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

COMMENTS ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE
ON THE PROPOSED RULEMAKING

I. BACKGROUND

The enactment of 66 Pa.C.S. Ch. 28, known as the Electricity Generation Customer Choice and Competition Act ("Competition Act"), fundamentally changes the way the rates are to be set for the generation portion of electric service.

Prior to the Competition Act, the Pennsylvania Public Utility Commission ("Commission") set electricity rates on a bundled basis (Generation + Transmission + Distribution) in base rate cases pursuant to 66 Pa.C.S. §1308. The Commission also approved the recovery of certain fuel and purchased power costs through a surcharge pursuant to 66 Pa.C.S. §1307.

In contrast, the Competition Act provides that generation rates are to be determined through market forces rather than through traditional rate base/rate of return/energy clause regulation. At the end of the transition period, each Electric Distribution Company ("EDC"), or a Commission-approved alternative default service provider, is to acquire electric energy "at prevailing market prices" to serve those customers who do not choose an Electric Generation Supplier ("EGS") or whose EGS fails to deliver. See 66 Pa.C.S. §2807(e)(3).

Section 2807(e)(2) requires the Commission to promulgate regulations to define the EDC's obligation under Section 2807(e)(3). To assist in the rulemaking process, the Commission convened the Provider of Last Resort ("POLR") Roundtable at Docket No. M-00041792 and sought written and oral comments from interested parties. The Office of Small Business Advocate ("OSBA") provided written comments and reply comments and made an oral presentation as part of the POLR Roundtable.

By Order entered December 16, 2004, the Commission closed the docket at M-00041792 and initiated a proposed rulemaking at Docket No. L-00040169. By Ordering Paragraph 5, the Commission invited comments on the proposed rulemaking within 60 days of publication in the Pennsylvania Bulletin. The proposed rulemaking was published on February 26, 2005, at Pennsylvania Bulletin, 35 Pa.B. 1421. Consequently, the deadline for comments is April 27, 2005.

Set forth below are the OSBA's comments.

II. COMMENTS ON COMMISSION'S DISCUSSION

In an effort to simplify these comments, the OSBA will respond first to the portion of the proposed rulemaking labeled "Discussion," wherein the Commission provides the rationale for its major policy decisions. In the succeeding section, the OSBA will offer amendments to the proposed regulations, as those regulations are set forth in Annex A to the Commission's Order.

Preamble

In the preamble of the Discussion section of the proposed rulemaking, the Commission appears to endorse the view of some presenters in the POLR Roundtable that the principal objective of the proposed regulations is "fostering a robust retail market

for electricity." (emphasis added) Any such endorsement by the final form regulations would be inconsistent with the legislative history of the Competition Act and would give insufficient weight to the priority of reducing rates.

A review of the floor debate in the House and Senate will verify that legislative supporters and opponents of the Competition Act started with the same stated goal: to reduce rates. No participant in that debate suggested that the Commission should require or permit artificially high POLR rates in order to stimulate retail competition.

Pressed by irate constituents, the General Assembly sought in the 1980s to mitigate rate shock caused primarily by the construction of nuclear power plants at a time when the demand for electricity was falling far short of projections. For example, legislators severely limited rate relief for construction work in progress, authorized the Commission to cancel the construction of unnecessary power plants, and provided for at least a partial denial of rate requests in cases involving excess capacity or construction cost overruns.

Unfortunately, the Commission responded by making only modest excess capacity and cost overrun adjustments, choosing not to halt the construction of the Limerick II nuclear power plant, and approving rates for the Philadelphia Electric Company ("PECO") and the Duquesne Light Company ("Duquesne") which were among the country's highest. Faced with that track record, legislators were open to the argument that competition would do a better job of restraining electric rates in the future than would traditional regulation. However, competition was the means to an end (i.e., lower electric rates) and not the end itself. In short, the General Assembly approved the Competition Act to benefit consumers—not to benefit EGSs.

The Commonwealth Court has already held that "[t]he purpose of the Competition Act is clear: to relinquish the local utilities' monopoly control over the generation of electricity and to invite competition in an effort to lower electric generation rates for the citizens of this Commonwealth." (emphasis added) Indianapolis Power & Light Company v. Pennsylvania Public Utility Commission, 711 A.2d 1071, 1077 (Pa. Cmwlth. 1998), appeal denied 556 Pa. 698, 727 A.2d 1124, certiorari denied 119 S. Ct. 1143, 143 L. Ed.2d 210. Nowhere in its opinion did the Court suggest that retail competition is a higher priority under the Competition Act than is wholesale competition. Nowhere did the Court endorse the view of some POLR Roundtable presenters that POLR rates should be artificially inflated—i.e., be made "as ugly as possible"—in order to give customers an incentive to shop.

