

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF THE ENERGY ASSOCIATION OF PENNSYLVANIA
ON PROPOSED DEFAULT SERVICE REGULATIONS**

Introduction

The Energy Association of Pennsylvania (“EAPA”) submits the following comments on the Pennsylvania Public Utility Commission’s (“Commission”) proposed regulations governing the provision of default supplier service in Pennsylvania. Default service is provided to customers who take generation service from the electric distribution company (“EDC”) at the conclusion of the electric industry restructuring transition period when generation service rate caps expire.

At the outset, the EAPA notes that it agrees with several aspects of the Commission’s proposed regulations governing the provision of default supplier service. The Energy Association member companies agree with the Commission in designating the incumbent EDCs in each certificated service territory to provide “default service” at the end of the effective rate caps or Provider of Last Resort (“POLR”) plans to all retail customers not receiving generation service from alternative Electric Generation Suppliers (“EGSs”) within the certificated service territory. EDCs are poised and ready to continue delivering energy to retail customers after the transition period at the prevailing market price.

Subject to the modifications as proposed in these comments, the member companies endorse the guidance and flexibility that the proposed regulations provide EDCs when it comes to formulating default service plans and acquiring generation through a competitive procurement process. The flexibility provided by the Commission is important because it allows each EDC to formulate a default service plan that is tailored to its particular circumstances and meets the needs of customers in its service territory. The member companies endorse the Commission's proposed use of the "wholesale model" to acquire generation. The member companies also endorse the rule that permits an affiliate of an EDC to participate in the competitive procurement process.

Although the Commission has generally adopted policy positions that are beneficial to the public interest in this docket, EAPA urges the Commission to consider and adopt several important modifications to the proposed regulations:

- In addition to a competitive procurement process, EAPA submits that the Commission's default service regulations should provide even greater flexibility to the EDCs in the method of supply procurement;
- EAPA argues against the preservation of Commission authority to initiate a statewide or multi-service territory procurement process;
- The Commission's default service regulations should provide EDCs with the option to reconcile the Generation Supply Charge;
- The Commission should not establish a separate default service customer charge;
- The Commission's default service regulations should establish a presumptive demand load threshold of over 1 megawatt to determine which large customers pay hourly prices;

- The Commission’s default service regulations should permit EDCs to have fair and appropriate switching rules in place for customers returning to default service;
- The evaluation period for Commission review of an EDC’s competitive procurement process should be no more than three business days.

The Commission has appropriately provided for the Submission of Individual Implementation Plans.

The EAPA commends the Commission for deciding “that each default service provider should have the option of proposing a default service implementation plan best suited to its service territory.” The Commission insight “that one size doesn’t fit all” is bolstered by the testimony submitted during the Commission’s POLR Roundtable proceeding that revealed the following critical facts:

- Over 650,000 customers are currently being served by EDCs that are no longer subject to restructuring settlement rate caps.
- These 650,000-plus are geographically spread around the state and are served by five different EDCs, four of which are the smaller EDCs, and serve a total of 77,000-plus customers.
- A significant percentage, 86%, of Pennsylvania’s electric consumers will still be receiving POLR service subject to statutory generation rate caps through 2008, and this figure remains high into 2009 when it is closer to 70%.¹

¹ An update of the number of customers subject to generation rate caps into 2009 would show a higher number. The higher number is the result of the Commission’s recent approval of a settlement involving West Penn Power Company at Docket Nos. R-00039022 and R-00973981, which extended its generation rate cap from the end of 2008 to the end of 2010.

- Electric service in this state is currently provided by both small and large EDCs, located in three distinct RTO control areas. As the Commission is aware, these three distinct RTOs are different in their transmission constraints, their access rules, their governance and the level of authority or control.

These factors complement the Commission's recognition that EDC flexibility in formulating a default service plan is paramount for the Commonwealth and its electric consumers. The Commission is urged to adhere to its general insight that EDC discretion regarding implementation of default service plans is appropriate and thereby, permits each default service provider the opportunity to submit plans for the Commission's consideration that are tailored to their individual circumstances. Flexibility in formulating default service plans is critical to the continued appropriateness of the regulations through 2010, which is a necessity given the timetables that are in place for generation rate caps.

