BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa. C.S. §2807(e)(2)	:	Docket No.	L-00040169
Provider of Last Resort Roundtable	:	Docket No.	M-00041792

COMMENTS OF THE
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I. INTRODUCTION

On February 26, 2005, the Commission's Rulemaking Regarding Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant To 66 Pa.C.S. §2807(e)(2) was published in the *Pennsylvania Bulletin*. In the proposed regulations, the Commission sets forth the key elements of the obligation to serve retail customers who do not choose to be served by an alternative provider or who contracted with an alternative provider for energy service that was not delivered. As the OCA set forth in its Comments in the POLR Roundtable, the design of the provider of last resort service is one of the most critical tasks facing the Commission.

The fundamental goal of the Pennsylvania restructuring law was to provide reliable service to consumers at lower prices than they would pay under the prior regulatory model. The need for lower prices was considered essential for consumer welfare and economic development. As a means of achieving that goal, the 1996 Act sought to ensure that Pennsylvania electric consumers gained access to a competitive generation market. As stated in Section 2802(5) of the Act's Declaration of Policy: "Competitive market forces are more effective than economic regulation in controlling the cost of generating electricity."

The underlying premise of the Act was that when competitive market forces are brought to bear on the generation of electricity, those competitive market forces will reduce the ***cost*** of generating that electricity and therefore the ***price*** of generation service to retail consumers. Under the Act, a customer does not have to leave his or her retail electric distribution company ("EDC") in order to get access to competitive market generation. Rather, once the transition period is over, the customer can choose between purchasing generation at unregulated market prices from an alternative electric generation supplier ("EGS"), or

purchasing unbundled generation from the provider of last resort ("POLR") at a price that is designed to reflect the costs to the POLR of acquiring generation in the competitive wholesale market. Equally important under the Act, electric service is to be available to all customers on reasonable terms and conditions. 66 Pa.C.S. §2802(16). It is the OCA's position that the goal of POLR service should be to provide basic generation service at a reasonable price and on reasonable terms and conditions. Nine years after the adoption of the Act, the level of retail competition available to residential customers is either very small or absent altogether in some service territories. As a result, default service must be viewed as the primary vehicle for the delivery of the promises of the 1996 Act. The OCA urges the Commission to adopt POLR regulations that are designed to assure residential customers the continuation of a stable and affordable electric generation service that is essential to their health and welfare. All customers should be able to rely upon this service if they do not choose to select an alternative supplier, if they choose to return to POLR service, if their alternative supplier defaults, or if the alternative supplier terminates its service to the customer for any reason.

To achieve this goal, it is the OCA's position that each EDC should continue to serve as the provider of last resort for generation in its respective service territories. The EDCs should provide that service by acquiring a portfolio of resources through competitive procurement processes, but those processes and portfolios need not be identical for all utilities. The portfolio that is appropriate for a company the size of Wellsboro or Citizens, for example, might not be the same as for a company the size of PECO or PPL.

Each EDC should develop a multi-year plan to acquire the needed portfolio of resources. The design goal should be the provision of reliable service at reasonable, stable rates. The portfolio of products should include both short-term (one to three year) and long-term (at

least five year) contracts. The approach should also include demand measures and the resources needed to comply with the Alternative Energy Portfolio Standards required under Act 213 of 2004 ("AEPS" or "Act 213").[1] The products should be combined to create a "ladder" or "tranche" approach to procurement; that is, only a portion of the load obligation should be acquired in any single year of the purchasing plan. Such a purchasing strategy, although designed over the long term, will require updating on a periodic or an annual basis as the various components are implemented over time. In addition, while the portfolio procurement plan would cover a number of years, the price charged to consumers could change annually.

A range of competitive processes can be utilized, such as formal requests for proposals, wholesale auctions, or arms length negotiations with unaffiliated competitive suppliers.[2] One of the benefits of a portfolio approach is that it allows the POLR to hedge against a number of risks by acquiring its supply through a variety of methodologies and to utilize a variety of contract terms to meet its obligations. Additionally, use of a portfolio of resources enhances security and reliability that cannot be obtained through reliance on a single type of contract, a single fuel or a single supplier. A variety of products, resources, contracts, and financial instruments should mitigate the various risks of the service and result, long term, in reasonable costs for the type of service being provided. This approach also allows enough flexibility to respond to short-term developments in the markets or changes in load obligations.

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[1] The recent enactment of the Alternative Energy Portfolio Standards Act reinforces the need for portfolio planning by the POLR, or by the entity providing the full requirements of the POLR. In enacting the AEPS, the General Assembly has recognized the importance of a portfolio approach, particularly the diversity of resources, in supplying energy to customers in Pennsylvania. The OCA submits that the enactment of the Alternative Energy Portfolio Standards leads to an approach to default service that is portfolio based, whether provided by the EDC or a winning bidder meeting the full requirements of an EDC.

[2] To the extent that an EDC's affiliate wishes to provide generation service, any contract entered into with the affiliate should only be done through a formal competitive bidding process.

The price the customer pays at any given point in time will be the blended price of the various components of the portfolio. That blended price will change annually, but the annual price changes should be modest because only a portion of the portfolio will be replaced each year. What is critical is that under a portfolio approach, only a portion of the total load obligation should be procured at one time. This diversity stabilizes the rate, resulting in modest rate changes each time. For residential customers, the OCA submits that the rate should be presented in a simple, understandable cents per kilowatthour charge.

During the Roundtable Phase of this proceeding, it was the OCA's position that either a reconcilable or a non-reconcilable recovery mechanism could be used to recover the costs of meeting the POLR obligation. The OCA originally found a fixed price that included renewables, to be a reasonable approach to cost recovery. This was the approach presented to the Commission in the Stipulation submitted by the OCA and Duquesne Light Company regarding Duquesne's POLR III service. Petition of Duquesne Light Company For Approval Of Plan For Post-Transition Period Provider of Last Resort Service, Docket No. P-00032071 (Order entered August 23, 2004). Under this approach, customers would be charged a fixed price for the term of the service and the EDC would procure resources -- including renewables -- within these price parameters on a non-reconcilable basis. If the EDC was able to secure resources at a lower price, it could retain the benefit, but if it was unable to purchase at or below those prices, it would eat the difference. The OCA/Duquesne Stipulation, however, was rejected by the Commission. Id.

Most importantly, given the subsequent enactment of the Alternative Energy Portfolio Standards Act, which calls for fully reconcilable recovery of the alternative energy resources needed to comply with the Act, the OCA has concluded that the recovery mechanism

for POLR costs will have to be reconcilable. The use of a mechanism that is reconcilable for a portion of supply and non-reconcilable for another portion of supply may result in resource purchasing that is not fully consistent with a portfolio approach. If purchasing for two types of resources must be conducted separately so that the different cost recovery mechanisms can be implemented, the benefits of portfolio management are lost. It will always be more expensive to procure two separate portfolios rather than one integrated portfolio.[3]

The OCA submits that the Commission's proposed regulations have established an appropriate general framework for provider of last resort service that should enable default service providers to offer a reasonably priced, stable and affordable service to residential retail customers.[4] The OCA would note, however, that some aspects of the Commission's proposal will not achieve the goal of providing reasonably priced, reliable default service. The OCA will discuss areas where the OCA suggests a modified approach in more detail in these Comments.

The Commission's approach of requiring an implementation plan that sets forth the term of the plan, the portfolio of resources to be acquired to meet the load obligation, and the competitive procurement process for acquiring generation supply is the key to the provision of reasonably priced POLR service. The development of a default service implementation plan by each EDC provides the needed flexibility for each EDC to develop a portfolio of resources and purchasing strategies that meets its particular service territory needs, such as its RTO

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[3] Arguably, if an EDC can waive the provisions of Act 213 calling for fully reconcilable cost recovery for compliance with the Act, a non-reconcilable mechanism for all supply could be used. Act 213 does not clearly allow for this option. If it does, the EDC should select one of the two options so that purchasing can be properly integrated.

[4] The OCA's review, and these Comments, will focus on the regulations concerning residential service. The OCA will not offer comments on these proposed regulations as it concerns small commercial customers or large commercial and industrial customers. The OCA anticipates that representatives of these other customer classes will address issues specific to the interests of those customer classes.

membership, size, or other unique characteristics. It also allows for flexibility for each EDC to respond to statutory requirements, such as the recently enacted Alternative Energy Portfolio Standards, in a manner appropriate for its customers. The implementation plan proposed by the regulations also allows each EDC to design a portfolio of resource purchases that will enable it to provide, over the long term, the lowest priced, reliable default service to consumers.

The Commission, however, states in its Order that while it will allow longer-term implementation plans, longer-term plans "may lead to divergence from the prevailing market price, which is the legal standard that controls default service rates." Order at 11. The Commission's Order and some language in the regulations suggest that the Commission may be discouraging reliance on long term planning and long term purchasing. The OCA wants to ensure that the Commission's regulations do not move EDCs toward total reliance on short-term solicitations to meet the provider of last resort obligation. There is no statutory basis for the assumption that the reference to "prevailing market prices" refers only to hourly or short term contracts. The wholesale market can and does provide a wide variety of products, both long and short term. While there has been much attention paid to the development of the short-term wholesale market that is not the only definition of "market" and should not be the entire focus of the Commission's regulations. The OCA suggests that the regulations focus on the competitive nature of the POLR acquisition process rather than the notion that the POLR price must reflect short-term wholesale market price movements.

The sole reliance on short-term solicitations is fundamentally flawed for at least two reasons. First, reliance on short-term solicitations will introduce volatility into the pricing for customers and may improperly drive up the cost of POLR service. This volatility may result in sharp upward and downward price movements. While price movements in the downward

direction may be welcome, the fact of price volatility itself is not a value that most residential customers want or welcome. Second, short-term purchases and contracts will not properly provide adequate incentives for generation construction needed to maintain reliable service or to facilitate the development of alternative energy resources as contemplated by the Alternative Energy Portfolio Standards Act.

Several states that have implemented competitive solicitation processes for procuring generation supply have already begun to move away from short term auctions for procuring all of the POLR supply. For example, the New Jersey Board of Public Utilities ("NJ BPU") now requires fixed price, three-year bids in its Basic Generation Service ("BGS") auction. New Jersey began its BGS auction process in 2002. The first auction process conducted in early 2002 was for 100% of the customer load for a one-year period. For its 2003 BGS auction, the Board began a transition to longer-term contracts. In 2003 and 2004, the Board required that for residential and small commercial customers, a separate auction be conducted to obtain two-thirds of the utility load for 10-months and one-third of the fixed price load for a 34-month period. These two bids were blended into a single price for the customers. By the 2005 BGS auction, the Board was able to move to a process where supply is procured for 1/3 of the load each year under a three year fixed price contract. In the Matter of the Provision of Basic Generation Service for Year Three of the Post-Transition Period, Decision and Order, NJ BPU Docket No. EO04040288 (December 1, 2004). In moving to longer term contracts, the New Jersey Commission stated:

> For the post-Transition Year One FP [Fixed Price] Auction, the Board elected to adopt a term-averaged approach, as it would hedge the risk of unfavorable market conditions that might be present at any one point in time. This logic was continued for the Year Two FP Auction and still appears valid. Therefore, in an effort to balance the risk to ratepayers, the Board DIRECTS the

> EDCs to procure the approximately one-third of the EDC's current BGS-FP load which is not under contract for a 36-month period, and continue to use a "slice of the system" as the bid product. The tranche-weighted average of the winning bids from the 36-month period, as well as the 34-month and 36-month supply secured previously will be used to determine the price of the BGS-FP rates for the 2005 period. The Board will review its hedging policy prior to making its decision for the June 1, 2006 procurement period to determine at that time how best to proceed.

New Jersey Order at 6.

Other states also use a competitive solicitation process for longer-term contracts for some or all of the load. In Maryland, utilities must attempt to obtain 1-, 2-, and 3-year contracts for residential standard offer service (SOS). The Maryland process also uses a blended price of these contracts. In the Matter of the Commission's Inquiry into the Competitive Selection of Electricity Supplier/Standard Offer Service, MD PSC Case No. 8908 (April 29, 2003). The D.C. Public Service Commission also adopted regulations regarding wholesale bidding procedures for standard offer service. Pursuant to these regulations, PEPCO was required to solicit multiple length contract terms to serve residential and commercial customers with 50% or more of the load to be served by contracts of "three years or more." Order Adopting Wholesale Standard Offer Service, D.C. PSC Formal Case No. 1017, Order No. 13118 (March 1, 2004). As a result of the most recent solicitation in late 2004, about 26% of PEPCO's standard offer service load for residential and small commercial customers is secured in 16-month contracts, 37% of the load is secured under 28-month contracts, and 37% of the load is secured under 40-month contracts. For large commercial customers, about 63% of the load is secured under 16-month contracts and the remainder is under 28-month contracts.

