

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

**Rulemaking Re: Electric Distribution Companies'
Obligation to Serve Retail Customers at the
Conclusion of the Transition Period Pursuant
To 66 Pa. C.S. § 2807(e)(2)**

Docket No. L-0040169

**REPLY COMMENTS OF RELIANT ENERGY, INC. ON
PROPOSED RULEMAKING ORDER**

**Filed on behalf of
RELIANT ENERGY, INC.**

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**INDEX TO
REPLY COMMENTS OF RELIANT ENERGY, INC. ON
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Index.....	1
List of Attachments.....	2
Executive Summary.....	3
Reply Comments.....	7
Hourly-only Default Service for Larger Commercial and Industrial Customers.....	10
The Appropriate Threshold for Hourly-only Default Service.....	12
Delaying Implementation of Residential/Small Business Customer Default Service Rules is a Viable Option at this Time.....	13
Summary.....	14

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**LIST OF ATTACHMENTS TO
REPLY COMMENTS OF RELIANT ENERGY, INC. ON
PROPOSED RULEMAKING ORDER**

- Setting the Initial Price under Reliant’s Market
Responsive Pricing Model.....Attachment I

- Reliant’s Detailed Response to Various Issues Raised by Other
Parties.....Attachment II

- Reply Comments Appendix A Blackline

- Reply Comments Appendix A Redline

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Executive Summary

In Reply Comments, Reliant Energy (“Reliant”) opines on a limited number of default service features that it feels is absolutely necessary to further the goals of the Electric Competition and Choice Act (“Choice Act”) to bring direct access to Pennsylvania’s consumers. Reliant firmly believes that the single most important issue for fostering robust, sustainable competition is a properly designed default service pricing structure. For large commercial and industrial customers, Reliant believes this is accomplished through an hourly-only default product for customers above 100 kW. For small business and residential customers, this is best accomplished through a default structure that adjusts with changes in market prices.

As noted in Reliant’s Comments filed on April 27, 2005 and discussed in more detail in these comments, hourly-only default service pricing for large customers accomplishes the following: 1) provides assurance to competitive Electric Generation Suppliers (“EGSs”) that the default price will not fall below

market, thus allowing new entry; 2) prohibits the default product from competing with competitive offers and impeding the development of a competitive market; 3) allows competitive affiliates of the default service provider to make competitive offers; and 4) eliminates any need for switching restrictions, thus giving large customers the ability to seek more innovative products to meet the specific electric service attributes they desire from EGSs.

Reliant believes that both adoption of hourly-only default service and the lowering of the hourly-only threshold will bring all the benefits of direct access to those consumers. Since the implementation of an hourly-only default product will result in a competitive market, competitive affiliates of the default provider should be free to make competitive offers at any time.¹

The proposed Rule adopts a 500 kW threshold for hourly-only default service and Reliant believes that while this threshold is a step in the right direction, it should be even lower if competition is to flourish for an even wider set of customers. In addition to the larger power users such as industrial facilities, most business customers, including discount and grocery stores, have the capability to analyze commodity offers germane to their business and make the best purchasing decision to meet their individual needs. Electricity purchasing should be no different. As many customers as possible should be allowed to benefit from direct access, thus Reliant recommends that the threshold level for

¹ This aspect of Reliant's proposal may not have been clearly stated in its Initial Comments thus clarification is provided here.

hourly-only default service be lowered to 100 kW. While not expressly addressed in the Duquesne Light's recent POLR Order, the effect of the Commission's decision in that case resulted in a threshold of 300 kW for hourly-only default service, so there is already precedence for a threshold lower than the proposed 500 kW level. Reliant urges the Commission to lower the threshold for hourly-only default service at this time so that all the benefits of direct access are available to significantly more customers. Increasing the size of the market to which new and existing EGSs will have access to will make the Commonwealth a more attractive location for new businesses since these entities will be able to seek the electric service attributes they desire from a robust, sustainable competitive retail market. Thus, the Commission should adopt a threshold level lower than 500 kW and preferably the 100 kW threshold recommended by Reliant.

The final topic Reliant will address is default service for residential and small business customers. Reliant has put forth a Market Responsive Pricing Model ("MRPM") that will bring the benefits of direct access to smaller customers. Reliant believes that this model will best enable a robust, sustainable competitive market for these customers. However, Reliant can also appreciate the fact that due to the characteristics of these customers (i.e., lower usage levels and less market-sophistication), the Commission may not feel that it is in the best interests of these customers to implement such a default service design at this time. Given the expiration date of the utility transition periods, the Commission has the luxury of delaying implementation of default service rules for

residential/small business customers.² Other markets have implemented other default service designs and the Commission can benefit from the experience in those markets before crafting default service Rules in Pennsylvania. The Commission took a similar stance in Duquesne Light's recent POLR proceeding by extending, with some modification, the current rates for residential and small business customers and calling for a revisit in three years.

To summarize, Reliant urges the Commission to 1) adopt hourly-only default service pricing for large commercial and industrial customers; 2) lower the threshold level for hourly-only default service to 100 kW; and 3) delay if need be the implementation of default service rules for small customers until 2006.

Reliant believes that if the Commission will, at a minimum, adopt these recommendations, the goals of the Choice Act will be greatly advanced.

² Reliant supported delaying implementation of default service rules for residential and small business customers in its Initial Comments filed April 27, 2005 as an alternative to implementing its Market Responsive Pricing Model.

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Reliant Energy, Inc., (“Reliant”) is pleased to have the opportunity to offer reply comments in the Pennsylvania Public Utility Commission’s (“Commission”) proposed rulemaking (“Rule”) for default service in the Commonwealth. Reliant provided three alternative proposals for the Commission to consider in its Comments filed April 27, 2005 (“Initial Comments”). Reliant first proposed its Market Responsive Pricing Model (“MRPM”) which consists of hourly-only default service pricing for large commercial and industrial customers with peak loads greater than 100 kW. The MRPM for residential and small business customers consisted of establishing an initial fixed default service price that could then be adjusted by the default service provider up to twice per year based on a known index to reflect changes in market prices and conditions. An alternative proposal consisted of adopting the hourly-only default service pricing for large customers and delaying development of default service rules for the residential and small business customers. An additional proposal consisted of adopting the

MRPM large customer proposal and making modifications to the Rule's proposed auction format for pricing residential and small business default service to restrict the auction to a 12-month term. This structure should be revisited two years following implementation in each default service provider's territory.

Reliant believes that the following default service design basic features are absolutely essential for furthering retail competition for large customers in Pennsylvania at this time:

- 1) Hourly-only default service for larger commercial and industrial customers; and
- 2) Lower the threshold level for hourly-only default service to 100 kW.

The main body of Reliant's Reply Comments will discuss the rationale supporting the default service design basics noted above and will also address why they best meet the goals of the Electric Generation Competition and Choice Act ("Choice Act") to further competitive retail markets for larger commercial and industrial customers.

Reliant believes that the benefits of retail competition should be available to all customers and, to that end, fully supports its MRPM for residential and small business customers. However, Reliant believes that a reasonable course of action is for the Commission to delay implementation of default service rules for residential and small business customers at this time so that additional evidence can be gained from other markets. Additional discussion on delaying the

residential and small business customer default service rules can be found in the main body of Reliant's Reply Comments.

Should the Commission consider advancing direct access for all customers now by adopting the MRPM for residential and small business customers, Attachment I gives details on how the initial price for default service would be established, as well as details on the adjustment mechanisms the default service provider would use to make adjustments to the default service price going forward.

Attachment II contains detailed discussion on Reliant's opinion regarding the following issues raised by various parties in initial comments: (1) the fundamental goal of the Choice Act; (2) what the term "Provider of Last Resort" means; (3) hourly-only default service is appropriate for larger commercial and industrial customers; (4) the appropriate threshold level for hourly-only default service; (5) delay implementation of default service rules for residential and small business customers; (6) a mandated auction does not meet the definition of a competitive market wherein buyers and sellers willingly negotiate for retail products and services; (7) a competitive market vs. economic regulation; (8) the default price should not be reconcilable; (9) retail customer charges should be separate from distribution charges; and (10) the EDC should not serve as a retail provider of electricity - selling the commodity and delivering the commodity are separate functions with the former being a competitive market activity and the later being a regulated, cost-of-service activity.

Hourly-only Default Service for Larger Commercial and Industrial Customers

The Commission's Rule proposes hourly-only default service for large non-residential customers, but falls short of ensuring competition for these customers by allowing the default service provider to also propose a fixed price product. This is not necessary and will hinder development of the competitive market. If the default service is an hourly-only service, the market will be conducive to competitive EGSs entering and remaining in the market. To win customers, many EGSs will be making fixed-price competitive offers to these customers. If larger commercial and industrial customers do not want the hourly-only default service, competitive offers will provide these customers with the electric service attributes they desire – including fixed prices for a variety of specified terms.

Requiring the default provider to offer a fixed price is very likely to limit the market's ability to provide customers the products and services they desire. Larger commercial and industrial customers are sophisticated and have the ability to shop for products and services that meet their specific needs. An example of the interest given to larger commercial and industrial customers can be found in Duquesne Light Holdings, 2004 Annual Report, "Duquesne Light Energy, LLC (DLE) is a competitive retail electric generation supplier that offers customized solutions tailored to meet its customer specific electricity needs. DLE's primary focus is on the large commercial and industrial customer market segment in

Duquesne Light's service territory."³ An hourly-only default structure, with the ability of competitive affiliates to make competitive offers, has been very successful in leading to a competitive market in other states.

Many of the issues regarding hourly-only default service were addressed by the Commission in Duquesne Light's recent POLR III proceeding, Docket P-00032071, where it was determined that hourly-only default service for large customers best met the requirements of the Choice Act.

"...we will modify the structure of the Large Customer Plan to provide that HPS service will be the default service." "In making this determination, we are guided largely by Section 2802(3) of the Act which provides for direct access to the competitive marketplace. Thus, while we will approve the proposed FPDS [Fixed Price Default Service] for a limited time period, we recognize that the price application period commitment and GRA mechanism restricts the ability of customers to move into the market place.

The HPS [Hourly Price Service] provides the freedom for customers to move into the market at will, subject to administrative switching protocols. Accordingly, in a POLR universe with two product offerings, we find that the product with the most freedom to move into the market must be the default product in order to satisfy the mandates of Section 2802(3). We also find that this construct properly balances the policy considerations which strongly favor competitive markets as set forth in Section 2802(5) of the Act with the considerations requiring service on reasonable terms and conditions as set forth in 2802(9).

We disagree with Duquesne's suggestion that the structure of the POLR Plan should be completely aligned with customers' preferences. We also do not agree with DII that an HPS only POLR will necessarily subject customers to seasonal fluctuations that will harm their competitive positions. As set forth in the Act, this Commonwealth has found that a competitive marketplace is better

³ Duquesne Light Holdings, 2004 Annual Report, page 43.

able to address those concerns than a regulatory construct. 66
Pa.C.S. § 2802(5).”⁴

Based on these findings, the Commission should now adhere to this same philosophy and adopt hourly-only default service for larger commercial and industrial customers, with no switching restrictions or fees.

The Appropriate Threshold Level for Hourly-only Default Service

In order to move the electric market to a greater level of competition, Reliant strongly recommends that the Commission accept Reliant’s 100 kW threshold. As noted in Initial Comments, it is not necessary to have hourly metering before an hourly-only default service is instituted. For those customers that do not have an hourly meter, or chose not to install an hourly meter for themselves, they would use an hourly load profile representative of that group of customers.

Most large commercial and industrial customers, be they manufacturing facilities, hospitals, grocery stores, discount stores, etc., have the wherewithal to evaluate multiple offers for electric service. These customers desire different electric service attributes (price, term, etc.) and should not be held captive by one product and one provider. The Choice Act envisioned bringing the benefits of direct access to all Pennsylvanians and these customers should not be exempt.

In approving the Duquesne POLR III service, the Commission effectively set the threshold level at 300 kW in Duquesne Light’s service territory. Thus,

⁴ Opinion and Order, Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service, Docket P-00032071, Pages 39-40.

there is already precedent for a threshold level lower than 500 kW in the Commonwealth and Reliant recommends that the Commission adopt a lower threshold for all EDC service territories.

Delaying Implementation of Residential/Small Business Customer Default Service Rules is a Viable Option at this Time

An alternative proposal that Reliant made in its Initial Comments was for the Commission to consider delaying implementation of default service rules for residential and small business customers so that further evidence could be gained in states with other default service models. While Reliant is fully in favor of implementing the MRPM for all customers at this time, Reliant is also cognizant of the fact that given the expiration date of the EDC's transition plans, the Commission has time to assess the success or failure of the residential/small business competitive market designs in other states before implementing default service rules for these customers. This is why, as an alternative to implementing a MRPM design now, Reliant proposed that the Commission delay implementation of the Rule for residential and small business customers so that further evidence on the various market designs throughout the country would be available. Several parties, including Duquesne Light, Direct Energy, and Strategic Energy Inc., also offered commentary on delaying rule implementation or alternative market designs for this group of customers. Given other parties' interest in delaying default service rules for residential/small business customers, the expiration dates of the EDCs transition plans, and ongoing experience with various default service

designs for these customers in other states, Reliant supports delaying implementation of default service rules for residential and small business customers until 2006.

