

**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 DIRECT ENERGY SERVICES, LLC

Direct Energy Services, LLC ("Direct Energy") submits these comments to demonstrate that a full Retail Default Service bid out model – rather than the structure initially proposed by the Commission – provides the greatest opportunity for competitive market forces to deliver the best value to consumers in the post-transition period as envisioned by the Electric Choice Act. If the Commission nonetheless decides to not adopt Direct Energy's model, Direct Energy suggests modifications to the structure initially proposed by the Commission so that market distortions will be minimized and so that consumers can fully realize the benefits of a competitive electricity market, including product options, innovation, service improvement and downward pressure on electricity prices.

I. Introduction and Summary

Direct Energy, a licensed electric generation supplier ("EGS"), is a subsidiary of Centrica, a leading provider of energy and other energy-related services to over 18 million households worldwide, with annual revenues of \$31 billion and \$17 billion in market capitalization, and over 38,000 employees. Direct Energy has over 3.5 million gas and electricity customers in North America. Direct Energy serves about 25,000 residential and small commercial natural gas customers in Western Pennsylvania. In serving electricity customers in

the U.S., Direct Energy provides an "all in" service, including billing and customer care service, and acts as the single point of contact for electricity service, including acquiring and paying for the utility's distribution service. Direct Energy offers retail customers a variety of product options, including multi-year price protection programs that allow customers to mitigate their specific concerns about energy prices.

Direct Energy's position on the issues concerning post-transition Default Service is informed by Centrica's experiences in the United Kingdom, Texas and Canada. In Texas and Canada, Direct Energy provides default and equivalent service in place of the utilities. In the UK, competitive electricity and gas markets have resulted in switching by almost one-half of all customers, and customers have experienced substantial savings as well as service improvements and innovation – demonstrating conclusively that competitive markets can and do work.

The General Assembly has determined that competition is the law of the land for Pennsylvania. In the order initiating this rulemaking, the Commission correctly determined that Default Service "should primarily serve as a backstop to the competitive retail market" and that an appropriately crafted framework for Default Service serves the public interest "by fostering a robust retail market for electricity."¹ The Commission has thus recognized the wisdom of the General Assembly's determination that competition provides the right tools to deliver the best service to retail electric consumers. Therefore, every decision the Commission makes concerning the post-transition period should be in favor of more competition, not less. This is especially true for the design of post-transition Default Service, which the Commission agrees "is the most important task remaining for the Commission in the implementation of the Act."²

¹ December 16, 2004 Order at 5.

² *Id.*

The Commission's proposal to have the incumbent utilities provide Default Service through a wholesale supply bid out is simply the wrong approach. On the other hand, Direct Energy's proposal to bid out the entire Retail Default Service function to qualified EGSs will permit competitive market forces to deliver the best value and service to consumers. Simply put, under the Retail Default Service model, the EGS winning the bid will provide retail electric service to the end user, and will be responsible for billing, collecting and customer care. Many EGSs have the resources and wherewithal to provide Retail Default Service. Having companies other than the incumbent utilities provide default and equivalent service has worked in other territories. In fact, Direct Energy is the provider of "Price to Beat Service" to approximately 700,000 electricity customers in Texas, and finalized an agreement last year to become the provider of "Default Service" to 980,000 gas and electric customers in Alberta, Canada.

The Commission has acknowledged that it has the authority to require a Retail Default Service model.³ However, the Commission has declined to propose a Retail Default Service model for the post-transition period because "the competitive retail market is still in transition." Direct Energy suggests that this rationale does not fully recognize that the rules established in this proceeding will not become effective for the majority of retail customers until January 1, 2011.⁴ Also, this rationale is not consistent with the Commission's determinations that Default Service is both to backstop and foster the competitive retail electric market, and must avoid distortions to the operation of the market.⁵

³ *Id.* at 8.

⁴ Stranded cost recovery periods and rate caps expire December 31, 2010 for the following utilities: West Penn Power Company, Pennsylvania Electric Company, Metropolitan Edison Company and PECO Energy Company.

⁵ December 16, 2004 Order at 5.

Direct Energy submits that, rather than counseling *against* adoption of a Retail Default Service model for the post-transition period, the current market environment demonstrates why the Commission must implement a Retail Default Service bid out for the post-transition period. Otherwise it is likely that competitive market forces will not be able to deliver all of the benefits of competition to customers. The high levels of shopping during the phase-in of electric choice have not been sustained through the transition period primarily because stranded cost charges and rate caps have distorted the normal relationship between wholesale and retail electric markets and prices.⁶ The completion of the utilities' stranded cost collections and the expiration of administratively determined capped rates provide the Commission with the opportunity to do what the General Assembly envisioned in enacting the Electric Choice Act – rely upon full competition to deliver value to customers.

II. A Retail Default Service Bid Out Will Provide the Benefits of Full Competition to Default Service Customers in the Post-Transition Period as Envisioned by the Electric Choice Act.

The purpose of the Electric Choice Act is to "create direct access by retail customers to the competitive market for the generation of electricity."⁷ The reason for this innovation is the General Assembly's declaration that markets are superior to economic regulation in determining the costs of generating electricity.⁸ The Commission's order initiating this rulemaking correctly determines that this is "one of the key policy declarations of the Act."⁹ This key policy

⁶ Former Chairman Fitzpatrick recognized this market distortion in his Concurring Statement to the Commission's decision addressing requests for reconsideration in Duquesne's POLR III case, and in the list of reports and quotations attached to his statement as Appendix A.

⁷ 66 Pa. C.S. § 2802(12).

⁸ 66 Pa. C.S. § 2802(5).