Maine provides another example of the use of bids for multi-year contracts to meet POLR obligations. After conducting a number of solicitations, the Maine Commission conducted a proceeding to determine how to procure supply beginning in March 2005. As a result of that proceeding, the Commission concluded that it would solicit bids for one, two, three and five year terms for a portion of the SOS customer load obligation in the future to avoid "the risk of substantial price changes for customers if there are large market movements between standard offer solicitations." *Report on Standard Offer Procurement for Residential and Small Commercial Customers*, Maine PUC Docket No. 2004-147 (August 3, 2004).[5]

The Montana Public Service Commission has also addressed this issue in its default service regulations in addressing the obligations of the default service utility ("DSU"). The Montana default service regulation provides in part:

> (1) In order to satisfy its default supply responsibilities, a DSU should pursue the following objectives in assembling and managing an electricity supply portfolio. The DSU should:
>
> (a) provide default supply customers adequate and reliable default supply services, stably and reasonably priced, at the lowest long-term total cost;
>
> (b) design rates for default supply service that are equitable and promote rational, economically efficient consumption and customer choice decisions;
>
> (c) assemble and maintain a balanced, environmentally responsible portfolio of power supply and demand-side management resources coordinated with economically efficient cost allocation and rate design that most efficiently supplies firm, full electricity supply service to default supply customers over the planning horizon;
>
> (d) maintain an optimal mix of demand-side management and power supply sources with respect to underlying fuels, generation technologies and associated environmental impacts, and a diverse mix of long, medium and short duration power supply contracts with staggered start and expiration dates; and

Montana Admin.R. 38.5.8204.

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[5] http://mpuc.informe.org/cache/123366.pdf

The OCA submits that the Commission should build on the experience of other states. Other states have recognized the importance of an approach to POLR that spreads out the procurement of resources and uses a variety of resources and terms to mitigate risk and provide the lowest, long-term price for consumers. The National Association of Regulatory Utility Commissioners ("NARUC") came to the same conclusion in 2003. In a Resolution on Portfolio Management adopted by the NARUC Board of Directors on November 18, 2003, NARUC provided:

> **WHEREAS,** a variety of techniques, collectively known as *portfolio management*, can help utility regulators to ensure that regulated electricity services are provided in a manner that manages risks, enhances reliability, and improves the performance of wholesale and retail markets; and
>
> **WHEREAS,** portfolio management is wholly consistent with efforts to create competitive wholesale electric markets and offers a structured approach for assembling a diverse mix of short- and long-term energy resources to serve retail customers at regulated rates, via traditional power supplies as well as energy efficiency, distributed generation, demand response, and renewable energy resources; and
>
> **WHEREAS,** retail electric customers receiving regulated service can be protected from volatile energy markets by load-serving electric utilities that engage in prudent portfolio management practices; and

After considering these and other clauses, NARUC resolved as follows:

> **RESOLVED**, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its November 2003 Annual Convention in Atlanta, Georgia, encourages state regulatory commissions to explore portfolio management techniques that may be applicable to their particular circumstances, under either traditional or restructured markets, and to adopt appropriate regulatory policies to facilitate effective implementation of portfolio management practices by regulated utilities; and be it further

> **RESOLVED,** that NARUC explore opportunities to develop a research, training, and outreach program on portfolio management to serve the needs of state commissions and to further develop the regulatory community's knowledge about resource management practices to minimize risk and improve system reliability and market performance.

NARUC Resolution on Portfolio Management, November 18, 2003 (attached hereto as Appendix A).

The OCA submits that the proposed regulations take an important step in the direction of portfolio management but still appear to support reliance on short-term purchases for all supply. Short term purchasing for significant amounts of supply is vulnerable to price volatility and may compromise reliability. The OCA proposes modifications to the regulations designed to reflect, and encourage, multi-year portfolios and resource acquisition by the default service provider. As discussed above, the default service rate will change annually reflecting changing components of the portfolio. But management of the portfolio should be an on-going activity so that purchasing reflects a mix of resources of varying lengths.

The OCA respectfully submits that the proposed regulations could also compromise the goal of providing reasonably priced default service in one other key area -- the area of the proposed cost recovery and rate design, including the proposed "customer charge." For residential customers, the OCA submits that the pricing of the service should be simple and easily understood, utilizing a cents/kwh format. This approach is consistent with the extensive education given to residential customers about the price to compare and will continue to enable customers to compare price offers from alternative suppliers. The cost recovery mechanism also should not provide a barrier to integrated purchasing of the portfolio of resources.

The proposed regulations erect barriers to shopping and to coordinated purchasing of resources. The proposed regulations call for three separate charges to make up the residential

customer's generation rate – a fixed rate with no reconciliation for a portion of the supply, an automatic reconcilable clause for the portion of the supply associated with recovery of alternative resources under AEPS, and a customer charge. The use of this three charge structure will not only make it difficult or impossible for a customer to shop, but it could actually increase the cost to customers of default service as discussed more below. Additionally, the customer charge increases the cost of default service unreasonably by including costs in a customer charge that are not reasonable costs of the default service.

Through these Comments, the OCA will discuss in more detail the proposed regulations and will identify areas where modifications to the regulations are needed to better ensure that customers are provided with reasonably priced, reliable service. In Section II, the OCA will provide brief overview comments on the specific topics identified by the Commission in its Order. In Section III, the OCA will discuss each individual regulation and present the key recommended modifications to the regulations. Appendix B presents a version of the proposed regulations showing all of the OCA's recommended modifications.

II. SPECIFIC COMMENTS ON IDENTIFIED TOPICS

A. Introduction

In its Order, the Commission noted that it was particularly interested in comments on a number of areas, including definitions, the replacement of default service providers pursuant to Section 54.183(b), the length of the term of default service, the structure of the procurement process, cost recovery allocation and recovery mechanisms, hourly priced service, the review process for implementation plans, and customer migration. In this Section, the OCA will provide an overview discussion of these topics, and others, to identify areas of agreement and disagreement with the proposed regulations. The OCA will discuss specific recommendations regarding these topics when it provides a discussion of each regulation in Section III.

B. Replacement of Default Service Provider, Section 54.183(b)

The provider of last resort function is necessary to ensure that all retail customers have access to essential electric service on reasonable terms and conditions. The OCA strongly supports the regulation at Section 54.183(a) that requires the Electric Distribution Company (EDC) to remain as the default service provider. The EDC will always be required to step in as the "last resort" when other entities fail, particularly since the EDC will continue to have the obligation to connect all customers and deliver supply through its facilities. The EDC is the only entity properly situated to provide this service. The EDCs are also in the best position to provide customer cares service for residential customers.

The regulations, however, also provide that an EDC may be replaced as the default service provider if it petitions the Commission or if the Commission determines that, the EDC should be replaced. Section 54.183(b). The regulations require that any alternative supplier that fills this role obtain a certificate of public convenience. The OCA submits that

providing for any replacement of the EDC as the default service provider is unworkable and should be removed from the regulations. As noted above, the EDC will always be the "last resort" since it must connect and deliver supply. There is no efficiency, and no clear purpose, to allowing the replacement of the EDC as the ultimate default service supplier. Unless the EDC seeks to abandon all service in its territory -- distribution, transmission and generation – through a total sale or acquisition, there is no need to consider replacement of the EDC as the ultimate default service supplier. If there were a sale of the entire utility, this would be addressed through the Commission's Chapter 11 procedures.[6] As such, the OCA recommends that Section 54.183(b) be eliminated in its entirety.

C. Length of Term of Default Service

As discussed above, in the OCA's view, the default service provider should serve the role of a portfolio manager that acquires a portfolio of resources from the competitive wholesale markets to meet the load obligations of customers through a multi-year default service plan.[7] The role of default service provider, particularly for larger EDCs, should not just be a mechanical auction taker, but should assemble a portfolio of products that will provide the lowest priced, reliable service to customers. The OCA recommends that an EDC develop an implementation plan that extends for a minimum of five years. The implementation plan should contain a portfolio of products, both short-term (one to three year) and long-term (at least five

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[6] Based on the Commission's Order which states that it is not considering "retail POLR" as part of the regulations, the OCA interprets the replacement provision in Section 54.183(b) to refer to an abandonment of the obligation of the EDC to serve as default service provider in its entirety.

[7] The OCA anticipates that smaller EDCs may wish to enter into a single, fixed price, full requirements contract for an appropriate term. This places the winning supplier in the role of portfolio manager and the EDC as an auction manager. That is, the supplier must manage purchases of resource to meet the fixed price of the contract that it has entered with the EDC.

year). Longer-term contracts may be especially appropriate for resources procured in compliance with the Alternative Energy Portfolio Standards.

It is important to note that there is a distinction between the length of the default service term, or implementation plan, and the length of time that a particular rate or contract under the implementation plan may be in effect. Most EDCs should design a multi-year purchasing portfolio where a portion of the load obligation is procured from the markets at various times during that plan. The OCA strongly discourages an approach that has 100% of the default service load being procured each year through an auction conducted at the same time each year. It is only through a longer-term purchasing strategy with greater diversity that the risk and cost of default service can be mitigated.

While the purchasing plan should cover a several year period, the price that customers pay may change on an annual basis. The annual default service price is a blended price, reflecting the weighted average cost for the diverse portfolio of resources that have been acquired for that year. As components of the purchasing plan are implemented and resources procured, the price would be updated to reflect the cost of the new procurement. Price changes should not be substantial from one year to the next since only a portion of the load obligation is being procured at any given point in time.

The Commission's regulations appear to support an approach where the EDC purchases a portfolio of resources to meet its default service needs. The Commission regulations in Section 54.185 call for each EDC to file an implementation plan. This plan should be the EDC's strategy for acquiring the necessary portfolio of products over time. As discussed in Section I, the purchasing plan should extend over a multi-year period, at least a five-year period.

D. Structure of the Procurement Process

The OCA submits that the regulations should allow flexibility in the structure of the procurement process. The default service provider may want to use a variety of procurement methods including auctions, RFPs, and arms length negotiations with unaffiliated competitive suppliers. With the enactment of the Alternative Energy Portfolio Standards Act, some flexibility may be needed as EDCs seek to procure, and support the development of, designated resources.

The regulations may too narrowly define the competitive procurement process by referring to it only as a "bid solicitation" process. The OCA has provided modifications in Section III. C.1.

E. Cost Recovery Allocation and Recovery Mechanisms

1. Introduction

It is the OCA's position that pricing, and cost recovery mechanisms, for residential POLR service must reflect the fact that electricity is an essential service. The residential POLR service should be provided to all customers at reasonable, affordable, and stable rates. The cost recovery mechanism should be designed to support an appropriate purchasing strategy and it should ensure that all benefits, as well as costs, are reflected in the price paid by consumers. It is also important that the rates be understandable to the customers, and that the customer be able to easily compare offers from EGSs so that they can make choices about shopping. For residential customers, the OCA recommends that the regulations provide for a cents/kwh format for the default service generation rate. This allows for an understandable "price to compare" that is consistent with the significant consumer education that the Commission and the EDCs have provided over the years.

The OCA submits that the proposed regulations on cost recovery should be modified in several respects. The structure proposed by the regulations is complicated, deviates from the price to compare format that has been the basis of all consumer education, includes costs in the generation rate in the form of a customer charge that improperly increases the rate, and does not allow for the benefits of the portfolio of resources to be fully reflected in the customer's rates.

2. The Default Service Rate Must Be Understandable And Should Facilitate Offer Comparisons.

Under the proposed regulations, for a residential customer, the default service generation rate would be made up of three charges – a non-reconcilable clause for a portion of the resources, a reconcilable clause for the alternative energy resources, and a customer charge. It is the OCA's understanding that the two resource charges would be presented on a cents/kwh basis, but the customer charge may be a fixed monthly charge. A residential customer who wishes to compare the default service rate to competitive prices will have to add the separate charges together and convert the fixed customer charge into a cents/kwh basis to arrive at a "price to compare." If alternative suppliers are expected to make offers using this three-tiered structure, customers will have to be educated again as to how to compare the three separate charges from their alternative supplier.

The approach of providing three separate rates or charges for generation service is unnecessarily complicated and will result in a pricing scheme for this service that is difficult for residential consumers to understand. This pricing approach is significantly different from the Commission's extensive consumer education campaign on the "price to compare." The cost recovery proposal will impair a customer's ability to make reasoned and informed decisions

about choice. The regulations should return to a price to compare format on a cents/kwh basis so that customers can understand their rates and compare those rates to other offers.

