

COMMONWEALTH OF PENNSYLVANIA



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June 3, 2011

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17101

RE: Investigation of Pennsylvania's Retail
Electricity Market
Docket No. I-2011-2237952

Dear Secretary Chiavetta:

Enclosed for filing please find the Comments of the Office of Consumer Advocate in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Darryl Lawrence".

Darryl Lawrence
Assistant Consumer Advocate
PA Attorney I.D. # 93682

Enclosure
143808

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation of Pennsylvania's
Retail Electricity Market

:
:

Docket No. I-2011-2237952

COMMENTS OF THE OFFICE OF CONSUMER
ADVOCATE REGARDING PENNSYLVANIA'S
RETAIL ELECTRICITY MARKET

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Dated: June 3, 2011

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I. INTRODUCTION

On October 15, 2008, Governor Edward G. Rendell signed into law Act 129 of 2008. Act 129 addressed several matters, including energy efficiency, demand response, and the deployment of smart meters, but of particular relevance to the present investigation, Act 129 defined and set forth specific parameters for the procurement of electric “default service” in Pennsylvania. Act 129 commenced by identifying three “public policy findings” and “objectives of the Commonwealth” that were to be served by the Act. The first of these findings included the need to ensure the availability to all Pennsylvanians of “adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account any benefits of price stability over time.” Act 129 went on to declare that it is in the public interest to adopt “energy procurement requirements designed to ensure that electricity obtained reduces the possibility of electric price instability, promotes economic growth and ensures affordable and available electric service to all residents.”

Consistent with these findings, the General Assembly in 2008 set forth a definition of default service and established procurement standards for the provision of default service, which includes the obligation to provide generation service to retail electric customers who “do not choose an alternative electric generation supplier.” 66 Pa.C.S § 2803. Under Act 129 the default service provider may be “an electric distribution company within its certificated service territory or an alternative supplier approved by the commission,” *id.*, but in either case that provider must offer service “pursuant to a commission-approved competitive procurement plan” through a “prudent mix of contracts” that is designed to ensure the “least cost to customers over time.” 66 Pa.C.S. § 2807(e) 3.1, 3.4.

Under Act 129, Pennsylvania electric consumers who do not choose an alternative supplier have a statutory right to receive default service through a Commission-approved competitive procurement process that is designed to ensure the least cost to customers over time. To the extent that the present Commission investigation is intended to find ways to improve default service in a manner that will enhance the General Assembly's goal of ensuring stable, affordable, least cost service to those customers who do not choose to switch to alternative generation suppliers, then the OCA looks forward to working with all stakeholders to achieve those goals. These considerations may include alternative procurement and pricing approaches for default service and, as permitted in Act 129, the selection of alternative default suppliers if the Commission concludes that they can better meet the goals of the Act. The OCA respectfully submits, however, that default service itself is not a flaw in the Pennsylvania restructured electric system nor is it an "anachronism" as some have argued. On the contrary, the provision of retail default service through competitive procurement in wholesale generation markets lies at the very heart of the restructured Pennsylvania electric system. Default service, particularly for residential customers, makes it possible for all Pennsylvania consumers to receive the benefits of competitive generation service, whether or not they choose to shop for retail service from an alternative supplier.

If one of the questions before the Commission is what percentage of Pennsylvania consumers are now receiving their generation supplies from competitive generation sources, the answer is 100%. Whether customers receive those competitive generation supplies through their utility default service or through an alternative retail marketer, they are benefitting from direct access to competitive wholesale generation markets. This stands in marked contrast to the

situation before the Electric Choice Act in 1996, when customers all purchased bundled generation service from their vertically integrated monopoly utilities.

The fact that more than 1.1 million Pennsylvania electric consumers, including over 900,000 residential customers, have now switched to alternative retail suppliers demonstrates that many consumers are willing and able to find retail generation products that they find preferable to their utility default service. That does not mean, however, that customers who do not choose to switch can or should be deprived of their statutory right to receive stable, least cost service over time from a Commission-approved default supplier.