⁹ December 16, 2004 Order at 4. Other key policy declarations identified by the Commission are: "POLR service should be reliable, available on reasonable terms and conditions, associated with high-quality customer service, and provided consistent with the level of protections currently afforded to low-income customers. 66 Pa. C.S. §§2802(9), (10), (11)." *Id.* The Commission also

declaration is the basis for the General Assembly's pricing standard for Default Service in the post-transition period: prevailing market prices and full recovery of all reasonable costs.¹⁰

The Commission has correctly determined that "to foster a competitive market, any POLR service model must be carefully designed to avoid distortions in the market" because the primary function of POLR service is to backstop the competitive retail market.¹¹ Direct Energy believes that the Commission's proposal will distort the retail market and therefore is not supportive of the broader goals of the Act. Moreover, even in the best light, the Commission's proposal can only capture a portion of the benefits the competitive market can provide to customers after the transition period market ends. The Commission must go further and permit competitive market forces to work in the post-transition period as envisioned by the General Assembly by bidding out the entire Retail Default Service function.

There is no dispute that the scope of the post-transition Default Service function is set forth in Section 2807(e)(3) of the Electric Choice Act:

If a customer contracts for electric energy and it is not delivered or if a customer does not choose an alternative electric generation supplier, the electric distribution company or **commission-approved alternative supplier** shall acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs.¹²

Thus, the General Assembly has declared that after the transition period, the market is to determine the price for Default Service and, as the Commission acknowledges, the Act envisions that post-transition Default Service can be provided by an EGS alternative provider through a

previously recognized that the means to accomplish these goals is through the competitive market and not through regulation. *Petition of Duquesne Light Company*, Docket No. P-00032071, Order entered August 19, 2004, at 7.

¹⁰ 66 Pa. C.S. § 2807(e)(3).

¹¹ December 16, 2004 Order at 5.

¹² 66 Pa. C.S. § 2807(e)(3) (emphasis added).

competitive retail bid out process.¹³ Section 2802(16) of the Act also declares that "[e]lectric distribution companies should continue to be the provider of last resort *in order to ensure the availability of universal electric service* in this Commonwealth unless another provider of last resort is approved by the Commission."¹⁴ Contrary to the Commission's statement,¹⁵ Direct Energy submits that this provision does not express a preference for utilities to continue the role of Default Service Provider in the post-transition period as a general matter, but rather *only* for the purpose of ensuring the availability of universal electric service. There is no reason why a Retail Default Service bid out could not ensure the availability of universal service from a non-utility Default Service Provider. Bidding out the full Retail Default Service function, with a commitment that the bidder agree to provide service according to all PUC rules, regulations and guidelines, will ensure that competitive market forces deliver the best value to customers for these services in a manner that meets all the key policy declarations of the Electric Choice Act.¹⁶

The Commission should adopt Direct Energy's Retail Default Service proposal to auction off the full retail obligation to default service customers.¹⁷ Under Direct Energy's alternative model, the **entire** Retail Default Service function would be bid out to qualified EGSs who would provide not just the generation service to customers but the retail functions needed to provide the

¹³ *Id.* at 8.

¹⁴ 66 Pa. C.S. § 2802(16) (emphasis added).

¹⁵ Having the EDC act as the default service provider "is consistent with the General Assembly's declaration of policy that incumbent EDCs should continue to act as the default service provider unless the Commission approves an alternative provider. 66 Pa. C.S. §2802(16)." *Id.* at 8-9.

¹⁶ As stated above, the key policy declarations identified by the Commission are that market forces are superior to economic regulation in determining the cost of electric generation, and that POLR service should be reliable, available on reasonable terms and conditions, associated with high-quality customer service, and provided consistent with the level of protections currently afforded to low-income customers. *Id.* at 4.

¹⁷ Proposed regulations to implement Direct Energy's Retail Default Service proposal are attached as Appendix A.

retail service (billing, customer care, etc.) as well. The EDC would continue to meter the service and be responsible for physically terminating a customer's service, as well as retail back-up service for short-term energy replacement. The EDC would not receive an "adder" but could be compensated by a small one-time fee to pay for transferring customers. Other key features of Direct Energy's alternative model, as it is presently being proposed, are:

- Several companies could provide full Retail Default Service (no EDC affiliate could provide service to more than 1/3 of the customers in its affiliated EDC's service territory, and each EDC service territory would have at least three Retail Default Service Providers).
- Companies affiliated with EDCs could bid (so PECO could bid to serve customer in West Penn's service territory – or vice versa) provided the EDC-affiliate is structurally separated from the EDC; statewide, EDC-affiliates would be limited to 2 million customers.
- Retail customers would have an "opt out" option, in which case the customers would take the EDC's monthly priced "default" service.
- Retail Default Service Providers would post security against business failure (other Retail Default Service Providers would be required to step in if needed).
- Retail Default Service Providers would provide service according to all Commission rules, regulations and guidelines, including universal service.

Advantages of Direct Energy's Retail Default Service proposal include:

- **The Retail Default Service Model Brings Greater Value to Consumers** – The right to be the Retail Default Service Provider is valuable. The Retail Default Service bid process will unlock that value and force the winning bidder to share it with customers.
 - Bids would be for two year period, providing stable transition to full competitive market-based prices (without a retail "default" supplier).
- **The Retail Default Service Model Promotes Reliability** – Several companies in each service territory will be set up to serve large numbers of customers.
 - Financial security will compensate any company that takes over for a Retail Default Service Provider/winning bidder that subsequently abandons the market.
- **The Retail Default Service Model will Promote Greater Retail Competition** – The ability of all customers to select from a range of competitors and variety of

products is one of the most important outcomes of any further reform for the electricity market .