3. The Customer Charge Is Unreasonable And Must Be Eliminated.

The customer charge proposal contained in the regulations is particularly troubling and must be eliminated. The OCA does not support adding costs to the default service rate that are not part of the reasonable cost of providing default service by the EDC. Retail adders, or price adjustments that have as their purpose "covering the costs" of EGSs just make default service expensive to all customers and do not foster genuine competition based on efficiencies in service. These types of "adders" are particularly burdensome to low income customers. Many low-income customers will not be attractive to EGSs due to credit problems or payment history no matter how expensive the default service. It would be ironic if the result of the Act was to impose additional costs on those least able to pay and least able to choose.

The customer charge here, while purporting to cover costs related to the provision of default service, only seems to unreasonably increase the generation rate at the expense of default service customers. The OCA discusses this issue in detail in Section III.H.3, but the Commission's Order on this point is telling. In its Order, the Commission discusses the reallocation of costs between the distribution function and the generation function, and concludes:

> Any increase in default service rates resulting from reallocation should be matched by a ***near*** corresponding decrease in distribution rates.

Order at 17 (emphasis added). Referring to this as a "near" corresponding decrease highlights the fundamental problem with the approach in the regulations – not all of the costs that are assigned to the default service are solely related to default service or completely avoided by the

default service provider when a customer shops. For example, meter reading, which the regulations assign to the customer charge, are not costs that will be avoided by the EDC if a customer shops. There will not be two-meter readers, one to read distribution usage and one to read generation usage. The readings are the same and are necessary for the distribution operations as well. Because these costs are not solely related to default service or cannot be avoided, customers will end up paying for some of these costs twice – once in default service rates and once in distribution rates.

The OCA does not object to reasonable costs, related solely to the generation function, and properly avoided by the default service provider when a customer shops, being included in the generation rate. Those costs should be included as part of a cents/kwh generation rate if they can be properly identified. Distribution rates should then be reduced in an exact corresponding amount. The proposed regulations, however, include many cost categories that are not solely related to generation service, are not avoided when a customer shops, and are not even for services provided by the alternative generation supplier. The proposed customer charge unreasonably increases the price of generation service and must be eliminated.

4. In Light Of The Cost Recovery Mechanism Required By The Alternative Energy Portfolio Standards Act, A Reconcilable Mechanism May Now Be Necessary For All Supply Acquisition.

The regulations also provide for two charges related to the cost of supply procured by the default service provider. One charge is a fully reconcilable automatic adjustment clause to recover the costs of complying with the Alternative Energy Portfolio Standards Act. The second charge is a non-reconcilable clause to recover all other costs of generation supply. The use of two clauses, one reconcilable and one not, could result in increased costs to consumers.

The OCA recognizes that with the passage of the Alternative Energy Portfolio Standards Act, which requires recovery of the costs of compliance with AEPS through an automatic, reconcilable adjustment clause, the use of a non-reconcilable rate approach may not be possible. The OCA's original position was that an approach similar to that proposed by OCA and Duquesne in the Duquesne Light Company POLR III proceeding was an appropriate cost recovery mechanism. Under that mechanism, the customer is charged a non-reconcilable default service rate that reflects a reasonable portfolio of resources, including renewable resources, needed to meet the default service obligation. The EDC procures the resources through a strategy that it finds appropriate. If the EDC's cost exceeds the default service rate, the EDC assumes this risk and bears the cost. If the EDC cost is less than that reflected in the default service rate, the EDC retains this reward.

Ideally, a default service provider should acquire resources from suppliers where the supplier would meet the load obligation, including the AEPS requirements. The supplier's wholesale price would reflect the cost, and benefit, of the AEPS requirement in that price. Under the proposed regulations, however, the single wholesale price would have to be split into two components – one for the reconcilable portion of the generation and one for the non-reconcilable portion. This split would be extremely difficult to implement. The effect of the proposed regulations is that an EDC will have to conduct two procurement processes, one for the AEPS requirements and another for all other supply, so that the cost elements can go into the proper recovery mechanism. The OCA submits that this approach increases costs by artificially imposing a lack of coordination in planning and purchasing.

The OCA has concluded that if an automatic, reconcilable clause is used for the recovery of the alternative energy resources as required by the Act 213, then an automatic,

reconcilable clause should be used for the recovery of ***all*** costs of default generation supply. To properly reflect the price of the portfolio, and capture the benefits of the entire portfolio, the same cost recovery mechanism must be used for all of the default generation supply that is procured.[8]

The OCA submits that the proposed cost recovery mechanisms must be simplified for customer understanding and designed to support coordinated planning and purchasing strategies that maximize the cost saving benefits of resource procurement to customers. The mechanisms must also avoid charging customers for costs that are not the reasonable, avoidable cost of providing default service. The regulations must be modified to achieve this result.

F. Review Process For Implementation Plans

The regulations propose a review process for the implementation plans that calls for a plan to be submitted 15 months before the end of the existing plan term. The OCA agrees that the Commission should review the EDC's plan to be sure that it is reasonable and designed to provide reliable default service at reasonable prices. Since the OCA recommends that the implementation plans have multi-year terms, such as a minimum five-year term, the Commission would only need to review the plan on a periodic basis. The Commission would still need to certify the results of competitive procurements carried out pursuant to the plan and review any updates to the default service rate as a result of the implementation of the plan components. These subsequent reviews, however, would not need to be extensive.

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[8] Some may argue that an EDC can waive the provisions of Act 213 that require the use of a fully reconcilable cost recovery mechanism for the alternative energy resources procured to comply with Act 213. The OCA submits that such a waiver possibility is not clear in the Act. If an EDC could waive its right to automatic, reconcilable recovery, and such waiver would not harm customers, the OCA submits that each EDC should be permitted to select whether to use a non-reconcilable mechanism for all default service supply or a reconcilable mechanism for all default service supply. The EDC should make this election in its implementation plan. The EDC should not be allowed to switch back and forth between recovery mechanisms or use different recovery mechanisms for different types of resources.

The OCA would suggest that the Commission establish a staggered schedule for filing the implementation plans over a number of years. In this way, the Commission and other parties do not have to review numerous implementation plans each year. This process would also allow the EDC to focus its efforts on implementing the approved competitive procurement processes and would give certainty to the EDC that solicits multi-year contracts that might extend across a number of implementation plan periods.

The OCA also submits that the proposal that the Commission issue an Order on each plan in six months may be overly optimistic, particularly for a review of the initial plans. A six-month time frame may not be sufficient to address the many details that should be contained in the plans. The OCA would recommend at least a nine-month period at this time for review of the implementation plans. If a reconcilable recovery mechanism is used, an annual review of the projected and actual costs will have to be conducted.

G. Hourly Prices and Seasonal Rates

1. Seasonal Rates

The proposed regulations allow for the introduction of seasonal rates for residential customers. A move to seasonal rates can have significant consequences for residential customers and raises many public policy issues that must be considered. The question concerning seasonal rates for residential customer is whether the rates have merit in their own right and whether they bring benefits to customers. The suggestion in the regulations and the Commission's Order that seasonal rates be used in order to discourage EGSs from gaming the retail market is not appropriate. Seasonal switching by residential customers has never been shown to be a problem. Residential customers should not be harmed as a means to stop exploitative behavior by EGSs.

A move to seasonal rates from average rates will produce winners and losers depending on a customer's usage patterns. If entertained at all, a move to seasonal rates should be done modestly and carefully. The losses may be significant, particularly for the elderly, disabled and poor. For example, a move to seasonal rates from average rates increases the price of electricity for the summer period when air conditioning use drives up customer usage. Air conditioning use is an essential health requirement for many residential customers, particularly the elderly and disabled. Customers may become payment troubled and face termination before the upcoming, lower priced winter season when they could catch up on their arrearages.

While providing an ***option*** for seasonal pricing may be appropriate, the regulations should specify that this is an option, not the basic default service rate unless the EDC already has seasonal rates as part of its standard residential rates.[9] If any move to seasonal pricing is proposed, the Commission will need to thoroughly review Customer Assistance Programs and LIURP programs to determine if they are appropriately structured to address the impacts of the seasonal rate on the bill of low-income, elderly and disabled customers.[10] Such programs would need to include medically necessary air conditioning use. Additionally, given the recent legislative changes in termination rules, customers may not be provided an adequate chance to catch up on high bills during lower priced periods. These issues will have to be addressed as part of any proposal for seasonal rates for residential customers.

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[9] The OCA is aware that PECO has a seasonal rate for residential customers that is part of its current default service rates. PECO would be able to continue this rate structure for residential customers after 2010 if it did not elect to move to an annual average rate structure.

[10] PECO's seasonal price for residential customers that has been in effect for many years has a price differential of about 0.7 cents/kwh between summer and winter usage for usage exceeding 500 kwh. PECO has also developed components of its CAP and LIURP that address summer electricity usage, efficient air conditioning, and medically necessary electricity usage.

At this time, the OCA recommends that references to seasonal rates be removed from the regulations since this issue is one of rate design that affects all aspects of the utility bill, not merely the pricing of default service. Those utilities who already have seasonal prices for residential customers should be allowed to continue that approach. If at some point an EDC wishes to provide an option for seasonal rates, or change its rate design, that proposal could be introduced as part of the implementation plan and tariff filing with the required public review process.

2. Hourly Rates

An issue regarding hourly rates and compliance with the Alternative Energy Portfolio Standards Act is raised by the regulations.[11] Large commercial and industrial customers are to be placed on hourly rate service. This service is a purchase from the spot energy market, which then flows through the locational marginal price from the energy market to the customer. It is not clear to the OCA how these hourly spot market purchases could meet the requirements of the Alternative Energy Portfolio Standards Act. These spot purchases will almost certainly not have alternative energy attributes.

Given the passage of AEPS and the intent of the General Assembly to use a portfolio approach, it is unclear how hourly pricing may be employed as part of default service. If, for example, an EDC could not meet the requirements of the AEPS due to purchasing large volumes on the spot market for these large users, penalties would ensue. It would also not be appropriate to exclude large customer classes from the alternative energy requirement and shift the burden of compliance to other classes.

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[11] The OCA anticipates that representatives of the large commercial and industrial class will address other issues regarding the hourly rates. The OCA has limited its discussion to the effect of the Alternative Energy Portfolio Standards Act.

H. Customer Migration

The regulations address customer migration by allowing a default service provider to adjust rates if a specified level of customer migration is met. Section 54.187(g). The OCA submits that a default service provider should design its purchasing plan in a manner that allows it to address customer migration. There will always be a risk that customers will leave POLR service, and return to POLR service. Through a portfolio approach, which combines contracts of varying lengths, the portfolio can address this risk. For example, a default service provider may wish to have a small tranche of short-term contracts that it procures each year. As those contracts come up for renewal, the amount of load covered by the contract can be adjusted depending on whether the load expectation has changed due to customer migration. It may also be appropriate to secure a small portion of resources from the monthly or spot markets to further expand flexibility to meet customer switching and unanticipated load growth. Moreover, if a fully reconcilable mechanism is adopted, reasonable changes in cost resulting from customer migration will be reflected in the reconciliation process.

III. SPECIFIC COMMENTS ON EACH REGULATION

A. Introduction

In this Section, the OCA will address each specific regulation in light of the discussion provided above. The OCA has included the key modifications to the regulations in the Section where those modifications are discussed. Appendix B includes all of the necessary modifications to the regulations that the OCA is proposing using a strikethrough format for deletions and underline format for additions.

B. Section 54.181. Purpose.

In this Section, the Commission sets forth the statutory purpose of the service. The "purpose" section should state the policy objective of the regulations. Some of the language proposed by the regulations addresses specific requirements of the statute, rather than the overarching policy objective. The OCA recommends that the purpose section be modified as follows:

> This subchapter implements §2807(e) of the Electricity Generation Customer choice and Competition Act, 66 Pa.C.S. §§2801-2812, pertaining to an EDC's obligation to serve retail customers at the conclusion of the restructuring transition period. The purpose of ~~T~~these regulations is to ensure that all retail customers who do not choose an alternative EGS, or who contract for electric energy that is not delivered, have access to generation supply at prevailing market price and to ensure that ~~T~~the EDC ~~shall~~ fully recovers all reasonable costs for acting as a default service provider of electricity to all retail customers in its certificated distribution service territory.

This modification slightly differs from the proposed regulation, but the OCA submits that this approach captures the overarching purpose of the regulations.