Recommendation No. 1

EAPA supports the regulations providing even greater flexibility in the method of acquiring default generation.²

Consistent with permitting each default service provider the opportunity to formulate a default service plan that is tailored to its individual circumstances, EAPA submits that the Commission's regulations need to go one step further and provide even more flexibility to the EDCs in formulating default service plans. The member companies submit that the Commission's default service regulations should permit an EDC to acquire generation by not only the competitive procurement process as outlined

² PPL does not join in Recommendation Nos. 1 and 2 but fully supports the remaining recommendations. PECO does not join in Recommendation No. 1 but fully supports the remaining recommendations.

in the proposed regulations, but also, by any other reasonable procurement processes that meet the needs of customers. Such additional flexibility is consistent with the Commission's intent as expressed in the Proposed Rulemaking Order that different procurement mechanisms may be appropriate in different territories or terms of service. This additional flexibility is workable as the "reasonableness" of the procurement method can be considered as part of the Commission's review and pre-approval of an EDC's supply procurement processes.

Appendix 1 contains revisions to the proposed regulations with the language necessary to provide EDCs with this additional flexibility in the supply procurement process. Consistent with the relevant administrative regulations, this appendix and the remaining appendices depict deleted language from the proposed regulations with the use of brackets and added language through underlining.

Recommendation No. 2

EAPA argues against the preservation of Commission authority to initiate a statewide or multi-service territory procurement process.

The EAPA notes that the Commission has preserved an option for a statewide or multi-service territory procurement process that would be initiated by the Commission directing affected EDCs to file a joint default service implementation plan pursuant to 52 Pa. Code 54.185(e).

As previously discussed, the factual and legal circumstances surrounding default service do not lend themselves to a statewide plan under any circumstances. A "one size fits all" approach to default service simply will not work, based on the different circumstances of each EDC operating in Pennsylvania. As to a multi-service territory plan, EAPA suggests that the regulations should reserve this option, but only at the

initiation of the relevant EDCs. Engineering and operations are paramount in discussing multi-service territory arrangements. EDCs interface with one another in a multitude of ways and this major engineering and operational challenge is magnified by boundaries involving three different transmission organizations. Therefore, the EDCs are in the best position to determine when and if any such multi-service territory arrangement is appropriate.

Alternatively, if the Commission decides to retain this preservation of authority to initiate a multi-service territory plan, EAPA submits that the Commission's authority to direct a multi-service territory procurement process should be limited to exigent circumstances. Furthermore, the EAPA suggests that any decision to direct a multi-service territory procurement process should not occur unless preceded by a thorough investigation to fully explore the engineering and technical factors that are involved in any multi-service territory procurement process and determine whether an optimal result can occur.

Appendix 2 contains revisions to the proposed regulations that reflect the aforementioned comments of the EAPA regarding statewide and multi-service territory procurement.

Recommendation No. 3

The Commission's default service regulations should provide EDCs with the option to reconcile the Generation Supply Charge.

The Commission's proposed default service regulations presently authorize a non-reconcilable generation supply charge. In addition, the proposed regulations bar any adjustments to the Generation Supply Charge, except in circumstances where absent a

rate adjustment based on changes in number of customers or costs, the provision of default service would be prejudiced.

EAPA submits that the proposed regulations should be modified to permit an EDC to use a reconciliation process applicable to the Generation Supply Charge as shown in Appendix 3 of these comments. Providing an EDC with the option of reconciling Generation Supply Charge revenues with actual supply expenses is consistent with the Commission's theme throughout the proposed regulations to provide EDCs with flexibility in formulating their individual default service plans. Providing a reconciliation option is also consistent with Section 2807(e)(3) of the Public Utility Code, which requires full recovery of default service supply costs. Furthermore, reconciliation of the supply charge supports and is consistent with Chapter 28's requirement that customers have significant latitude in returning to default service from an alternative supplier at any time.³ The inherent volatility in numbers of customers and supply needed to serve default service customers could justify Commission authorization for EDCs to establish an optional reconciliation process for supply costs and revenues.

Recommendation No. 4

Consistent with the letter and spirit of Chapter 28 of the Public Utility Code, the Commission should not establish a separate default service customer charge.

The regulations propose the breakout of a new separate default service customer charge that would recover, in theory, default service customer costs relating to billing, meter reading, collections, uncollectible debt, customer service, customer care, universal

³ This ability to return to default service is only constrained in very limited circumstances. Proposed Regulation §54.123(a).

service charges, return or risk component, taxes and other reasonable and identifiable costs.