II. PENNSYLVANIA'S DEFAULT SERVICE LAW AND DEFAULT SERVICE MODEL HAVE BEEN SUCCESSFUL AND SHOULD BE CONTINUED

A. Introduction.

Generation competition in Pennsylvania is alive and well and should be allowed to continue to develop within the framework established by the Electricity Generation Customer Choice and Competition Act in 1996 (the Electric Choice Act, 1996 Act, or Chapter 28), as amended by Act 129 of 2008 (Act 129). Since Chapter 28 became effective on January 1, 1997, this Commission and other stakeholders have done much work to develop the rules and procedures necessary for the implementation of competitive generation markets in Pennsylvania. This work has now accelerated as stranded cost recovery has come to an end and the last of the rate caps have expired. As of January 1, 2011, all Pennsylvania customers have direct access to competitive market generation rates as envisioned in Chapter 28, through either their default service provider or an alternative provider of their own choosing.

By any measure, Pennsylvania's transition to a restructured electric industry has gone well and has progressed without the tremendous rate shock and political upheaval that has plagued other states. Stranded costs have been paid in full; electric utilities have emerged from the transition financially strong; consumers were protected by the rate caps during the stranded cost recovery period; and default service plans are now in place that are providing competitively based generation prices across Pennsylvania. In addition, retail choices are now available throughout Pennsylvania. Currently in Pennsylvania, 207 electric generation suppliers¹ have applied for and been granted licenses to serve customers and a variety of retail offers are being made to customers in all major electric service territories, including residential customers. Retail offers for residential customers include both fixed and variable offers as well as renewable

¹ Source: http://www.puc.state.pa.us/electric/electric_suppliers_list.aspx

products. Residential customers can choose from as many as 27 different suppliers in the PECO Energy Company and PPL Electric Utilities, Inc. service territories. Customers have also responded, with more than 1.1 million customers selecting an alternative supplier by May 25, 2011, representing 20% of all customers in the Commonwealth and nearly half of the load in the Commonwealth.

Retail choice for residential customers is most active in areas where the Price to Compare has been relatively high compared to the current wholesale market rates. In PPL's service territory, 37.9% of the residential customers have selected an alternative supplier; in Duquesne's service territory, 27.5% of the residential customers have switched to an alternative supplier; and in PECO's service territory 17% of residential customers have selected an alternative supplier. While the number and percentage of customers that have selected an alternative supplier remains low in the service territories of Met-Ed, Penelec and West Penn Power, there is nothing inherently wrong with that as a matter of law or policy. Penelec has just announced that, by procuring supply in the wholesale competitive markets in accordance with its procurement plan approved under Act 129, it will be charging its residential customers a rate of 6.99 cents/kwh starting on June 1, 2011.² To the extent that marketers can provide lower prices or offer other benefits to those customers, customers are free to switch. But retail shopping is not an end in itself. Rather, it is one of the means provided by the General Assembly in 1996 and 2008 to allow consumers to obtain reliable electric generation service at reasonable prices.

Only five months after the last of the rate caps ended, allowing for more robust retail competition, Pennsylvania's restructuring law and its approach to retail competition is off to a sound start. In the OCA's view, this record of success speaks volumes for the collaborative

² Source: <http://www.altoonamirror.com/page/content.detail/id/550508/Electric-rates-falling.html?nav=742>

approach pursued in Pennsylvania and the balance that has been struck by Pennsylvania's stakeholders. Guided by the enactment of Chapter 28 in 1996, and supplemented by Act 129 of 2008 that further defined the default service role in Pennsylvania, Pennsylvania has been able to move forward with a generation competition model that can bring benefits to all consumers. A variety of default service plans are now in place that generally extend through May 2013. The OCA submits that we should see how these plans work over the next two years in order to gain information on "best practices" that can be utilized in future default service plans.

The concern that gives rise to the Commission's investigation seems to be that the role of the electric distribution company (EDC), as an incumbent provider of electric service to customers, creates barriers to competition when the EDC serves as the default service provider. The OCA submits that this underlying concern is not supported in two respects. First, the standard for assessing Pennsylvania's transition to a restructured electric industry is whether the goals of the Electricity Generation and Customer Choice Act, as amended by Act 129 of 2008, have been achieved. The resounding answer to this question is yes. All customers in Pennsylvania are receiving competitive generation at market-based prices whether or not they shop for electric service at the retail level.

