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Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building

P.O. Box 2063

Harrisburg, PA 17105-2063

April 27, 2005

Office of Energy and
Technology Development

717-783-0540

HAND DELIVERED

Commonwealth of Pennsylvania
Secretary's Bureau
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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APR 26 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Docket No. L-00040169

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)

Dear Secretary McNulty:

Enclosed please find fifteen (15) copies of the Department of Environmental Protection's comments on the Rulemaking Re Electric Distribution Companies Obligation to Serve Retail Customers at the Conclusion of the Transition Period.

Respectfully Submitted,

Daniel J. Desmond
Deputy Secretary
Office of Energy and Technology Development

Enclosures

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PA PUC
SECRETARY'S BUREAU

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Introduction

Pursuant to Act 18 of 1995 the Pennsylvania Department of Environmental Protection (DEP) assumed the primary duties of the former Pennsylvania Energy Office. Recognizing the importance of these responsibilities Governor Rendell created the Office of Energy and Technology Development within DEP to serve as the primary entity responsible for energy programs and policy for agencies under the Governor's jurisdiction.

Governor Rendell has advocated an Alternative Energy Portfolio Standard, statewide net-metering and interconnection standards, and reliable and affordable electricity for Pennsylvania's consumers. As such, the final form of "Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period" (hereafter referred to as default service rules) will be an important component of achieving the Governor's energy goals.

The following comments reflect the Governor's and DEP's concerns that electricity be provided consistent with the administration's environmental and economic goals to ensure the delivery of clean, reliable and affordable electricity to all electricity customer classes. As a result we raise several considerations for the Commission's consideration relative to the default service rules set forth in the draft order.

Length of Service

DEP is concerned that the one-year minimum term of service for default generation contracts may not provide enough protection from market fluctuations. The Department recommends that the PUC consider requiring a staggered bid-process under which default providers would secure up to one-third of their load every year for three years. We believe this will mitigate abnormally high prevailing market prices impacting customers in any given year.

The proposed rules do allow default service providers to propose implementation plans for multiple twelve month periods. The option for default providers to secure long-term contracts for generation is important for the maintenance of price stability. Additionally, long-term contracts are critical to the deployment of alternative energy resources in the Commonwealth. The provisions of the default service rulemaking should allow for long-term contracting by default providers to ensure price stability and to promote the deployment of alternative energy resources.

We are specifically concerned that default providers have an opportunity to address price volatility relative to peaking fuels such as natural gas. Shorter contract terms and a potential reliance on spot prices to meet peak energy needs will make it more difficult to avoid price spikes associated with peaking fuel volatility.

Alternative Energy Portfolio Standard

The Department agrees that default service plans should identify a default provider's method of compliance with the Alternative Energy Portfolio Standards Act, No. 213 of 2004.

Failed Procurement Process and Replacement Generation

The default service provisions require the default provider to acquire electricity at the prevailing market price from the RTO or ISO in whose control area the default service is provided in cases in which the procurement process does not result in sufficient electric supply or when a generation supplier fails to deliver generation supply to a default service provider. Presumably the RTO or ISO prevailing market price in this instance would be the RTO or ISO spot price. The default provider would acquire electricity to service its load on the spot market until another competitive procurement process is completed or until a replacement procurement process is approved and implemented. Such circumstances would expose consumers to potentially higher prices or price variations that would not have occurred had the default provider secured reliable generation.

The Commission should take steps to ensure that the impacts to consumers of a default provider needing to purchase electricity on the RTO or ISO spot market are limited. Staggered procurement processes and long-term contracts are potential remedies.

Hourly Pricing

The administration strongly endorses The Electricity Generation Customer Choice and Competition Act's (Act 138) advocacy for market forces. Act 138's policy declarations recognize competition as a preferable means to control costs but clearly underscore that the purpose of competition is to achieve cost and reliability benefits for all electricity customers. We believe that markets are a means to achieve these ends as was recognized by Act 138. However, we do not believe in competition for competition's sake when provisions designed to spur enhanced competition might actually lead to negative impacts for electricity consumers counter to the price and reliability objectives of Act 138.

Specifically we are concerned that the provisions requiring non-residential customers with a load of over 500 kilowatts to submit to hourly pricing based on the RTO's or ISO's locational marginal price will create undue economic hardship on these customers. We recognize that the Commission's objective in advancing these provisions is to encourage further competition by encouraging customers seeking long-term contracts to shop. In order to ensure undue economic hardship does not befall these customers we encourage the Commission to take the following steps:

- Survey the market for competitive suppliers to ensure that a reasonable number of competitive suppliers exist to meet potential consumer demand and provide that information to consumers.
- Develop provisions that allow default providers to provide long-term price options to consumers should the competitive supplier market fail to develop sufficiently to meet consumer demand.

We are also curious as to why the Commission chose the 500 kilowatt level for non-residential customers to receive hourly pricing for default service. The commentary associated with the default service provisions references New Jersey as a model for the hourly pricing option and

notes that New Jersey's hourly pricing requirement takes effect for non-residential customers over 1500 kilowatts. We recommend that the Commission provide some commentary on why it chose the 500 kilowatt level.

A final issue of concern is how hourly pricing relates to Alternative Energy Portfolio Standards. In our view the spot market for alternative energy credit acquisition will be quite limited with prices higher relative to longer-term contracts. We envision most alternative energy credits being contracted for bilaterally between generators and suppliers. We are concerned that the hourly pricing requirement for non-residential customers over 500 kilowatts will limit default providers flexibility in meeting the requirements of the Alternative Energy Portfolio Standard.