Summary

Reliant encourages the Commission to carefully consider the impact its decisions regarding default service will have on direct access for all customers in the Commonwealth. Reliant has offered a comprehensive design for default service, the MRPM, in its Initial Comments that it feels will best meet the requirements of the Choice Act and allow for the development of robust, sustainable retail competition as the transition plans for each EDC expire. It is a competitive market that will bring the benefits of direct access to all customers. If the Commission does not feel that adoption of the MRPM for all customers is in the best interests of all customers at this time, Reliant has put forth in these comments those things that are imperative to keep retail competition moving towards the Choice Act's goal of direct access for all customers. It is towards this goal that the Commission must strive in crafting the default service rules at this time. These rules will be critical in moving the Commonwealth the next step closer to a fully functioning competitive retail electric market. Reliant urges the Commission to consider Reliant's comments and adopt, at a minimum, hourly-only default service for large customers with peak load above 100 kW and delay development of market rules for residential/smaller customers until 2006.

Reply Comments Appendix A Blackline
Reliant’s Recommended Comprehensive Rule to Implement the MRPM for
Both Large and Residential and Small Business Customers and Set the Initial
Fixed Price per a Voluntary Standard Competitive Retail Service Open Offer

ANNEX A
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 54. ELECTRICITY GENERATION
CUSTOMER CHOICE
Subchapter A. CUSTOMER INFORMATION

* * * * *

§54.4. Bill format for residential and small business customers.

* * * * *

(b) The following requirements apply only to the extent to which an entity has responsibility for billing customers, to the extent that the charges are applicable. The [provider of last resort] default service provider will be considered to be an EGS for the purposes of this section. Duplication of billing for the same or identical charges by both the EDC and EGS is not permitted.

* * * * *

§ 54.5. Disclosure statement for residential and small business customers

* * * * *

(b) The EGS shall provide the customer written disclosure of the terms of service at no charge whenever:

* * * * *

(3) Service commences from a [provider of last resort] default service provider.

(c) The contract's terms of service shall be disclosed, including the following terms and conditions, if applicable:

* * * * *

(9) The name and telephone number of the [provider of last resort] default service provider.

* * * * *

(h) If the [provider of last resort] default service provider changes, the new [provider of last resort] default service provider shall notify customers of that change, and shall provide customers with their name, address, telephone number and Internet address, if available.

§54.6. Request for information about generation supply.

(a) EGSs shall respond to reasonable requests made by consumers for information concerning generation energy sources.

* * * * *

(2) The [provider of last resort] default service provider shall file at the Commission the annual licensing report as required by the Commission's licensing regulations in this chapter and shall otherwise comply with paragraph (1).

*

Subchapter B. ELECTRIC GENERATION SUPPLIER LICENSING

§54.31. Definitions.

* * * * *

[Provider of last resort] Default service provider – [A supplier approved by the Commission under section 2807(e)(3) of the code (relating to duties of electric distribution companies) to provide generation service to customers who contracted for electricity that was not delivered, or who did not select an alternative electric generation supplier, or who are not eligible to obtain competitive energy supply, or who return to the provider of last resort after having obtained competitive energy supply] The affiliated EGS of the incumbent EDC within a certificated service territory or a Commission approved alternative default service provider.

* * * * *

§54.32. Application process.

* * * * *

(h) An EGS acting as a [provider of last resort] default service provider is required to obtain a license.

* * * * *

§54.41. Transfer or abandonment of license.

* * * * *

(b) A licensee may not abandon service without providing 90 days prior written notice to the Commission, the licensee's customers, the affected

distribution utilities and [providers of last resort] default service providers prior to the abandonment of service. The licensee shall provide individual notice to its customers with each billing, in each of the three billing cycles preceding the effective date of the abandonment.

* * * * *

Subchapter E. COMPETITIVE SAFEGUARDS

* * * * *

§54.123. Transfer of customers to default service.

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

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

(1) Upon Commission approval of the abandonment, suspension or revocation of an EGS license, consistent with §§54.41 and 54.42 (relating to transfer or abandonment of license and license suspension; license revocation).

(2) Upon nonpayment by a retail customer for services rendered by the EGS.

(3) To correct an unauthorized or inadvertent switch of a retail customer's account from default service to an alternative EGS's service.

(4) Upon the normal expiration of contracts that are not structured in a way to exploit seasonal variations in market prices for electric generation service

(b) An EGS may initiate transfers in the above situations through standard electronic data interchange protocols.

(c) An EGS may not initiate or encourage transfers of service to a default service provider from the EGS to exploit seasonal variations in market prices for electric generation service.

(d) The Commission may impose a penalty for every retail customer transferred to default service in violation of §54.123, consistent with 66 Pa. C.S. §§3301-3316 (relating to violations and penalties).

Subchapter G. DEFAULT SERVICE

§54.181. Purpose.

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

§54.182. Definitions.

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

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

Alternative energy portfolio standards compliance filing – a filing made by all licensed EGSs operating in the Commonwealth of Pennsylvania, including an

EDC if acting in the role of default provider, demonstrating compliance with the Alternative Energy Portfolio Standards Act, No. 213 of 2004. Filing requirements to be developed by the Commission at a later date.

Commission – The Pennsylvania Public Utility Commission.

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

Default service –

(i) Electric generation service provided by a default service provider to a retail electric customer who does not choose an alternative EGS or who contracts for electric energy and it is not delivered.

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

Default service implementation plan – A filing submitted by a default service provider to the Commission that identifies the determination of initial default service price and the fixed rate adjustment factor to which the price will be adjusted to reflect changes in prevailing market prices during the term of the plan, and all other necessary terms and conditions of default service.

Default service provider – An affiliate of the incumbent EDC within a certificated service territory or a Commission approved alternative default service provider.

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

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

FERC – The Federal Energy Regulatory Commission.

Fixed price option – A default service price that is set in advance for the entire term, subject to the fixed price adjustment factor, of the default service implementation plan that may include seasonal differences. The initial default

price at the end of each EDC's transition period will be the *Standard Competitive Retail Service* price for each rate type combined with the *Standard Competitive Retail Service* charge, and all non-bypassable charges including PJM Network Integration Transmission Service charge, EDC wires charges, etc.

Fixed price adjustment factor – The adjustment mechanism by which the fixed rate default service price is changed no more than twice per year at the discretion of the default service provider to reflect changes in prevailing market prices based on a known market index.

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

ISO – A FERC approved independent transmission system operator.

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

Prevailing market price – The price of electric generation supply in the control area of the default service provider.

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

RTO - A FERC approved regional transmission organization.

Standard Competitive Retail Service – a one-time, 12-month fixed price service resulting from a voluntary competitive open offer. The offers, made under standard terms and conditions, are held open for a two month period, beginning three months prior to the end of an EDC's transition plan. The marginal price selected for each SCRS rate type will form the basis for the initial *fixed price option* for residential and small business customers.

Standard Competitive Retail Service Charge – a bypassable charge paid by default service customers that will cover the Commission's expenses for promoting the SCRS program, including all participating providers' offers, through a non-discriminatory customer education process.

§54.183. Default service provider.

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

(b) An EDC may petition the Commission to have the EDC's affiliated EGS relieved from the default service obligation. In the alternative, the Commission may propose through its own motion that an affiliate of the EDC be relieved from the default service obligation. The Commission may approve such a request if it is in the public interest. In such circumstances, the Commission will announce through an order a competitive process to determine the alternative default service provider, which may be any licensed EGS, including affiliate EGSs of other EDCs.

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

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

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

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

4. If one or more applicants meet the standard provided in §54.183(c)(2), the Commission shall grant a certificate of public

convenience to act as a default service provider to the applicant best able to fulfill the obligation

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

§54.184. Default service provider obligations.

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

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

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

(d) A default service provider shall comply with the requirements set forth in the *Alternative energy portfolio standard compliance filing* requirements.

(e) The default service provider may not charge residential or small business customers a price different than the fixed default price until the earlier of three years after implementation of the service or the date on which 30% of the power consumed by the relevant class is served by other EGSs.

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

(a) A default service provider shall file a default service implementation plan with the Commission's Secretary's Bureau no later than fifteen months prior

to the conclusion of the currently effective default service plan or Commission approved generation rate cap for that particular EDC service territory, unless the Commission authorizes another filing date.

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

(c) A default service implementation plan shall propose a minimum term of service of at least twelve months, or multiple twelve month periods, or for a period necessary to comply with §54.185(f).

(d) A default service implementation plan shall propose a fair, transparent and non-discriminatory competitive procurement process consistent with §54.186 for the acquisition of sufficient electric generation supply, at prevailing market prices, to meet the demand of all of the default service provider's retail electric customers for the term of service. The default service plan shall identify its method of compliance with the Alternative Energy Portfolio Standards Act, No. 213 of 2004.

(e) The Commission may direct that some or all default service providers file joint implementation plans. In the absence of such a directive, some or all default service providers may jointly file default service plans.

(f) A default service provider shall be responsible for procuring the generation supply needed to serve retail customers taking default service..

(g) The default service implementation plan shall include a schedule of rates, rules and conditions of default service in the form of proposed revisions to its tariff. The default service provider may use the already effective retail

customer classes in the EDC's service territory, or may propose a reclassification of retail customers.

(h) The default service implementation plan shall identify fixed price adjustment factor to be used at the discretion of the default service provider to adjust the fixed price option no more than twice per year to reflect changes in the prevailing market price.

(i) The Commission may issue orders further specifying the form and content of default service implementation plans when necessary to enforce or carry out the provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§2801-2812, and other applicable law.

§54.186. Default service supply procurement.

(a) A default service provider shall procure the electricity needed to provide default service

(b) A default service provider shall comply with the requirements of the AEPS during supply procurement for the default service load.

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

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

(1) Generation supply charge – the generation supply charge is a non-reconcilable charge that is designed to cover all reasonable costs associated with the acquisition of generation supply to meet default service demand. The associated costs with this charge will be designed to cover, either through the initial fixed price or through the fixed price adjustment factor:

(i) The prevailing market price of energy.

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

- (iii) The prevailing market price of AEPS requirements.
- (iv) FERC approved ancillary services and transmission charges.
- (v) Required RTO or ISO charges.
- (vi) Applicable taxes.
- (vi) Standard Competitive Retail Service charges.
- (viii) 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.

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

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

(5) Upon a finding that the default service provider can not maintain its financial integrity based upon compliance with the terms of this section, the

Commission shall set the minimum generation and customer charges that are adequate to maintain the financial integrity of the default service provider.

(b) A default service plan shall include a fixed price option for all residential customers.

(c) A default service implementation plan shall include a fixed price option for non-residential default service customers whose load test indicates a registered peak demand less than 100 kilowatts.

(d) The default service provider shall include only an hourly rate in its implementation plan for all default service customers whose load test indicates a registered peak demand of greater than or equal to 100 kilowatts.

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

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

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

(3) The prevailing market price of AEPS requirements.

(3) FERC approved ancillary services and transmission charges.

(4) Required RTO or ISO charges.

(5) Applicable taxes.

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

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

(f) The default service implementation plan may include mechanisms that allow default service providers to adjust their prices during the term of service to reflect changes in prevailing market prices.

(g) The default service provider's actual incurred costs for providing service may not be subject to Commission review and reconciliation except in extraordinary circumstances to maintain the financial integrity of the default provider.

§54.188. Commission review of default service implementation plans.

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

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

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

(d) Upon completion of the default service implementation plan, the default service provider shall provide written notice to all default service customers and the named parties identified in §54.185(b) of the Commission certified default service prices and terms and conditions of service no later than 60 days before their effective date, unless another time period is approved by the Commission.

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

§54.189. Default service customers.

(a) At the conclusion of an EDC's Commission approved generation rate cap, all retail customers who are not receiving generation service from an EGS shall be assigned to the default service provider named in the Commission approved default service implementation plan.

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

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

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

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

CHAPTER 57. ELECTRIC SERVICE
Subchapter M: STANDARDS FOR CHANGING A CUSTOMER'S
ELECTRIC GENERATION SUPPLIER

* * * * *

§57.178. [Provider of Last Resort] Default service provider.

This subchapter does not apply when the customer's service is discontinued by the EGS and subsequently provided by the [provider of last resort] default service provider because no other EGS is willing to provide service to the customer.

* * * * *

Reply comments Appendix A Redline
Reliant's Recommended Comprehensive Rule to Implement the MRPM for
Both Large and Residential and Small Business Customers and Set the Initial
Fixed Price per a Voluntary Standard Competitive Retail Service Open Offer

ANNEX A
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 54. ELECTRICITY GENERATION
CUSTOMER CHOICE
Subchapter A. CUSTOMER INFORMATION

* * * * *

§54.4. Bill format for residential and small business customers.

* * * * *

(b) The following requirements apply only to the extent to which an entity has responsibility for billing customers, to the extent that the charges are applicable. The [provider of last resort] default service provider will be considered to be an EGS for the purposes of this section. Duplication of billing for the same or identical charges by both the EDC and EGS is not permitted.

* * * * *

§ 54.5. Disclosure statement for residential and small business customers

* * * * *

(b) The EGS shall provide the customer written disclosure of the terms of service at no charge whenever:

* * * * *

(3) Service commences from a [provider of last resort] default service provider.

(c) The contract's terms of service shall be disclosed, including the following terms and conditions, if applicable:

* * * * *

(9) The name and telephone number of the [provider of last resort] default service provider.

* * * * *

(h) If the [provider of last resort] default service provider changes, the new [provider of last resort] default service provider shall notify customers of that change, and shall provide customers with their name, address, telephone number and Internet address, if available.

§54.6. Request for information about generation supply.