C. Section 54.182. Definitions.

The OCA has identified a number of definitions that should be modified. The definitions, and suggested changes, are addressed as follows:

1. Competitive Procurement Process

The definition of competitive procurement process proposed in the regulations is as follows:

> A fair, transparent, and non-discriminatory process by which a default service provider acquires electric generation supply to service its default customers through a bid solicitation process.

The OCA recommends that the phrase "through a bid solicitation process" be deleted. The phrase "bid solicitation process" may unduly narrow acquisition methods, which could be particularly important regarding procurement of alternative energy supplies to meet the Alternative Energy Portfolio Standards. The default service provider should use a variety of competitive processes to procure supply in the wholesale market. For some of the resources, an RFP or an arms length negotiation with a non-affiliate resulting in a contract may be the most appropriate means to acquire the resources rather than an auction process. The default service provider may even elect to acquire a small portion of supply on the spot market in certain time frames. To restrict the default supplier to only a "bid solicitation process" may preclude the use of procurement methods that will assist in providing lowest priced, reliable service.

With the OCA's recommended modification, the definition of "competitive procurement process" would read:

> A fair, transparent, and non-discriminatory process by which a default service provider acquires electric generation supply to service is default customers. ~~through a bid solicitation process~~

The modification is intended to allow necessary flexibility in procuring needed resources.

2. Default Service

Although following the language contained in Section 2807(e)(3), the definition of default service does not clearly capture the circumstance where a customer voluntarily returns to default service from an EGS or the EGS returns the customer to default service, such as when an EGS leaves the market. So that there is no misunderstanding as to the scope of default service, subsection (i) of the definition should be expanded as follows:

> (i) Electric generation service provided by a default service provider to a retail electric customer who does not choose an alternative EGS, who is no longer being served by an alternative EGS, or who contracts for electric energy that is not delivered.

With this addition, it is clarified that default service is provided to all customer who are not being served by an EGS.

3. Default Service Implementation Plan

The definition of default service implementation plan appears to contain a typographical error. The definition refers to "prevailing market rates" when it should refer to "prevailing market prices."

4. Fixed Rate Option

Through this definition, the Commission presents the fixed rate as an "option." The OCA submits, however, that this service should be the default service, and not the option, for residential classes. The OCA recommends deletion of the term "option" so that the more specific regulations can identify those customer classes where the fixed rate is an option and those customer classes where it is the default service. The OCA would also note that a fixed rate associated with an implementation plan need not be fixed at a single rate for the entire length of the plan. The rate may change annually as plan components are implemented or reconciled. This possibility should be captured in the definition of "fixed rate."

The definition of fixed rate option also introduces the possibility of seasonal price differences. As discussed in more detail in Section II.G.1, the introduction of seasonal price differentials for EDCs that have not used seasonal rates could have profound implications for actual customer bills, resulting in higher bills for some customers and lower bills for others, depending on their usage profiles. The OCA submits that it is unnecessary to include a reference to seasonal prices in this definition. The reference should be deleted.

The OCA recommends the following modifications:

> *Fixed rate ~~option~~* – Default service price or prices that do not change more than once every twelve months ~~is set in advance~~ in accordance with ~~for the entire term of~~ the default service implementation plan. ~~that may include seasonal differences.~~

These modifications address the issues that the OCA has identified with this definition.

5. Prevailing Market Price

The definition of prevailing market price as contained in subparagraph (i) correctly reflects the fact that the prevailing market price is realized through the procurement process contained in the implementation plan. The OCA supports the definition as provided in subparagraph (i). This definition correctly recognizes that there is no single price that can be pointed to as prevailing market price and it correctly recognizes that prevailing market price is not a spot price that changes every hour.

Subparagraph (ii), however, attempts to define prevailing market price in a situation where replacement of a supplier, as set forth in Section 54.186(g), 54.187(i) or 54.188(e), is needed. This definition moves away from the definition in subparagraph (i) and suggests that in certain circumstances, a prevailing market price more closely associated with short term or spot purchases will be flowed through to customers. As will be discussed more fully when the OCA addresses Sections 54.186(g), 54.187(i) and 54.188(e), the regulations for

pricing replacement energy to the customer are flawed. The regulations do not recognize the portfolio of other products that the POLR will be utilizing to serve customers or the portfolio management steps that the default service provider can take to mitigate the impact of customer migration or defaulting suppliers. Additionally, if a reconcilable recovery mechanism is used, any reasonable, unmitigated costs associated with replacement energy will be addressed through the reconciliation process.

The OCA recommends that subparagraph (ii) be deleted from the regulations. As modified, the definition of prevailing market price would be as follows:

> *Prevailing market price* – ~~(i)~~ The price of electric generation supply for a term of service realized through a default service provider's implementation of and compliance with a Commission approved default service implementation plan. ~~(ii) The price of electric generation supply in the RTO or ISO-administered energy markets in whose control area default service is being provided, or acquired pursuant to the conditions specified in §§54.186(g), 54.187(i) or 54.188(e).~~

This modification results in an appropriate link between the implementation plan, or portfolio strategy, and the prevailing market prices that are charged to customers.

D. Section 54.183. Default Service Provider.

Section 54.183(a) establishes the EDC in each service territory as the default service provider. The OCA fully supports this determination. As experience has demonstrated, as a practical matter, the EDC will always be required to step in when other entities fail, particularly since the EDC will continue to have the obligation to connect all customers and deliver supply through its facilities. The EDC also remains in the best position to offer customer cares service to residential customers.

In Section 54.183(b) and (c), however, the Commission allows for an EDC to exit the role of default service provider through a Petition by the EDC or through the Commission's own motion. The OCA submits that this provision raises significant concerns. First, the Commission has provided no standard for determining under what circumstances it would act on its own motion to relieve an EDC of its default service obligation. The OCA questions whether the Commission could relieve an EDC of this statutory obligation absent a finding that the EDC has failed to meet its obligations as a certificated public utility.

Second, while in its Order, the Commission properly states that it is not proposing a retail POLR model through these regulations, Sections 54.183(b) and (c) appear to be allowing for a "retail POLR" approach or an abandonment of service by the existing POLR. There are insufficient procedural steps, standards, and restrictions governing these important matters.

As noted, the EDC will always be the provider of last resort, even if another entity purports to serve in that role. While generation is a competitive service, POLR service is not. There is no benefit to creating the fiction that another entity can serve as the POLR, even if they qualify for a certificate of public convenience, since the EDC must serve if the EGS fails. There is no point paying for two POLR providers when one will be expensive enough.

At this time, the OCA recommends that Sections 54.183(b) and (c) be eliminated in their entirety from the regulations.

E. Section 54. 184. Default Service Provider Obligations.

Section 54.184 sets forth the obligations of the default service provider. To the extent that this Section is addressing the generation supply function, the regulation on subsection (a) captures the obligation, but requires a minor modification. The OCA submits the obligation of the default service provider is not only to those customers who are not receiving generation

service from an alternative EGS, but also to those customers whose alternative EGS failed to deliver the electricity supply. Subsection (a) should be reworded as follows:

> A default service provider shall be responsible for the reliable provision of default service to all retail customers within the certificated territory of the EDC that it serves who are not receiving generation services from an alternative EGS or whose alternative EGS has failed to deliver electric energy ~~within the certificated territory of the EDC that it serves~~.

This modification captures the obligation of the default service provider under Section 2807(e).

The regulation, however, is not clear that it is limited to generation service. The regulation adds the provision of universal service as an obligation of the default service provider. This reference makes it unclear whether the regulation is referring to the default service provider or the full obligation of the EDC. The EDC role is broader than just providing default generation service. The EDC has an obligation to connect, deliver and acquire electricity. If this section is intended to refer to the obligation of the EDC, the language is too narrow and the reference to an obligation other than the default service obligation is confusing.

If the Commission's intent is to transfer the provision of universal service programs to a default generation service provider other than an EDC, however, the OCA submits that this is improper. The obligation to provide universal service programs must remain with the EDC as a non-bypassable distribution function and cost. Universal service programs have been developed and provided for more than a decade by staff of EDCs who are highly trained in these areas. This obligation should not be transferred to an alternative provider who may only be providing generation service. These programs are unique and require experienced staff to deliver. Any suggestion in the regulations that the administration of these programs could be transferred to an alternative default generation service provider should be removed.

Additionally, transferring any costs of the programs to the default service rate would make those costs bypassable when a customer shops, in contravention of 66 Pa.C.S. §2804(9).

Since the purpose of these regulations is to address the more narrow obligation of the default service provider, the OCA recommends that other obligations that pertain to the distribution operations of the EDC should not be addressed through the regulations. Although the OCA fully agrees that universal service programs must continue, the reference to the obligation in these regulations is confusing. As such, the OCA recommends that subsection (c) be removed from the regulations.

F. Section 54.185. Default Service Implementation Plans and Terms of Service.

Through Section 54.185, the regulations establish the requirement that each default service provider file a default service implementation plan no later than 15 months prior to the conclusion of the currently effective plan or the Commission approved generation rate cap. The OCA supports the Commission's approach of requiring each default service provider to develop an implementation plan that is best suited to its service territory. As the Commission is aware, not all service territories in Pennsylvania are in PJM, and the service territories vary widely in terms of size and characteristics. What might be an appropriate plan for PECO Energy, for example, may not be appropriate for Citizens Electric or Wellsboro. The implementation plan approach allows for a recognition of the differences in Pennsylvania.

The OCA is concerned about some details in Section 54.185, however. Of particular concern are subsections (c), (e), (g) and (l).

1. Subsection 54.185 (c) – Term of Plan

Subsection (c) provides that a default service plan should propose a minimum term of at least twelve months. The OCA agrees that no shorter term is appropriate, but a 12-

month term for the implementation plan is far too short. The default service implementation plan should be a multi-year procurement strategy that the default service provider will use to acquire the resources to meet its load obligations over the long term. The goal of this procurement plan should be to assure the long term, lowest cost for reliable service, so that prices to residential customers are reasonable, affordable and stable. To achieve this objective, and meet all statutory requirements such as those of the Alternative Energy Portfolio Standards Act, the plan should combine supply contracts of a variety of terms and resources, from short term (one to three year) to long term (five years or longer), and include demand management strategies, alternative energy sources, and other necessary products, such as hedges if the EDC is managing the portfolio.

In its Order, the Commission expresses concern that an implementation plan with a longer term may lead to divergence from the legal standard of "prevailing market prices." Order at 11. The OCA submits, however, that the use of a long-term plan, or long-term contracts within that plan, does not mean that the resulting price is not prevailing market price. The Act itself does not require the use of spot or short-term prices. It requires the use of market prices that reflect prevailing conditions associated with the products that are providing the default service. As the Commission correctly recognizes in its definition section, the prevailing market price is the blended price of the portfolio of products used to meet the load obligation.

Additionally, and more to the point, the use of a multi-year purchasing plan does not mean that the price to customers must be the same for the entire period. The price to consumers should be updated on an annual basis to reflect the changes in the mix of resources that are a part of the portfolio in that year. The OCA anticipates that annual changes in the rates will be modest, and most efficient. Even where market forces cause sharp spot price or short-

term price changes, these changes will be moderated through the multi-year character of the portfolio. Also, reconciliation on a 12-month basis will reduce volatility.

The OCA recommends the following modification to subsection (c) to address these issues:

> (c) A default service implementation plan shall propose a multi-year ~~minimum~~ term of service necessary to provide reasonably priced, reliable service, but no less than five years ~~of at least twelve months, or multiple twelve month periods,~~ or for a period necessary to comply with §54.185(f).

This modification captures the policy that the implementation plan should be a multi-year plan designed to provide reasonably priced service over a longer term.

2. Subsection 54.185 (e) – Joint Default Service Plans

In Subsection 54.185(e), the regulations provide that the Commission may direct the filing of joint default service implementation plans or that the default service providers may propose such plans. Through this subsection, the regulations allow for the possibility of a multi-service territory competitive procurement processes. While providing for flexibility for multi-service territory procurement, such an undertaking will require considerable analysis and coordination. Also, to undertake this effort under Commission direction may be difficult given the breadth of Pennsylvania and the variety of market circumstances.

At this time, the OCA recommends that subsection (e) be removed. If EDCs wish to file joint default service implementation plans, the issues can be taken up in the review process.

3. Subsection 54.185(g) – Reclassification of Retail Customers

Subsection 54.185(g) introduces the possibility of reclassification of retail customers. It is not clear to the OCA what is intended by this reference. Historically, residential

customers have been placed on a single rate schedule with the option to choose other rate schedules, such as winter heating rates, that may provide benefits to the customer and the EDC. If the Commission is suggesting that residential customers could be reclassified by some as yet unknown criteria, the OCA would urge caution in this approach. Any reclassification of customers will result in winners and losers depending on the customer's individual usage characteristics. Reclassification can also raise significant issues of discrimination. Nothing prevents the EDC from filing tariffs with the Commission to create additional needed rate schedules and pricing alternatives for customers. The reference here, however, should be deleted.