- The retail competitive market in Pennsylvania has been shown to offer great benefits to customers when customers are exposed to market-based default prices.¹⁸
- Allowing a variety of companies to provide Retail Default Service will give them a stake in the Pennsylvania competitive market – and a base from which they can compete to serve other consumers in Pennsylvania.
- **The Retail Default Model Can Promote Greater Energy Diversity and Economic Development.**
 - As a condition of the bid, the bidder could propose any increase or expansion in the otherwise applicable AEPS standards for that service territory. Additionally, the bidder would be required to make a contribution to an economic development fund.

Direct Energy's proposal squarely responds to the Commission's view that "the framework associated with implementing a retail POLR model requires further review and consideration."¹⁹ Direct Energy's Retail Default Service Model will provide immediate, real benefits to retail customers by taking the economic profits embedded in EDCs' monopoly on providing default service and forcing this value of incumbency to end users. At the same time it provides these benefits from competitive market forces, Direct Energy's proposal satisfies the post-transition standard of Section 2807(e)(3) that Default Service reflect prevailing market prices and provide for full recovery of all reasonable costs. The Retail Default Service bid out will produce market-based prices that reflect the market-based costs of the Retail Default Service provider (generation procurement expenses, customer migration risks/costs, administrative & operational costs, customer care costs, and reasonable profits), and will permit default prices to reflect the different risks and costs of serving Default Service customers.

¹⁸ The increased competition among large business customers versus the lack of competition among residential and small business customers in Duquesne's service territory demonstrates this most clearly.

¹⁹ December 16, 2004 Order at 9.

However, Direct Energy's proposal alters the Commission's proposed process for appointing an alternative Default Service Provider ("DSP").²⁰ By requiring an alternative DSP to obtain a certificate of public convenience, the Commission's proposed process treats an alternative DSP as a full-fledged "public utility" under the Public Utility Code. The Electric Choice Act envisions just the opposite. Section 2807(e)(3) states that "the *electric distribution company or commission-approved alternative supplier* shall acquire electric energy at prevailing market prices to serve" default service customers. This language shows the General Assembly's intent that an alternative Default Service Provider is not to be an EDC-type public utility. An alternative DSP will provide service through contract only to a segment of customers and will not be providing EDC "public utility" service. A blanket requirement for an EGS to become a "full-fledged" public utility if it is to serve as an alternative DSP is also contrary to requirement of Section 2809(e) of the Act. This section requires the Commission to show that the imposition of additional Public Utility Code provisions applicable to EDCs is necessary to maintain quality of service, protect the public or ensure safety and reliability of electric service.²¹ Such a blanket requirement is also not good policy and is unnecessary. The Commission need only impose financial security requirements on an alternative DSP to guarantee performance which, in effect, will treat the alternative DSP the same as an EGS rather than a utility.

III. Commission's Proposal

The Commission has proposed that Default Service should be provided through a wholesale auction with the incumbent EDC continuing the customer relationship. Direct Energy does not support wholesale auctions to provide default service for the following reasons:

²⁰ December 16, 2004 Order at 9; Annex A, proposed Section 54.183(b),(c).

²¹ 66 Pa. C.S. § 2809(e); *see PPL Energyplus v. Com.*, 800 A.2d 360, 362 (Pa.Cmwlth. 2002); 814 A.2d 861, 864-65 (Pa.Cmwlth. 2002), *reversed on other grounds, Delmarva Power & Light Co. v. Commonwealth & Pa. PUC*, 2005 Pa. LEXIS 632 (Pa., March 31, 2005).

- Wholesale auctions, especially when structured as long-term price hedge arrangements, do not provide customers with proper price signals,
- Wholesale auctions do not provide generators with proper price signals to make incremental investments in power stations,
- Wholesale auctions do not allow consumers the opportunity to effectively manage their energy usage in response to price signals,
- Wholesale auctions do not encourage customers to become educated shoppers of retail electricity prices,
- Wholesale auctions do not enable consumers to see and make decisions based on reducing the environmental impact of their energy usage, and
- Wholesale auctions fail to recognize the critical non-price benefits of retail competition, especially product innovation and service improvements.

The Commission has suggested that customers be provided with default pricing with a proposed term of service of at least one year, and an initial term of 17 months²². Providing default fixed pricing for periods of 12, 17 or more months will not create a workable retail market, as demonstrated by the lack of competitors and product options in New Jersey. Moreover, a wholesale auction model will give consumers little incentive to consider the environmental impact of their energy usage, as customers will be provided with a fixed price regardless of their usage pattern. Consumers will not be empowered or even encouraged to respond to, let alone see, the prevailing market price. As the Commission's proposed model will result in a disconnect between the price consumers pay and the prevailing market price, demand response will not be considered. In order to be able to effectively promote demand side response consumers should have the opportunity to effectively manage their energy usage in response to

²² December 16, 2004 Order at 11.

price signals. Also, as can be seen from the experience in New Jersey, wholesale auctions do not promote the development of a competitive market. In February 2005, New Jersey had 1,481 residential customers being served by alternate suppliers out of a market with well over 3 million residential customers, resulting in a participation rate of less than 0.05%.²³ Forcing consumers onto extended default fixed prices provided through a wholesale auction is ultimately bad for the environment, does not empower consumers to be able to make their own decisions and will stifle the creation of a competitive market. Providing consumers with prevailing market prices through monthly pricing will allow them to make rational decisions, use energy more efficiently and will provide consumers with options for their energy supply through the competitive market.

IV. Modifications To The Commission's Proposal

If Direct Energy's Retail Default Service model is not adopted as the post-transition Default Service model, the Commission's proposal should be modified according to the six points outlined below.