(a) EGSs shall respond to reasonable requests made by consumers for information concerning generation energy sources.

* * * * *

(2) The [provider of last resort] default service provider shall file at the Commission the annual licensing report as required by the Commission's licensing regulations in this chapter and shall otherwise comply with paragraph (1).

*

Subchapter B. ELECTRIC GENERATION SUPPLIER LICENSING

§54.31. Definitions.

* * * * *

[Provider of last resort] Default service provider – [A supplier approved by the Commission under section 2807(e)(3) of the code (relating to duties of electric distribution companies) to provide generation service to customers who contracted for electricity that was not delivered, or who did not select an alternative electric generation supplier, or who are not eligible to obtain competitive energy supply, or who return to the provider of last resort after having obtained competitive energy supply] The affiliated EGS of the incumbent EDC within a certificated service territory or a Commission approved alternative default service provider.

* * * * *

§54.32. Application process.

* * * * *

(h) An EGS acting as a [provider of last resort] default service provider is required to obtain a license.

* * * * *

§54.41. Transfer or abandonment of license.

* * * * *

(b) A licensee may not abandon service without providing 90 days prior written notice to the Commission, the licensee's customers, the affected

distribution utilities and [providers of last resort] default service providers prior to the abandonment of service. The licensee shall provide individual notice to its customers with each billing, in each of the three billing cycles preceding the effective date of the abandonment.

* * * * *

Subchapter E. COMPETITIVE SAFEGUARDS

* * * * *

§54.123. Transfer of customers to default service.

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

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

(1) Upon Commission approval of the abandonment, suspension or revocation of an EGS license, consistent with §§54.41 and 54.42 (relating to transfer or abandonment of license and license suspension; license revocation).

(2) Upon nonpayment by a retail customer for services rendered by the EGS.

(3) To correct an unauthorized or inadvertent switch of a retail customer's account from default service to an alternative EGS's service.

(4) Upon the normal expiration of contracts that are not structured in a way to exploit seasonal variations in market prices for electric generation service

(b) An EGS may initiate transfers in the above situations through standard electronic data interchange protocols.

(c) An EGS may not initiate or encourage transfers of service to a default service provider from the EGS to exploit seasonal variations in market prices for electric generation service.

(d) The Commission may impose a penalty for every retail customer transferred to default service in violation of §54.123, consistent with 66 Pa. C.S. §§3301-3316 (relating to violations and penalties).

Subchapter G. DEFAULT SERVICE

§54.181. Purpose.

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

§54.182. Definitions.

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

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

Alternative energy portfolio standards compliance filing – a filing made by all licensed EGSs operating in the Commonwealth of Pennsylvania, including an

EDC if acting in the role of default provider, demonstrating compliance with the Alternative Energy Portfolio Standards Act, No. 213 of 2004. Filing requirements to be developed by the Commission at a later date.

Commission – The Pennsylvania Public Utility Commission.

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

Default service –

(i) Electric generation service provided by a default service provider to a retail electric customer who does not choose an alternative EGS or who contracts for electric energy and it is not delivered.

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

Default service implementation plan – A filing submitted by a default service provider to the Commission that identifies the determination of initial default service price and the fixed rate adjustment factor to which the price will be adjusted to reflect changes in prevailing market prices during the term of the plan, and all other necessary terms and conditions of default service.

Default service provider – An affiliate of the incumbent EDC within a certificated service territory or a Commission approved alternative default service provider.

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

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

FERC – The Federal Energy Regulatory Commission.

Fixed price option – A default service price that is set in advance for the entire term, subject to the fixed price adjustment factor, of the default service implementation plan that may include seasonal differences. The initial default

price at the end of each EDC's transition period will be the *Standard Competitive Retail Service* price for each rate type combined with the *Standard Competitive Retail Service* charge, and all non-bypassable charges including PJM Network Integration Transmission Service charge, EDC wires charges, etc.

Fixed price adjustment factor – The adjustment mechanism by which the fixed rate default service price is changed no more than twice per year at the discretion of the default service provider to reflect changes in prevailing market prices based on a known market index.

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

ISO – A FERC approved independent transmission system operator.

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

Prevailing market price – The price of electric generation supply in the control area of the default service provider.

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

RTO - A FERC approved regional transmission organization.

Standard Competitive Retail Service – a one-time, 12-month fixed price service resulting from a voluntary competitive open offer. The offers, made under standard terms and conditions, are held open for a two month period, beginning three months prior to the end of an EDC's transition plan. The marginal price selected for each SCRS rate type will form the basis for the initial *fixed price option* for residential and small business customers.

Standard Competitive Retail Service Charge – a bypassable charge paid by default service customers that will cover the Commission's expenses for promoting the SCRS program, including all participating providers' offers, through a non-discriminatory customer education process.

§54.183. Default service provider.

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

(b) An EDC may petition the Commission to have the EDC's affiliated EGS relieved from the default service obligation. In the alternative, the Commission may propose through its own motion that an affiliate of the EDC be relieved from the default service obligation. The Commission may approve such a request if it is in the public interest. In such circumstances, the Commission will announce through an order a competitive process to determine the alternative default service provider, which may be any licensed EGS, including affiliate EGSs of other EDCs.

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

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

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

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

4. If one or more applicants meet the standard provided in §54.183(c)(2), the Commission shall grant a certificate of public

convenience to act as a default service provider to the applicant best able to fulfill the obligation

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

§54.184. Default service provider obligations.

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

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

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

(d) A default service provider shall comply with the requirements set forth in the *Alternative energy portfolio standard compliance filing requirements*.

(e) The default service provider may not charge residential or small business customers a price different than the fixed default price until the earlier of three years after implementation of the service or the date on which 30% of the power consumed by the relevant class is served by other EGSs.

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

(a) A default service provider shall file a default service implementation plan with the Commission's Secretary's Bureau no later than fifteen months prior

to the conclusion of the currently effective default service plan or Commission approved generation rate cap for that particular EDC service territory, unless the Commission authorizes another filing date.

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

(c) A default service implementation plan shall propose a minimum term of service of at least twelve months, or multiple twelve month periods, or for a period necessary to comply with §54.185(f).

(d) A default service implementation plan shall propose a fair, transparent and non-discriminatory competitive procurement process consistent with §54.186 for the acquisition of sufficient electric generation supply, at prevailing market prices, to meet the demand of all of the default service provider's retail electric customers for the term of service. The default service plan shall identify its method of compliance with the Alternative Energy Portfolio Standards Act, No. 213 of 2004.

(e) The Commission may direct that some or all default service providers file joint implementation plans. In the absence of such a directive, some or all default service providers may jointly file default service plans.

(f) A default service provider shall be responsible for procuring the generation supply needed to serve retail customers taking default service..

(g) The default service implementation plan shall include a schedule of rates, rules and conditions of default service in the form of proposed revisions to its tariff. The default service provider may use the already effective retail

customer classes in the EDC's service territory, or may propose a reclassification of retail customers.

(h) The default service implementation plan shall identify fixed price adjustment factor to be used at the discretion of the default service provider to adjust the fixed price option no more than twice per year to reflect changes in the prevailing market price.

(i) The Commission may issue orders further specifying the form and content of default service implementation plans when necessary to enforce or carry out the provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§2801-2812, and other applicable law.

§54.186. Default service supply procurement.

(a) A default service provider shall procure the electricity needed to provide default service

(b) A default service provider shall comply with the requirements of the AEPS during supply procurement for the default service load.

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

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

(1) Generation supply charge – the generation supply charge is a non-reconcilable charge that is designed to cover all reasonable costs associated with the acquisition of generation supply to meet default service demand. The associated costs with this charge will be designed to cover, either through the initial fixed price or through the fixed price adjustment factor:

(i) The prevailing market price of energy.

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

- (iii) The prevailing market price of AEPS requirements.
- (iv) FERC approved ancillary services and transmission charges.
- (v) Required RTO or ISO charges.
- (vi) Applicable taxes.
- (vi) Standard Competitive Retail Service charges.
- (viii) 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.

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

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

(5) Upon a finding that the default service provider can not maintain its financial integrity based upon compliance with the terms of this section, the

Commission shall set the minimum generation and customer charges that are adequate to maintain the financial integrity of the default service provider.

(b) A default service plan shall include a fixed price option for all residential customers.

(c) A default service implementation plan shall include a fixed price option for non-residential default service customers whose load test indicates a registered peak demand less than 100 kilowatts.

(d) The default service provider shall include only an hourly rate in its implementation plan for all default service customers whose load test indicates a registered peak demand of greater than or equal to 100 kilowatts.

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

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

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

(3) The prevailing market price of AEPs requirements.

(3) FERC approved ancillary services and transmission charges.

(4) Required RTO or ISO charges.

(5) Applicable taxes.

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

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

(f) The default service implementation plan may include mechanisms that allow default service providers to adjust their prices during the term of service to reflect changes in prevailing market prices.

(g) The default service provider's actual incurred costs for providing service may not be subject to Commission review and reconciliation except in extraordinary circumstances to maintain the financial integrity of the default provider.

§54.188. Commission review of default service implementation plans.

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

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

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

(d) Upon completion of the default service implementation plan, the default service provider shall provide written notice to all default service customers and the named parties identified in §54.185(b) of the Commission certified default service prices and terms and conditions of service no later than 60 days before their effective date, unless another time period is approved by the Commission.

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

§54.189. Default service customers.

(a) At the conclusion of an EDC's Commission approved generation rate cap, all retail customers who are not receiving generation service from an EGS shall be assigned to the default service provider named in the Commission approved default service implementation plan.

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

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

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

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

CHAPTER 57. ELECTRIC SERVICE
Subchapter M: STANDARDS FOR CHANGING A CUSTOMER'S
ELECTRIC GENERATION SUPPLIER

* * * * *

§57.178. [Provider of Last Resort] Default service provider.

This subchapter does not apply when the customer's service is discontinued by the EGS and subsequently provided by the [provider of last resort] default service provider because no other EGS is willing to provide service to the customer.

* * * * *

Attachment I
Setting the Initial Price under Reliant’s Market Responsive Pricing Model
(“MRPM”)

To provide additional detail regarding the MRPM design discussed in Initial Comments, Reliant would like to offer a method for setting the initial price for default service for residential and small business customers not covered by the hourly-only default product. Setting the initial price at the appropriate level will be the key to successfully facilitating direct access and enabling retail markets for residential and small business customers. It is through direct access that residential and small business customers can seek not only price, but also other electric service attributes they desire including term, pricing structure, product bundling, socially responsible products, brand-loyalty, etc. The initial default price serves a dual purpose in bringing direct access to residential and small business customers. First, the initial price establishes a price against which other competitive EGSs must beat to enter the market. Second, the price must provide a reasonable backstop price for those customers taking default service. Balancing these two goals can be accomplished through a market-based setting of the initial price. If the initial price is below market, then direct access will be an immediate failure as new EGSs will not be able to enter the market and offer products below the default service price. If the initial price is too far above market, then customers will be pushed to leave the default product and will not have a meaningful backstop should they want to remain with the default provider. Thus careful attention must be given to setting the initial price. The dual goals of

enabling competition and providing a safety backstop for customers is intrinsically difficult, but must be accomplished if the goals of the Choice Act are to be attained.

Thus, Reliant recommends that the initial price for residential and small business customer default service be established based on the results of a voluntary retail competitive open offer for “Standard Competitive Retail Service” (“SCRS”). The Commission, prior to the end of the transition period in each EDC’s service territory, will administer the SCRS whereby competitive providers can voluntarily offer a standard retail electric product to all customers by rate type (residential and small business customers less than 100 kW). This structure will give the Commission oversight of the voluntary competitive open offer process.

The Commission will also promote the program, including all participating providers’ offers, through a non-discriminatory customer education process, funded through a bypassable charge paid by default service customers. Customers that switch from default service properly avoid this charge. It should be noted that participants in the SCRS process are not default providers, nor is the service a default service. This process is used to set the initial price for default service, which preferably is to be provided by the retail affiliate of the EDC. Default customers that do not elect service pursuant to the SCRS or any other competitive service offer will continue to receive default service. Customers that do elect the SCRS service are able to leave the SCRS service at any time, with no restrictions or exit fees.

Standard Competitive Retail Service

The SCRS open offer is the methodology by which Reliant proposes to establish the initial price for default service under the MRPM for residential and small business customers. EGSs choosing to participate determine the energy price at which they will be willing to serve customers for a period of twelve months under standard terms and conditions. The offer period would begin three months prior to the end of the transition period for each EDC and will be held open for two months. During this time, customers within the EDC can choose to take SCRS from a retailer of their choice. The program will be well advertised so that consumer awareness is raised and a website that lists all SCRS providers would be made available for customer education purposes.¹ At the end of the offer period, the retail offer with the marginal price for each SCRS rate type will be the basis for determining the initial default service price. If an EGS is not selected during the open offer period, then its price will not be a factor in determining the default price.

EGSs are not required to hold open the price beyond the offer period nor are they prohibited from offering products other than the SCRS product. However, in order to avoid the possibility of an affiliate of the default provider undercutting competitors and driving them from the market, affiliates of the incumbent EDC cannot participate in the SCRS open offer. Since participation in

¹ After the two month offering period, the website would list all competitive offers and remain listed for at least five years.

the SCRS program is entirely voluntary, competing retailers do not have to offer SCRS service to participate in the market. Any competitive offer that is not part of the SCRS open offer will not be considered part of the Commission's promotional program.