4. Subsection 54.185 (i) and (l) – Replacement Procurement Process

The Commission also requires that an implementation plan include a replacement procurement process in the event of supplier default. The OCA agrees that the default service provider must plan for this eventuality. This is precisely where a portfolio approach with multiple suppliers can mitigate the impact of a single supplier failure. Additionally, contracts with suppliers should contain reasonable creditworthiness requirements and damage clauses to financially protect the EDC and customers from such failures.

The regulations should require the default service supplier to show that it has included appropriate protections in any contracts that it enters with suppliers. Performance requirements, the Master Supplier Creditworthiness document, and liquidated damages clauses can provide some protection of the default service provider and customers.

Although this issue arises from Subsection (l), a modification to subsection (i) may be the most appropriate place to address this issue. The OCA proposes that subsection (i) be modified to read:

> (i) The default service implementation plan shall include reasonable credit requirements, security requirements, performance guarantees, liquidated damages, or other reasonable assurances of any supplier of electric generation services' ability to perform, as approved by the Commission.

Including these elements as part of the implementation plan and contracts will better protect the default service supplier and customers.

G. Section 54.186. Default Service Supply Procurement.

1. Subsection 54.186(a) – Competitive Procurement Process

In this Section, the regulations set forth the standards for the competitive procurement process to obtain default service supply. Subsection 54.186(a) states that the "default service provider shall procure the electricity needed to provide default service only through a competitive procurement process or replacement procurement process". "The OCA has proposed a modified definition of "competitive procurement process" in Section III.B.1. The OCA's proposal is intended to broaden the definition so that a default service provider has flexibility to procure electricity through a variety of means. Auctions, RFPs, arms length negotiations with non-affiliates, and even limited spot market purchases are all means of competitively procuring supply. As noted, entering contracts through arms length negotiations may be particularly necessary for alternative energy sources to facilitate financing and construction of projects needed to comply with the requirements of the Alternative Energy Portfolio Standards Act. The OCA's modification to the definition of "competitive procurement process" should be sufficient to ensure that a broad range of procurement options are available to the EDC.

Subsection 54.186(a) also refers only to the procurement of electricity. In the future, a default service provider may also wish to procure demand response or energy efficiency measures. This concept may be captured in subsection 54.186(b)(2) where the default service provider is to specify "power supply products," but this language is unclear. The Commission may wish to amend subsection 54.186(a) to allow for demand response and energy efficiency products. The OCA recommends the following wording:

> (a) A default service provider shall procure the electricity or other products or services needed to provide default service ~~only~~ through a competitive procurement process or replacement procurement process approved by the Commission, with the following exceptions: . . .

In this way, flexibility is provided to procure demand response and energy efficiency type programs to assist in meeting the default service obligation.

2. Subsection 54.186(b) – Standards For Bid Solicitations

Subsection (b) sets forth the standards for the "competitive procurement process." Since the regulations defined competitive procurement process as a bid solicitation process, these standards are directed toward a bid or auction approach. For clarity, the phrase "competitive procurement process" should be replaced with "bid solicitation process" throughout subsection 54.186(b). As an example, the OCA shows a rewording of the introductory portion of subsection (b) as follows:

> (b) A default service provider's bid solicitation process ~~competitive procurement process~~ shall adhere to the following standards:

This change will help to clarify that the standards set forth are directed specifically to a bid solicitation process that may be used to procure resources. Changes to other subsections have been shown in Appendix B.

3. Subsection 54.186(g) – Failure of the Competitive Procurement Process

In subsection 54.186(g) regarding a failure of the competitive procurement process, the Commission allows for the purchase of supply from the energy market and deems this to be the "prevailing market price." The implication of this section is that the price procured in the spot market to serve customers until a new competitive procurement process can be conducted should be the price charged to customers. The language of this section does not appear to recognize that the prevailing market price is a result of the combination of products and contracts that make up the portfolio of resources. The failure of one of the procurement processes under the plan for only one part of the supply will not set the default service rate. It will be a component of the prevailing market price reflected in the portfolio, but it is not the price charged to customers.

Additionally, competitive procurement processes should be conducted sufficiently in advance of the supply need so that the default service provider does not have to cover a shortage of supply from failure of the process by sole reliance on the spot market. The implication of subsection 54.186(g) is that the plan was not properly designed. The OCA recommends that subsection 54.186(g) be modified as follows:

> (g) If the implementation of a competitive procurement process under this section does not result in sufficient electric supply to meet the default service provider's full load requirements, the default service provider shall repeat the competitive procurement process. The default service provider may petition for necessary changes to the previously approved competitive procurement process to ensure the acquisition of sufficient supply. ~~When necessary to procure electric generation supply before the completion of another competitive procurement process, a default service provider shall acquire supply at prevailing market prices and shall fully recover all reasonable costs associated with this activity. In this circumstance, the prevailing market price shall be the price of electricity in the RTO and ISO's administered energy markets in whose control area that service is being provided. The~~

~~default service provider shall follow acquisition strategies that reflect the incurrence of reasonable costs, consistent with 66 Pa. C.S. §2807(e)(3), when selecting from the various options available in these energy markets.~~

Deleting the reference to obtaining supply in the spot market and flowing through a spot price to customers will eliminate any confusion as to the proper definition of prevailing market price and the proper portfolio approach.

H. Section 54.187. Default Service Rates and the Recovery of Reasonable Costs.

1. Introduction

In Section 54.187, the regulations set forth the types of costs to be recovered in default service rates and the mechanisms for recovery of these costs. The regulations provide for three charges that will be part of the default service rate – a non-reconcilable generation rate, a reconcilable automatic energy clause of alternative energy charges and a customer charge. As described above, the OCA submits that this approach makes it difficult for customers to understand their default service rate and to shop for alternative supply. Additionally, such an approach may result in a portfolio where the necessary purchases are not properly integrated to provide the lowest priced, reliable service. The OCA submits that given the requirements of the AEPS, the Commission may have to require the use of an automatic, reconcilable adjustment clause.

In this section, the OCA will address some particular problems with each of the components of the default service rate that the OCA has identified throughout these Comments. The OCA shows all of its recommended modifications to this Section in Appendix B

2. Subsection 54.187(a)(1) – Generation Supply Charge

The generation supply charge proposed in the regulations is designed to recover the non-alternative energy costs associated with acquiring generation. The charge appears to

now bundle transmission charges into the generation supply charge rather than have this charge separately identified. Since the transmission charge is part of the "price to compare" that the customer uses to compare offers, including the transmission charges with the generation charges will make it easier for customers to make decisions regarding choice. Having these two charges combined on the monthly bill will also make the "price to compare" more apparent to the customer each month.

The OCA would caution, however, that there could be rate design and allocation issues unique to transmission charges that will need to be addressed even in this bundled context. It is unclear to the OCA whether including the transmission charges in the generation rate will affect the proper allocation of the transmission costs to the customer classes. If the default service provider procures a bundled generation and transmission product through its process on a class basis, this issue may be resolved through the bid structure.

The more significant problem is that the use of a non-reconcilable mechanism for a portion of the supply portfolio and a reconcilable mechanism for the alternative energy resources may not result in a properly integrated portfolio. The use of separate pricing for the different purchases may simply increase the price of both components and may also confuse the customer. As detailed above, given the requirements of the Alternative Energy Portfolio Standards Act, the Commission may need to eliminate this non-reconcilable charge. If eliminated, these cost components should be included as part of the automatic, reconcilable charge. The OCA modified this subsection to reflect this approach in Appendix B.

3. Subsection 54.187(a)(2) – Customer Charge

a. Introduction

The customer charge proposed in the regulations should be eliminated for residential customers. The customer charge proposed in the regulations is a non-reconcilable, fixed charge designed to recover such costs as customer billing, collections, customer service, meter reading, uncollectibles, return, other administrative and general expenses, and taxes. The OCA submits that this charge is too complicated, making it impossible for customers to shop. Additionally, as discussed below, this charge contains many costs that are not properly part of the default service rate.

b. Inclusion of Costs For Billing, Metering, Collection, Uncollectibles Expense, Administrative Expense, And Regulatory Expense In A Fixed Customer Charge Unreasonably Increases The Price Of Default Service.

The customer charge proposed by the regulations is to be designed to recover, among other costs, customer billing, collection, meter reading, return, uncollectibles, and other administrative and regulatory expenses. Although in its Order discussing this issue the Commission states that the reallocation of costs from distribution rates to default service rates will be matched by "a near" decrease in distribution rates, the fact that the Commission refers to this as "a near" match reveals the significant problem with this approach – customers may end up paying for the same service twice.

It is critical to note that many of the costs that the regulations propose to allocate to the default service customer charge are not costs that are avoided by the EDC when a customer switches to an alternative supplier. Whether some customers choose to receive a bill from their alternative supplier, for example, does not mean that the EDC can reduce billing costs. The EDC still has to bill customers, maintain billing systems, and even bill the same customer

the distribution charges (if not a consolidated supplier bill). The EDC must also maintain the capacity to resume all billing functions if the customer returns, or the supplier determines it will no longer offer billing service.

Metering costs are another example. When a meter is read, the same kilowatthour usage is used to bill the customer for distribution service and generation service. It is clear that there will not be two meters or even two meter readings to read the same usage off the same meter. Meter reading is not a cost that is avoided when a customer shops. Administrative and regulatory costs being included in the customer charge present a similar problem. If costs are not fully avoidable when a customer shops, customers will be paying twice. The administrative and regulatory expense category is also a wide-open category with no definition by the Commission.

Uncollectible expense does represent an expense that may be avoided by the EDC if a customer shops, at least for the generation portion of the bill. But, the amount of such avoided expense will need to be carefully calculated based on the billing protocols. For example, under the current EDI billing protocols for residential customers, an EDC that is providing consolidated billing service for an alternative supplier places the supplier's charges on the EDC bill. The EDC is required to remit to the alternative supplier the full amount of those charges whether or not the EDC actually collects the charges from the customer. This can continue for up to 90 days, or 3 bills. At that time, if the customer has not paid, the EDC can convert the customer to dual billing, *i.e.*, require the alternative supplier to separately bill for its own charges. The alternative supplier, however, can return the customer to POLR service at this point rather than accept the risk of the uncollectible expense. The OCA would also note that in all alternative supplier contracts that the OCA has reviewed, the EGS retains the right to promptly return the customer to POLR service for non-payment. The EGS, therefore, retains

significant ability to control its level of uncollectible expense. While the EGS has some exposure to uncollectible expense, allocating the appropriate amount to the default service charges will require substantial analysis. If too high a level is assigned to the default service rate, rates will end up being increased to cover this loss in uncollectible expense to the EDC. Default service customers will be paying for uncollectible expense twice.

To even begin to implement this proposal regarding customer cares, uncollectibles, and administrative and regulatory expenses, the Commission will need to initiate a distribution service unbundling proceeding for each EDC to determine which costs are related to providing only generation service and whether those costs are fully or partially avoided by the EDC when a customer switches to an EGS. If such a determination can be made, and it can be assured that customers are not double paying, or seeing increased costs, some allocation of these cost items to the default service rate may be appropriate. As discussed above, the OCA recommends that rather than being separately stated as a customer charge, these costs, if not otherwise in distribution rates, be part of the kilowatthour default service charge for residential customers so that they are part of the price to compare for the customer.

The Commission recognizes in its Order that no EGS is currently providing residential services other than generation service. The expense and resources needed for such an endeavor are not warranted. The OCA remains concerned about this customer charge proposal and recommends that it not be included with the regulations at this time.

c. <u>There Is No Basis To Include A Return Or Risk Component In The Fixed Customer Charge</u>.

The regulations also include in the customer charge a return or risk component for the default service provider. The OCA submits that this should not be separately stated or included in a customer charge. Including a separately stated return component as part of a fixed

customer charge converts the opportunity to earn a fair rate of return, the regulatory standard, to a guaranteed return.

Moreover, the risk of resources needed to support default service should be reflected in the cost of the portfolio of resources that the default service provider procures to meet its obligation and should be based on the recovery mechanism adopted. For example, if the default service provider is using a dollar for dollar fully reconcilable recovery mechanism, there is no risk and no need for any risk adjustment.

