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June 1, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA HAND DELIVERY

**RE: Proposed Policy Statement Regarding Default Service and Retail Electric Markets;
Docket No. M-2009-2140580**

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") an original and fifteen (15) copies of the Comments of Citizens' Electric Company of Lewisburg, PA ("Citizens"), and Wellsboro Electric Company ("Wellsboro") (collectively "Companies") in the above-referenced proceeding.

Please date stamp the extra copy of this transmittal letter and Comments, and kindly return them to our messenger for our filing purposes.

Very truly yours,

McNEES WALLACE & NURICK LLC

By

Carl J. Zwick

Counsel to Citizens' Electric Company of
Lewisburg, PA, and Wellsboro Electric Company

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Enclosures
c: Elizabeth Barnes, Assistant Counsel, Law Bureau (via E-mail)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Policy Statement Regarding :
Default Service and Retail Electric : Docket No. M-2009-2140580
Markets :
:

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**COMMENTS OF CITIZENS' ELECTRIC COMPANY OF LEWISBURG, PA, AND
WELLSBORO ELECTRIC COMPANY**

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Dated: June 1, 2010

I. INTRODUCTION

On January 19, 2010, in accordance with Act 129 of 2008 ("Act 129"), the Pennsylvania Public Utility Commission ("PUC" or "Commission") issued its Proposed Policy Statement to recommend changes in the Commission's guidelines regarding default service and retail electric markets to reflect the default service procurement provisions of Act 129. *See Proposed Policy Statement Regarding Default Service and Retail Electric Markets*, Docket No. M-2009-2140580 (Order entered Jan. 19, 2010) ("Proposed Policy Statement"). The Proposed Policy Statement was published in the *Pennsylvania Bulletin* on May 1, 2010, with Comments due 30 days from publication.

Citizens' Electric Company of Lewisburg, PA ("Citizens"), and Wellsboro Electric Company ("Wellsboro") (collectively, "Companies"), submit these Comments to address their preliminary position and concerns regarding the Commission's proposed changes to its default service policy statement.¹

Citizens' and Wellsboro recognize that the PUC's implementation of the changes that Act 129 imposes on the Commission's policy statement requires a balance of all stakeholders' interests. The Commission recently approved a default service plan for Citizens' and Wellsboro for the period from June 1, 2010, through May 31, 2013, that was filed to comply with the default service procurement provisions of Act 129. *See Joint Default Service Plan for Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company for the Period of June 1, 2010 through May 31, 2010*, Docket Nos. P-2009-2110798 and P-2009-2110780 (Order entered Feb. 26, 2010) ("Citizens' and Wellsboro Default Service Plan"). Citizens' and Wellsboro submit these Comments to ensure that the Commission understands and considers how the proposed

¹ The Companies' failure to address a specific section of the Proposed Policy Statement does not represent the Companies' support for, or acquiescence to, such proposal. The Companies are only addressing primary areas of concern in these Comments.

changes to the policy statement may impact their recently approved plan. Because many of the proposed changes to the default service policy statement mirror the statutory language of Act 129, however, the Companies will only address those provisions that are not required by Act 129 and that raise concern for the Companies.

II. COMMENTS

A. Proposed 52 Pa. Code § 69.1803 – The Definition of "Bilateral Contract" Should Include Financial Products.

Pursuant to Act 129, the Commission intends to add the term "bilateral contract" to the definitional section of its final Policy Statement. *See* Proposed 52 Pa. Code § 69.1803. Although the Companies do not object to the inclusion of this term within the PUC's final Policy Statement, the Companies are concerned that, to the extent the definition limits the use of bilateral contracts to physical products, the definition is overly restrictive. The Companies' recently-approved default service plan includes the use of cleared financial products, and provides the Companies with the opportunity to seek approval for non-cleared products that would be memorialized through a bilateral contract. *See generally* Citizens' and Wellsboro Default Service Plan. Although the definition in Act 129 recognizes in the final sentence that a "standard industry template" may include "the ISDA Master Agreement for financial energy purchases," the definition also references buying "a quantity of electric energy at a specified price for a specified period of time," which could be construed as only a physical purchase. 66 Pa. C.S. § 2803. The Commission should take the opportunity to resolve any ambiguity by specifically confirming in the final Policy Statement that a bilateral contract may be used for physical or financial transactions.

B. Proposed 52 Pa. Code § 69.1805 – The Definition of "Long-Term Contract" Should Include a Contract of At Least Four Years In Length.

In accordance with the requirements of Act 129, the Commission proposes to redefine the term "long-term contract" as a contract that is "neither less than 4 nor greater than 20 years in length." Proposed 52 Pa. Code § 69.1805. As an initial matter, there seems to be ambiguity in Act 129 as to whether a long-term contract includes a contract of four years.² Specifically, Act 129 defines a long-term contract as a contract "*of more than four* and not more than 20 years." 66 Pa. C.S. § 2807(e)(3.2)(iii). Under this definition, a 4-year contract would not be characterized as a long-term contract. Because the Companies believe that the General Assembly intended a 4-year contract to be a "long-term contract," the Commission should clearly define the term in its final Policy Statement to include a contract "of at least four years but not longer than 20 years."