The General Assembly approved the Competition Act because "[r]ates for electricity in this Commonwealth are on average higher than the national average, and significant differences exist among the rates of Pennsylvania electric utilities" and because "[t]he cost of electricity is an important factor in decisions made by businesses concerning locating, expanding and retaining facilities in this Commonwealth." See 66 Pa.C.S. §2802(4) and (6), respectively.

The legislature opted to allow competition in the belief that "[c]ompetitive market forces are more effective than economic regulation in controlling the cost of generating electricity." (emphasis added) See 66 Pa.C.S. §2802(5).

Consistent with its goal of restraining the cost of generation, the General Assembly mandated that the POLR supplier "acquire electric energy at prevailing market prices" (emphasis added) in order to serve POLR customers. See 66 Pa.C.S. §2807(e)(3).

Therefore, the proposed regulations must assure that the EDC acquires energy at prevailing market prices, regardless of what effect that may have on how many customers shop.

The Competition Act does expressly state that "all customers of electric distribution companies … shall have the opportunity to purchase electricity from their choice of electric generation suppliers." (emphasis added) However, the Competition Act makes clear that "[t]he ultimate choice of the electric generation supplier is to rest with the consumer." (emphasis added) See 66 Pa.C.S. §2806(a). Nowhere does the Competition Act explicitly or implicitly empower the Commission to influence that choice by making POLR rates "as ugly as possible." Instead, the Competition Act requires that electric service be "available to all customers on reasonable terms and conditions." (emphasis added) See 66 Pa.C.S. §2802(9).

A. Purpose

The OSBA agrees with the Commission's decision to utilize "default service" rather than "POLR service" to describe the service governed by the proposed regulations. The OSBA also agrees with the Commission's decision to designate the EDC as the "default service provider." Consistent with the Commission's own discussion of the issue, the OSBA will address the designation of the default service provider in more detail at a later point in these comments.

B. Definitions

- The OSBA agrees with the Commission that the proposed regulations should avoid overly prescriptive language at this time. Most of the major EDCs will not be providing default service pursuant to these regulations until 2009, 2010, or 2011.

Intervening changes in federal or state law may require amendments to the regulations. In addition, Duquesne's experience (under its current POLR plan and under a plan to be proposed for the period beginning January 1, 2008) and the experience of other states may identify the need for specific amendments. Similarly, the anticipated increase in the number of states acquiring energy through competitive procurement may cause timing-related market distortions which the Commission will need to address before the regulations become applicable to all Pennsylvania EDCs.

- The OSBA agrees with the Commission that the default service provider should acquire energy through an open competitive auction or Request for Proposals ("RFP").

- Although the Commission states that "different procurement mechanisms may be appropriate in different territories or terms of service," the Commission has not articulated what those differences are. In addition, in a later section ["E. Default Service Implementation Plans and Terms of Service"], the Commission acknowledges that a statewide procurement process may be appropriate in the future. Furthermore, the requirement to acquire energy through an open competitive procurement process will apply both under a uniform statewide plan and under plans designed by individual EDCs. Therefore, the OSBA questions the need to allow each EDC to propose its own default service plan. At a minimum, that approach will assure litigation of each plan. Allowing each EDC to follow its own model may also increase the transaction costs for potential wholesale suppliers and may make it more difficult to achieve the Competition Act's goal of eliminating territorial differences in generation rates. New Jersey and Maryland EDCs are acquiring electric energy pursuant to a uniform statewide procurement process. The

OSBA believes that Pennsylvania's EDCs can, and should, do the same for 2011 and subsequent years (when no EDC will be subject to transition rate caps).

- The OSBA agrees with the Commission that a fixed rate or fixed price option should be available to small commercial and industrial customers.

C. Default Service Provider

The General Assembly designated the EDC as the default service provider unless the Commission selects some other entity to perform that function. See 66 Pa.C.S. §§2802(16) and 2807(e)(3). The OSBA agrees with the Commission's decision to maintain the EDC as the default service provider at the present time and to set forth a procedure for evaluating potential changes in the future.

For numerous reasons, the OSBA believes that the EDC should be the default service provider for the foreseeable future.