Second, the underlying assumption that an EDC serving as the default service provider presents a barrier to retail competition is not supported under Pennsylvania's approach to default service. Under Pennsylvania's approach, as required by Act 129 of 2008, each default service provider must procure its supply using competitive processes in the wholesale markets. The EDC has no particular advantage over any other market participant when purchasing supply from the PJM wholesale markets. On the contrary, because the EDC has an obligation to serve all customers – coming and going—the EDC has additional costs and burdens that an EGS does

not have. See, e.g., 66 Pa.C.S. § 2807(e)(4). Moreover, through the open, transparent competitive procurement process required by statute, and the Codes of Conduct that are in place, the EDC is on equal footing with any other entity that might serve as the default service provider. Indeed, several competitive auctions and RFPs have now been conducted by EDCs in Pennsylvania and the OCA is aware of no allegation that these processes have not been conducted in a fair and competitive manner.

As noted above, Pennsylvania law allows for an alternative default service provider other than the EDC, but such an approach should only be used when the EDC is unable to meet the requirements of providing default service in a manner that is most beneficial to consumers. The Commission's existing regulations on default service appropriately reflect this point. Changing a statutory default service provider that is meeting all statutory requirements in a least cost manner will not benefit consumers and would not be in accord with the statutory framework laid out for Pennsylvania.

The OCA does not suggest here that no improvement could be made to the default service model in Pennsylvania. Nor does the OCA suggest here that entities other than the EDC could not serve as a default service provider in accordance with the requirements set forth in Section 2807(e)(3) of the Public Utility Code and the Commission regulations at 52 Pa. Code Section 54.183. What the OCA states here is that Pennsylvania's model has managed to bring substantial benefits to all stakeholders through some very difficult times and should not be disrupted without good cause. The fact that many customers have not decided to make a switch away from the default service provider is not a failing of the default service model in Pennsylvania. The number of customers that switch retail suppliers is not the only measure, nor even a proper measure, of the success of Pennsylvania's restructuring efforts. The measure of

these efforts needs to consider whether all customers in Pennsylvania have the benefit of competition in the generation of electricity and whether they are receiving reliable electric service at a reasonable cost. And, indeed, all customers are receiving competitively-procured generation and all customers have the benefit of competitively-priced generation in their rates whether they shop or not. To the extent that retail marketers can and do offer additional benefits – from lower prices to renewable energy options – the benefits of the Pennsylvania model will be even greater. But those additional choices should not come at the expense of consumers’ statutory right to continue to receive competitively procured default service at the least cost over time.

Again, the OCA does not suggest that improvements to the Pennsylvania model cannot be made both with respect to default service and service from the retail markets. Chief among these is the continuation of consumer education efforts to try to assist customers to understand how to shop so that all customers that wish to engage in the retail market have the knowledge to make informed choices. Additionally, efforts must continue to eliminate barriers that might be presented by EDC billing systems, EDC procedures, or EDC communications with customers.

Pennsylvania has come a long way, and has taken proactive efforts to address issues early in the process. The Commission and Commission staff efforts in this regard over the years have been extraordinary. The OCA has participated actively in Commission working groups where many issues were identified and resolved in a manner acceptable to all stakeholders. The OCA has also participated in stakeholder groups conducted by the EDCs where issues that may be presenting a barrier to EGSs can be identified and remedied. The

Commission has also promulgated necessary rules, guidelines and regulations to ensure fair and orderly processes and to provide certainty on many issues.

The OCA looks forward to continuing to work with all stakeholders to remove barriers that may prevent customers who wish to do so from engaging more fully in the retail competitive markets. The OCA respectfully disagrees, however, with the suggestion that the availability of reasonably priced default service is one of these barriers. Pennsylvania's statutory and regulatory model for residential default service has resulted in reliable, reasonably priced electric service while at the same time supporting the development of robust retail competition among a large number of suppliers. Pennsylvania should continue to develop along this path, and, as EGSs are able to bring additional benefits, different products and different services to customers, the number of customers wishing to engage in the retail markets will grow.

B. Statutory and Regulatory Framework of Electric Restructuring in Pennsylvania.

The Pennsylvania General Assembly enacted the Electricity Generation Customer Choice and Competition Act in 1996 to bring to bear competitive market forces to control the cost of generating electricity. The purpose of electric restructuring in Pennsylvania is set forth in Chapter 28 as follows:

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 the generation of electricity while maintaining the safety and reliability of the electric system for all parties.