In terms of operations, supply-related customer services are fully bundled with distribution-related customer services. These costs can only be segregated between supply and distribution functions on some hypothetical basis. In reality, these services are not separately provided and may well continue to be provided by the EDC even to customers electing to shop. In such a scenario, the ratemaking should follow operational function and the applicable Customer Charge should not be unbundled from distribution rates.

In terms of Pennsylvania law, unbundling of the customer charge in the manner set forth in the proposed regulations may not be consistent with the General Assembly's legislation that restructured the electric industry in Pennsylvania. Chapter 28's rate unbundling mandate addressed the initial rate unbundling of the generation rate as occurred in the restructuring proceedings adjudicated by the Commission in the late 1990's. However, Chapter 28 does not contain any specific, post-transition direction regarding further unbundling of the default service rate into a supply charge and a customer charge.

An additional flaw in the proposal to separate supply and customer charges relates to cost recovery and the fact that the proposed separation cannot easily be done in a revenue-neutral manner. With the proposed unbundling, customer costs would be split between a volumetric and non-volumetric rate, which means that the separation would probably not occur on a revenue-neutral basis.

The regulations designate the EDCs as the default service provider at the end of the restructuring transition period. This policy acknowledges that for the foreseeable future, the default service role and the distribution service role will remain with the EDC. A logical application of this policy decision would keep supply-related customer costs and distribution-related customer costs unified within existing EDC customer and distribution charges.

The regulations should be amended to reflect elimination of the proposed unbundled Customer Charge as depicted in Appendix 3.

Recommendation No. 5

The Commission should establish a demand threshold of over 1 megawatt when determining which large customers pay hourly prices.

The EAPA member companies support the use of a presumptive demand threshold amount for determining whether a default service customer is eligible for hourly rates. However, EAPA does not support 500 kw as that demand threshold amount. Rather, the proposed regulations should specify that all customers over a 1 megawatt demand should be considered “large” customers subject to hourly prices for default service. EAPA notes that the sophistication of customers taking service at this demand amount and the existing metering capabilities at this demand amount provide ample justification for use of the 1 megawatt threshold to define “large” customers.

At the same time, EAPA submits that the regulations should also permit EDCs to propose a lower demand threshold to determine which customers are subject to hourly prices. Allowing EDCs such discretion is consistent with the theme of providing EDCs with flexibility in developing default service implementation plans.

The regulations should be amended to reflect the proposed changes to the demand threshold amount as depicted in Appendix 4.

Recommendation No. 6

The Commission’s regulations should permit EDCs, as part of their default service implementation plans, to establish fair and appropriate switching rules for customers who return to default service providers.

Under the proposed regulations, which do not contain any switching restrictions, the member companies submit that default service providers cannot effectively manage the supply risks associated with customer migrations. As a general premise, the fewer the restrictions on customer migrations, the higher the default service generation rate will be, while the greater the restrictions on customer migrations, the lower the default service generation rate will be. This is due to the fact that a more volatile customer load is a more expensive customer load to service. Therefore, without any switching restrictions in place, EDCs in Pennsylvania will be forced to manage the risks associated with free migration through higher default service generation rates than would otherwise occur with fair and appropriate switching rules.

To this end, the member companies note that the Commission could lower the cost of procuring default generation supply and any residual risk to EDCs by allowing EDCs the option to establish fair and reasonable switching rules. As an example of something that an EDC could propose in its default service plan, a switching rule could provide for a one year stay provision for all customers returning to default service from an EGS, with a 60-day return option. Under this option, a customer could return to default service for up to 60 days, at market-based rates, while the customer decides to either choose another EGS or stay with the default service provider for at least a year.

Appendix 5 contains proposed regulations that permit EDCs to propose switching rules as part of their implementation plan in order to manage the risks associated with customer migrations.

Recommendation No. 7

The Commission review period for procurement results should be no more than three business days.

The proposed regulations establish a minimum Commission review period for the results of an EDC's procurement process of three business days, and no maximum period. Given the approach taken by other states such as Maryland,⁴ the pre-approval process and the need to provide bidders with prompt results, a maximum Commission review period of three business days is appropriate.

Appendix 6 contains an amended regulation that revises the time period for Commission review of the EDC procurement process.

⁴ Maryland's process allows for a Commission review period of two business days.