First, the requirement to acquire energy at prevailing market prices through an open competitive procurement process will be the same, whether the default service provider is the EDC or an alternative supplier designated by the Commission. Therefore, it is questionable whether selecting an EGS as the default service provider would result in lower rates or better service.

Second, the bulk of the potential savings accruing to small business customers because of the Competition Act will result from competition at the wholesale level. Therefore, it is questionable whether designating an EGS as the default service provider would have significant benefit for small business customers, especially when compared to the potential cost to those customers if an EDC must pick up the pieces after an EGS's default.

Third, consumers, the Commission, and elected officials would look to the EDC to keep the lights on if an EGS were designated as the default service provider but were then to fail to perform.

Fourth, EDCs are more likely to respond to the Commission's directives than are EGSs. An EGS has the option of leaving Pennsylvania or closing its doors entirely. In contrast, because an EDC is required to obtain a certificate of public convenience, an EDC is not permitted to abandon service without Commission approval, even if the EDC declares bankruptcy. See 66 Pa.C.S. §1102(a)(2). Therefore, the OSBA agrees with the Commission that, in order to become the alternative default service provider, an EGS must first obtain a certificate of public convenience. However, even if the EGS were made subject to that requirement, the Commission would continue to have more leverage over an EDC's performance than over an EGS', because the return an EDC is authorized to earn on its "wires" business depends upon Commission decisions.

D. Default Service Provider Obligations

The OSBA agrees with the Commission that default service providers are required to continue universal service programs but may propose modifications in those programs, subject to Commission approval.

E. Default Service Implementation Plans and Terms of Service

The OSBA agrees with the Commission's decision to permit existing POLR plans to continue through their respective scheduled expiration dates. Although the default service regulations may not be finalized by the time each of these EDCs must propose its next plan, the OSBA believes that such interim plans should comply with the proposed regulations as closely as possible. At a minimum, each EDC which proposes an interim

plan should be required to acquire electric energy through a process which is both competitive and transparent.

The OSBA also agrees with the Commission's proposed one-year minimum term for each default service plan. However, the OSBA is concerned that the failure to set a maximum term length will lead to a waste of resources. For example, Duquesne expended resources to design a six-year POLR III Plan. Duquesne and the various intervenors subsequently expended resources to litigate the case, with much of the dispute focused on the permissible length of the plan. Thereafter, the Commission approved only the first three years of the six-year plan. See 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). To avoid a repeat of that case, the OSBA believes that the Commission should, at least, provide a "safe harbor" for three-year plans. Furthermore, the OSBA notes that the Commission could avoid dealing with the length-of-term issue on an EDC by EDC basis by providing for a statewide plan to govern procurement by all EDCs for 2011 and beyond.

F. Default Service Supply Procurement

The OSBA agrees with the Commission that the competitive procurement process should be transparent and should be open to all qualified bidders.

To get the lowest prices for consumers, a generating entity affiliated with one EDC should be permitted to bid to supply energy to any or all EDCs, including its own affiliate. To minimize risk to the EDC, each winning bidder should deliver energy to the default service provider under a load-following contract and without reconciliation.

The OSBA recognizes that the Commission needs a reasonable period of time to review the results of the competitive procurement process. However, the OSBA believes that extending that review process beyond three business days will lead bidders to build an additional premium into their bids, thereby resulting in higher rates for consumers. Furthermore, the OSBA points out that another benefit of a statewide procurement process would likely be the need for a shorter review period than needed under the "one EDC/one plan" approach allowed by the proposed regulations.

G. Default Service Rates and the Recovery of Reasonable Costs

• At the time of restructuring, small business customers generally were paying rates in excess of the cost of supplying energy to them. The restructuring process did not correct that inequity because the Competition Act prohibits interclass shifting of stranded costs during the transition period. See 66 Pa.C. S. §2808(a). However, perpetuation of this cost misallocation beyond the transition period would be inconsistent with basing default service rates on market prices.

The OSBA appreciates the Commission's intention to require EDCs to conduct cost-of-service studies as part of their first post-transition distribution and transmission rate cases. Unless and until interclass subsidies have been eliminated, any generation-related customer care costs which are embedded in current distribution and transmission rates should not be shifted to generation. However, the Commission's goal of shifting those embedded customer care costs to generation when generation rate caps have expired should not be used as justification for failing to move each class toward cost-based distribution and transmission rates during the remainder of each EDC's transition period. Delaying the elimination of embedded subsidies until the end of the transition

period would be inconsistent with 66 Pa.C.S. §1304 and would increase the risk of rate shock when generation-related customer care costs are ultimately shifted to generation.