66 Pa. C.S. § 2802(12).

One goal of electric restructuring was to ensure the availability of lower rates for generation service than would have been possible under a rate base/rate of return monopoly regulatory system. The means to achieve this goal was through the introduction of direct access

to competitive generation. As the Declarations of the Act make clear, reasonably priced electric generation service is critical to this Commonwealth, and the Act saw competitive market forces as a means to provide that reasonably priced service. The 1996 Act states as follows:

The General Assembly finds and declares as follows:

(4) 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.

(5) Competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.

(6) The cost of electricity is an important factor in decisions made by businesses concerning locating, expanding and retaining facilities in this Commonwealth.

(9) Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions.

66 Pa. C.S. § 2802.

The OCA submits that the course set through passage of the Choice Act required two key components: the *separation* of generation from rate base/rate of return regulation through the transition process, and the *access* of all customers to competitive generation markets. Through these two requirements of the Act, the competitive market has been brought to bear on the cost of generation, and the retail price of electricity in all Pennsylvania service territories now reflects the wholesale price of generation established in the competitive market.

It is important to note that under the Electric Choice Act, divestiture of generation plants was not required. Electric utilities could have held on to their generating plants and, at the end of the rate cap period, sold power from their plants to their own customers. What in fact

happened is that every electric utility either divested their generating plants to other entities or transferred those plants to unregulated affiliates who now sell the generation from those plants in the PJM wholesale markets. Our utilities are not selling retail power from their own formerly rate-based units to their own captive customers. Rather all power is procured through an open and transparent process from the wholesale generation markets and the cost of these procurements is charged to default service customers.

Under Chapter 28 and as part of the original restructuring proceedings of each EDC in Pennsylvania, the EDCs were permitted to recover their stranded cost occasioned by the move to competitive generation markets and in return, generation rates were subject to rate caps that were in place during the recovery period for stranded cost. For some EDCs, the stranded cost recovery and rate caps extended for ten to eleven years. During this period, rate caps in other states that were engaged in a transition to competitive generation markets ended with nearly disastrous consequences of significant rate shock from very high short term market prices and little to no preparation for retail choice.

Based on these occurrences, and some unfortunate, dramatic increases for at least one small Pennsylvania EDC (Pike County Light and Power), the Pennsylvania General Assembly recognized the need to further address default service and the end of the generation rate caps. Building upon the foundation of the 1996 Electric Choice Act, the General Assembly passed Act 129 in October of 2008 (Act 129). Act 129 set forth the obligation of Default Service Providers to bring the benefits of competitive generation prices in the wholesale market to all customers, and to procure supply at the least cost over time for all customers. Recognizing the concerns with volatility in wholesale markets that had impacted post-rate cap customers in other

states and to some extent in Pennsylvania, the General Assembly declared that one of the main goals of Act 129 is to reduce the price instability of electric energy:

The General Assembly recognizes the following public policy findings and declares that the following objectives of the Commonwealth are served by this act:

(1) The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account any benefits of price stability over time and the impact on the environment.

Act 129, 66 Pa. C.S. § 2806.1 *et seq.*, pmb1.

As the Declaration of Policy makes clear, the Act was passed to ensure affordable, reliable electric service at the least cost over time. Act 129 was passed in October 2008, in advance of the end of rate cap protections for most Pennsylvania consumers. In order to ameliorate potential rate increases, and reach the goal of reasonable and affordable rates, the Act addresses several aspects of generation procurement as well as customer usage that can impact the price of service. The Act requires EDCs to implement comprehensive energy efficiency programs and demand reduction programs, develop advanced metering programs and secure default supplies for customers at least cost over time.

Act 129 provides a comprehensive set of tools designed to provide electric service to customers at reasonable and stable prices. Act 129 requires EDCs to develop energy efficiency and demand response measures and to deploy smart meters that will allow customers access to a greater amount of information about usage and enable greater customer control over usage. In addition, Act 129 requires DSPs to provide non-shopping customers with the least cost service over time, through a mix of default supplies that best accomplishes that goal. Act 129 provides numerous tools, from fully engaging the competitive wholesale markets for a variety of

products to bringing demand side and energy efficiency resources to bear, as a means of ensuring reliable, adequate, reasonable and stable electric prices.