1. The Commission should include Direct Energy's model as a pilot program for each EDC territory to be implemented according to a definite timetable, or upon petition from a qualified entity. The New York Public Service Commission recently approved a settlement in a Consolidated Edison rate case that includes on-going consideration of the implementation of such a retail auction pilot.²⁴ The Commission should embrace this opportunity to continue to be at the forefront of exploring ways to increase development of the competitive retail market. The Commission could direct that 20% of residential and small commercial customers be subject to a

²³ New Jersey Board of Public Utilities Electric Switching data for February, 2005, available at <http://www.bpu.state.nj.us/energy/elecSwitchData.shtml>.

²⁴ Case # 04E0572. See ORDER ADOPTING THREE-YEAR RATE PLAN, issued by the New York Public Service Commission March 24, 2005 available at: [http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/ArticlesByCategory/BFCF5488B5C3620A85256FCD005A5F0F/\\$File/04e0572.ord.03.24.05.pdf?OpenElement](http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/ArticlesByCategory/BFCF5488B5C3620A85256FCD005A5F0F/$File/04e0572.ord.03.24.05.pdf?OpenElement).

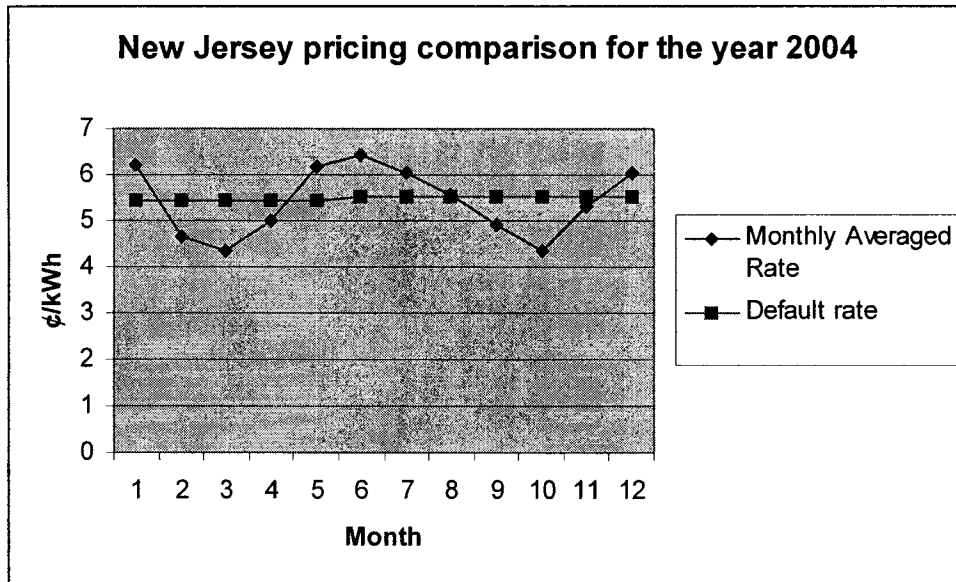
full retail POLR model bid out. The results of the pilot could then be monitored to allow the Commission to judge the success of the program in light of real-world conditions.

2. With respect to the details of Commission's proposed wholesale supply model, the Commission should require a uniform statewide competitive procurement process rather than permitting each EDC to implement a different procurement process for its service territory. Requiring Competitive Suppliers to deal with many different procurement rules and practices imposes anticompetitive burdens on suppliers that are unnecessary and not outweighed by any purported benefits to individual EDCs. Additionally, having differing rules on default supply is confusing for Pennsylvania consumers that move between EDC territories or that have meters in more than one EDC territory. Providing uniformity in rules and practices across the state promotes customers understanding of and ability to participate in the market.

3. Default prices for residential customers and small business customers should be set at a monthly average price and, as the Commission has suggested, not be subject to reconciliation. By setting monthly average prices the Commission will allow customers to see the "prevailing market prices", will eliminate the need for reconciliations or true-ups, which are inherently difficult for consumers to understand, and will reduce the opportunity and risk of "gaming".

Monthly average prices can result in savings for default consumers when compared to fixed default prices gained through a wholesale auction and will not result in extreme monthly volatility in prices. Internal analysis of New Jersey's market by Direct Energy shows just this result. Comparing pricing under the New Jersey wholesale auction model and what monthly prices in 2004 could have been demonstrates that electricity consumers would have benefited to a tune of \$6 million had New Jersey used the structure advanced by Direct Energy. Moreover, while there would have been seasonal price variations, consumers would not have seen dramatic

price volatility. Monthly prices would have ranged from a low of 4.33¢/kWh in March to a high of only 6.45¢/kWh in June. Clearly this approach gives consumers a fair arrangement, minimizes the migration risk issues, provides better price signals to consumers to understand their usage and environmental impact, and allows for real retail competition.



Graph compiled from Direct Energy analysis

Opponents of monthly pricing claim that it would expose consumers to the volatility of the spot market prices. However, these views fail to recognize that consumers pay the average price over an entire month, whereas perceptions of price volatility are generally based on hour-to-hour spot market price changes.

4. The threshold between small and large business customers should be reduced from 500 kW annual peak demand as proposed to 25 kW annual peak demand, consistent with the Commission's regulations concerning customer information²⁵ with all large business customers (≥ 25 kW annual peak demand) receiving hourly pricing as their default option. The Commission should rely upon the competitive market to deliver fixed price options to these customers, as customers have been able to in Duquesne's service territory. Information on the

²⁵ 61 Pa. Code § 54.2.