Not only does the market benefit from properly setting the initial default price to enable direct access, but customers choosing SCRS service will also benefit. SCRS customers will receive a competitive price lower than the default price (the competitive price will not include the SCRS promotional bypassable charge). SCRS customers will receive service at a fixed price for up to 12-months. This is in contrast to the default product, which is subject to adjustments up to twice per year based on changes in power prices. Finally, the SCRS program will allow customers to ease into the competitive market since offer comparison will be simplified due to the standard terms and conditions, with price being the only variable for the SCRS program.

SCRS service is not default service and is a one-time product offering that forms the basis of the initial default service price. The SCRS service, as noted above, is only available for a 12-month period and must be voluntarily selected by customers during the offer period. Customers whose default provider fails or who fail to choose a provider will not be able to take SCRS service.

Reliant believes that setting the MRPM initial price for residential and small business default service through the competitive-based SCRS program will result in the price being both an appropriate level to foster direct access for these

customers and at an appropriate level to provide a safety backstop for all customers. Implementation of this pricing structure (market-based initial price combined with the ability of the default provider to make future adjustments for changing market conditions) will ensure customers that EGSs can enter the market and offer competitively priced products and services. A market structure that allows EGSs to enter the market will bring customers the electric service attributes they desire through a variety of providers from which to choose.

Setting the Initial Default Price based on the SCRS Voluntary Open Offer

For illustrative purposes, the following example will show how the initial default price for residential customers² would be determined in an EDC's service territory at the end of its transition period, December 31, 2008. Since the initial default service price for residential customers in this example would go into effect on January 1, 2009, the SCRS voluntary open offer would begin on October 1, 2008. Any competitive EGS choosing to participate in the open offer would submit bids at the Commission on or by that date. Assuming three EGSs, Company A, Company B, and Company C, submit residential offers of 3.00 c/kWh, 3.04 c/kWh, and 3.75 c/kWh, respectively. These prices would remain fixed throughout the 12-month term of service from January 1, 2009 to December 31, 2010. The Commission would then promote these offers via the Internet, mailings, television, newspaper ads or any other educational vehicle they choose

² The same methodology would be used to set the initial default service price for small business customers.

for a two-month period ending November 30, 2008. At the end of the offer period, the marginal priced offer selected would then be the basis for the default service initial price. Let's assume in our example that 10,000 customers selected the 3.00 c/kWh offer, 1,000 customers selected the 3.04 c/kWh, and no customers selected the 3.75 c/kWh offer.³ The 3.04 c/kWh offer would then be the basis of the initial default price, with the cost of the Commission's administering the SCRS open offer a component of the default service (for illustrative purposes, assume this cost is 0.010 c/kWh).

Under the MRPM proposed in Reliant's Initial Comments, the initial default service fixed price option for residential customers would be the 3.04 c/kWh on January 1, 2009, with all non-bypassables added to EDC rates (SCRS program costs, PJM costs, regulated wires charges, etc.). If electric prices had significantly decreased/increased (for example, assume 20%) between November 30, 2008 and January 1, 2009, the EDC could file for one of its discretionary adjustments to the fixed rate option and decrease/increase the 3.04 c/kWh price on January 2, 2009 to 2.43/3.65 c/kWh.

Rule Redlines to Implement Reliant's MRPM Initial Price Setting Proposal

In order to implement the SCRS offering to set the initial price under Reliant's MRPM proposed in Initial Comments, the following Rule changes must be made:

³ The SCRS offers are the energy only component of a customer's bill. EDC, PJM Network Integration Transmission Service Charge ("NITS") and other non-bypassable charges are added to the SCRS energy component to constitute the customer's total energy price.

Reliant Proposed Rule Redline:

§54.182. Definitions. Add the following definitions:

Standard Competitive Retail Service – a one-time, 12-month fixed price service resulting from a voluntary competitive open offer. The offers, made under standard terms and conditions, are held open for a two month period, beginning three months prior to the end of an EDC’s transition plan. The marginal price selected for each SCRS rate type will form the basis for the initial fixed price option for residential and small business customers.

Standard Competitive Retail Service Charge – a bypassable charge paid by default service customers that will cover the Commission’s expenses for promoting the SCRS program, including all participating providers’ offers, through a non-discriminatory customer education process.

The remainder of the proposed Rule changes will be made utilizing Reliant’s Appendix A Blackline filed on April 27, 2005. Because the SCRS methodology for setting the initial price is dependant upon the Commission’s implementation of Reliant’s MRPM for residential and small business customers, this Rule Blackline incorporates all the other Rule changes necessary to implement the MRPM model, absent the setting of the initial price.

Reliant Proposed Rule Redline:

§54.182. Definitions. Add the following to Reliant’s definition for the *fixed price option* so that the initial default price is established per the voluntary standard competitive service open offer.

Fixed price option – A default service price that is set in advance for the entire term, subject to the fixed price adjustment factor, of the default service implementation plan that may include seasonal differences. The initial default price at the end of each EDC’s transition period will be the *Standard Competitive Retail Service* price for each rate type, combined with the *Standard Competitive*

Retail Service charge, and all non-bypassable charges including PJM Network Integration Transmission Service charge, EDC wires charges, etc.

Reliant Proposed Rule Redline:

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

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

(1) Generation supply charge – the generation supply charge is a non-reconcilable charge that is designed to cover all reasonable costs associated with the acquisition of generation supply to meet default service demand. The associated costs with this charge will be designed to cover, either through the initial fixed price or through the fixed price adjustment factor:

- (i) The prevailing market price of energy.
- (ii) The prevailing market price of RTO or ISO capacity or any similar obligation.
- (iii) The prevailing market price of AEPS requirements.
- (iv) FERC approved ancillary services and transmission charges.
- (v) Required RTO or ISO charges.
- (vi) Applicable taxes.
- (vi) Standard Competitive Retail Service charges.
- (viii) Other reasonable, identifiable generation supply acquisition costs.

Basis for Adjustments to the Residential and Small Business Default Service Price under the MRPM

In its Initial Comments, Reliant proposed the MRPM that would allow the residential and small business customer default service price to be adjusted by the

default provider up to twice a year through a known adjustment mechanism.

Reliant provides additional detail regarding the adjustment mechanism that could be utilized by the default provider after the initial default service price is set as discussed above. In order for the adjustment mechanism to be transparent and verifiable, a known, published market index should be the basis for adjustment. The New York Mercantile Exchange (“NYMEX”) PJM monthly financially settled on-peak and off-peak electricity futures contracts are examples of such indices.

Using the NYMEX PJM futures indices, Reliant proposes two methods by which the default service provider can adjust the default service price. Adjustment Mechanism A employs a simple, transparent adjustment mechanism that requires a minimal review to ensure that the default service provider utilized the correct NYMEX settlement prices and applied those prices appropriately in the adjustment. Adjustment Mechanism B adjusts the futures prices to reflect basis differentials, load shape adjustments due predominately to switching, and changes in the PJM capacity prices. Adjustment Mechanism B is made available to the default service provider to capture the broader risks of providing default service as changing market conditions can result from factors other than the NYMEX electric price contracts. Examples of such factors are load migration, changes in LMP prices due to congestion, and changes in capacity market prices. However, Adjustment Mechanism B may entail a slightly more detailed review process on the part of the Commission.

Providing two methods by which to make an adjustment allows the default provider to use its discretion to determine if system wide market prices reflected in the NYMEX contract price changes are sufficient to cover their procurement expenses or if a more comprehensive adjustment is needed to reflect market changes specific to a particular service territory. Under either adjustment mechanism, it is imperative that once a request is made, a quick review of the calculation by Commission staff be made concurrently with implementation of the adjusted price. Default prices must reflect changing market conditions and the default service provider needs to be able to plan and rely on a timely adjustment to manage their risks. The two methods are as follows:

Adjustment Mechanism A: The default service energy price would be adjustable by the percentage change in the difference between the twelve-month average of the NYMEX on and off peak PJM electricity futures price for the current twelve consecutive months (“Forward Futures Price”) at the time the adjustment is submitted as compared to the Forward Futures Price used in the most recent adjustment for the default service energy price that utilized Adjustment Mechanism A. If this adjustment mechanism has not been previously used, the Forward Futures Price at the time an adjustment is requested would be compared to the Forward Futures Price for the initial twelve-months of default service as determined at the start of the SCRS offer period (using Adjustment Mechanism A).

The Forward Futures Price is calculated using the on-peak and off-peak contracts for 12 consecutive months. Each monthly component of the Forward Futures Price is calculated as follows:

$$\left[\text{On Peak Forward Futures Price} * 47.6\%^4 \right] + \left[\text{Off Peak Forward Futures Price} * 52.4\%^5 \right]$$

Where:

- Typical week # of Off-Peak hours: Off-peak hours are from midnight to 7 AM (the hour ending 0100 to the hour ending 0700) and 11 PM to midnight (the hour ending 2400) Mondays through Fridays; also, all day Saturdays and Sundays (the hour ending 0100 to the hour ending 2400).
- Typical week # of On Peak hours: On peak hours are from 7 AM to 11 PM (the hour ending 0800 to the hour ending 2300) Mondays through Fridays.

⁴ 47.6% or 80 out of a total of 168 hours in a week are defined as on-peak by NYMEX. 52.4% or 88 hours out of a total of 168 hours in a week are defined as off-peak by NYMEX.

⁵ *Id.*

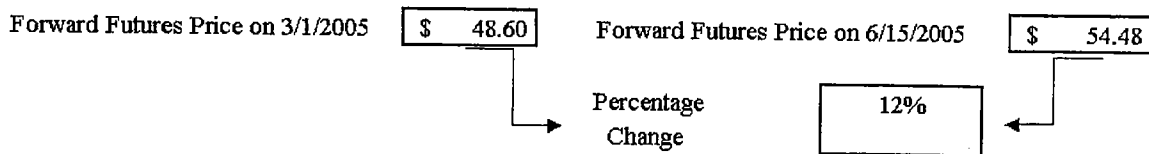
Example of Methodology A Adjustment:

Initial Default Energy Price:	5.00 cents/ kWh
% Change in the Forward Futures Price:	12%
Adjusted Default Energy Price:	5.60 cents/ kWh

Forward Futures Price

Contract	Peak Price - Settlement \$/MWh	Off Peak Price - Settlement \$/MWh	Contract	Peak Price - Settlement \$/MWh	Off Peak Price - Settlement \$/MWh
Trade Date:	3/1/2005	3/1/2005	Trade Date:	6/15/2005	6/15/2005
JUN.05	\$ 58.46	\$ 37.85	JUL.05	\$ 78.92	\$ 44.38
JUL.05	\$ 72.25	\$ 40.25	AUG.05	\$ 78.92	\$ 44.38
AUG.05	\$ 72.25	\$ 40.25	SEP.05	\$ 63.05	\$ 37.00
SEP.05	\$ 55.94	\$ 37.85	OCT.05	\$ 60.19	\$ 37.75
OCT.05	\$ 53.78	\$ 34.00	NOV.05	\$ 60.19	\$ 37.75
NOV.05	\$ 53.78	\$ 34.00	DEC.05	\$ 60.19	\$ 37.75
DEC.05	\$ 53.78	\$ 34.00	JAN.06	\$ 74.98	\$ 53.13
JAN.06	\$ 66.25	\$ 38.50	FEB.06	\$ 74.98	\$ 53.13
FEB.06	\$ 66.25	\$ 38.50	MAR.06	\$ 68.02	\$ 44.25
MAR.06	\$ 60.31	\$ 38.50	APR.06	\$ 68.02	\$ 44.25
APR.06	\$ 60.31	\$ 38.50	MAY.06	\$ 63.03	\$ 36.50
MAY.06	\$ 55.75	\$ 38.50	JUN.06	\$ 65.31	\$ 36.25
Average:	\$ 60.76	\$ 37.56	Average:	\$ 67.98	\$ 42.21

Peak	47.6%	*	\$ 60.76	=	28.92	Peak	47.6%	*	\$ 67.98	=	32.36
Off Peak	52.4%	*	\$ 37.56	=	19.68	Off Peak	52.4%	*	\$ 42.21	=	22.12



Adjustment Mechanism B: Adjustment Mechanism B is available for the default provider to capture price changes that could result from market conditions other than changes in the trading hub price for electricity, such as load migration, congestion, or changes in capacity pricing. Adjustment Mechanism B uses the load weighted Forward Futures Price, adjusted to take into account regional differences in the pricing of electricity due to transmission congestion (also known

as the basis differential in pricing). Additionally, the Forward Futures Price would be adjusted for changes in PJM capacity prices.

To adjust the default service energy price under Adjustment Mechanism B, the percentage change in the difference between the Forward Futures Price at the time the adjustment is submitted as compared to the Forward Futures Price used in the most recent adjustment to the default service energy price that utilized Adjustment Mechanism B. If Adjustment Mechanism B has not been previously used, the Forward Futures Price at the time an adjustment is requested will be compared to the Forward Futures Price for the initial twelve-months of default service as determined at the start of the SCRS offer period (using Adjustment Mechanism B). Below is an example of the calculation of the Forward Futures Price under Adjustment Mechanism B.