- As the Commission has implicitly recognized, some embedded customer care costs are related both to generation service and to distribution and transmission service. In view of the General Assembly's intent that the Competition Act reduce rates, the OSBA opposes any shifting of customer care costs to generation rates without a dollar-for-dollar reduction in distribution and transmission rates. To assure revenue neutrality, the Commission should permit the shifting of only those customer care costs which the EDC actually would avoid if it were not the default service provider.

- Because of the embedded interclass subsidies in current rates, default service retail rates should not be calculated by allocating a systemwide wholesale generation bid price among the rate classes on the basis of the EDC's last approved "bundled" cost-of-service study or on the basis of an across-the-board adjustment to existing class generation rates. Instead, the EDC should be required to eliminate generation-related embedded subsidies by acquiring energy through separate bids for residential customers, small commercial and industrial customers, and large commercial and industrial customers. Therefore, the OSBA supports the Commission's decision to require competitive procurement on a rate class by rate class basis and believes that that requirement should preclude the need for any system-wide generation cost allocations.

- The OSBA supports the Commission's decision to guarantee a fixed rate option for small business customers with a load of 500 kW or less. As the Commission has recognized, many small business customers can not readily shave their electricity use to respond to hourly fluctuations in market prices. Instead, they must consume energy to

accommodate their own customers. That is especially true for restaurants and retail businesses.

Small businesses also need to be able to predict their costs in order to set the prices they charge for their own goods and services. A UGI witness at the POLR Roundtable provided empirical evidence to support that proposition. Specifically, he observed that, instead of taking their chances with year-to-year market fluctuations, one-third of UGI's business customers chose a three-year plan with a known rate increase each year. Therefore, the default service provider should offer prices to small businesses which are fixed for no less than one year.

- The OSBA does not believe that the risks to the default service provider are as great as the Commission appears to be assuming.

For example, unanticipated seasonal migration can be a serious risk for EDCs when they are under capped generation rates. However, in the post-transition period, the winning bidders in the competitive procurement process presumably will be obligated to provide electric energy on a load-following basis. Therefore, the risk of seasonal migration will be borne by the winning bidders and not by the EDCs. Because bidders will build the risk of seasonal migration into their bids, there should be no need for the Commission to authorize risk premiums or new procedures for EDCs to recover costs associated with changes in market conditions, sales, and switching.

Similarly, the proposed regulations guarantee that an EDC will recover all of its reasonable costs, including the cost of energy, if a wholesale supplier fails to deliver. Therefore, there should be no need for customers to pay a risk premium to the EDC for risks the EDC will <u>not</u> incur.

• Section 3(a)(3) of the act of November 30, 2004 (P. L. ___, No. 213), known as the Alternative Energy Portfolio Standards Act ("Alternative Energy Act") provides that costs incurred by an EDC for the purchase of electricity from alternative energy sources and costs for the purchase of credits shall be recovered "pursuant to an automatic energy adjustment clause under 66 Pa.C.S. §1307 as a cost of generation supply under 66 Pa.C.S. §2807."

Under Section 2807(e)(3), an EDC "shall acquire electric energy at prevailing market prices . . . and shall recover fully all reasonable costs." (emphasis added) Under Section 1307(a), surcharges are intended to provide a public utility with a "just and reasonable return" on its rate base and may be revoked if rates are "unjust or unreasonable." Therefore, by linking purchases under the Alternative Energy Act to Sections 2807 and 1307, the General Assembly set parameters for the charges to ratepayers. To fit within those parameters, the OSBA recommends that EDCs be required to utilize a competitive procurement process for acquiring electricity, or associated credits, from alternative energy sources.

Electric energy generated from alternative energy sources has the potential to offset volatility in the market price of electricity. Ideally, an EDC would seek bids for a specified quantity of electricity, with a bid requirement that the statutorily-designated percentage of that electricity be provided from alternative energy sources. Potential wholesale suppliers responding to such a solicitation might then be in a position to lower their bid prices to reflect the benefits of using alternative energy sources as a hedge.

Unfortunately, because the Alternative Energy Act provides for the recovery of alternative energy costs through a surcharge, the Commission may not be empowered to

order each EDC to conduct a competitive procurement process which results in a "blended" price for the required combination of electricity from non-alternative sources and electricity from alternative sources. However, the OSBA recommends that each EDC be given the option to waive recovery of its alternative energy costs through a surcharge and, instead, to collect those costs as part of a "blended" price which results from an open and transparent competitive procurement process.