Pennsylvania Consumer Advocate's website shows that as of April 1, 2005, over 43% of industrial customers in Duquesne's service territory are being supplied by alternative suppliers.²⁶ Any large business customers that do not have the appropriate technology to allow hourly pricing at the end of their EDCs transition period should be provided with hourly profiles to allow them to receive pricing which properly reflects their usage. If the Commission sets the threshold between large and small business customers above 25kW annual peak demand it should establish a schedule to reduce the threshold to 25kW over a set time period or establish a mechanism to allow the threshold to be reduced in the future. Setting the threshold at 500kW, which is higher than the threshold already set in the Duquesne service territory, without a means to revise this downward would reduce options available to customers and stifle the competitive market.

5. The Commission should require the deployment of advanced metering technology and the provision of EGS competitive metering to all customers prior to the end of each EDC's transition period to enable smaller commercial customers, and ultimately residential and small business customers, to obtain benefits of real-time pricing and demand response programs.

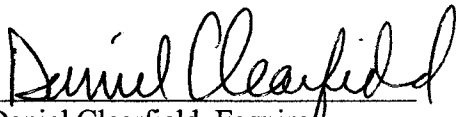
6. Finally, the proposed switching rules should be changed to state that the Default Service Provider must accept the return of shopping customers as the general rule, with exceptions only to prevent actual "gaming." The Commission's proposal treats the utility's acceptance of these customers as the exception rather than the rule. The Commission's proposal complies with Section 2807(e)(4) of the Act *only* if the utility can refuse to accept a returning customer for the same reasons it could refuse service to a new applicant, that is, bad credit concern. This concern is further minimized if the Commission adopts monthly pricing as the default price mechanism.

²⁶ <http://www.oca.state.pa.us/cinfo/instat.htm>, April 1, 2005 statistics.

V. Conclusion

The Commission has the opportunity to set the framework for a successful competitive electric market that will benefit all Pennsylvania consumers while ensuring that these customers will have access to reliable service. Direct Energy believes that the ultimate framework should foster a robust retail market and, wherever possible, should foster more competition. Direct Energy's primary and alternative proposals for the Commission's post-transition default service rules will accomplish these goals and should be incorporated into the final product.

Respectfully submitted,


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APPENDIX A

PENNSYLVANIA PUBLIC UTILITY COMMISSION

DIRECT ENERGY'S PROPOSED REGULATIONS Provision of Retail Default Service in Post-Transition Period

1. Definitions.

“Act” – The act of December 3, 1996, known as the “Electricity Generation Customer Choice and Competition Act,” (P.L.802, No.138), as amended.

"Competitive Transition Charge" (CTC) - as defined in 52 Pa. Code § 54.2.

"Retail Back-Up Default Service" - Retail back-up service available to a customer in the event that: (i) the applicable Retail Default Service Provider or EGS was unable to provide service to that customer; (ii) the term of Retail Default Service has been completed; (iii) the customer is unable to receive Retail Default Service or EGS Retail Services for whatever reason; or (iv) the customer opts out of Retail Default Service. Default Service does not include service from a Replacement RDSP or a Designated RDSP.

“Designated Retail Default Service Provider” – A Retail Default Service Provider appointed by the Commission in accordance with section 5.

"Distribution" - the delivery of electricity over lines which operate at a voltage level typically equal to or greater than 110 volts and less than 69,000 volts to an end-use customer within the Commonwealth.

"Distribution Service" - the delivery of electricity to a retail customer by the electric distribution company, on behalf of the customer's EGS or Retail Default Service Provider, from points on the transmission system or from a generating plant, but shall in no case include any component of Retail Services as defined herein.

"Electric Distribution Company" (EDC) - An electric distribution company as defined in section 2803 (relating to definitions) of the Act, including any provider of Distribution Service in accordance with orders or regulations of the Commission.

"Electric Generation Supplier" (EGS) – an electric generation supplier as defined in Section 2803 of the Act, including any provider of Generation Service and/or Retail Services in accordance with orders or regulations of the Commission.

"Generation Service" - the provision of electric energy and capacity to a retail customer.

"Intangible Transition Charge" (ITC) - as defined in 52 Pa. Code § 54.2.

"Large Non-Residential Customer" - a non-residential electric service customer with a maximum registered peak load exceeding 50kW in the last 12 months.

"Non-Generation Retail Services" - those aspects of Retail Services other than procuring and providing Generation Service.

"POLR Service" - "Retail Default Service" or "Retail Back-Up Default Service"

"Replacement Retail Default Service Provider" – A Retail Default Service Provider appointed by the Commission in accordance with Section 10.

"Residential Customer" - a customer who receives or would receive Distribution Service in accordance with the EDC's residential service tariff.

"Retail Services" - the provision to one or more retail customers of services other than Distribution Service. As of January 1, 2010, Retail Services shall include, but need not be limited to, procuring and providing Generation Service, initiating and procuring Distribution Service, retail billing, customer care services, call center facilities for customer inquiries; and other information services as determined by the Commission.

"Retail Default Service" - The provision of Retail Services to customers: (i) who have not chosen an EGS to provide Retail Services; (ii) who have previously chosen an EGS but have elected to return to Retail Default Service; or (iii) who have returned to Retail Default Service when their EGS has defaulted, exited the market or otherwise ceased serving the customer. Retail Default Service does not include Retail Back-Up Default Service.

“Retail Default Service Provider (RDSP) - Any company appointed by the Commission through auction or otherwise to provide Retail Default Service.

“Small Non-Residential Customer” - a non-residential customer with a maximum registered peak load no greater than 50kW in the last 12 months.

POLR Service for Residential and Small Non-Residential Customers.

The Commission shall appoint through auction a Retail Default Service Provider for a 2-year period at the end of the Transition Period.