	(a)	(b)	(c)	(d)	(e) = (c) + (d)	(f)	(g) = (e) * [1 + (f)]	(h)	(i) = (h) + (g)
	PJM West Hub On- Peak (\$/MWh)	PJM West Hub Off- Peak (\$/MWh)	PJM West Hub 7x24 (\$/MWh) ⁶	Basis to MD (\$/MWh)	Price, including Basis (\$/MWh)	Monthly Premiums for Shaped Load	Shaped Delivered Price (\$/MWh)	PJM UCC Price (\$/MWh)	Forward Futures Price (\$/MWh)
Jan-06	\$61.33	\$46.37	\$53.12	\$5.11	\$58.24	2.9%	\$59.90		
Feb-06	\$61.33	\$41.53	\$50.96	\$4.00	\$54.96	2.5%	\$56.32		
Mar-06	\$56.38	\$35.28	\$45.72	\$1.88	\$47.59	2.3%	\$48.69		
Apr-06	\$56.38	\$36.18	\$45.16	\$2.15	\$47.31	4.6%	\$49.49		
May-06	\$51.00	\$30.58	\$40.24	\$3.82	\$44.46	5.2%	\$43.62		
Jun-06	\$52.75	\$31.00	\$41.63	\$6.50	\$45.46	8.7%	\$49.41		
Jul-06	\$65.25	\$38.98	\$50.28	\$6.67	\$56.78	4.3%	\$59.20		
Aug-06	\$65.25	\$33.03	\$48.97	\$1.88	\$55.63	4.6%	\$58.21		
Sep-06	\$49.00	\$31.22	\$39.12	\$1.42	\$41.00	5.0%	\$43.06		
Oct-06	\$47.70	\$30.99	\$38.90	\$1.57	\$40.32	4.4%	\$42.09		

⁶ The PJM West Hub 7x24 is calculated using the ratio of actual number of on and off peak hours for each month shown, multiplied by the applicable on or off peak PJM West Hub forward price.

Nov-06	\$47.70	\$29.98	\$38.25	\$1.65	\$39.82	4.1%	\$41.43
Dec-06	\$47.70	\$32.40	\$38.98		\$40.63	2.6%	\$41.70

Average Market Price

\$44.28 \$47.43 \$49.43 \$1.42

(i) \$50.85

- (a) and (b) The NYMEX PJM Financially Settled Electricity Futures Contract clearing price.
- (c) Hourly weighted from On-Peak and Off-Peak price
- (d) The difference between the average monthly locational marginal price at the delivery zone (e.g. PJM LMP at the default service provider's zone) and the average monthly locational marginal price at the PJM West Hub for the previous 12 months.
- (f) Derived from prior 12-months. Historical zonal load data and LMP data. For the previous 12-months shown:

$$\sum_{i=month}^{n=12} \{ [\sum (\text{hourly kWh} * \text{hourly LMP})] / \sum \text{total kWh} \} / \text{Average LMP for the month}$$

i =month

Where:

- n = the number of months and i = each month
 - Hourly kWh: The hourly kWh for customers taking service pursuant to the default service price for which an adjustment is being calculated.
 - Total kWh: The sum of the hourly kWh for customers taking service pursuant to the default service price for which an adjustment is being calculated.
 - Average LMP for the month: The average of the hourly LMP in the applicable delivery zone
- (h) See below for explanation of the derivation of the PJM Unforced Capacity Credit ("UCC") Price
(i) Index Price used to determine the adjustment to the default energy price.

Determining the PJM Unforced Capacity Credit ("UCC") Price for Adjustment Mechanism B

The capacity component of the default service price adjustment measures changes in the following:

- o Changes in the market price for PJM Unforced Capacity Credits
- o Zonal Scaling Factors
- o Installed reserve margin requirement
- o Poolwide Avg Equivalent Forced Outage Rate

The capacity component of the default service price adjustment is determined as follows:

Using the average load (expressed in kilowatts) and monthly energy usage (expressed in kilowatt hours) for each rate class, the annual average price resulting from the following calculation is added to the average energy price calculated in Appendix B in order to determine the default service price adjustment.

$$\sum_{i=1}^n \left[(\text{UCCAP} * \text{AFO} * \text{\# of Days in Month}) \right] / \text{Annual_Energy_Usage}$$

where:

n: The number of months. For the purpose of this calculation, a 12-month annual average will be used. (what period? Lance – this is an open item that I will address)

UCCAP: the market price (in \$/MW-Day) resulting from the most recent PJM-UCC auction for which (1) the auction includes UCCs for a period of 12-consecutive months and (2) the 12-month period for UCCs begins no earlier than one month subsequent to the default service price adjustment request.

AFO: The average Accounted For Obligation for the average customer within each EDC rate schedule for which the price adjustment is being calculated. The Accounted For Obligation, expressed in kilowatts, = $(\text{OPL} * \text{ZSF}) * [(1 - \text{IRM}\%) - (1 - \text{Poolwide Avg EFOR}_d)]$

- o **OPL:** Obligation Peak Loads are peak loads on which LSEs' unforced capacity obligations are based. OPLs are based on the zonal weather normalized peaks, allocated to each PJM zone. EDCs allocated obligation peak loads to customers based upon rules negotiated by each EDC with regulators. OPLs are updated annually, in the fourth quarter of the year, and applied for the following calendar year.
- o **ZSF:** Zonal Scaling Factors are the ratio of a PJM zone's forecasted peak to the sum of its historical-based peak load. ZSF's are updated by PJM prior to each interval (See Zonal Scaling Factors sections of PJM Manual M-19, Load Data Systems).

Determining the PJM UCC Price for the Default Service Price Adjustment

- o **IRM:** Installed Reserve Margin requirement expressed as a percentage. The IRM reflects the amount of resources required, above the expected peak load, to meet reliability criterion, as determined by PJM. The IRM for a planning year is established in June of the prior year, based on the results of the annual Reliability Study.
- o **Poolwide Avg EFOR_d:** The five year average aggregated Equivalent Forced Outage Rate for all generating units in a pool.
- o **Note:** For the purpose of this calculation, the average customer will not have any Active Load Management credits.
- o **Annual_Energy_Usage:** the annual kilowatt hours consumed by the average customer within a rate class.

Sample Calculation of UCC Price for the Default Service Price Adjustment:

	Type II Customer Class - Average Customer	
Average Monthly Usage*:	40,000	kWh
Accounted For Obligation	90	kW
UCC Price**	\$ 20.75	MW-Day

$$((\$20.75 \text{ per MW-Day} / 1000) * 90 \text{ kW} * 30.4167 \text{ Days}) / 40,000 \text{ kWh} =$$

\$0.00142 / kWh or \$1.42/MWh

* For the purpose of this example, small business customers with average monthly usage of 40,000 kWh has been used with an average class load factor of 60.8%. For an actual adjustment, each EDC will determine the average accounted for obligation for each rate class based upon actual experience.

** The most recent UCC auction price covering a 12-month period starting subsequent to the adjustment date. For this example, an adjustment date of July 31, 2004 is used. The \$20.75 / MW-Day price resulted from the April 30, 2004 UCC auction for the period January 2005 through December 2005.

While Reliant has put forth two methods by which the default provider may adjust the residential and small business default service price, it is certainly possible to develop other adjustment methodologies or modify Reliant's proposed adjustment mechanisms to the extent improvements can be made to better capture changes in the market. Ultimately, what is important is that the default service provider has the ability, at its discretion, to adjust the default service energy price twice per year for changing market conditions and that those adjustments reflect changing market conditions.

The key goal should be to utilize an appropriate index that allows changing market prices and conditions to be reflected in the default service price. This is necessary in order to allow the default service provider to sufficiently manage the risk of providing the service. Another key goal should be to provide competitive electric service providers a mechanism to have confidence that the default service price will not fall below market prices for sustained periods of time. Finally, and an equally important goal, is that customers have a safe harbor default price should they need default service. Reliant believes that the MRPM for residential and

small business customers accomplishes all of these goals and should be adopted by the Commission in this Rulemaking.

Attachment II
Reliant's Detailed Response to Various Issues Raised by Other Parties

To discuss the shortcomings in other parties' comments, Reliant will provide detailed discussion in this attachment on the following topics:

- 1) The fundamental goal of the Choice Act;
- 2) What the term "Provider of Last Resort" means;
- 3) Hourly-only default service is appropriate for larger commercial and industrial customers;
- 4) The appropriate threshold level for hourly-only default service;
- 5) Delay implementation of default service rules for residential/small business customers;
- 6) A mandated wholesale auction does not meet the definition of a competitive retail market wherein buyers and sellers willingly negotiate;
- 7) A competitive market vs. economic regulation;
- 8) The default price should not be reconcilable;
- 9) Retail customer charges should be separate from distribution charges; and
- 10) The EDC should not serve as a retail provider of electricity - selling the commodity and delivering the commodity are separate functions with the former being a competitive market activity and the later being a regulated, cost-of-service activity.

1) The fundamental goal of the Choice Act

Both the Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA") characterize lower prices or reduced rates as the sole purpose of the Electric Generation Competition and Choice Act ("Choice Act"). OCA states "[t]he fundamental goal of the Pennsylvania restructuring law

was to provide reliable service to consumers at lower prices than they would pay under the prior regulatory model.”¹ OSBA states “[a] review of the floor debate in the House and Senate will verify that legislative supporters and opponents of the Competition Act started with the same stated goal: to reduce rates.”² Reliant has reviewed the floor debate and would agree that lower prices or reduced rates are expected to be an outcome of the Choice Act, but not a prerequisite for a competitive market. Competitive markets will provide the most efficient price for electricity and the Choice Act recognized this economic posit. However, in markets that more efficiently and effectively reflect the fundamental principles of supply and demand, no promise was made nor can such a promise be made that a competitive market will always yield lower prices than economic regulation every single hour of every single day. Competition must be viewed by long-run outcomes rather than on short-run events that drive competitive market behavior and efficiency.³

In the legislative history that OSBA refers to, there is a lengthy debate concerning a proposed amendment to the Act that would have imposed an across the board ten percent rate reduction for all Pennsylvania consumers. That

¹ Comments of the Office of Consumer Advocate filed April 27, 2005, page 1.

² Comments on behalf of the Office of Small Business Advocate on Proposed Rulemaking filed April 27, 2005, page 3.

³ Other industries that have a deregulated market structure, including the airline and natural gas industries, have not been re-regulated simply because, at times, short-term events have resulted in temporal price increases. Competitive market response to higher natural gas prices, for instance, is demonstrated by the spate of LNG (liquefied natural gas) investment.

amendment, offered by Senator Fumo, was defeated and never became part of the law.⁴

Senator Piccola, speaking against Fumo Amendment A7963, states,

“Now for us, the General Assembly, to adopt the Fumo amendment and to mandate a rate rollback would be simply saying, well, yes, we are going to dictate what the market shall charge, what the market will bear. The Consumer Advocate has placed his faith and the faith of his office in this approach to marketing electricity as it is generated here in Pennsylvania. He believes and I believe and I believe a majority of this General Assembly believes that this proposal will result in lower rates, but it will not result in lower rates because the General Assembly passes a law. It will result in lower rates rather because the free market will be allowed to work with regard to the generation of electric power.”⁵

As noted in the quote by Senator Piccola, OCA was a supporter of the Choice Act. OCA wrote a letter to Governor Ridge and the Members of the General Assembly on November 14, 1996 in support of the bill. In this letter, OCA recognizes that a competitive market, and not simply lower prices would result from passage of the Choice Act:

“Under this legislation, however, by the year 2001, all consumers would have the ability to purchase their generation from sources other than their own utility, much as consumers do today can buy long distance telephone service. Competition in electric generation should drive down the price of such generation in the future and would almost certainly prevent the kind of extreme rate disparities that occur in Pennsylvania today and that would not be possible if consumers had the ability to acquire their generation from alternative sources. In addition, while the price charged for generation in the future will be established by the market, rather than by regulation, the PUC and other independent

⁴ See, *Special Order of Business Supplemental Calendar No. 2, Bill on Third Consideration and Final Passage*, HB 1509 (Pr.No. 4282), Legislative Journal – Senate, pp. 2674-2705, November 25, 1996.

⁵ Legislative Journal – Senate, November 25, 1996, 2687. Compiled by Jenkins Law Library.

entities will retain authority to ensure the reliability of the utility system.”⁶

The letter goes on to state,

“The proposed legislation also states that, even after all transition costs are collected, the utility (or an alternative provider determined by the commission) will have the duty to purchase generation at prevailing market rates for any customers who, for whatever reason, do not obtain generation service from an alternative supplier. There are, of course, numerous other provisions in the bill that I would be happy to discuss with you, but the above consumer protections, coupled with the potential for long-run consumer savings resulting from access to competitive generation, are the reasons that I am supporting this consensus proposal.”⁷

Clearly, in 1996, OCA envisioned a competitive market bringing benefits to customers. OCA indicates that the competitive market brings the *potential* for lower prices, but supported the bill nevertheless without a continual guarantee of lower prices. However, as the rate cap periods expire, competition should be given a chance to develop. Just because OCA currently wants to reverse course by changing its position and wants to thwart the Commission’s move towards greater competition does not mean that we should turn our backs on competitive markets. This is the antithesis of the consumer advocate’s support for the Choice Act in 1996 and is more importantly, contrary to the Choice Act itself.

The OCA and OSBA, who once supported competitive markets, now apparently desire regulation simply because wholesale electric prices have risen. They ignore the fact that electricity prices, due largely to commodity prices for

⁶ *Id.*

⁷ *Id.*, 2687-2688.

fuels used to generate electricity, have risen. They discount the fact that even in the old days of monopoly-based electric utility cost-of-service ratemaking, higher commodity fuel prices led to higher electric prices. Competition is what puts pressure on suppliers to produce electricity as efficiently as possible; competition is what allows innovation in products and technology; and competition is what allows customers to select the electric service attributes that they desire.

