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June 15, 2010

VIA OVERNIGHT UNITED PARCEL SERVICE

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

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JUN 15 2010

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

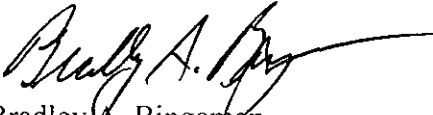
**Re: *Implementation of Act 129 of October 15, 2008; Default Service
Docket No. L-2009-2095604***

Dear Secretary Chiavetta:

Enclosed for filing are an original and sixteen (16) copies of Reply Comments of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company pursuant to the Commission's Proposed Rulemaking Order in the above-captioned docket.

Please date stamp the additional copy and return it to me in the enclosed, postage-prepaid envelope. Please contact me if you have any questions regarding this matter.

Very truly yours,


Bradley A. Bingaman

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Enclosures

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JUN 15 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Implementation of Act 129 of October 15, : Docket No. L-2009-2095604
2008; Default Service :

**REPLY COMMENTS OF METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY
AND PENNSYLVANIA POWER COMPANY**

I. INTRODUCTION

On January 19, 2010, the Pennsylvania Public Utility Commission (“Commission”) entered a Proposed Rulemaking Order to amend the Commission’s existing default service regulations. Specifically, the proposed rulemaking order was adopted by the Commission to make the Commission’s existing default service rules consistent with the provisions contained within Act 129 of 2008 (“Act 129”). The Commission’s Proposed Rulemaking Order was published in the *Pennsylvania Bulletin* on May 1, 2010¹. Interested parties were invited to submit comments on the proposed rulemaking within 30 days and reply comments within 45 days.

Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”) and Pennsylvania Power Company (“Penn Power”) (“the Companies”) submitted comments on June 1, 2010. In response to several comments submitted by other interest parties, the Companies respectfully submit the following reply comments regarding the proposed rulemaking on default service in the above-captioned docket.

¹ 40 Pa.B. 2267.

II. REPLY COMMENTS

A. Specific Sections of the Proposed Rulemaking

1. 52 Pa. Code § 54.187 (b)

The Companies agree with several of the parties, including PPL Electric Utilities and PECO Energy, that the Commission’s replacement of the term “shall” with “may” regarding cost recovery in Section 54.187 (b) of the Proposed Rulemaking is inconsistent with Act 129, which mandates that the “default service provider *shall* have the right to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause...all reasonable costs incurred under this section and a commission-approved competitive procurement plan.” 66 Pa. C.S. § 2807(e)(3.9) (emphasis added). Section 2807(e)(3.9) is clear and unambiguous and, therefore, the Companies believe that the Commission should delete the term “may” and replace it with the term “shall.”

B. Specific Questions Raised by the Commission

1. Question No. 6: What is a “prudent mix” of spot, long-term, and short-term contracts?

In their response to Question No. 6, the Industrial Customer Groups state that they believe that, at a minimum, two types of products must be included to constitute a “mix,” and providing only hourly priced service does not result in a “prudent mix” of spot, long-term, and short-term contracts for the large commercial and industrial customer class. The Industrial Customer Groups propose that Section 69.1805 (3) of the Commission’s Policy Statement on Default Service be modified to require a combination of service options. The Companies disagree.

Historical shopping results and the results of auctions have proven that due to the increased uncertainty of load that may be present for suppliers to supply, it is uneconomic to offer a fixed-priced service for customers in the large commercial and industrial class for a couple of reasons. First, consistent with the Companies experience in the Penn Power service territory and specifically the default service program, the majority of Penn Power's large commercial and industrial customers will shop and are shopping for their electric generation supply. As a result, it is increasingly difficult for suppliers to bid on such an uncertain load.

Second, because of this uncertainty, there is a very limited amount of supplier interest in entering into the bidding process for this load. As a result, the bid prices for this load will reflect a valuation of the shopping risk, leading to pricing which default service customers will find unattractive. If the utilities seek to directly procure the needed supply, the risk is not diminished; it is borne by the utilities and will potentially materialize in the form of stranded costs as the utilities enter power contracts only to subsequently have the load migrate to other suppliers. In the Companies' view, the only way for a fixed-price option to be viable would be for the large customers to commit to not shop for an alternative electric generation supplier for a defined period of time (e.g., 12 months), or for the default service price to incorporate a potentially large exit fee. While this may be viewed as an obstacle to retail competition, it is the only way to ensure that the default service provider offers a fixed-price for this group of customers that is reasonably procured.

For these reasons, the Companies do not believe that Section 69.1805 (3) should be modified to require a combination of service options.