With this statutory framework, the Commission has developed rules, processes, and procedures through its various rulemakings, policy statements, and orders that have allowed a competitive generation market to develop while providing for a reasonably priced and stable default service option for all customers. It is critical to note here that in Act 129 of 2008, the service that is provided to those customers who do not choose an alternative supplier or whose alternative supplier fails to meet its service obligation was statutorily defined through the definition of default service provider. Act 129 provides the following definition:

“Default service provider.” An electric distribution company within its certified service territory or an alternative supplier approved by the commission that provides generation service to retail electric customers who:

(1) contract for electric power, including energy and capacity, and the chosen electric generation supplier does not supply the service:

or

(2) do not choose an alternative electric generation supplier.

66 Pa.C.S. § 2803. Act 129 then sets forth the obligation of the default service provider in Section 2807(e)(3.1) as follows:

(3.1) Following the expiration of an electric distribution company's obligation to provide electric generation supply service to retail customers at capped rates, if a customer contracts for electric generation supply service and the chosen electric generation supplier does not provide the service or **if a customer does not choose an alternative electric generation supplier**, the default service provider shall provide electric generation supply service to that customer pursuant to a commission-approved competitive procurement plan. The electric power acquired shall be procured through competitive procurement processes and shall include one or more of the following:

66 Pa.C.S. § 2807(e)(3.1) (emphasis added). The selection of the phrase “default service provider” by the General Assembly is telling in this regard. Webster’s Dictionary provides the following definition of default in this context as:

An option that is selected automatically unless an alternative is specified.

Webster’s on-line dictionary.³ Default service is just that, the service that the customer receives automatically if that customer makes no other choice. Just like the default settings on a computer when you take it out of the box, a customer can “customize” the service by making other choices. And if those choices do not work out, the customer can return to the “default settings.”

This is precisely how Chapter 28, as amended by Act 129, is intended to work and this is the design of default service that has developed in Pennsylvania over the past 15 years. The statutory requirements are clear. Customers can (1) choose an alternative supplier that offers a price, product or service that the customer desires or (2) remain with the default service provider and be served through competitive purchases from the wholesale markets. In addition, all customers have a statutory right to be served by the default service provider if their alternative supplier fails or if they wish to return to default service in accordance with the terms of any contract they may have entered with an EGS.

The underlying premise of the Act was that when competitive market forces are brought to bear on the generation of electricity, those competitive market forces will reduce the *cost* of generation and therefore the *price* of generation service to retail consumers. Under the Act, however, a customer does not have to leave his or her retail electric distribution company (EDC) in order to get access to competitive market generation. Rather, now that the transition

³ Available at: <http://www.websters-online-dictionary.org/definitions/default?cx=partner-pub-0939450753529744%3Av0qd01-tdlq&cof=FORID%3A9&ie=UTF-8&q=default&sa=Search#922>

period is over, customers can purchase generation from an alternative electric generation supplier (EGS), or purchase unbundled generation from the default service provider at a price that reflects the costs of acquiring generation in the competitive wholesale market. Equally important under the Act, and as the Commission recognized in its Order initiating this investigation, electric service is to be available to all customers on reasonable terms and conditions. 66 Pa. C.S. § 2802(9); Order at 1. The Act also requires the default provider to ensure the availability of universal electric service in the Commonwealth. 66 Pa. C.S. § 2802(16).

Electric service is an essential service critical to the health and safety of the residents of Pennsylvania and critical to the economic health of the businesses and industry of this Commonwealth. In enacting Chapter 28 and in amending this statute to more clearly set forth the statutory framework of default service, the General Assembly was clear that a stable, reasonably priced default service that utilizes the competitive generation markets must be available to all customers at all times. Pennsylvania's default service model achieves this goal.

C. The Pennsylvania Structure For Default Service Achieves The Statutory Goals And Allows A Competitive Generation Market To Flourish.

For all Pennsylvania consumers, shopping or not, the price of electricity reflects the procurement of a variety of energy products from the competitive generation markets. The prices paid by Pennsylvania's default service customers reflect a wide variety of competitive wholesale products, ranging from fixed standard block products (the so called "7x24" and "5x16" blocks), full requirements products, spot market purchases (primarily through the PJM day ahead and real time markets), as well as other more tailored products designed to meet individual service territory needs. Each of these products is acquired through an open, transparent and competitive process to ensure that the prices being paid for default service are arms-length, market-based prices. The procurement plans of the EDCs acting as default service

providers are reviewed and approved by the Commission, and those plans have resulted in reasonably priced default service available to all Pennsylvania consumers.