Customers, having the ability to choose a number of products from multiple suppliers, will be able to seek the lowest price the competitive market has to offer if that is the electric service attribute a customer desires. Besides, competition is about more than just price. Customers can and do have other desires than just price, (e.g., green power, customer service, reward programs, etc.). The wide variety of products and services customers' desire can only be achieved through competitive markets. Pennsylvania is well along the path to competition. In some service territories stranded costs are still being recovered, while in Duquesne, competition for larger commercial and industrial customers greater than 300 kW is allowing those customers to achieve the benefits of competition. To reverse course and revert back to a regulated marketplace with the expiration of the generation rate caps in each EDC's service territory would be counter to the Choice Act and deny consumers the very benefits they are paying for now through stranded cost charges.

As a review of the floor debate shows, the lower price argument centered on the stranded cost issue, not on what mandated prices would be following the

end of the rate cap period. In fact, Representative Durham, in addressing the lack of a sunset provision in the bill states, “When the transition period is over, you will be in full competition, so there would be no need to sunset, because you would then have reached your goal.”⁸ Also, in consideration of HB 1509, the following discussion takes place:

“Mr. Preston. So can you tell me that if we pass this bill, the customers of Duquesne Light will be guaranteed a rate decrease?

Mrs. Durham. Yes, Mr. Speaker; your customers will be guaranteed a rate decrease. And furthermore, if you do not pass this bill, your customers in the Duquesne service territory, as in the PECO service territory, are guaranteed not to have a rate reduction for far more than 10 to 15 years, because neither of those utilities have a way to recover their stranded investment.”

Mr. Preston. Is there any kind of way in this bill that we can really guarantee a rate decrease for all the citizens of Pennsylvania, under this current bill?

Mrs. Durham. Mr. Speaker, after reading this legislation, this is the closest thing that I have seen to a rate guarantee in any legislation I have seen in the past 18 years. I cannot believe that the utility companies in this State are going to submit plans to the PUC that are not going to come out with a rate reduction. As a matter of fact, Mr. Speaker, I believe that the utility companies in this State, if pressed, could tell you exactly what the rate reduction will be, depending upon the amount of stranded investment that they are going to receive from the PUC.

All of the utility companies have given me information which indicates that there will be rate reductions. Duquesne and PECO have told me that there will be a guaranteed reduction. They have given me a range, which the PUC has also agreed that those numbers seem fair. So I am 100-percent positive that there is going to be a reduction; I just cannot tell you how much it is going to be.”⁹

⁸ Legislative Journal – House, November 25th, 2564. Compiled by Jenkins Law Library.

⁹ Legislative Journal – House, November 25, 1996. 2556, Compiled by Jenkins Law Library.

Mrs. Durham goes on to state later in the debate,

“Mr. Speaker, specifically to PECO, they are estimating that their stranded investment costs are going to be about \$5 billion. And the way that you are going to get the immediate rate reduction is that instead of having the ratepayers pay for that debt, which is estimated to take 30 years to pay, they are going to be able to not pay interest for 30 years, pay it for approximately 9 years and at a lower rate.”¹⁰

Based on the floor discussion, Reliant believes it is clear that the rate reductions envisioned by the General Assembly were related to the securitization of stranded costs. Other than the comment about the sunset provision made by Mrs. Durham, we find little discussion in the record on how default service would be priced following the transition period, other than the unmistakable comment that the prices would be determined by competitive market forces.

OSBA also attempts to support its lower rate claim with the following statement, “The Commonwealth Court has already held that “[t]he purpose of the Competition Act is clear: to relinquish the local utilities’ monopoly control over the generation of electricity and to invite competition in an effort to lower electric generation rates for the citizens of this Commonwealth.” (*Emphasis added*)” It should be noted that the case in which OSBA places so much emphasis on in determining the purpose of the Choice Act had no bearing on the retail market model at all. The Opinion by Presiding Judge Colins in the referenced case, *Indianapolis Power & Light Company v. Pennsylvania Public Utility Commission*, No. 1597 C.D. 1997, states “[t]his case presents an issue of first impression:

¹⁰ *Id.* 2559

whether the provisions of the Competition Act allowing the recovery of stranded-costs violate the Commerce Clause of the United States Constitution.” This case focused on the recovery of stranded costs and the impact this could have on out-of-state generators’ ability to compete. Clearly the focus and resulting opinion in this case has no bearing on the retail market design (i.e., default service) currently being contemplated in the Commission’s Rulemaking regarding default service and envisioned in the Choice Act. Therefore, OSBA’s attempt to rely on this case in an attempt to thwart the competitive marketplace is misguided and should not be given any merit. More importantly, Reliant believes that all market participants desire lower prices. The issue is whether the default service design will allow a competitive market to develop and flourish or be thwarted by adoption of default service rules desired by opponents of competition. If anticompetitive default service rules are adopted, then a regulated utility will be left as the monopoly provider of retail service, leaving customers with little or no meaningful choice. The regulated utility providing retail service has already been shown not to produce lower prices over the long-term. The Choice Act calls for elimination of this model and in its place, a competitive market design to be implemented.

Both OCA and OSBA apparently believe that the Choice Act somehow guarantees perpetual, regulation-induced, price reductions. However, this is not the case. The Choice Act was passed with the end result being the move towards competitive electric markets that give customers direct access to prices and products that only a competitive market can bring. This is clearly stated in the

core policy pronouncement in the Choice Act, “The purpose of this chapter is to modify existing legislation and regulations and to establish standards and procedures in order to create direct access by retail customers to the competitive market for generation of electricity while maintaining the safety and reliability of the electric system for all parties.” 66 Pa.C.S. § 2802(12). A reading of Section 2802 of the Choice Act shows that while the cost of generation is extensively referenced, no guarantees are made as to the level of those costs. Instead, what the General Assembly enacted into law with respect to electric generation costs is an endorsement of competition, not a guarantee of rate reductions. OCA and OSBA now seek to destroy the ability of customers to reap the benefits of a competitive market by supporting default service policies that fail to comport with the provisions of the Choice Act and erect barriers to new market entry. Specifically, they seek to return to economic regulation, an environment that clearly violates the Choice Act’s Declaration of Policy, 66 Pa.C.S. § 2802(5), “Competitive markets are more effective than economic regulation in controlling the cost of electricity.” The Commission should reject OCA and OSBA’s return to economic regulation recommendations. These suggestions are out of line with the clear policy goals of the Choice Act. The end result of the market design they advocate will be a return to a market wherein a regulated monopoly provides all customer service, the default prices will be determined by regulated pricing mechanisms, and market barriers will prevent competitive retail markets from participating in the Commonwealth, leaving a perpetually regulated marketplace with the attendant

problems that regulation-directed resource planning (e.g., administratively-driven wholesale auctions) has on stifling competitive markets.

OSBA and OCA would then support a return to the same environment that the General Assembly was trying to rid the Commonwealth of by enacting the Choice Act wherein “rates for electricity in this Commonwealth are on average higher than the national average, and significant differences exist among the rates of Pennsylvania electric utilities. 66 Pa.C.S. § 2802(4). Nowhere in the Choice Act can the expression, the priority of the Choice Act is reducing rates, be found. The General Assembly, well aware of competitive market dynamics, could not make such an absolute guarantee to the people of Pennsylvania. However, the General Assembly was clearly aware that competitive market forces are more effective than economic regulation. 66 Pa.C.S. § 2802(5).

The closest the Choice Act comes to any directive with respect to setting rates is at 66 Pa.C.S. § 2804 where the General Assembly approved the rate cap mechanism (and exceptions to rate caps) to be used during the transition period to full, competitive retail direct access. That transition period has ended for one major Pennsylvania utility (Duquesne Light Company) and is nearing the end for other Pennsylvania utilities. What is proposed for the acquisition of default supply is not rate reductions, but rather the acquisition of electric energy at prevailing market prices with the full recovery of all reasonable costs. 66 Pa.C.S. § 2807(e)(2)(3).

The statutory language of the Choice Act is clear, and this rulemaking cannot serve as a vehicle to re-open a debate that was heard and resolved by the General Assembly in 1996. As noted above, the amendment seeking a guaranteed rate reduction was defeated and the Act was passed without setting rate reduction as a priority. The Choice Act, as passed by the General Assembly, de-regulates generation and following the transition period, renders price a function of open, competitive retail markets.

2) What the term “Provider of Last Resort” means

The Choice Act only uses the term “provider of last resort” in one Declaration of Policy, 66 Pa.C.S. § 2802(16), “It is in the public interest for the transmission and distribution of electricity to continue to be regulated as a natural monopoly subject to jurisdiction and active supervision of the commission. Electric distribution companies should continue to be the provider of last resort in order to ensure the availability of universal electric service in the Commonwealth unless another provider of last resort is approved by the Commission.” The General Assembly chose the term “provider of last resort” with purpose and intent. They did not choose the term “provider of first resort” or even “provider of equal resort” as many parties would have the Commission believe. The provider of last resort is intended to be the last choice for service. A provider of last resort service would therefore manifest itself in being a product for customers whose provider has failed to provide service, customers that chooses not to chose, and customers who are evaluating competitive alternatives and need a backstop service in the

interim. It is not meant to be the only choice a customer has for service. Moreover, default service should not be designed to compete with competitive offers as those that advocate having a fixed-price default service for larger commercial and industrial customers would have it do. As PPL Electric Utilities Corporation notes, "...default service should be considered a "back stop" to the competitive retail market, not an alternative or option to that market."¹¹ Thus, default service is meant to provide for customers taking service from an EGS that exits the market or for customers who fail to choose an alternative supplier. In fact, this is the express purpose stated in the proposed Rule, "As the Act makes clear, the purpose of this obligation is to address the scope of retail electric service that must be provided to customers who either have not chosen an alternative electric generation supplier or who contracted for electric energy that was not delivered."¹² The default product is the vehicle through which retail access will be made available to all customers. Properly establishing the default price for the appropriate customer class will enable competitors to enter the market and remain in the market, a necessary component of a competitive market.

OSBA and the Industrial Electric Consumers of Pennsylvania, et. al., ("IECPA") have characterized a properly priced default product as an "ugly as possible"^{13 14} default service price. These parties would have one believe that

¹¹ Comments of PPL Electric Utilities Corporation and PPL EnergyPlus, LLC filed on April 27, 2005, page 1.

¹² Proposed Rulemaking Order, Docket L-00040169, page 2.

¹³ Comments of the Office of Small Business Advocate filed on April 27, 2005, page 4.

¹⁴ Comments of Industrial Electric Consumers of Pennsylvania, et. al filed on April 27, 2004, page 4.

choice is an inconsequential aspect of a retail market. In fact, choice is the key to a competitive marketplace and it is not simple coincidence that the legislation is called the “Electric Generation Competition and Choice Act”. If the Commonwealth wanted monopoly provision and sales with power procured via regulatory-mandated auctions, the act could have very well been called the “Electric Generation Competition Act”. However, that is not what the Commonwealth intended or wrote in the plain language of the law. The act is called “Electric Generation Competition and Choice Act”. It calls for competition on both the upstream (wholesale production) and downstream (retail services) sides of the electric marketplace.

The Commission must take great care in setting the default price as it will either enable or hinder competition. If the default price is established in a manner that hinders and restricts competition, as OCA, OSBA, IECPA, and the EDCs would have the Commission do, then competition will surely fail. Hindering competition will harm all market participants, but especially end-use customers who, having paid for stranded costs, would be essentially denied the benefits for which they paid. In competitive markets, choice allows individuals to be the final arbiter of their provider. Customers hold the ultimate advantage so long as they have the ability to freely switch providers in a competitive market. A provider that does not act in the best interests of its customers will lose its customers to a provider that does provide the electric service attributes sought by individual customers. The Commission is at a defining moment where it can enable the

creation of markets that will lead the Commonwealth forward and create the strategic advantages competition brings, or it can resort to turning around and returning to the path of regulation that often times stifles economic growth and takes undue advantage of captive customers.

3) Hourly-only default service is appropriate for larger commercial and industrial customers

Reliant, along with the National Energy Marketers Association (“NEMA”), Mid-Atlantic Power Suppliers Association (“MAPSA”), and Amerada Hess support an hourly-only default service for larger commercial and industrial customers because these customers are sophisticated and are typically the customers most sought after in a competitive market. Reliant also suggests that should the Commission believe it is appropriate to initially include a fixed price default option to help these customers transition to a competitive market place, then the fixed price default option should be offered for no more than a 12-month period.

Not all parties agree that the hourly-only default product is appropriate. IECPA questions whether the default service regulations “must require a DSP [default service provider] to offer both a fixed price option and an hourly price option in order to ensure that larger commercial and industrial customers are not subject to unreasonable discrimination.”¹⁵ However, IECPA provides the very evidence why hourly-only pricing should be the only default service option for

¹⁵ Comments of the Industrial Energy Consumers of Pennsylvania, et. al., filed on April 27, 2005, page 4.

these customers when it states earlier in its Comments, “If these customers face significantly higher rates upon return to a DSP after entering into the competitive market, these customers may be even less likely to enter into the competitive arena.”¹⁶ If prevailing market prices fall, but the default service price is based on fixed-price auctions conducted before the price moved down, then these larger customers would face higher prices upon return to the fixed price default service. The other missing link in IECPA’s comments is that if the default service is hourly-only, there will be fixed-price competitive offers from the competitive marketplace from which to choose. If the customer chooses to return to the hourly-only default service, the price by definition is the prevailing market price, as PJM-run LMP would be setting the market price for the customer.