Also, even with a non-reconcilable mechanism that reflects wholesale bid prices, the contracts with suppliers will reflect the risk to the suppliers associated with their commitment. The Commission has also required that the implementation plan contain processes for covering supplier default and customer migration, thus mitigating the risk to the default service provider and transferring it to the customer as the price of the contract adjusts to provide the necessary protection. Indeed, if a fully reconcilable charge is implemented, the risk on the default service provider is eliminated.

The OCA submits that there is no need for a separately stated return component to reflect the risk of default service. The implementation plan should address the risks, and the wholesale price procured in the market will reflect the risks that the suppliers assume in meeting the obligation. Additional risk adjustments, particularly as part of a fixed, monthly customer charge, are wholly improper.

4. Subsection 54.187(a)(3) -- Automatic Energy Adjustment Charge

The regulations provide for the recovery of the costs of compliance with the Alternative Energy Portfolio Standards Act through an automatic energy adjustment clause as called for in the Act. This section captures the requirements of the Act. As discussed above,

however, recovery of a portion of charges through an automatic adjustment clause, and a portion through a non-reconcilable clause, is not optimal, and could result in significantly increased costs to consumers. It is clear that the cost of separately procuring two different sets of products is more expensive than one.

Alternative energy resources can provide an important fuel price hedge value in a portfolio of resources for meeting default service requirements, particularly as the cost of natural gas and oil remain high. By having a portion of the supply requirements recovered through a non-reconcilable charge and a portion through an automatic adjustment clause, however, the portfolio will not be fully integrated. The benefit of the hedge provided by the alternative resources may not be captured for the customer because it is through the coordinated development of a portfolio that the variety of price risks can be hedged.

The default service provider should be acquiring resources in a coordinated manner for all inter-related supply purchases to obtain the lowest, reasonable cost consistent with statutory requirements. Allowing one portion of the supply to be recovered on a reconcilable basis and another portion on a non-reconcilable basis could foster separate acquisition for these two aspects of the supply. This would result in suboptimal plans, and the hedge value of the alternative resource could be lost.

As discussed above, given the requirements of the Alternative Energy Portfolio Standards Act, the Commission may need to establish the use of a reconcilable mechanism for all supply procurement. The regulations in subsection 54.187(a) should be amended to include only one recovery mechanism. Subsection 54.187(a)(1) and (a)(3) should be combined.

5. Subsection 54.187(b) -- Fixed Rate Option for Residential Customers

Subsection 54.187(b) requires the default service provider to have a fixed rate option for all residential customers. The OCA submits that the fixed rate must be the default service for residential customers, not merely an option. Residential customers could be provided other options, such as time of day rates, heating rates, or other types of options, but these should be voluntarily chosen by the customer. Subsection 54.187(b) must be modified as follows:

> (b) A default service plan shall include a fixed rate ~~option~~ as the default rate for all residential customers.

This language makes clear that all residential customers will be served on the fixed rate. Residential customers should still be able to select, or remain on, time-of-day rates, heating rates, and other such rates that already exist or that may be offered in the future after a proper rate design proceeding to approve new rate options.

6. Subsection 54.187(g) -- Customer Migration Adjustment

The regulations allow the default service provider to include a mechanism that allows for an adjustment in prices to recover the costs of significant changes in the number of default service customers, or other events that would materially prejudice the reliable provision of default service. In discussing this provision in its Order, the Commission states that it recognizes risks of being a default service provider and intends to provide flexibility in managing the risks so that rates will likely be more reasonable. The Commission identified the risk it is seeking to address as follows:

> Such risks could include, but are not limited to, the risks of customer migrations or behavior by an EGS to exploit seasonal variations in the market.

Order at 19.

The OCA submits that the approach in the regulations may not result in reasonable rates, and would shift the risk and cost of customer migration, or improper behavior by EGSs, onto default service customers. A more appropriate mechanism to address customer migration is through management of the portfolio. For example, a portfolio that contains short-term contracts for a portion of the load allows the default service provider to adjust for migration. Moreover, if a reconcilable recovery mechanism is used, the reasonable costs of these portfolio adjustments will be picked up in the reconciliation process. If EGSs are exploiting seasonal differences, such as returning customers in the high cost summer period, other rules may be needed to prevent costs for default service customers from becoming unreasonable.

The OCA recommends that the Commission remove subsection 54.187(g) from the regulations. The implementation plan itself should address customer migration. The regulations can add a requirement to Section 54.185 requiring that this be part of the implementation plan, as the OCA shows in Appendix B. In addition, the use of a reconcilable adjustment clause renders this issue moot.

7. Subsection 54.187(i) -- Replacement For Failed Supplier

In subsection 54.187(i), the regulations address the replacement process when a supplier fails to deliver to the default supplier. The provision calls for a replacement procurement process and suggests that the full cost of replacing this supply is flowed through to customers as "prevailing market price." The OCA has discussed the "prevailing market price" references in Section III.C.5 of these comments. Importantly, a diverse portfolio of contracts procured at various times and covering a diverse set of resources will mitigate the impact of a supplier default. In other words, the cost to replace one supplier will be blended with the other portfolio costs to result in the prevailing market price flowed through to customers.

Additionally, proper credit requirements, security requirements, and damages clauses can provide some financial protection for the default service provider and customers. The use of a reconciliation mechanism for all cost recovery will allow for recovery of reasonable, unsecured or unmitigated replacement costs.

If any additional recovery is allowed, the OCA submits that the regulations must provide that the security provided by the supplier and any liquidated damages that are owed be used to offset any replacement supply costs before customers are asked to pay any portion of the costs.[12] The regulations must also reflect the fact that any replacement costs are blended with the other costs of the portfolio so that replacement costs do not form the sole basis of charges to customers.

The following amended language attempts to capture these points:

> (i) When a generation supplier fails to deliver generation supply to a default service provider, the default service provider shall be responsible for acquiring replacement generation supply consistent with its Commission approved replacement procurement process. When necessary to procure electric generation supply before the completion of the replacement procurement process, a default service provider shall acquire supply ~~at prevailing market prices~~ and shall fully recover all reasonable, unmitigated and unsecured costs associated with this activity. ~~In this circumstance, the prevailing market price will be the price of electricity in the RTO or ISO's administered energy markets in whose control area the default service is being provided. The default service provider shall follow acquisition strategies that reflect the incurrence of reasonable costs, consistent with 66 Pa. C.S. §2807(e)(3), when selecting from the various options available in these energy markets.~~

These modifications are intended to give the default service provider flexibility in procuring replacement supply, but recognize that security and damage clauses should cover some or all of these costs.

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12 PJM has developed extensive security requirements that can be used as a guide.

8. Subsection 54.187(h) -- Costs Not Subject To Review

In subsection 54.187(h), the regulations state that:

> The default service provider's projected and actual costs for providing service may not be subject to Commission review and reconciliation except in extraordinary circumstances, or as provided in §54.187(a)(3).

This subsection appears to be referencing the non-reconcilable recovery mechanism. The OCA agrees that if a non-reconcilable mechanism is used, the actual costs incurred during the term of the implementation plan should not be reviewed except for extraordinary circumstances. The OCA submits, however, that if the projected costs the Commission refers to are the basis of the customer charge or non-reconcilable rates charged to customers, these costs must be reviewed as part of the implementation plan. Additionally, with a fully reconcilable mechanism, all costs, both projected and actual, must be reviewed.

The OCA is concerned that this subsection could compromise the Commission's oversight process and allow default service suppliers to flow through costs to customers without proper review. Default service remains a regulated retail service even though it now utilizes competitive wholesale market forces to provide rates that are just and reasonable. The Commission retains the obligation to ensure that default service rates are consistent with the applicable provisions of the Public Utility Code. This subsection appears to surrender the Commission's oversight responsibility.

The OCA strongly urges the Commission to delete subsection 54.187(h). If it remains, it must be clarified and limited in scope.

9. Subsection 54.187(f) -- Demand Side Response

Subsection 54.187(f) provides that the default service plan must include rates that correspond to demand side response and demand side management programs. It is not clear

what the regulations are requiring. If the regulation is intended to require that the default service provider offer rate options that allow customers to provide demand side response or demand management, such as time of day rates, load control rates, seasonal rates, or the like, this should be more clearly stated. For example, the EDC may seek to include a contract for the delivery of energy efficiency or demand response services in its default portfolio to mitigate price volatility and meet the objective of assuring the lowest, long-term cost, and stable default service rate, for the term of the portfolio. The OCA supports the inclusion of optional, well-designed rates for residential customers that allow the customer to provide demand response or demand management and allow the EDC to reduce overall portfolio costs. The OCA sees these programs as important parts of the portfolio of resources that the default service provider can use to meet its obligation and these options should be encouraged. The OCA recommends that the Commission attempt to clarify subsection 54.187(f).

I. Section 54.188. Commission Review of Default Service Implementation Plans.

1. Subsection 54.188(a) -- Review Process

In Section 54.188, the Commission establishes the review process for the Default Service Implementation Plans. In Section 54.185(a), the Commission requires that the Plan be filed 15 months before the expiration of the generation rate cap, or the expiration of the currently approved plan. In Section 54.188(b), the Commission provides that it will enter an order within six months of the filing, thus allowing six months for review and nine months for implementation. The OCA submits that the Commission has not allowed sufficient time for review of the Plans, particularly the initial plans.

As discussed above, the default service implementation plan should not just be a single solicitation for most EDCs. The implementation plan for large EDCs should be a portfolio

of products and contracts, including alternative energy sources and credits, extending over a multi-year period. The review of the Plan, particularly the initial plans, may require a longer period of time than six months.[13]

The OCA recommends that the Commission require multi-year implementation plans, such as five-year plans, even though the rates may be updated annually during the course of the plan. The Commission should establish a rotating schedule for the default service providers to file their plans for review. Under this approach, for example, the Commission could have two to three EDCs file each year for review of their plan. Once approved, the EDC could certify results to the Commission throughout the term of the Plan as the various components are implemented. If a fully reconcilable recovery mechanism is used, an annual review proceeding should be conducted.

2. Subsection 54.188(c) and (e) -- Review Standards

In subsection 54.188(c), the regulation provides that the Commission will evaluate the default service implementation plan to ensure that it includes a fair, transparent and non-discriminatory competitive procurement process. No other standard for review of the implementation plan is included in the regulations. The OCA submits that the Commission should also review the implementation plan to determine if it is properly designed to produce the lowest priced, reliable electric supply and only includes reasonable costs for recovery. While the Act has provided guidance to the Commission concerning the pricing of default service, this service remains "regulated" and subject to approval. It will be the Commission's obligation to

[13] The OCA would also note that the filing time frame, *i.e.* 15 months prior to the end of the currently effective plan, and the regulations that allow a plan to have a term of 12 months, do not coincide. A default service provider would have to be filing its next plan before its currently approved plan was implemented. The necessary time for review and implementation strongly suggests that the Plans should be for multi-year terms.

determine that the prevailing market prices reflected in the proposed implementation plan will be consistent with the objective of providing stable and reasonable default service rates.

Additionally, in subsection 54.188(e), the regulations set forth the standard for certifying the results of a competitive procurement process. The regulations only list non-compliance with the approved procurement process as a reason to reject results. There may, however, be other reasons to reject results of the competitive procurement process. The regulations should allow the Commission flexibility to consider other circumstances where the results of a competitive procurement process appear to be anomalous.

Subsection 54.188(e) also provides for the circumstance when the Commission rejects the results, and supply is needed before another competitive procurement process can be completed. In that instance, the default supplier is to procure supply in the energy market. The regulations provide that the price of this supply is "prevailing market price." As discussed above, however, the prevailing market price is the combined effect of a portfolio of contracts and products obtained through multiple procurement processes. Except possibly for small EDCs with a smaller load, no single procurement would be the "prevailing market price."

The OCA recommends the following changes to subsections 54.188(c) and (e):

> (c) The Commission will evaluate the default service implementation plan to ensure that it includes a fair, transparent and non-discriminatory competitive procurement process for all potential suppliers provided under §54.186 and to ensure that the implementation plan and proposed cost recovery will result in default service rates that reflect the requirements of this Chapter.
> (e) The Commission will certify the results of a competitive procurement process in their entirety or reject them due to non-compliance with the approved procurement process or if the Commission finds that the process produced non-competitive results. If the Commission rejects the results due to non-compliance, the default service provider shall repeat the approved competitive procurement process. ~~When necessary to procure electric generation supply before the completion of the subsequent~~

~~competitive procurement process, a default service provider shall acquire supply at prevailing market prices and shall fully recover all reasonable costs associated with this activity. In this circumstance, the prevailing market price will be the price of electricity in the RTO or ISO's administered energy markets in whose control area that service is being provided. The default service provider shall follow acquisition strategies that reflect the incurrence of reasonable costs, consistent with 66 Pa.C.S. §2807(e)(3), when selecting from the various options available in these energy markets.~~

These modifications clarify that the resulting default service rates must be reasonable and consistent with the provisions of the statute.