- The proposed regulations authorize EDCs to recover the cost of Demand Side Response ("DSR") programs on a separate basis. The OSBA believes that this portion of the proposed regulations is inconsistent with the Alternative Energy Act.

Specifically, Section 2 of the Alternative Energy Act lists "demand side management" as an alternative energy source. Section 2 defines "demand side management" to include DSR. Section 3 requires that EDCs include a designated percentage of alternative energy in the electricity they sell in Pennsylvania. As long as an EDC meets the overall percentages designated by Section 3, the EDC is in compliance with the Alternative Energy Act even if it decides not to include any DSR in its alternative energy portfolio. Therefore, the Commission should not use the proposed default service provider regulations to mandate that each EDC make DSR available.

H. Commission Review of Default Service Implementation Plans

As stated above, the OSBA believes that all EDCs should acquire energy for 2011 and beyond through a statewide competitive procurement process. If the Commission were to adopt that approach, there would be no need for periodic and lengthy reviews of individual EDC plans. However, the OSBA offers the following comments in recognition that the Commission may decide not to mandate a statewide procurement

process and in recognition that the Commission will need to review interim plans for some EDCs even if it does order a statewide process for 2011 and beyond.

- The OSBA is concerned that extending the period for Commission review of the results of the competitive procurement process beyond three business days will cause bidders to build an additional premium into their bids, thereby resulting in higher rates for consumers.

- A six-month period for Commission review of an EDC's competitive procurement plan is inadequate. Generation costs are a bigger share of a customer's bill than are distribution costs. Distribution rate cases typically involve a nine-month review period. Although it may be reasonable to have a shorter review period for an EDC's second plan, there should be a review period of at least nine months for the first plan. A longer review period is necessary (at least for the initial plan) because the Commission is proposing to give EDCs flexibility to design competitive procurement plans which may differ from each other in significant and unpredictable ways.

The OSBA assumes that requiring 60 days' notice of the rates, terms, and conditions of default service is intended to facilitate shopping. However, the OSBA would support shortening that notice period to 30 days if that were the only way to provide adequate time for review of the EDC's plan. In that regard, the Commission's proposal to allow virtually unlimited switching would make a 30-day notice period less problematic.

Similarly, the OSBA believes that the seven-month implementation period could be shortened in order to assure adequate time for review of the plan. Furthermore, the

OSBA questions whether an EDC will need a seven-month implementation period when it is implementing its second or other succeeding plans.

I. Default Service Customers and the Standards for Transferring Customer Accounts to Default Service Providers

- The Commission's decision not to endorse minimum stay and switching restrictions at this time will result in higher rates for those customers who do not shop. Wholesale suppliers will build switching risk into their bid prices or seek to mitigate such risk by requesting authorization for periodic rate adjustments. Experience to date has been that shopping is much more extensive among large commercial and industrial customers than among small business customers. Therefore, higher bid prices because of switching risk will be especially problematic for the smallest commercial customers, who are unlikely to create switching costs because they are unlikely to shop. However, the Commission's decision to require the competitive acquisition of energy by rate class should help mitigate the burden on non-shopping small business customers because costs associated with switching risk will be recovered on a class basis.

- The OSBA agrees, in general, with the Commission's proposed restrictions on an EGS's ability to return customers to default service. However, the OSBA questions whether the proposal is adequate to prevent an EGS from timing its contract termination date to exploit seasonal price variations. Therefore, the Commission should consider prohibiting an EGS from entering contracts which terminate within one month of the beginning of the EDC's peak season.

- Seasonal usage is only one factor to be considered in the design of rates. In no event should seasonal rates be implemented in isolation, simply to facilitate the

elimination of switching rules, or be implemented in a punitive fashion, simply to make default service rates "as ugly as possible."

Although seasonal rates can be revenue neutral on a class basis, they are unlikely to be revenue neutral on an individual customer basis. Many small business customers can not respond to seasonal price signals and, therefore, can not mitigate the bill impacts associated with such signals. For example, restaurants and stores could lose customers and offices could lose worker productivity if air conditioning use were curtailed significantly. Similarly, small manufacturers must meet customer demand, regardless of the season.

Furthermore, because there has been minimal shopping by small business customers, the small commercial and industrial rate classes have generally not been involved in the switching abuses which seasonal rates are intended to deter.

- The OSBA believes that there would be less need to consider strengthening competitive safeguards if the Commission were to require a statewide procurement process for energy acquired for 2011 and beyond. The Commission's proposal to allow each EDC to design its own plan will unnecessarily increase the danger that an EDC will try to discourage shopping in order to preserve customers for the EDC's generation affiliate.

