



800 North Third Street, Suite 301 • Harrisburg, Pennsylvania 17102
Telephone (717) 901-0600 • Fax (717) 901-0611 • www.energypa.org

June 16, 2010

VIA HAND-DELIVERY

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

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PA PUC
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, please find an original and 15 copies of the Energy Association of Pennsylvania's Reply Comments in the above-referenced docket number.

Very Truly Yours,

A handwritten signature in black ink that reads "Terrance J. Fitzpatrick".

Terrance J. Fitzpatrick
President & CEO

TJF

CC: James H. Cawley, Chairman (via hand-delivery)
Tyrone J. Christy, Vice Chairman (via hand-delivery)
Robert F. Powelson, Commissioner (via hand-delivery)
Wayne E. Gardner, Commissioner (via hand-delivery)
Elizabeth Barnes, Asst. Counsel (at ebarnes@state.pa.us)
Donna M. J. Clark, Vice President & General Counsel

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA

At its Public Meeting of January 14, 2010, the Commission adopted a Proposed Rulemaking Order regarding the implementation of the default service procurement provisions of Act 129. The Proposed Rulemaking Order was published in the *Pennsylvania Bulletin* on May 1, 2010, and interested parties were given 30 days to file comments and 45 days to file reply comments. The Energy Association of Pennsylvania (“EAP” or “Association”) files these reply comments on behalf of its Electric Distribution Company (“EDC”) members.¹

1. The Commission should continue its case-by-case approach to developing default service procurement policy.

A number of commenting parties expressed strong preferences for particular default service procurement strategies. For example, the Pennsylvania Energy Marketers Coalition (“PEMC”) and the National Energy Marketers Association (“NEMA”) both advocated “monthly-adjusted, market-based commodity rates” for residential and small commercial customers. (PEMC comments at 2; NEMA comments at 4). Other parties endorsed strategies such as reliance on full requirements contracts or managed portfolios. Some of these

¹ Allegheny Power, Citizens’ Electric Company, Duquesne Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, Pennsylvania Power Company, Pike County Light & Power Company, PPL Electric Utilities Corporation, UGI Utilities, Inc. (Electric and Gas), and Wellsboro Electric Company.

comments could be construed as requesting that the Commission state a preference for these procurement strategies in the default service regulations.

Over the past several years, Electric Distribution Companies (“EDCs”) have proposed, and the Commission has approved, a variety of strategies for default service procurement that satisfy the criteria of Act 129. These strategies involve competitive procurement that is designed to produce the least cost for customers, and different types and durations of contracts. These default service procurement strategies have also provided marketing opportunities for electric generation suppliers (“EGSs”).

The Commission’s case-by-case approach has worked well, and should be continued. This approach allows the Commission to consider the particular circumstances of each utility and its customers, and to adjust its policies to changing circumstances and to the experience gained under previous plans. Therefore, the Commission should refrain from endorsing any particular procurement strategy in its regulations.

2. It would not serve the public interest to establish default service procurement policies to promote construction of generating plants for economic development purposes.

The “Industrial Customer Groups” (“ICG”) commented that “the Commission should seek to promote the construction of new generation capacity and should require that a portion of that capacity be dedicated to economic development on a cost-of-service basis.” (comments at 3) They explain that these units could be owned by the default service provider, a competitive developer, or the Commonwealth. The ICG comments also list a number of criteria for gaining access to these special economic development rates.

The ICG proposal raises a host of thorny issues that ICG does not even acknowledge, let alone resolve. It is unclear who would bear the considerable risk of building the new plant, or how that entity would be compensated for taking that risk. It does seem clear, however, that industrial customers are unwilling to bear this risk, because if they were willing to do so, there is no reason these plants could not be built now without seeking the Commission’s assistance

through its default service policies. Accordingly, it can only be assumed that the industrial customers are seeking to impose the risk of building the plant on someone else.