2. **Question No. 14: What will be the effects of bankruptcies of wholesale suppliers to default service suppliers on the short and long term contracts?**

In its response to Question No. 14, Citizen Power proposes that in the event of a supplier bankruptcy, the default service provider should be responsible for any cost differential between the contracted cost of supply and the replacement cost for the same supply, and that this incremental cost should not be passed on to the default service customers. The Companies strongly disagree with this recommendation.

The proposal of Citizen Power described above is in absolute contradiction to Act 129, which provides that the default service provider is entitled to full and current cost recovery of its reasonably incurred default service supply expenses. The statute clearly provides that the “default service provider shall have the right to recover on a full and current basis...all reasonable costs incurred under this section and a commission-approved competitive procurement plan.” 66 Pa. C.S. § 2807(e)(3.9). In addition, the Commonwealth Court has also held that default service providers are entitled to full recovery of their reasonable costs as a provider of last resort. See, *Pennsylvania Power Company v. Public Utility Commission*, 932 A.2d 300. (Pa. Commw. 2007).

Citizen Power offers no support for its answer to this question; therefore, the Companies recommend that the Commission disregard this statement as having no merit in determining the policies needed to implement a successful competitive energy market.

3. **Question No. 15: Does Act 129 allow for an after-the-fact review of the “cost reasonableness standard” in those cases where the approved default service plan gives the EDC substantial discretion regarding when to make purchases and how much electricity to buy in each purchase?**

The Office of Small Business Advocate, in response to Question No. 15, suggests that the Commission may subject a default service provider to an after-the-fact prudence review of procurement decisions. The Companies disagree.

As the Companies stated in their Comments, after a default service plan is approved by the Commission, there may not be any after-the-fact cost reasonableness standard review. Such an after-the-fact prudence review would be unlawful and inconsistent with Act 129. The Companies agree with the Comments of the Office of Consumer Advocate that state that a procurement plan that has been approved and purchases that have been made in implementing that plan should not be second guessed.

The language in Act 129 that provides for EDCs to recover reasonable costs simply does not allow for a prudency review at a later time. This is buttressed by the fact that Act 129 includes a specific provision that limits the denial of cost recovery *only* to situations including non-compliance with the Commission-approved plan, fraud, collusion, or market manipulation. 66 Pa. C.S. § 2807(e)(3.8).

C. Specific Sections of the Proposed Policy Statement

1. 52 Pa. Code § 69.1807

The Companies realize that the proposed policy statement Order did not provide for reply comments from interested parties. However, the Office of Consumer Advocate, in its Comments, proposed a change to Section 69.1807 of the Commission's Policy Statement of Default Service, 52 Pa. Code § 69.1807, even though this section was not affected by or included in the Commission's original proposal. Inasmuch as the Companies, and all other interested parties for that matter, have only had the opportunity to review this proposal for the first time as

part of the Office of Consumer Advocate's Comments, and have not had a chance to comment upon it, the Companies respectfully request that the Commission consider their reply comments herein on this topic in an effort to improve the proposal.

The Office of Consumer Advocate offered the addition of specific language to Paragraph 7 of the existing section, 52 Pa. Code § 69.1807(7), in order to address the release of winning bid information as follows:

Keeping these interests in mind, Default Service Providers should release the following information within seven days of Commission approval of each procurement: the winning price results (the price for each product and/or the clearing prices for winning bids) and the quantity of power to be supplied.

The Companies do not oppose the idea of having a uniform method for releasing the results and winning bid information for public consumption. In fact, the Companies agree that it is beneficial to do so. However, the Companies believe that a minor caveat should be included with this proposed change.

The Companies believe that the results should not be released until after the entire procurement process is complete, including making sure that all contingencies have been met, and that there is nothing pertaining to releasing the results that could negatively impact or influence the integrity of the contingency processes. The Companies suggest that the following language be added to the Office of Consumer Advocate's proposed language:

If a procurement has not been fully subscribed, the default service provider, at its sole discretion, may delay releasing some or all of the above information until all contingency processes have been completed and the results have been approved.

III. CONCLUSION

The Companies appreciate the opportunity to provide reply comments on the Commission's Proposed Rulemaking Order regarding default service in Pennsylvania.

Respectfully submitted,

Dated: June 15, 2010



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Act 129 of October 15, 2008; Default Service : **Docket No. L-2009-2095604**
:

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by overnight United Parcel Service, as follows:

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

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JUN 15 2010

Service by electronic mail, as follows:

Elizabeth Barnes, Assistant Counsel
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**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

Dated: June 15, 2010



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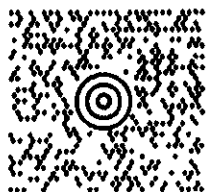
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