Conclusion and summary of recommendations

As mentioned in these comments, the EAPA endorses numerous elements of the Commission's proposed default service regulations, and, in particular, the guidance and flexibility that the regulations provide to the EDCs in formulating default service plans. Nevertheless, the member companies urge the Commission to adopt the aforementioned modifications as set forth in these comments as they will serve to further and enhance the stated goals of the Commission in regulating default service. The Commission will no doubt receive many comments from a number of interested parties and groups in this rulemaking. The EAPA notes, however, that its modifications will likely have unique status as near consensus modifications that have the full support and backing of EAPA EDC members.⁵ Moreover, the EAPA's near consensus modifications address what the member companies, who along with their customers, stand to be most affected by these regulations, consider to be core issues to EDCs operating in Pennsylvania. EAPA summarizes its proposed modifications as follows:

- In addition to a competitive procurement process, EAPA submits that the Commission's default service regulations should provide even greater flexibility to the EDCs in the method of supply procurement;
- EAPA argues against the preservation of Commission authority to initiate a statewide or multi-service territory procurement process;
- The Commission's default service regulations should provide EDCs with the option to reconcile the Generation Supply Charge;
- The Commission should not establish a separate default service customer charge;

⁵ All EDC members of EAPA fully support Recommendation Nos. 3-7. All EDC members with the exception of PPL and PECO support Recommendation No. 1. All EDC members except PPL support Recommendation No. 2.

- The Commission's default service regulations should establish a presumptive demand load threshold of over 1 megawatt to determine which large customers pay hourly prices;
- The Commission's default service regulations should permit EDCs to have fair and appropriate switching rules in place for customers returning to default service;
- The evaluation period for Commission review of an EDC's competitive procurement process should be no more than three business days.

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Respectfully submitted,

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On behalf of the Energy Association
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Appendix 1

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

* * *

(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.

* * *

§54.186. Default service supply procurement.

(a) A default service provider shall procure the electricity needed to provide default service [only] through any reasonable procurement process, including but not limited to a competitive procurement process, or, if necessary and in accordance with §54.187(i), a 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 shall [adhere to the following standards] be described in detail. If a competitive procurement process is proposed, the following information shall be provided:

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Appendix 2

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

* * *

(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] Multiple default service providers may jointly file default service plans that propose a [competitive] reasonable procurement process, including but not limited to 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.

* * *

Appendix 3

§54.187. Default service rates and the recovery or 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] may be 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, or may be a reconcilable charge that is adjustable, if necessary. If the generation supply charge is adjustable, actual generation supply costs and revenues may be reconciled every twelve months. The reconciliation adjustment to the generation supply charge is subject to Commission review if the Commission, by order, determines review is appropriate.

The associated costs with this charge include but are not limited to:

* * *

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

(vi) Applicable taxes

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

[(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.]

(2)[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.

(3)[4] The costs associated with providing default service, exclusive of generation supply costs and costs recovered through §54.187(a)(1) and (2), shall be recovered by the EDC acting as a default service provider through its Commission approved distribution rates. These costs include but are not limited to default service related costs for customer billing, collections, customer service, meter reading, uncollectible debt, applicable taxes, and other reasonable and identifiable administrative or regulatory expenses. [recovered through the preceding charges and mechanisms shall not be recovered by an EDC acting as a default service provider through its Commission approved distribution rates.]

* * *

[(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 or 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).]

(g)[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 costs associated with this activity. In this circumstance, the prevailing market price will reflect [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.

Appendix 4

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

* * *

(d) The default service provider shall include an hourly rate in its implementation plan for all default service customers whose registered peak demand from an appropriate 12-month period [load test indicates a registered peak demand of] is greater than 1 megawatt [500 kilowatts] unless the EDC as part of its default service implementation plan proposes to establish a different demand threshold amount. The default service provider may propose a fixed rate for these customers in its default service implementation plan.

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Appendix 5

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

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(l) A default service implementation plan may include reasonable restrictions on customer migrations for customers who return to the default service provider after receiving generation supply from an alternative EGS.

(m)[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.

(n)[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.

§54.189. Default service customers.

* * *

(b) A default service provider shall accept all applications for default service from new retail customers and retail customers who switch from an EGS, subject to any restrictions set forth in this Chapter and [if the customer complies] consistent with all Commission regulations or orders 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, subject to any restrictions set forth in this Chapter and [if the customer complies] consistent with all Commission regulations or orders pertaining to changing generation service providers.

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Appendix 6

§54.186. Default service supply procurement.

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(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 shall [may] not be more [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.

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