2. Retail Default Service.

(a) Upon the completion of the collection of competitive transition charges and intangible transition charges by an EDC, Retail Default Service in the EDC's service territory for Residential Customers and Small Non-Residential Customers shall be provided by one or more RDSPs selected as a result of a Retail Default Service Auction, as described in section 3. Retail Default Service shall be provided for a period of two (2) years after which such service shall no longer be available.

(b) The Commission shall designate Retail Default Service Providers to provide Retail Default Services to all Residential Customers and Small Non-Residential Customers in each EDC's service territory, provided, however, that any such customer who has already chosen an EGS to provide service effective on or before the effective date of the initiation of Retail Default Service shall continue to receive service from the customer's chosen EGS.

Process for Retail Default Service Auction.

3. Retail Default Service Auction.

(a) General. The Commission shall appoint the providers of Retail Default Service no later than 120 days prior to the initiation date for the provision of Retail Default Service. Selection by the Commission of such providers, and the price at which Retail Default Service will be provided, shall be determined through a competitive

bidding process. The design of the competitive bidding process shall be determined by the Commission through an on-the-record proceeding, and shall include, at a minimum, the following characteristics: (i) the bidding process shall be in the form of a retail auction designed to arrive at two-year fixed prices retail price for all Retail Default Service customers in each EDC service territory and shall be conducted in an efficient manner that minimizes the administrative costs involved in conducting the auction; (ii) the Commission shall structure the auction so that each customer type (e.g., Residential Small Non-Residential) is auctioned separately and shall create reasonable size customer tranches that promote an efficient auction; (iii) should any EDC have fewer than 100,000 customers eligible for the auction, the Commission shall determine the appropriate treatment of such customers so that they will not be placed at a disadvantage with respect to customers in other EDC service territories; (iv) the auction shall be conducted in all EDC service territories by a neutral third party that is not an affiliate of either any EDC for purposes of Chapter 21 of the Public Utility Code or any EGS that will be participating in the auction; (v) no EDC-affiliated EGS may be awarded a number of customers greater than one third of the customers eligible for the auction in the service territory of the EDC of which such EGS is an affiliate, or more than 2,000,000 customers in total through the auction process; (vi) no non-EDC-affiliated EGS may be awarded more than 3,000,000 customers in total through the auction process; and (vii) each EDC service territory shall have a minimum of three (3) Retail Default Service Providers providing Retail Default Service.

(b) All bids shall include:

(i) A commitment that the bidder will meet the retail requirements it serves as a Retail Default Service Provider by using a renewable energy and conservation portfolio representing no less than ___% of total energy consumed.

(ii) A commitment that the bidder will agree to contribute \$5 per customer assigned through the auction process to a state-administered economic development fund designated by the Commonwealth in an amount to be pre-defined by the Commission;

(iii) A commitment that the bidder will agree to provide service according to all rules, regulations and guidelines of the Commission, including universal service;

(iv) A commitment that the bidder pay to the EDC as a Retail Default Service coordination fee (which will not be considered as distribution revenues for the EDC) an amount equal to \$20 per customer assigned through the auction process within 10 days of receiving results of the auction process; and

(v) A commitment that the bidder will maintain sufficient collateral with the Commission approved credit agency to meet the obligations of its Retail Default Service customers.

4. To participate in the auction, an EGS must first qualify by establishing that:

(a) it meets the qualifications for or has already been granted an EGS license pursuant to PUC rules;

(b) it meets appropriate standards for financial strength and security, to be determined by the Commission, which shall take into account the total number of customers for which the EGS proposes to bid; and

(c) it meets all other appropriate standards determined by the Commission.

5. Designated RDSP. In the event that no company bids to provide such service for all or any portion of Retail Default Service in the service territory of an EDC, the Commission shall require that one or more EDC-affiliated or non-EDC-affiliated Retail Default Service Providers serve as the provider therefor as a condition of maintaining license certification. In the event that the Commission must utilize this section, the limitations imposed in section 3(a) above are no longer binding. The Commission and the designated EGS(s) shall arrive at mutually acceptable prices, terms and conditions pursuant to which the EGS(s) shall serve as Designated RPSPs. If terms cannot be arrived at through negotiation, the Commission shall issue an order, after an on-the-record proceeding, setting forth the prices, terms and conditions of the Retail Default Service to be provided by the Designated RDSP(s).

Customers may opt-out of Retail Default Service and go directly to Retail Back-Up Default Service. Customers already taking competitive supply are not included in the auction.

6. Any customer otherwise eligible for Retail Default Service may choose to opt out of this service at least 30 days prior to initiation of Retail Default Service and take service

from the Retail Back-Up Default Service provider or a licensed EGS. In order to opt out of Retail Default Service in this manner, a customer must express an affirmative choice to do so in a manner consistent with the Commission's Standards for Changing Customer's Electricity Generation Supplier (52 Pa. Code § 57.171-.176). Customers selecting the Retail Back-Up Default Service provider shall not be allowed to take Retail Default Service, but may depart Retail Back-Up Default Service at any time in order to take a competitive service offering from an EGS.

RDSPs may market alternative products and services to Retail Default Service customers.

7. Nothing in this section shall preclude a designated Retail Default Service Provider from offering its Retail Default Service customers products and services, other than the aforementioned Retail Default Service package, at prices, terms and conditions that are not be subject to review by the Commission.

Customers who migrate from Retail Default Service cannot return.

8. Customers being provided Retail Default Service may choose at any time to leave Retail Default Service in order to be served by an EGS (including the non-Retail Default Service product being offered by the EGS providing Retail Default Service). Customers choosing to obtain service other than Retail Default Service pursuant to this subsection shall no longer be eligible for Retail Default Service.

Process at end of 2-year Retail Default Service term.