IECPA claims that hourly-only default pricing will discriminate against the larger customers and subject these customers to “arbitrary price increases, market volatility, and potential budgetary constraints.”¹⁷ Reliant notes that IECPA totally misrepresents the hourly-only default service with these characterizations. The hourly-only prices will be well defined through a tariff filed by each default provider. The tariff will provide all the price components including the visible LMP pricing point. Thus, there is no arbitrary nature to the pricing mechanism. Market volatility is also not arbitrary, since it is based on the market fundamentals and the product being offered. If larger commercial and industrial customers do

¹⁶ *Id.*, page 3.

¹⁷ Comments of Industrial Energy Consumers of Pennsylvania, et. al., pages 6-7.

not want the hourly-only default service, competitive offers will provide these customers with the electric service attributes they desire – including fixed prices for a specified term. Requiring the default provider to offer a fixed price will actually limit the market’s ability to provide customers the products and services they desire. IECPA represents some of the largest customers in the Commonwealth and they have a great deal of market sophistication and have the ability to shop for products and services that meet their specific needs. The financial benefits for their customers to save even a few mils per kilowatt-hour can be significant due to the volume these customers consume, thus their incentive to navigate the market for the best deal is high. Likewise, due to these customers’ usage levels, retail suppliers have an incentive to design products to address individual desires.

In addition, allowing the default provider to offer both fixed and hourly default products will give the larger commercial and industrial customers the ability to arbitrage the default offers and the competitive offers which will ultimately drive out any competitors. IECPA, like OCA and OSBA seems to desire a return to a regulated market rather than promoting a competitive retail market, since they also want the default provider to be “able to offer more than one of each of these options.”¹⁸ If the default service provider is allowed to make multiple service offerings and maintains all the customers, the competitive market will likely fail and customers will be denied the benefits of direct access.

¹⁸ Comments of IECPA, et. al., filed April 27, 2005, page 26.

Another argument that IECPA puts forth to bolster its argument for both fixed and hourly default prices for larger commercial and industrial customers is that because customers will be “forced into the competitive market in order to obtain fixed priced options”¹⁹ that “EGSs will be cognizant of that fact” and “have the opportunity to significantly raise their fixed prices above what the market would otherwise bear.”²⁰ There is clear evidence from markets that have hourly-only default service that there will be robust competition. In competitive markets, if collusion to fix prices occurs, there are legal remedies available. There is no need for the Commission to believe collusion will exist before it is proven to occur and consequently structure the default service products in such a manner as to prohibit competition for this reason.

IECPA attempts to lean on certain provisions of the Choice Act to support its claim that the default service provider must offer both a fixed and hourly default product. Reliant submits that the basis for this claim is unwarranted. First, IECPA states that “Under the PUC Code and the Commission regulations, different classes of customers can be treated differently as long as a *cost-causation methodology* is the basis for this different treatment.” *[Emphasis added]* There is nothing in this section that implies that the offers to one set of customers should be identical to another. It simply means there can be no cross-subsidization. To the contrary, the Choice Act, 66 Pa.C.S. § 2802(7) states that default service is to be

¹⁹ *Id.*, page 24.

²⁰ *Id.*

“implemented in a manner that does not *unreasonably* discriminate against one customer class to the benefit of another.” [*Emphasis added*]

IECPA also points to the utility code, 66 Pa.C.S. § 1304, which states, “No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service.” The operative term that IECPA apparently gives no merit to is “unreasonable” both within the Choice Act and the Utility Code. The hourly default product is not *unreasonably* discriminatory and makes the most sense for larger, non-residential customers. An hourly-only default structure has been very successful in leading to a competitive market, which is the final outcome envisioned by the Choice Act. It is no secret that large non-residential customers are among the most highly sought after customers, and therefore, will have plenty of alternative offers as long as the default service product is not allowed to stifle the formation of a competitive marketplace. IECPA is seeking to substitute a mix of administratively determined default offers for competitive-based offers. This is in direct opposition to the clear language of the Choice Act. It is important that the Commission continue to move the Commonwealth towards competitive markets and not give in to narrowly-focused economic regulation.

An hourly-only default service should not be considered unreasonable or discriminatory as IECPA purports and should be implemented in this Rulemaking with the changes recommended by Reliant. IECPA's recommendations for a fixed price default service option are counter to the Choice Act and should be rejected.

IECPA claims that the energy tracking requirements under the AEPS will make it burdensome for the default service provider to verify compliance for hourly-only customers.²¹ Reliant would point out that the requirements of the AEPS Act are still being reviewed by the Commission and have not been finalized. Other parties have also attempted to rely on the AEPS Act to support various anti-competitive default service features. Reliant submits that while compliance with the AEPS standards is very important, the requirements of the AEPS Act should not cloud the Commission's view in establishing a competitive retail electric market. The default service rules should establish a market design that results in robust, sustainable retail competition and the AEPS requirements, once finalized, it can be handled with an appropriately designed retail market model.

To offer the Commission some possible ways to address IECPA's AEPS issue, Reliant offers two proposals on how to handle AEPS purchases in conjunction with adoption of an hourly-only default product. One way would be to set a fixed charge (i.e. an administrative adder) that would be added to the Locational Marginal Price ("LMP") to cover the costs of procuring alternative

²¹ *Id.*, page 25.

energy supply credits along with other retail costs. The fixed charge approach assumes there is no bid out for hourly-only default as is done in Duquesne's service territory and Maryland. Another method for handling AEPS requirements along with hourly-only default service is to bid out the AEPS requirements as part of a demand charge assuming default service is bid out as it is done in New Jersey. Reliant notes that neither methodology requires long-term contracting of the AEPS requirements.

4) The appropriate threshold level for hourly-only default service

Reliant Energy proposed a threshold level of 100 kW in its Initial Comments while Direct Energy (25 kW) and Dominion Retail (50 kW) proposed lower levels. UGI Utilities, Inc. and Allegheny Energy on the other hand proposed raising the Commission proposed 500 kW level up to 1,000 kW and 1,500 kW respectively. In order to move the electric market to a greater level of competition, Reliant strongly recommends that the Commission accept Reliant's 100 kW threshold. As noted in Initial Comments, it is not necessary to have hourly metering as Strategic Energy suggests before customers can be placed on hourly-only default service. For those customers that do not have an hourly meter, or chose not to install an hourly meter for themselves, there simply needs to be an hourly load profile representative of customers down to the 100 kW level by which service can be priced.

OSBA supports the 500 kW threshold level and notes "many small business customers can not readily shave their electricity use to respond to hourly

fluctuations in market prices. Instead, they must consume energy to accommodate their own customers. That is especially true for restaurants and retail businesses.”²² OSBA goes on to state,

“Small business also need to be able to predict their costs in order to set the prices they charge for their own goods and services. A UGI witness at the POLR Roundtable provided empirical evidence to support that proposition. Specifically, he observed that, instead of taking their chances with year-to-year market fluctuations, one-third of UGI’s business customers chose a three-year plan with a known rate increase each year. Therefore, the default service provider should offer prices to small businesses which are fixed for no less than a year.”²³

What OSBA does not say however, is that two-thirds of UGI’s business customers did not choose the three-year plan. By trying to get a one-size fits all default service plan, you end up with a one-size fits very few plan. If retail competition is allowed, i.e. barriers to entry created by mandated wholesale auction models are not erected, then customers that desire three-year deals with known price increases, as OSBA mentions, can seek those from competitive suppliers. However, customers can also seek three-year deals with known price *decreases*, three-year deals with no price increases, or any other electric service attribute they desire. It is direct access that will allow customers to match their business needs with their electric service requirements, not one fixed price product offered by one entity.

5) Delay implementation of default service rules for residential/small business customers

²² Comments of the Office of Small Business Advocate filed April 27, 2005, page 12.

²³ *Id.*

An alternative proposal that Reliant made in its Initial Comments was for the Commission to consider delaying implementation of default service rules for residential and small business customers so that further evidence could be gained in other states with other default service models. Several parties, including Duquesne Light, Direct Energy, and Strategic Energy Inc., offered commentary on delaying rule implementation or alternative market designs for this group of customers. Duquesne states, “the Commission should leave open the possibility that prevailing market prices may be established through benchmarking to other prices in the region, through a market price index formula, or through other means.”²⁴ While Reliant is fully in favor of implementing the MRPM for all customers at this time, Reliant is also cognizant of the fact that given the expiration date of the EDC’s transition plans, the Commission has time to assess the success or failure of the residential/small business competitive market designs in other states before implementing default service rules for these customers. This is why, as an alternative to implementing a MRPM design now, Reliant proposed, should the Commission want to gather further evidence on the various market designs throughout the country, that the Commission delays the Rule for residential/small business customers. Duquesne Light has also seen wisdom in this approach and has suggested that the Rule leave open the possibility of other market designs as well. Duquesne specifically points to the Texas market and

²⁴ Comments of Duquesne Light Company filed April 27, 2005, page 7.

notes "...Pennsylvania may learn important lessons when PTB rates expire at the end of 2006 about the feasibility of having retail suppliers establish prevailing market prices. If the Texas experiment proves successful by both facilitating retail competition and treating customers fairly, and if such a model is demonstrated to be consistent with the Competition Act, the Commission may wish to consider this type of default service program in the future. Its default service regulations therefore should not prevent the Commission from doing so."²⁵ Reliant, as discussed above and in conjunction with other parties, believes that the best course of action for the Commission at this time is to delay implementation of default service rules for residential/small business customers.

6) A mandated auction does not meet the definition of a competitive market wherein buyers and sellers willingly negotiate

Exelon, FirstEnergy, Allegheny Power, Constellation Energy and Amerada Hess among others supported the Commission's proposed auction format for procuring supply for the default service load. However, as noted in Reliant's Initial Comments, a prescriptive auction format will not result in the most favorable price for default service. There should be nothing in the Rule to prevent an EGS, or a default provider for that matter, from providing service to customers based on a company decision to procure in any manner it chooses. If a default service provider opts to procure in a manner similar to the auction format in the proposed Rule, it should be free to do so, but not mandated to do so. In fact, if an

²⁵ Comments of Duquesne Light Company filed April 27, 2005, pages 19-20.

auction were the best method of assuring customers the best price and meeting customers' needs, it would be a key strategic advantage for a company to unilaterally implement such an auction design. As a result, allowing the default provider discretion in their procurement practices to serve default customers does not prohibit them from adopting an auction model. The advantage of a competitive wholesale market is that buyers and sellers will come together, not only on price, but on other terms and conditions as well. However, to mandate this one particular procurement strategy to be the *only* procurement strategy allowed is not competitive nor does it take into account a vibrant, healthy marketplace.

For example, the financial situation of individual buyers and sellers will dictate the credit requirements desired by both parties and these may be more or less rigid than those that a standard auction terms and conditions document may require. Assuming that parties have good financial standing, the credit requirements may be lower, and therefore, the price of the contract may be lower if these parties were allowed to freely negotiate the deal. On the other hand, so as to not restrict participation in a mandated auction, a standardized contract may result in higher prices to cover the higher credit requirements such a contract is likely to require. As shown below, the parties filing comments in the Commission's Rulemaking do not see eye-to-eye on what might be included in a standard auction contract that would be utilized for an auction-based procurement:

Office of Consumer Advocate

“One of the benefits of a portfolio approach is that it allows the POLR to hedge against a number of risks by acquiring its supply through a variety of methodologies and to utilize a variety of contract terms to meet its obligations. Additionally, use of a portfolio of resources enhances security and reliability that cannot be obtained through reliance on a single type of contract, a single fuel, or a single supplier. A variety of products, resources, contracts, and financial instruments should mitigate the various risks of the service and result, long term, in reasonable costs for the type of service provided.”²⁶

Office of Small Business Advocate

“To minimize risk to the EDC, each winning bidder should deliver energy to the default service provider under a load-following contract and without reconciliation.”²⁷

Morgan Stanley Capital Group Inc.

- The EDCs should create and submit competitive procurement process implementation plans based specifically on New Jersey’s Basic Generation Service auction model
- The EDCs together with all interested parties should develop one, standard full services agreement (“FSA”) to be entered into between the winning default service bidder(s) and the EDC
- The standard FSA should be approved by the Commission and should include critical threshold items such as bilateral credit risk, alternative guaranty and termination of payment notional quantity provisions
- The Commission’s review of the results of an EDC’s auction should be limited to two days
- The Rule should require the use of an independent third party consultant to run the auction such as utilized effectively by NJ in its BGS auctions²⁸

Pike County Light & Power Company

- “To increase its ability to achieve the goal of default coverage, Pike would propose to utilize commodity swap transactions rather than physical purchases.”²⁹
- “The review period may not be less than two business days.”³⁰

²⁶ Comments of the Office of Consumer Advocate, filed April 27, 2005, page 3.

²⁷ Comments on Behalf of Small Business Advocate on the Proposed Rulemaking, filed April 27, 2005, page 9.

²⁸ Initial Comments of Morgan Stanley Capital Group Inc. filed April 27, 2005, page 2.

²⁹ Pike County Light & Power Company comments regarding the Regulations filed April 25, 2005, page 2.