EAP recognizes the importance of establishing policies to promote sustainable economic development and creation of private-sector jobs in Pennsylvania. The General Assembly decided in passing the Electricity Generation Customer Choice and Competition Act that relying on markets is the best way to promote efficiency in generating and supplying electricity. Subject to the Commission's regulatory oversight, EDCs also strive to distribute electricity in an efficient manner while continuing to make the necessary investments to maintain reliable service.

If industrial customers believe that they require financial assistance *beyond the delivery of efficient generation and distribution services as described above*, this assistance must come from the General Assembly. The Commission should not impose costs or risks on other customers in order to provide financial assistance to industrial customers.

3. The Commission has discretion to determine in each default service case what purchasing strategy will best serve its policy goals for default service.

Citizen Power comments (page 5) that the language in Act 129 requiring a "prudent mix" of spot market purchases, short-term contracts, and long-term contracts means that all three types of purchases must be part of each and every procurement plan. EAP disagrees. This inflexible, mechanistic interpretation would elevate form over substance. It would require at least one of each type of purchase, no matter how inconsequential in terms of size, in order to "check off the box" that all three types of purchases were included in the plan.

EAP contends that all three types of purchases do not need to be part of every plan so long as the Commission finds that the overall purchasing strategy is prudent. Act 129 does not state explicitly that all three purchases must be part of every plan, and the word "mix" should not be interpreted to imply such a rigid requirement. In interpreting the procurement language of Act 129, the

Commission should keep in mind the numerous goals it must balance – least cost, price stability, and providing an opportunity for a competitive market to develop² – to name a few. These goals can best be achieved by avoiding overly-prescriptive interpretations of the Act that limit the Commission’s discretion over policy development.

4. Act 129 requires that EDCs be permitted to recover replacement power costs if a wholesale supplier goes bankrupt.

Citizen Power comments (pp. 6-7) that, in the event a wholesale supplier goes bankrupt, any differential between the contracted price and the cost to replace that power should not be passed on to default service customers.

Citizen Power does not provide any explanation for this conclusion.

Citizen Power’s argument is contrary to the plain language of Act 129. The Act states clearly that the Commission may only disallow costs for failure to comply with an approved procurement plan, fraud, collusion, or market manipulation. 66 Pa.C.S. Sec. 2807 (e) (3.8). The Act also states that an EDC “shall have the right to recover on a full and current basis. . . all reasonable costs incurred under this section. . . .” 66 Pa.C.S. Sec 2807 (e) (3.9). Clearly, denying recovery of reasonable replacement power costs where an EDC has followed its Commission-approved default service plan, but a wholesale supplier chosen under that plan goes bankrupt, would be inconsistent with Act 129.

5. Act 129 does not allow after-the-fact reviews of the prudence of EDC purchasing decisions made pursuant to a Commission-approved default service plan.

OSBA comments (pp. 31-33) that language in Act 129 (cited above) allowing recovery of “reasonable” costs “may have left the door open to an after-the-fact review” of the prudence of these costs where the EDC has been granted discretion over the timing of purchases under the plan. EAP disagrees.

OSBA reads too much into the use of the word “reasonable” in the Act. OSBA overlooks that the term is used in a section of the Act that provides EDCs

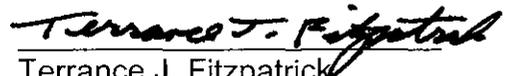
² As EAP pointed out in its comments, Act 129 did not alter those parts of the Competition Act that allow customers to shop for supplies of electricity, and that emphasize the benefits of electricity markets.

with the right to recover costs via an automatic adjustment clause pursuant to section 1307 of the Public Utility Code, 66 Pa.C.S. Sec. 1307. In addition, the Act states specifically that the Commission may disallow costs “only” for failure to comply with a plan, fraud, collusion or market manipulation. 66 Pa.C.S. Sec. 2807 (e) (3.8).

Conclusion

EAP respectfully requests that the Commission consider these reply comments in developing final regulations in this proceeding.

Respectfully submitted,


Terrance J. Fitzpatrick
President & CEO
Energy Association of Pennsylvania
800 North Third Street, Suite 301
Harrisburg, PA 17102
(717) 901-3912
tfitzpatrick@energypa.org

Dated: June 16, 2010