9. Retail Default Service shall be provided for a term of two (2) years. No later than three months prior to the end of the two-year term, Retail Default Service Providers shall offer to their current Retail Default Service customers a choice of no fewer than two Retail Service offerings for service effective the first day after the end of the two-year term. At least one such Retail Services offering shall be a one-year fixed price product, and the Commission shall not impose any other material contract limitations on such product. Retail Default Service customers may choose one of these Retail Services offerings or any other EGS competitive service offering. Retail Default Service customers who make no choice will receive the one-year fixed price product.

Failure of Retail Default Service Provider - Replacement RDPS.

10. In the event a Retail Default Service Provider is unable to continue serving its customers as a result of bankruptcy, involuntary dissolution or otherwise, the Commission shall arrange for a Replacement Retail Default Service Provider for the duration of the two-year term through means the Commission determines appropriate. Any Retail Default Service Provider(s) serving customers on such an emergency basis shall provide Generation Service at rates determined by the Commission. The Commission shall make every effort to maintain the Generation Service rate(s) at the level(s) determined in the Retail Default Service Auction, recognizing that a Replacement Retail Default Service Provider should be allowed an opportunity to recover its reasonable costs. Any security deposit or other form of financial assurance made available by the Retail Default Service Provider that will be discontinuing service shall be applied to mitigate the cost impacts, if any, to the Replacement Retail Default Service Provider(s) that continue serving customers affected by the discontinuance of service.

The EDC shall be allowed to participate as a Retail Default Service Provider if the Commission approves the EDC's proposal for structural separation.

11. EDC Participation as an RDSP.

(a) An EDC that desires to participate in the Retail Default Service auctions of other Pennsylvania EDCs pursuant to section 8 may do so only if it voluntarily agrees to participate in the Retail Default Service auction in its service territory, as well as the auctions for the other EDCs' service territories, through an affiliated EGS that shall be structurally separate from the EDC as provided in this section. Nine months before the scheduled completion of the EDC's collection of CTC or ITC charges, each such EDC shall file with the Commission a detailed plan for restructuring its operations such that all Retail Services currently provided by the EDC, as well as all rights, liabilities, and costs related to the provision of such Retail Services, shall be transferred to an EGS formed by and affiliated with the EDC. As an element of its filing, each such EDC shall propose new tariffed rates for Distribution Service consistent with the provisions of section 14 of this regulation and section 1301 of the Public Utility Code, and shall also show that it has created a system of cost-accounting and records, consistent with the requirements of the Federal Energy Regulatory Commission, to ensure that the costs associated with the provision of Distribution Service and the provision of Retail Services are accurately and separately identified. Each such EDC's proposal shall also propose tariffed rates for the

provision of Non-Generation Retail Services on a wholesale basis to EGSs and RPSPs, consistent with the provisions of section 12 of this regulation, and shall describe the manner in which the EDC and its affiliated EGS will exchange safety and reliability-related customer information. Each such EDC's proposal shall also describe the manner in which its affiliated EGS will provide Non-Generation Retail Services to non-affiliated RPSPs.

(b) The Commission shall review each plan filed pursuant to this section and shall make an express finding as to whether such plan complies with the provisions of this chapter. All EGSs in the Commonwealth shall have standing to participate in such proceedings. Each plan shall be designed to implement such restructuring of the EDC's operations sufficiently prior to the point that the Retail Default Service auction will be conducted and shall include all information and materials required by the Commission as it so designates, for the participation of the EDC's affiliated EGS in the auction. The Commission shall review a proposal filed by a EDC pursuant to this section and shall issue an order accepting, modifying, or rejecting such plan within three (3) months of its being filed. If the Commission rejects the plan, it shall state the specific reasons for rejection and direct the EDC to file an alternative plan addressing the objections within thirty (30) days of the Commission's order rejecting the plan. The Commission shall review this alternative plan and issue a final order regarding its compliance with this chapter within thirty (30) days of the filing thereof.

(c) No EDC or affiliate of an EDC, as defined by Chapter 21 of the Public Utility Code, that elects not to structurally separate as provided in subsection (a) may participate in any Retail Default Service auction other than the auction for the EDC with which it is affiliated. The EDC participating in the Retail Default Service auction in its own territory shall do so through a division or portion of the company that complies with a code of conduct which assures that the operations of the division or portion of the company are not subsidized by distribution operations and receive no preference or advantage in providing Retail Default Service in comparison to non-affiliated Retail Default Service Providers. Such an EDC shall file a restructuring plan demonstrating compliance with these requirements.

Provision of Non-Generation Retail Services.

12. Non-Generation Retail Services and Rates.

(a) As part of the Commission's order accepting or modifying an EDC's Default Service restructuring plan, the Commission shall approve new tariffed rates and terms and conditions for the provision of Non-Generation Retail Services by the EDC's affiliated Retail Default Service Provider to non-affiliated Retail Default Service Providers. Any EDC-affiliated Retail Default Service Provider electing to participate in the Retail Default Service Auctions of EDCs other than the EDC with which it is affiliated, must offer such Non-Generation Retail Services to non-EDC-affiliated Retail Default Service Providers for two (2) years from the date of the initiation of Retail Default Service. All non-EDC-affiliated Retail Default Service Providers must procure Non-Generation Retail Services from the EDC-affiliated Retail Default Service Provider at the tariffed wholesale rates approved by the Commission for resale to their customers for the first year in which Retail Default Service is provided. Thereafter, non-EDC-affiliated Retail Default Service Providers may, but are not required to, procure Non-Generation Retail Services from the EDC-affiliated Retail Default Service Provider at the tariffed wholesale rates approved by the Commission pursuant to this subsection. Where a non-EDC-affiliated Retail Default Service Provider procures Non-Generation Retail Services from the EDC-affiliated Retail Default Service Provider, billing shall be on a consolidated basis only; provided, however, that the Commission shall issue guidelines requiring EDC-affiliated Retail Default Service Providers to design, produce and distribute customer bills as directed by the applicable Retail Default Service Provider. The guidelines shall also require EDC-affiliated Retail Default Service Providers to purchase the accounts receivable of non-EDC-affiliated Retail Default Service Providers at a discount to be determined by the Commission which shall reflect the affiliated EDC's or the EDC-affiliated Retail Default Service Provider's actual uncollectible accounts experience or bad debt expense for the prior two (2) years.