³⁰ Id. Page 3

Exelon Companies

“[C]ompetitive bids should be evaluated solely on the basis of price and that the “non-price criteria” alluded to by the Commission are more appropriately utilized in the bidder qualification process than the bid evaluation process.”³¹

The Energy Association of Pennsylvania

“The Commission review period for procurement results should be no more than three business days.”³²

Constellation Energy

“[C]onstellation agrees that it is appropriate that the suppliers should provide reasonable credit assurances to the EDCs. It is equally important for the EDCs to provide reasonable credit assurances to the suppliers.”³³

PPL Electric Utilities Corporation and PPL EnergyPlus, LLC

“PPL recommends standard products should be procured in the market under standard terms. For example, on-peak energy is traded on daily, monthly, seasonal, and annual terms. By using standard terms, the products became commodities that can be traded, thereby enhancing the liquidity of the market”³⁴

Allegheny Power

“Most importantly, this process should ensure the EDC does not bear the risk of such default.”³⁵

Allegheny Conference on Community Development

Default service providers should be able to provide terms of service other than 12 months.³⁶

³¹ Comments of the Exelon Companies filed April 27, 2005, page 4.

³² Comments of the Energy Association of Pennsylvania filed April 27, 2005, page 11.

³³ Comments of Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. on the Proposed Regulations filed April 27, 2005, page 6.

³⁴ Comments of PPL Electric Utilities Corporation and PPL EnergyPlus, LLC filed on April 27, 2005, page 15.

³⁵ Allegheny Power referencing wholesale supplier default regarding the replacement procurement procedures. Comments of Allegheny Power on Proposed Default Service Regulations filed April 27, 2005, page 5.

Dominion Retail, Inc.

“Dominion Retail submits that the Commission should set a one-year maximum term as well.”³⁷

Amerada Hess

“[T]he Commission should amend the proposed regulations to permit default service terms of, at maximum, three months.”³⁸

As shown above, the parties’ positions vary greatly on what might need to be included in a standard contract if an auction-based procurement model is chosen. As with any process involving multiple parties with a myriad of interests, there is no “one size fits all” strategy. Even if the auction contract terms are determined through a stakeholder process, no one party is going to get everything they desire. A stakeholder process invariably results in some level of give-and-take with the resulting product meeting most of the parties’ desires, but certainly not all. Reliant is concerned that incorporation of the parties’ suggestions that prefer economic regulation will result in a marketplace that falls far short of being a robust and sustainable competitive marketplace. Therefore, Reliant recommends that the default service provider be able to procure supply at its discretion which will allow each and every party to seek the terms and conditions that best meets the needs of their individual situation. Reliant supplied the Rule changes necessary to allow for discretionary procurement in Appendix A to Reliant

³⁶ Letter to the Pennsylvania Public Commission re: Docket L-00040169 dated April 26, 2005, page 3

³⁷ Comments of Dominion Retail, Inc. filed April 27, 2005, page 4.

³⁸ Comments of Amerada Hess Corporation filed April 27, 2005, page 12.

Energy, Inc.'s Comments on the Proposed Rulemaking Order, filed with the Commission on April 27, 2005.

7) A competitive market vs. economic regulation

In a well-designed market, the goal of the default service product is not to substitute for choice but to provide a backstop without harming customer choice. The default service rules should enable direct access to satisfy consumers' desires, not administratively substituting one form of regulation (traditional, full cost-of-service ratemaking) with another form of regulation (administratively mandated procurement models). Any attempt at maintaining regulation in the form of administratively mandated procurement processes should be dissuaded and the ultimate goals of the Choice Act should prevail. While OCA and OSBA may believe that trying to design default service through a regulated process will result in the lowest price in the marketplace, will not. Such a design will hinder market development, which in turn will result in fewer choices and more inefficiencies, not more choices with greater efficiencies.

First, administrative, mandated procurement regimes will work against the goal of new entry. Second, they will not provide the long-term benefits of direct access to consumers since competition cannot flourish under such designs. Third, inserting regulatory and administrative choices for risk management will lead to unintended inefficiencies that consumers will once again be forced to bear, as they did in the prior regulated regime. This is because the auction's or RFP's term structure distorts the market by regressing to the flaws of regulation via

administratively determined risk and portfolio management for consumers (e.g., ladder and tranche auction requirements) instead of competitively determined risk and portfolio management. Long-term RFP terms are simply a proxy for and a path for a return to integrated resource planning (“IRP”). While this may be the goal of some, it is not the goal of the Choice Act.

A competitive marketplace will yield the desired goods, services and products for consumers. It is upon this premise that the road to competition is paved. Section 2802(5) of the Choice Act states that “[c]ompetitive market forces are more effective than economic regulations in controlling the costs of generating electricity.” Further, Section 2805(13) of the Choice Act states that “[t]he procedures established under this chapter provide for a fair and orderly transition from current regulated structure to a structure under which retail customers will have direct access to a competitive market for the generation and sale or purchase of electricity.” Mandated IRP was not particularly useful in the regulated environment. It is completely inappropriate in a competitive environment. A default provider should not be required to procure generation supply through an administrative, mandated process because:

1. It substitutes regulated choices for those of the competitive market, thereby allowing special interests to override customer choice;
2. Since these designs require costs to be passed on to customers, it decouples the customer retail price from prevailing wholesale

market prices, leaving consumers responsible for the inefficiencies of the administratively designed procurement strategy;

3. The historical disconnect between market prices and regulated prices was one key reason for the move to competitive markets in the first place.

In its quest for an economically regulated market, OSBA goes so far as to state that the Commission “should consider prohibiting an EGS from entering contracts which terminate within one month of the beginning of the EDC’s “peak season”.³⁹ The Commission should not dictate how, when, and under what terms a competitive EGS enters into contracts with its customers. The Commission should ensure that the default price is set at a level and in such a manner as to allow the default provider to accommodate a return to default service, regardless of what time of year that may occur in. Once this task is accomplished, buyers and sellers in a competitive market should be free to structure their contracts in a manner that is agreeable to both parties.

8) The default price should not be reconcilable

Many parties, including PPL Electric Utilities Corporation and PPL EnergyPlus, LLC and Exelon, suggested that the default price be reconcilable. Reliant does not believe that the default price should be reconcilable because reconciliations are a regulated construct, not a competitive market construct. Imposing regulated constructs into the competitive market can cause unintended

³⁹ Comments of the Office of Small Business Advocate filed April 27, 2005, page 16.

results that ultimately harm market participants. As an example, consider a retail market that allows customers to freely switch providers. The reconcilable charges can allow regulatory based arbitrage to occur because customers can switch to an alternative EGS when fuel surcharges go up to get out of paying their fair share of electricity costs. Conversely, they can then switch back to the default provider when the prices charged by the default provider falls below prevailing market prices due to reconciliation rebates. Thus, the Commission should avoid imposing regulated constructs, such as reconcilable default prices, on the competitive retail market to avoid market destructive outcomes that serve to introduce significant barriers to market entry. The Commission's Rule correctly recognizes that the default service price should not be reconcilable, and the parties' suggestions that the default price should be reconcilable should be rejected.

9) Retail customer charges should be separated from distribution charges

Most of the utilities suggest that there is no need for customer care charges to be separated from the distribution charge. Representative of the utility rationale is Citizens Electric Company and Wellsboro Electric Company's statement, "The Companies most likely will always provide billing, meter reading, collections and customer service activities for all customers, even those that access alternative generation supply."⁴⁰ Metropolitan Edison Company, et. al., notes "[s]imilar prudence also argues for the Commission to refrain from requiring separate cost of service studies and the breakout of a new customer charge for default service

⁴⁰ Comments of Citizens Electric Company and Wellsboro Electric Company filed April 27, 2005, page 18.

billing, collections, customer service, meter reading and uncollectible debt.”⁴¹

Reliant does not know any reason why EDCs should have an exclusive foothold on the provision of billing, meter reading, collections, etc. The separation of regulated and non-regulated costs is imperative for moving direct access forward in the Commonwealth. As the EDC, which will remain regulated, is removed from performing non-regulated services, customer care activities will be appropriately provided by competitive EGSs. Until these costs are unbundled from the distribution charge customers will have unnecessary difficulty in making fair comparisons between offers and thus will not be able to effectively evaluate services from multiple providers. The Commission should remove all barriers to switching to effectuate the development of a competitive market and allow customers to seek all the benefit available from direct access.

Reliant finds it interesting that OSBA, one of the parties clearly supporting a return to economic regulation, should be concerned that an “EDC will try to discourage shopping in order to preserve customers for the EDC’s generation affiliate.”⁴² If the Commission should adopt OSBA’s regulated procurement model, the EDC will be practically assured of getting all the customers because of the barriers to entry created by such a model.

10) The EDC should not serve as a retail provider of electricity – selling the commodity and delivering the commodity are separate functions with the former being a competitive market activity and the later being a regulated, cost-of-service activity

⁴¹ Comments of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company on Proposed Default Service Regulations filed April 27, 2005, page 6.

⁴² Comments of the Office of Small Business Advocate filed April 27, 2005, page 17.

In support of its position that the EDC remain the default provider, OCA states “[t]he EDC will always be required to step in as the “last resort” when other entities fail, particularly since the EDC will continue to have the obligation to connect all customers and deliver supply through its facilities.”⁴³ Reliant notes that OCA has missed the mark regarding the separation of responsibilities the integrated utility once performed. By passing the Choice Act, Legislators opened up the possibility in the Commonwealth that entities other than the EDC would perform the job of both generating electricity for wholesale competition and selling electricity to customers for retail (direct access) competition. The role of retail entities, the EGSs, is to market and promote their product offerings to customers. Given a customer base (known and/or projected) they then arrange for the supply to serve the load they have under contract with customers. Both the downstream (retail) and upstream (wholesale) aspects of electric service in a competitive market then are best served by entities that are not regulated. What remains a constant in this market model is that the EDC performs the transmission and delivery of the electricity through monopoly, cost-of-service ratemaking.

Since it is not efficient to have multiple entities performing the transmission and distribution functions (there is no need to have multiple distribution lines running through neighborhoods), one entity, the EDC in a particular area, should perform this function. Because this aspect of electric

⁴³ Comments of the Office of Consumer Advocate filed April 27, 2005, page 13.

service is monopolistic in nature, it is important that consumers' be assured that transmission and distribution activities are carried out in a reasonable manner by the EDC, and should therefore remain regulated. The EDC should impartially deliver electricity and should not take market positions that intertwine regulated delivery functions with the competitive functions of generating or selling electricity. The generation and selling activities should be left to competitive companies governed by competitive market forces, not economic regulation.

Regardless of which entity arranges for the generation to supply a customer's load, it is the same EDC that delivers that electricity to the customer in each service territory. Just because a customer's EGS may change in no way jeopardizes the customer's ability to flip the switch and have electricity flow. The reliability (characterized by having adequate generation to meet demand under changing conditions) referenced by OCA is a function of the RTO/ISO as discussed in Reliant's Initial Comments.

A different type of reliability, being assured that the electricity is delivered to the customer once it is produced is a function of how well the EDC maintains and operates its transmission and distribution facilities. This type of reliability failure would be evidenced by a lack of tree-trimming, for example, in an EDC's service territory, that could contribute to a blackout. "Wires" reliability is independent of who is buying electricity for customers and is purely a function of the EDC's policies.

Thus, while OCA supports the EDC as the default provider on the basis of reliability, the argument that this will “keep the lights on” has no merit. Any certified EGS operating in the Commonwealth can perform the same functions as any other EGS. The Commission simply needs to have a process in place that in the event of an EGS failure, other EGSs step in as discussed earlier. An EGS’ financial failure does not equate to a physical delivery failure.

There are numerous mechanisms by which to handle this situation. One method would be to create an “insurance pool”, which is how some states handle motorists that are not insurable. Another example can be found in the Texas market, which has bifurcated default service⁴⁴ and provider of last resort service.

In Texas, two retail providers, POLR Power, LLP, d/b/a Mutual Energy and Energy West Resources, LTD, d/b/a Franklin Power Company, did exit the competitive market and the customers taking service from each provider were switched to the POLR provider in that service territory without any interruption in service.⁴⁵ Thus, with adequate procedures in place to handle the exit of retail providers from the market, customers will continue to receive continual electric service. The delivery of electricity was accomplished via the regulated “wires” company and a competitive retail company, the POLR provider, performed the contracting of that electricity.

⁴⁴ This service ends 12/31/2006.

⁴⁵ In Texas it is illegal for the utility to be a POLR provider. POLR providers must be EGSs (known as Retail Electric Providers, “REPs”) in Texas.

Along with OCA, the vast majority of parties filing comments in the rulemaking supported the EDC continuing in the role of default service provider. Only Reliant, Direct and the National Energy Market Association believe that the EDC should be removed from this role. As evidenced by the comments of the parties supporting this role for the EDC, regulated entities tend to want regulated solutions rather than competitive solutions. Almost every EDC requested that the Commission make the recovery mechanism for default service reconcilable. They also suggested that there is no need to unbundle the customer care costs, as these services will not be competitive. It is unfortunate that the regulated EDCs have chosen to support a model that eviscerates the Choice Act, maintains the entrenchment of their monopoly position as the only retail provider, and effectively prohibits the competitive market from advancing and affording all customers the benefits of direct access. A competitive market is best served by regulated entities performing regulated functions and competitive entities performing competitive functions as Reliant recommended in its Initial Comments. If the Commission does not choose to remove the EDC from the role of default provider at this time, Reliant would support the National Energy Marketer Association's suggestion that the Commission establish a date certain for EDCs to no longer provide default commodity service.