Pennsylvania consumers also have the opportunity to shop for an alternative generation supplier that might offer them a better price, a product that they are more interested in, or a product that provides them additional benefits, such as renewable power. As retail competition has taken hold in Pennsylvania, retail shopping has grown steadily. Currently, more than 1.1 million customers have chosen an alternative supplier representing 20% of the customers and nearly 50% of the load. For residential customers, over 900,000 customers selected an alternative supplier as of May 25, 2011. In addition to the number of customers who have selected an alternative supplier, the number of EGSs that are seeking to participate in Pennsylvania's market is significant. There are 207 suppliers licensed in Pennsylvania.⁴ At least 27 of these suppliers are making offers to residential customers in some or all of the EDC service territories. The offers that are being made are also showing robust competition among these suppliers. Besides offering varying levels of savings, EGSs have offered renewable products, fixed price products, and even such enticements as airline miles for signing up with the EGS.

While selection of alternative suppliers may be slow to develop in some service territories, this does not reflect any flaw in the structure established by Pennsylvania or the eventual success of electric competition in Pennsylvania. The OCA submits that "shopping statistics" do not tell the whole story, or even the right story, about restructuring. As noted earlier, Penelec just announced its retail price for residential customers for the coming summer months based on its competitive market purchases to be 6.99 cents/kwh. There is nothing wrong with this outcome and in fact, this is the type of reasonably priced default service that Act 129

⁴ Source: http://www.puc.state.pa.us/electric/electric_suppliers_list.aspx

envisioned. Default service offerings like this one, or the 7.37 cents/kwh offering of West Penn Power should not be eliminated simply to make way for more shopping.

The Pennsylvania restructuring law never intended to force every single customer to switch to an EGS. The Pennsylvania statute sought to provide every customer access to a competitive generation market and that is what has occurred here. It is not a failing of the default service model if a customer chooses to remain on default service or chooses not to switch to an alternative provider. There are many reasons why customers, particularly residential customers, may not choose an alternative supplier. For some customers, the fine print attached to their cell phone, satellite television, car lease, etc., presents a daunting challenge that is not taken lightly by those customers and they do not want to repeat these experiences with their essential electric service. For some customers, the process of reviewing competitive offers and their terms and conditions is not warranted by the savings that may be realized. For other customers, the idea of a reasonably priced default service that does not come with any long term commitments, significant price volatility, or early termination fees is worth maintaining.

The General Assembly and this Commission have thus far steered a path that provides consumers with the benefits of generation competition and the security of reasonable default service. The OCA urges the Commission to continue along this path, seeking ways to improve both default service and the availability of retail competitive options, rather than eliminating the default option or making it somehow undesirable to consumers in the future.

D. There Are No Inherent Barriers in Pennsylvania's Default Service Model.

Only five months after the expiration of all rate caps in Pennsylvania, it is the OCA's view that the Pennsylvania model for residential customers is working well and that retail competition should be allowed to further develop along the sound framework that has been

established. Since the beginning of restructuring, Pennsylvania ratepayers have supported over \$100 million for the costs of educating customers about the price to compare, default service, and how to shop. These efforts are now coming to fruition and should not be unduly disrupted. In first proposing this investigation, the Commission indicated that it seems to view the existing model and legal landscape as a potential source of obstacles that need to be remedied. The Commission stated:

This investigation will examine both the legislative and the regulatory framework behind Pennsylvania's competitive retail electricity markets. This investigation will include an analysis of the current default service model and whether, as currently structured, that model is hindering competition. Additionally, the investigation will include a process to identify interested alternative suppliers of electric generation services qualified to provide default service throughout the state and should result in recommendations for legislative changes, as well as changes the Commission can initiate on its own, to improve competition in Pennsylvania's retail markets.

Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company and Trans-Allegheny Interstate Line Company, Docket Nos. A-2010-2176520 & A-2010-2176732, Slip op. at 46 (Order entered March 8, 2011). The Commission also suggests that the retail market may not be "properly functioning" or "workable." The OCA respectfully submits that these tentative conclusions, and the test laid out, are incorrect. The test of Pennsylvania's model is whether direct access to competitive generation is available to all customers and whether default service customers are receiving reliable electric service at the least cost over time.