3. Subsection 54.188(g) -- Waivers

In subsection (g), the regulations allow for the default service provider to petition for a waiver of the regulations. While the OCA agrees that a waiver provision is reasonable, the right to petition for a waiver should extend beyond the default service provider. Subsection 54.188(g) should be modified as follows:

> (g) ~~A default service provider may p~~Petitions may be made for a waiver of any part of these regulations, in a manner consistent with 52 Pa. Code §5.43 (relating to petitions for issuance, amendment or waiver of regulations). The Commission may grant waivers of these regulations to ensure the reliable provision of default service and to enforce and carry out the provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§2801-2812 and any other applicable laws.

This modification leaves open the possibility of a Petition by an interested party other than the default service provider.

J. Section 54.189. Default Service Customers.

In this section, the regulations provide that a default service provider shall accept all applications for default service from new customers and customers who switch from an EGS. The OCA submits, however, that customers who are returning to default service from an EGS do

not "apply" for service. The default service provider must serve these returning customers. In other words, the default service provider is already that customer's default service provider even when the customer is served by an EGS.

Given the recent enactment of Chapter 14, and the requirements that attach to "applicants" under Chapter 14, the OCA submits that the Commission must remove the word application or applicant from this entire section as it pertains to customers returning from service with an EGS. As written, customers that return to default service from an EGS could be required to pay onerous deposits, and may be without service if they cannot pay that deposit, even though they are an existing EDC customer. This is not what default service is supposed to be. A customer returning from an EGS, whether from default of the supplier or end of the contract, must be able to return to default service unimpeded.

The OCA proposes the following modifications to Sections 54.189(a), (b) and (c):

> (a) ~~At the conclusion of an EDC's Commission approved generation rate cap, a~~All retail customers ~~who are not receiving generation service from an EGS shall be assigned to~~ in the certificated service territory of the EDC are entitled to receive the Commission approved default service ~~implementation plan~~ provided by the EDC.
> (b) A default service provider shall accept all applications for default service from new retail customers if the customers comply with all Commission regulations pertaining to applications for service and shall accept all retail customers assigned to its default service who switch from an EGS~~, if the customers comply with all Commission regulations pertaining to applications for service~~.
> ~~(c) A default service provider shall treat a customer who leaves an EGS and applies for default service as it would a new applicant for default service.~~

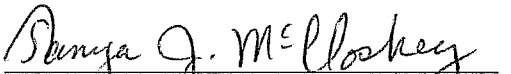
Subsection (c) is deleted in that it does not precisely track the statutory language and creates a misimpression that the returning customer must apply for default service. The statutory language

in Section 2807(e)(4) controls so it is not necessary to repeat it in this section. The other modifications make it clear that an existing customer does not apply for default service.

IV. CONCLUSION

The OCA thanks the Commission for conducting the POLR Roundtable and for soliciting Comments on these proposed regulations. The OCA looks forward to working with the Commission and other stakeholders to develop default service provisions that benefit Pennsylvania consumers and that are consistent with the principles of the Electricity Generation Customer Choice and Competition Act.

Respectfully Submitted,



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DATED: April 27, 2005
83927

Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa. C.S. §2807(e)(2)	:	Docket No.	L-00040169
Provider of Last Resort Roundtable	:	Docket No.	M-00041792

APPENDIX A

National Association of Regulatory Utility Commissioners (NARUC)
Resolution on Portfolio Management

Resolution on Portfolio Management

WHEREAS, state regulators of electric utilities today face numerous challenges, including corporate bankruptcies, market failure, exercise of market power, volatile markets for wholesale power and natural gas, and an uncertain investment climate for energy facilities; and

WHEREAS, today's retail electricity markets are characterized by a variety of market structures ranging from traditional vertically integrated utilities to retail competition; and

WHEREAS, state utility regulators continue to oversee the procurement of electricity resources to serve all or a majority of retail customers who continue to receive service under regulated retail rates; and

WHEREAS, a variety of techniques, collectively known as *portfolio management*, can help utility regulators to ensure that regulated electricity services are provided in a manner that manages risks, enhances reliability, and improves the performance of wholesale and retail markets; and

WHEREAS, portfolio management is wholly consistent with efforts to create competitive wholesale electric markets and offers a structured approach for assembling a diverse mix of short- and long-term energy resources to serve retail customers at regulated rates, via traditional power supplies as well as energy efficiency, distributed generation, demand response, and renewable energy resources; and

WHEREAS, retail electric customers receiving regulated service can be protected from volatile energy markets by load-serving electric utilities that engage in prudent portfolio management practices; and

WHEREAS, fourteen environmental and consumer organizations and the National Commission on Energy Policy, have called for portfolio management for residential and small business customers to be overseen by state utility regulators; now therefore be it

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its November 2003 Annual Convention in Atlanta, Georgia, encourages state regulatory commissions to explore portfolio management techniques that may be applicable to their particular circumstances, under either traditional or restructured markets, and to adopt appropriate regulatory policies to facilitate effective implementation of portfolio management practices by regulated utilities; and be it further

RESOLVED, that NARUC explore opportunities to develop a research, training, and outreach program on portfolio management to serve the needs of state commissions and to further develop the regulatory community's knowledge about resource management practices to minimize risk and improve system reliability and market performance.

Sponsored by the Committee on Energy Resources and the Environment
Adopted by NARUC Board of Directors November 18, 2003

Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa. C.S. §2807(e)(2)	:	Docket No.	L-00040169
Provider of Last Resort Roundtable	:	Docket No.	M-00041792

APPENDIX B

OCA Modification to Subchapter G. DEFAULT SERVICE

Subchapter G. DEFAULT SERVICE

§54.181. Purpose.

This subchapter implements §2807(e) of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§2801-2812, pertaining to an EDC's obligation to serve retail customers at the conclusion of the restructuring transition period. The purpose of ~~T~~these regulations is to ensure that all retail customers who do not choose an alternative EGS, or who contract for electric energy that is not delivered, have access to generation supply at prevailing market prices~~.~~ and to ensure that ~~T~~the EDC ~~shall~~ fully recovers all reasonable costs for acting as a default service provider of electricity to all retail customers in its certificated distribution service territory.

§54.182. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Alternative energy portfolio standards – A requirement that a certain percentage of electric energy sold to retail customers in the Commonwealth of Pennsylvania be derived from alternative energy sources, as defined in the Alternative Energy Portfolio Standards Act, No. 213 of 2004.

Commission – The Pennsylvania Public Utility Commission.

Competitive procurement process – A fair, transparent, and non-discriminatory process by which a default service provider acquires electric generation supply to serve its default service customers. ~~through a bid solicitation process.~~

Default service –

(i) Electric generation service provided by a default service provider to a retail electric customer who does not choose an alternative EGS, who is no longer being served by an alternative EGS, or who contracts for electric energy and it is not delivered.

(ii) Electric generation service provided pursuant to a Commission approved default service plan.

Default service implementation plan – A filing submitted by a default service provider to the Commission that identifies the means for procuring generation supply for default service customers at prevailing market ~~rates~~ prices, the reasonable costs associated with default service, and all other necessary terms and conditions of service.

Default service provider – The incumbent EDC within a certificated service territory or a Commission approved alternative default service provider.

EDC – Electric Distribution Company – This term shall have the same meaning as defined in 66 Pa. C.S. §2803.

EGS – Electric Generation Supplier – This term shall have the same meaning as defined in 66 Pa. C.S. §2803.

FERC – The Federal Energy Regulatory Commission.

Fixed rate ~~option~~ – A default service price or prices that ~~is set in advance for the entire term~~ do not change more than once every twelve months in accordance with ~~of~~ the default service implementation plan.~~that may include seasonal differences.~~

Hourly priced service – A default service price where the energy component of the generation supply charge is based on the RTO or ISO's LMP for energy, or other similar, mechanism.

ISO – A FERC approved independent transmission system operator.

LMP – Locational marginal pricing – A pricing mechanism used by some RTOs and ISOs, as defined in their FERC approved tariffs.

Prevailing market price –

~~(i)~~The price of electric generation supply for a term of service realized through a default service provider's implementation of and compliance with a Commission approved default service implementation plan.

~~(ii) The price of electric generation supply in the RTO or ISO administered energy markets in whose control area default service is being provided, acquired pursuant to the conditions specified in §§54.186(g), 54.187(i) or 54.188(e).~~

Replacement procurement process – A Commission approved process, submitted as part of the default service implementation plan, which provides for the acquisition of generation supply in the event that a supplier fails to deliver generation contracted for under the terms of a competitive procurement process.

Retail customer or retail electric customer – These terms shall have the same meaning as defined in 66 Pa. C.S. §2803.

RTO - A FERC approved regional transmission organization.

§54.183. Default service provider.

(a) The default service provider shall be the incumbent EDC in each certificated service territory, except as provided for pursuant to §54.183(b).

~~(b) An EDC may petition the Commission to be relieved from the default service obligation. In the alternative, the Commission may propose through its own motion that an EDC be relieved from the default service obligation. The Commission may approve such a request if it is in the public interest. In such circumstances, the Commission will announce through an order a competitive process to determine the alternative default service provider, which may be either an EDC or a licensed EGS.~~

~~(c) When the Commission finds that an EDC should be relieved of the default service obligation, the competitive process for the replacement of the default service provider shall be as follows:~~

~~1. Any EDC or EGS that wishes to be considered for the role of the alternative default service provider shall apply for a certificate of public convenience, consistent with 66 Pa. C.S. §§1101-1103 (relating to certificates of public convenience).~~

~~2. Applicants shall demonstrate their operational and financial fitness to serve and their ability to comply with all Commission regulations, orders and applicable laws pertaining to public utility service.~~

~~3. If no applicant can meet this standard, the incumbent EDC shall be required to continue the provision of default service~~

~~4. If one or more applicants meet the standard provided in §54.183(e)(2), the Commission shall grant a certificate of public convenience to act as a default service provider to the applicant best able to fulfill the obligation~~

~~5. An EGS that is granted a certificate of public convenience to act as an alternative default service provider shall be considered a public utility within the meaning of 66 Pa. C.S. §102.~~

§54.184. Default service provider obligations.

(a) A default service provider shall be responsible for the reliable provision of default service to all retail customers within the certificated territory of the EDC that it serves who are not receiving generation services from an alternative EGS or whose alternative EGS has failed to deliver electric energy. ~~within the certificated territory of the EDC that it serves.~~

(b) A default service provider shall comply with all applicable Commission regulations and orders to the extent that such obligations are not modified by this subchapter.

~~(c) A default service provider shall continue the universal service program in effect in the EDC's certificated service territory or implement, subject to Commission approval, a similar customer assistance program consistent with the provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§2801-2812.~~

§54.185. Default service implementation plans and terms of service.

(a) A default service provider shall file a default service implementation plan with the Commission's Secretary's Bureau no later than fifteen months prior to the conclusion of the currently effective default service plan or Commission approved generation rate cap for that particular EDC service territory, unless the Commission authorizes another filing date.

(b) Default service implementation plans shall comply with all Commission regulations pertaining to documentary filings, except when modified by this subchapter. The default service provider shall serve copies of the default service implementation plan on the Pennsylvania Office of Consumer Advocate, Pennsylvania Office of Small Business Advocate, the Commission's Office of Trial Staff, and the RTO or ISO in whose control area the default service provider is operating.

(c) A default service implementation plan shall propose a multi-year ~~minimum~~ term of service necessary to provide reasonably priced, reliable service, but no less than five years ~~of at least twelve months, or multiple twelve month periods,~~ or for a period necessary to comply with §54.185(f).

(d) A default service implementation plan shall propose a fair, transparent and non-discriminatory competitive procurement process consistent with §54.186 for the acquisition of sufficient electric generation supply, at prevailing market prices, to meet the demand of all of the default service provider's retail electric customers for the term of

service. The default service plan shall identify its method of compliance with the Alternative Energy Portfolio Standards Act, No. 213 of 2004.

~~(e) The Commission may direct that some or all default service providers file joint default service implementation plans that propose a competitive procurement process to procure electric generation supply for all of their default service customers. In the absence of such a directive, some or all default service providers may jointly file default service plans that propose a competitive procurement process to procure electric generation for all of their default service customers. A multi-service territory competitive procurement process shall comply with §54.186.~~

(f) A default service provider shall document that its proposal is consistent with the legal and technical requirements pertaining to the generation, sale and transmission of electricity of the RTO or ISO in whose control area it is providing service. The default service plan's term of service and generation supply acquisition processes shall align with the planning period of that RTO or ISO.