III. COMMENTS ON COMMISSION'S REGULATORY LANGUAGE

The following are specific amendments to the proposed regulations to implement the OSBA's recommendations which are set forth under "II. COMMENTS ON COMMISSION'S DISCUSSION":

§54.123. Transfer of customers to default service.

The following standards shall apply to the transfer of a retail customer's electric generation service from an EGS to a default service provider within the meaning of §54.182:

(a) An EGS shall not transfer a retail customer from its electric generation service to the default service provider without the consent of the default service provider, except in the following situations:

* * *

(4) Upon the normal expiration of contracts that are not structured in a way to exploit seasonal variation in market prices for electric generation service and that do not expire less than one month prior to the beginning of the default service provider's peak seasonal period.

* * *

(c) An EGS may not initiate or encourage transfers of service to a default service provider from the EGS to exploit seasonal variations in market prices for electric generation service. An EGS may not enter a contract to provide electric generation service to a non-residential customer with a load of 500 kW or less unless the expiration date of that contract is at least one month prior to the beginning of the default service provider's peak seasonal period.

§54.182. Definitions.

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

Fixed rate option—A default service price that is set in advance for one or more successive twelve-month periods or for the entire term of the default service implementation plan. The default service price [that] may include seasonal differences.

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

* * *

(c) A default service implementation plan shall propose a minimum term of service of at least twelve months, or multiple twelve month periods, or for a period necessary to comply with §54.185(f). A default service implementation plan may propose a maximum term of service of up to 36 months, provided that the Commission, for good cause shown, may approve a maximum term of service of greater than 36 months.

(d) * * * The default service plan shall identify a fair, transparent and non-discriminatory competitive procurement process as its method of compliance with the Alternative Energy Portfolio Standards Act, No. 213 of 2004. An EDC serving as the default service provider may, at its option, include such method of compliance with the Alternative Energy Portfolio Standards Act as part of its default service supply procurement under §54.186 and may recover the costs of complying with the Alternative Energy Portfolio Standards Act as part of the price for default service supply procurement determined under §54.186.

(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. All default service providers shall file a joint, statewide default service implementation plan that proposes a statewide competitive procurement process for the acquisition of electric generation supply for all default service customers for periods beginning on or after January 1, 2011.

§54.186. Default service supply procurement.

(a) A default service provider shall procure the electricity needed to provide default service, and to comply with the Alternative Energy Portfolio Standards Act, No. 213 of 2004, only through a competitive procurement process or replacement procurement process approved by the Commission, with the following exceptions:

* * *

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

* * *

(2) A default service provider's competitive procurement process shall include:

* * *

(ii) A definition and description of the power supply products on which potential suppliers shall bid. Such products shall be bid by each already effective retail customer class in the EDC's service territory or by such reclassification of retail customers proposed in accordance with §54.185(g) and approved by the Commission.

* * *

(vii) Relevant load data, including the following:

* * *

(C) Capacity peak load contribution figures, including capacity obligations, by rate schedule.

* * *

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

* * *

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

* * *

§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:

* * *

(2) Customer charge—* * * The associated costs with this charge include:

* * *

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

* * *

(3) A default service provider [shall] may 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.

* * *

[(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] for acquiring replacement generation supply when a generation supplier fails to deliver generation supply to the default service provider.

(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). Nothing herein shall be construed as prohibiting a default service provider from seeking extraordinary rate relief under 66 Pa.C.S. §1308(e).

* * *

§54.188. Commission review of default service implementation plans.

* * *

(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. * * *

* * *

(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] 30 days before their effective date, unless another time period is approved by the Commission. * * *

* * *

IV. CONCLUSION

According to the shopping statistics compiled by the Office of Consumer Advocate, the number of shopping customers is relatively modest statewide (and virtually non-existent in some service territories). Furthermore, if the wholesale competitive procurement process works properly, it would be surprising if EGSs were able to beat the default service rates available to most small commercial and industrial customers. However, the proper yardstick for measuring the Competition Act's success, now and after implementation of the regulations, is whether rates are lower than they would have been under traditional regulation.

WHEREFORE, the OSBA respectfully requests that the Commission revise the proposed regulations in accordance with the foregoing comments prior to submission of the regulations in final form to the Independent Regulatory Review Commission and the standing committees of the General Assembly.

Respectfully submitted,

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Dated: April 27, 2005