When the default service provider must purchase all supply from the competitive wholesale markets through an open, transparent competitive process, and must provide all customers with access to the retail market, there is no inherent barrier to retail competition by the default service provider being the EDC. Through its regulations, orders, codes of conduct, and approval of supplier tariffs, the Commission has tried to address EDC processes or procedures that may have unintentionally made choice difficult for customers or made interactions with the EDC unnecessarily difficult for the EGS.

Moreover, under the model used by most EDCs in Pennsylvania, the EDC is indifferent about whether customers remain on default service or leave for an alternative supplier. Serving as the default service provider does not make the EDC better off financially when the EDC purchases power at wholesale and then passes the costs on to consumers on a dollar-for-dollar basis with no profit or markup.

The only potential “advantage” that an EDC might have when serving as the default service provider at this time is that customers can have a tendency to make changes slowly, particularly in an area like electric choice where the customer may have no prior experience. But the OCA submits that this will be true regardless of who the default service provider is. Replacing one default service provider with another default provider does not necessarily solve the problem.

In the OCA’s view, the means to address customer reluctance to actively engage in the retail market is not to eliminate the default service model or force the removal of the EDC from the default service role. It is the EDC that has the obligation to connect every single household, business and industry in Pennsylvania to the electric grid, and it is the EDC that is ultimately responsible for the provision of safe, adequate, and reliable electric service. With

these ultimate responsibilities, it is difficult to envision any generic cost benefit from replacing the EDC as default service provider with another entity, and in particular, with an entity that must seek to earn a profit from the default service role.

Default service customers are currently able to receive fairly stable, reasonably-priced generation service from their EDC. At the same time, customers who choose to shop for an alternative generation supplier may be able to find an offer that is more suitable for them. Default service customers continue to receive the benefit of wholesale generation markets through the competitive least cost procurement process of Act 129, even if they do not choose to shop with an alternative retail supplier. But shopping customers also receive the benefit of knowing that there is a Commission-approved default service provider that must provide them with service at a Commission-approved price if their competitive supplier fails or decides to leave the Pennsylvania market. In the OCA's view, this "security" feature of default service enhances the competitive market in Pennsylvania because it permits customers to participate in the market without fear of jeopardizing their service.

Further, so long as the Commission continues to seek improvements and remove any undue inequities from the retail marketplace, such that EGSs who are willing to compete for customers can do so, one of the continuing goals of the Competition Act – to provide consumers with the *opportunity* to choose an alternative electric generation supplier – will also be met. In the OCA's view, there is nothing inherently wrong or misguided about default service customers being provided with generation service on reasonable terms and conditions, and at the least cost over time. It is, in fact, exactly what the General Assembly intended.

E. Conclusion.

By and large, the Pennsylvania electricity market for residential customers is off to a solid start in this post-rate cap era. Default service customers are being provided reasonable rates, the number of customers who have chosen an alternative retail supplier continues to grow, the number of competitive marketers that seek to enter the market is substantial, and there are a variety of offers and products for customers to choose from. Equally important, Pennsylvania has reached this position with minimal disruption through its sound transition process and design. The OCA submits that there is a solid foundation upon which to build and there is no reason to upend the balance struck by the Electric Choice Act and Act 129 at this time.

III. REMOVING THE EDC AS THE DEFAULT SERVICE PROVIDER WILL NOT NECESSARILY PROVIDE ADDITIONAL BENEFITS TO PENNSYLVANIA CONSUMERS.

The focus of many of the Commission's questions in this investigation seems to be directed at the issue of whether the EDC should continue to serve as the default service provider in Pennsylvania. As discussed above, the provision of reasonably priced, stable default service is at the heart of Pennsylvania's restructuring efforts and under Pennsylvania statutes. Under the current structure, it is assumed that the EDC will serve in this role unless the Commission determines that an alternative provider of default service could better meet the goal of providing reasonably priced, stable default service in accordance with the requirements of Section 2807(e) of the Public Utility Code. The OCA submits that this is the fundamental inquiry under the statute—which entity can best meet the goal of Act 129 to provide “adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account any benefits of price stability over time and the impact on the environment.” Preamble to Act 129 of 2008. The OCA submits that at this time, the EDC remains in the best position to serve as the default service provider within its certificated service territory.

The Commission has previously recognized the value of the EDC serving as the default service provider. In its existing regulations regarding the default service provider, promulgated under the 1996 Electric Choice Act, the Commission regulations first provide:

- (a) The DSP shall be the incumbent EDC in each certificated service territory, except as provided for under subsection (b).