(g) The default service implementation plan shall include a schedule of rates, rules and conditions of default service in the form of proposed revisions to its tariff. ~~The default service provider may use the already effective retail customer classes in the EDC's service territory, or may propose a reclassification of retail customers.~~

(h) The default service implementation plan shall identify the costs, consistent with §54.187, that will be recovered through a schedule of rates for the provision of default service.

(i) The default service implementation plan shall include reasonable credit requirements, security requirements, performance guarantees, liquidated damages, or other reasonable assurances of any supplier of electric generation services' ability to perform, as approved by the Commission.

(j) The default service implementation plan shall identify the load size and end date of all existing long-term generation contracts that are in effect between the EDC and a retail customer within its service territory.

(k) The default service implementation plan should include copies of any proposed confidentiality agreements for the protection of proprietary information of the default service provider and generation suppliers. The Commission will approve reasonable confidentiality agreements, including expiration provisions, that will be binding on the default service provider, generation suppliers and any third party involved in the administration, review or monitoring of a default service supply procurement process.

(l) The default service provider shall include in its implementation plan a replacement procurement process to ensure the reliable provision of default service in the event a supplier fails to deliver electric generation supply it has agreed to provide pursuant to the terms of a Commission approved competitive procurement process and a process to address customer migration.

(m) The Commission may issue orders further specifying the form and content of default service implementation plans when necessary to enforce or carry out the

provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§2801-2812, and other applicable law.

§54.186. Default service supply procurement.

(a) A default service provider shall procure the electricity or other products or services needed to provide default service ~~only~~ through a competitive procurement process or replacement procurement process approved by the Commission, with the following exceptions:

(1) Hourly priced service provided pursuant to §54.187(e).

(2) Supply procured through RTO or ISO administered energy markets consistent with §§54.186(g), 54.187(i) or 54.188(e).

(b) A default service provider's ~~competitive procurement process~~ bid solicitation process shall adhere to the following standards:

(1) A default service provider's supplier affiliate may participate in any ~~competitive procurement process~~ bid solicitation process. The default service provider shall propose and implement protocols to ensure that its supplier affiliate does not receive an advantage in either the solicitation and evaluation of competitive bids, or any other aspect of the ~~competitive procurement process~~ bid solicitation process. The process shall comply with the codes of conduct promulgated by the Commission at §54.122 (relating to code of conduct).

(2) A default service provider's proposed ~~competitive procurement process~~ bid solicitation process shall include:

(i) A bidding schedule.

(ii) A definition and description of the power supply products on which potential suppliers shall bid.

(iii) Bid price formats.

(iv) The time period during which the power will need to be supplied for each power supply product.

(v) Bid submission instructions and format.

(vi) Bid evaluation criteria.

(vii) Relevant load data, including the following:

(A) Aggregated customer hourly usage data for all retail customers.

(B) Number of retail customers.

(C) Capacity peak load contribution figures by rate schedule.

(D) Historical monthly retention figures by rate schedule.

(E) Estimated loss factors by rate schedule.

(F) Customer size distribution by rate schedule.

(c) A default service provider may employ a third-party to design and implement the competitive procurement process.

(d) ~~The~~ Any competitive procurement process may be subject to direct oversight by the Commission or an independent third party. Any third party shall report to the Commission. Commission staff and any third party involved in oversight of the procurement process shall have full access to all information pertaining to the

competitive procurement process, and may monitor the process either remotely or where the process is administered. Any third party retained for purposes of monitoring the competitive procurement process shall be subject to confidentiality agreements identified in §54.185(k).

(e) The default service provider shall evaluate and select winning ~~bids~~ suppliers in a non-discriminatory manner. ~~based on bid evaluation criteria set forth consistent with §54.186(b)(2)(vi).~~

(f) The Commission shall review the acquisition of generation supply and verify compliance with the approved competitive procurement process as follows:

(1) The Commission's review shall occur within a time period as specified in the approved competitive procurement process.

(2) The review period may not be less than 3 business days.

(3) The Commission's verification of compliance with an approved competitive procurement process shall constitute its certification of the default service provider's compliance with the approved default service implementation plan.

(g) If the implementation of a competitive procurement process under this section does not result in sufficient electric supply to meet the default service provider's full load requirements, the default service provider shall repeat the competitive procurement process. The default service provider may petition for necessary changes to the previously approved competitive procurement process to ensure the acquisition of sufficient supply. ~~When necessary to procure electric generation supply before the~~

~~completion of another competitive procurement process, a default service provider shall acquire supply at prevailing market prices and shall fully recover all reasonable costs associated with this activity. In this circumstance, the prevailing market price shall be the price of electricity in the RTO or ISO's administered energy markets in whose control area that service is being provided. The default service provider shall follow acquisition strategies that reflect the incurrence of reasonable costs, consistent with 66 Pa. C.S. §2807(e)(3), when selecting from the various options available in these energy markets.~~

(h) ~~The~~ Any bids or offers submitted by a supplier under the competitive procurement process shall be treated as confidential through the expiration date identified in the confidentiality agreement approved by Commission pursuant to §54.185(k). The default service provider, the Commission, and any third party involved in the administration, review or monitoring of the procurement process, shall be subject to this confidentiality provision.

§54.187. Default service rates and the recovery of reasonable costs.

(a) The costs incurred for providing default service shall be recovered through the following mechanisms ~~or charges~~:

(1) Generation supply charge – the generation supply charge is a ~~non-~~reconcilable charge that includes all reasonable costs associated with the acquisition of generation supply~~, exclusive of the costs of generation supply recovered through §54.187(a)(3),~~ to meet default service demand. The associated costs with this charge include:

(i) The prevailing market price of energy.

(ii) The prevailing market price of RTO or ISO capacity or any similar obligation.

(iii) FERC approved ancillary services and transmission charges.

(iv) Required RTO or ISO charges.

(v) Applicable taxes.

(vi) Other reasonable, identifiable generation supply acquisition costs.

(vii) Reasonable costs incurred in compliance with the Alternative Energy Portfolio Standards Act, No. 213 of 2004.

~~(2) Customer charge. The customer charge is a non-reconcilable, fixed charge, set on a per customer class basis, that includes all identifiable, reasonable costs associated with providing default service to an average member of that class, exclusive of generation supply costs and costs recovered through §54.187(a)(3). The associated costs with this charge include:~~

~~(i) Default service related costs for customer billing, collections, customer service, meter reading, and uncollectible debt.~~

~~(ii) A reasonable return or risk component for the default service provider.~~

~~(iii) Applicable taxes.~~

~~(iv) Other reasonable and identifiable administrative or regulatory expenses.~~

~~(3) A default service provider shall use an automatic energy adjustment clause, consistent with 66 Pa. C.S. §1307 to recover reasonable costs incurred through compliance with the Alternative Energy Portfolio Standards Act, No. 213 of 2004.~~

(4) The costs recovered through the preceding ~~charges and~~ mechanisms~~s~~ shall not be recovered by an EDC acting as a default service provider through its Commission approved distribution rates.

(b) A default service plan shall include a fixed rate ~~option~~ as the default rate for all residential customers.

(c) A default service implementation plan shall include a fixed rate option for non-residential default service customers whose load test indicates a registered peak demand of 500 or less kilowatts.

(d) The default service provider shall include an hourly rate in its implementation plan for all default service customers whose load test indicates a registered peak demand of greater than 500 kilowatts. The default service provider may propose a fixed rate for these customers in its default service implementation plan.

(e) The rate for hourly priced service shall include:

(1) The RTO's or ISO's LMP or the equivalent pricing mechanism.

(2) The prevailing market price of RTO or ISO capacity or any similar obligation.

(3) FERC approved ancillary services and transmission charges.

(4) Required RTO or ISO charges.

(5) Applicable taxes.

(6) Other FERC approved or reasonable, identifiable RTO or ISO charges and costs directly related to the hourly priced service.

(7) Other reasonable and identifiable administrative or regulatory expenses.

(f) The default service implementation plan shall include rates that correspond to demand side response and demand side management programs available to retail customers in that EDC service territory.

~~(g) The default service implementation plan may include mechanisms that allow default service providers to adjust their prices during the term of service to recover reasonable, incremental costs of significant changes in the number of default service customers or reasonable, incremental costs of other events that would materially prejudice the reliable provision of default service and the full recovery of reasonable costs.~~

~~(h) The default service provider's projected and actual incurred costs for providing service may not be subject to Commission review and reconciliation except in extraordinary circumstances, or as provided in §54.187(a)(3).~~

(i) When a generation supplier fails to deliver generation supply to a default service provider, the default service provider shall be responsible for acquiring replacement generation supply consistent with its Commission approved replacement procurement process. When necessary to procure electric generation supply before the completion of the replacement procurement process, a default service provider shall

acquire supply ~~at prevailing market prices~~ and shall fully recover all reasonable, unmitigated and unsecured costs associated with this activity. ~~In this circumstance, the prevailing market price will be the price of electricity in the RTO or ISO's administered energy markets in whose control area the default service is being provided. The default service provider shall follow acquisition strategies that reflect the incurrence of reasonable costs, consistent with 66 Pa. C.S. §2807(e)(3), when selecting from the various options available in these energy markets.~~

§54.188. Commission review of default service implementation plans.

(a) A default service implementation plan shall initially be referred to the Office of Administrative Law Judge for further proceedings as may be required.

(b) The Commission will issue an order within ~~six~~ nine months of a plan's filing with the Commission on whether the default service implementation plan demonstrates compliance with this subchapter and the provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§2801-2812. The Commission may order modification of the terms of the proposed plan to ensure that a default service plan is compliant.

(c) The Commission will evaluate the default service implementation plan to ensure that it includes a fair, transparent and non-discriminatory competitive procurement process for all potential suppliers provided under §54.186 and to ensure that the

implementation plan and proposed cost recovery will result in default service rates that reflect the requirements of this Chapter.

(d) Upon entry of the Commission's final order, the default service provider shall acquire generation supply for the term of service in a manner consistent with the terms of the approved competitive procurement process provided under §54.186, and report the bids or offers submitted by EGSs in writing to the Commission.

(e) The Commission will certify the results of a competitive procurement process in their entirety or reject them due to non-compliance with the approved procurement process or if the Commission finds that the process produced non-competitive results. If the Commission rejects the results due to non-compliance, the default service provider shall repeat the approved competitive procurement process. ~~When necessary to procure electric generation supply before the completion of the subsequent competitive procurement process, a default service provider shall acquire supply at prevailing market prices and shall fully recover all reasonable costs associated with this activity. In this circumstance, the prevailing market price will be the price of electricity in the RTO or ISO's administered energy markets in whose control area that service is being provided. The default service provider shall follow acquisition strategies that reflect the incurrence of reasonable costs, consistent with 66 Pa. C.S. §2807(e)(3), when selecting from the various options available in these energy markets.~~

(f) Upon completion of the competitive procurement process, the default service provider shall provide written notice to all default service customers and the named parties identified in §54.185(b) of the Commission certified default service prices

and terms and conditions of service no later than 60 days before their effective date, unless another time period is approved by the Commission. The default service provider shall also provide written notice to the named parties identified in §54.185(b) containing an explanation of the methodology used to calculate the price for electric service.

(g) ~~A default service provider may p~~Petitions may be made for a waiver of any part of these regulations, in a manner consistent with 52 Pa. Code §5.43 (relating to petitions for issuance, amendment or waiver of regulations). The Commission may grant waivers of these regulations to ensure the reliable provision of default service and to enforce and carry out the provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§2801-2812 and any other applicable laws.

§54.189. Default service customers.

(a) ~~At the conclusion of an EDC's Commission approved generation rate cap, a~~All retail customers ~~who are not receiving generation service from an EGS shall be assigned to~~ in the certificated service territory of the EDC are entitled to receive the Commission approved default service ~~implementation plan~~ provided by theEDC.

(b) A default service provider shall accept all applications for default service from new retail customers if the customers comply with all regulations pertaining to applications for service and shall accept all retail customers entitled to receive its default service who switch from an EGS~~, if the customers comply with all Commission regulations pertaining to applications for service~~.

~~(c) A default service provider shall treat a customer who leaves an EGS and applies for default service as it would a new applicant for default service.~~

(d) A default service customer may choose to receive its generation service from an EGS at any time, if the customer complies with all Commission regulations pertaining to changing generation service providers.

(e) A default service provider may not charge a fee to a retail customer that changes its generation service provider in a manner consistent with Commission regulations.