C. Proposed 52 Pa. Code § 69.1805 – The Use of Long-Term Contracts Should Be Permitted for All Products in the Default Service Procurement Plan.

In addition, in clarifying the meaning of a long-term contract, the Proposed Policy Statement appears to limit the use of a long-term contract only "when necessary and required for DSP compliance with alternative energy requirements." Proposed 52 Pa. Code § 69.1805. This limitation on the use of long-term contracts is neither mandated by Act 129 nor consistent with it. Specifically, Act 129 requires that a default service provider ("DSP") use a "prudent mix" of contracts when procuring default service *load*. 66 Pa. C.S. § 2807(e)(3.7). As such, the Commission should not limit the use of long-term contracts to those instances where it is

² In addition, there seems to be inconsistency between the Commission's Proposed Policy Statement and Proposed Rulemaking Order regarding this issue. See *Implementation of Act 129 of October 15, 2008; Default Service*, Docket No. L-2009-2095604 (Order entered Jan. 19, 2010) ("Proposed Rulemaking Order"). For example, in Proposed Section 69.1805, a long-term contract is defined as a "contract neither less than 4 years nor greater than 20 years in length." This definition indicates that a 4-year contract is a long-term contract. Proposed 52 Pa. Code § 69.1805. On the other hand, in the PUC's Proposed Rulemaking Order, the Commission defines a long-term contract as a contract "of more than 4 and not more than 20 years." Proposed 52 Pa. Code § 54.186. Under this definition, a 4-year contract is not a long-term contract.

necessary to comply with alternative energy requirements. To the contrary, as long as a DSP's procurement portfolio includes a "prudent mix" of contracts, the DSP should be permitted to use long-term contracts to procure all products in the procurement plan, including physical and financial products, as well as capacity, ancillary services, transmission, auction revenue rights ("ARRs"), and financial transmission rights ("FTRs"), in the PJM Interconnection, LLC ("PJM") markets and auctions.

Moreover, limiting the use of long-term contracts in such a manner is inconsistent with Act 129 and the Commission's proposed changes described in its Proposed Rulemaking Order. *See generally* Proposed Rulemaking Order. Specifically, Act 129 and the Proposed Rulemaking Order provide that a DSP "shall have sole discretion to determine the source and fuel type" of long-term contracts. 66 Pa. C.S. § 2807(e)(3.2)(iii); Proposed 52 Pa. Code § 54.186(b)(1)(iii). As such, the Commission should make clear in its final Policy Statement that a DSP's use of long-term contracts is not limited to circumstances when necessary and required to comply with alternative energy requirements.

D. Proposed 52 Pa. Code § 69.1805 – Most Fixed-Term Supply Should Be Procured Through Short-Term Contracts.

The Commission does not propose to revise the language of current Section 69.1805(1). *See* Proposed 52 Pa. Code § 69.1805(1). The Companies are concerned that, because the General Assembly mandated a shift in the procurement standard for default service from "prevailing market price procurement" to "least cost procurement" using a "prudent mix" of contracts,³ certain language within Section 69.1805(1) is no longer appropriate. Specifically, the requirement that "[c]onsideration should be given to procuring most fixed-term supply through full requirements or block contracts *of 1 to 3 years in duration.*" Proposed 52 Pa. Code §

³ See 66 Pa. C.S. § 2807(e)(3.7); *see also* 52 Pa. Code § 54.186.

69.1805(1) (emphasis added). Because the potential types of procurement contracts are defined by Act 129 as spot market purchases, short-term contracts, and long-term contracts (*i.e.*, contracts "neither less than 4 years nor greater than 20 years in length"),⁴ it is more accurate to require that consideration be given to procuring most fixed-term supply through short-term contracts.

E. Proposed 52 Pa. Code § 69.1805 – Certain Portions of the Proposed Policy Statement Should Be Revised To Recognize the General Assembly's Mandated Shift To "Least Cost Procurement" Using A "Prudent Mix" of Contracts.

The Companies recommend removal of the last sentence of Proposed Sections 69.1805(1) and (2), which read: "In subsequent programs, the percentage of supply acquired though shorter duration full requirements contracts and spot market purchases should be gradually increased, depending on developments in retail and wholesale energy markets." Proposed 52 Pa. Code § 69.1805(1) and (2). These sentences should be removed from both Proposed Sections 69.1805(1) and (2) because, as discussed above, the required procurement approach has shifted from "prevailing market price procurement" to "least cost procurement" using a "prudent mix" of contracts. As such, the Companies submit that, because the intent of this sentence is to move electric distribution companies' ("EDCs") procurement methods to a prevailing market approach, the sentence should be deleted from the Commission's final Policy Statement.

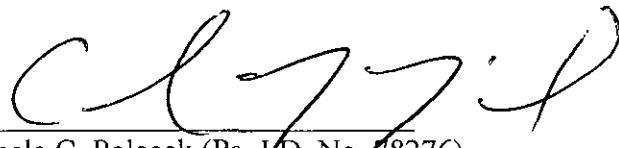
⁴ Proposed 52 Pa. Code § 69.1805.

III. CONCLUSION

WHEREFORE, the Citizens' Electric Company of Lewisburg, PA, and the Wellsboro Electric Company respectfully request that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Comments.

Respectfully submitted,

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