(b) The Commission shall determine an appropriate method for the exchange of safety and reliability-related customer information between an EDC and a non-affiliated Retail Default Service Provider that chooses to provide Non-Generation Retail Default Services on a competitive basis in such EDC's service territory.

Retail Back-Up Default Service for Residential and Small Non-Residential Customers.

13. Retail Back-Up Default Service Provider.

(a) There shall be established rates, terms and conditions for Retail Back-Up Default Service for customers who opt out of Retail Default Service. The Retail Back-Up Default Service provider shall make available to customers a retail service package consisting of firm Generation Service and Non-Generation Retail Services with prices that vary on a monthly basis. The Retail Back-Up Default Service provider shall recover all reasonable costs in the period incurred and shall not be authorized to recover any costs through true-up or other retroactive recovery mechanism. Such Retail Back-Up Default Service provider costs shall include all reasonable costs of providing service, including but not limited to all administrative costs and bad debt expense.

(b) The Commission shall appoint the EDC as the Retail Back-Up Default Service provider for its service territory for the first 5 years after the EDC's completion of the collection of CTC and ITC. After the initial period, the Commission shall designate a Retail Back-Up Default Service provider pursuant to a competitive bid process. The Commission may relieve a Retail Back-Up Default Service provider from its obligations for good cause shown.

(c) The Retail Back-Up Default Service provider may not require that a customer contract for a minimum term as a condition of service. A customer may leave Retail Back-Up Default Service at any time in order to take a competitive service offering from an EGS.

(d) A customer who has opted out of Retail Default Service or who has chosen service from an EGS or a Retail Default Service Provider but who is not able to procure service from such company, either temporarily or permanently, due to said company's failure to provide contracted service shall be eligible for Retail Back-Up Default Service provided pursuant to these rules.

(d) A new Residential or Small Non-Residential Customer who was not taking service from an EGS or a Retail Default Service Provider subject to this chapter prior to the beginning of the Retail Default Service term, and who wishes to obtain electric service, may do so by affirmatively choosing an EGS. In the absence of such affirmative choice, such customers shall be assigned to the Retail Back-Up Default Service provider.

Distribution Service will be provided to Retail Default Service Providers by EDCs.

14. Distribution Service.

(a) The Commission shall approve rates, terms and conditions for Distribution Service, which rates shall exclude all rights, liabilities, and costs related to the provision of Retail Default Service and Retail Back-Up Default Service. Distribution Service shall continue to be provided by the EDC to its affiliated or non-affiliated Retail Default Service Providers and to all EGSs on a tariffed, non-discriminatory basis in accordance with rules, regulations and guidelines to be developed by the Commission.

(b) An EDC shall provide advanced metering services to all Residential and Small Non-Residential Customers in its service territory. Such advanced metering services shall include the capacity to take interval metering measurements and transmit data to and from the meter in real-time. In addition, such advanced metering shall provide for access to customer data and access to meter data by EGSs and RPSPs as necessary, in accordance with rules and regulations to be developed by the Commission.

EDCs no longer provide Retail Services but remain responsible for safe and reliable Distribution Service. Customer calls related to Distribution Service shall be forwarded to the EDCs or information provided electronically.

15. All responsibility for the safe and reliable operation of the distribution system shall remain with the EDCs. EDC-affiliated Retail Default Service Providers shall exchange safety and reliability-related customer information with EDCs in the manner prescribed by the Commission. Non-EDC-affiliated Retail Default Service Providers shall exchange safety and reliability-related customer information with EDCs in the manner prescribed by the Commission.

POLR Service for Large Non-Residential Customers.

1. The Commission shall appoint the EDC as the Retail Back-Up Default Service provider to Large Non-Residential Customers after the EDC has completed collection of its CTC and ITC.

2. The Retail Back-Up Default Service product for Large Non-Residential Customers shall reflect the hourly price of energy and passthrough of all other costs, including but not limited to costs for capacity and administrative costs plus the tariffed rates for Non-Generation Retail Services.

(a) If the Commission determines, after a formal on-the-record proceedings, that the market in the service territory of an EDC is not sufficiently developed such that the Commission cannot reasonably conclude that at least two (2) non-EDC-affiliated EGSs shall offer fixed price products of at least one year in duration, the Commission shall order that the EDC conduct a wholesale auction to provide fixed price service with a price applicable for 12 months. The Commission through an on-the-record proceeding shall determine the design of the competitive bidding process. The Commission shall determine in the proceeding the amount that each EDC will be compensated (in the form of mils per kWh) in return for sponsoring and administering the auction. At the end of the fixed price service period, the Commission shall review the market and determine if the market has sufficiently developed to dispense with any further wholesale auctions. Once the Commission has determined that the market in a particular EDC's service territory is sufficiently developed, the Commission shall not have the authority to implement this subsection with respect to that EDC.

3. The Retail Back-Up Default Service provider for Large Non-Residential Customers may not require that a customer contract for a minimum term as a condition of service or require any other restriction or cost recovery for leaving Default Service. A customer may leave Retail Back-Up Default Service at any time without any restriction in order to take a competitive service offering from an EGS.