52 Pa. Code § 54.183(a).⁵ Subsection (b) provides for the process for changing the DSP and subsection (c) sets forth the standard for making such a change. The Commission regulations set forth the standard as follows:

(c) The Commission may reassign the default service obligation for the entire service territory or for specific customer classes, to one or more alternative DSPs when it finds it necessary for the accommodation, safety, and convenience of the public. A finding would include an evaluation of the incumbent EDC's operational and financial fitness to serve retail customers, and its ability to provide default service under reasonable rates and conditions. In these circumstances, the Commission will announce, through an order, a competitive process to determine an alternative DSP.

52 Pa. Code §54.183(c). In setting forth the competitive process, the Commission specifically notes that the ability of any bidder to meet the requirements of Sections 2807(e), 1501, and 1103 of the Public Utility Code, as well as to comply with all Commission regulations, orders and applicable laws, is the standard for consideration of the bids. If no bidder can meet the standard, the EDC remains as the default service provider. 52 Pa. Code §54.183(d).

The Commission has set forth the appropriate standard for determining whether an alternative default service provider should be considered. Only if the EDC cannot provide reasonable rates in accordance with the provisions of the law and it can be shown that an alternative DSP is in a better position to provide those reasonable rates should such an approach be considered.

As a preliminary matter, there does not seem to be any generic reason that the EDC should be required to cease serving as the default service provider. The EDC may be best positioned to serve this role as the EDC has an obligation to serve all customers and must continually stand ready to ensure a safe, adequate and reliable system is maintained. Ultimately,

⁵ The Commission did not propose any changes to Section 54.183 as part of its proposed rulemaking to implement the provisions of Act 129 of 2008. Implementation of Act 129 of October 15, 2008, Default Service, Dock. No. L-2009-2095604 (Proposed Rulemaking Order entered Jan. 19, 2010).

it is the EDC that has the responsibility of ensuring the energy is delivered to its system in a manner that preserves the reliability and integrity of the system. 66 Pa.C.S. §2807(a) – (d). Section 2806 also establishes that the EDC remains responsible for all billing, collection and customer service functions associated with the provision of electric service. 66 Pa.C.S. § 2806(c) and (d). It is the EDC that must keep the lights on, and will be called to task by the Commission and the public if this does not happen.

In light of the fact that EDCs must meet these obligations at all times, and the fact that the EDC is a regulated public utility and generally serves as the default service provider without profit or mark up, the OCA does not see any greater efficiency or benefit for customers in forcing this regulated entity out of the fundamental role of the default service provider.⁶ The EDC stands ready at all times to serve all of its customers and would need to continue to fill this role to some extent even if an alternative DSP was appointed by the Commission. An alternative DSP would almost certainly seek the ability to earn a profit on default service. It is not clear whether this additional cost would be offset by efficiencies or other benefits that an alternative default supplier might provide.

The OCA supports the Commission's goal of providing a structure in which customers have the option and opportunity to purchase electricity supply from EGSs that provide an offer that those customers want. The OCA submits that customers should be allowed to make an informed choice with regard to their generation supplier. To that end, the OCA has strongly supported consumer education programs to ensure that customers are aware of their options for choice, how to make an informed choice, and how to shop. As the title of the 1996 Act makes

⁶ Most of Pennsylvania's EDCs have adopted a quarterly reconcilable dollar-for-dollar recovery mechanism for default service as permitted under 66 Pa.C.S. §2807(3.9). The exception is Duquesne Light Company which was the first major utility to complete its stranded cost recovery and rate cap periods. Duquesne has adopted a series of multi-year fixed rate programs for residential customers, with no reconciliation.

clear, the Electricity Generation Customer Choice and Competition Act was intended to provide customers with a *choice*. Customer choice includes the choice to switch to an alternative marketer and the choice to not switch to an alternative marketer.

IV. WORK ON IMPROVING PENNSYLVANIA'S DEFAULT SERVICE SHOULD CONTINUE

As discussed herein, this Commission has actively pursued improvements to the provision of default service and the development of competitive generation markets over many years. Most recently, The Commission has also established a working group (CHARGE) tasked with identifying and resolving issues that may be creating problems for the full implementation of retail choice. See Secretarial Letter of December 10, 2009, Re Office of Competitive Market Oversight. To date, the CHARGE working group has identified and addressed numerous issues resulting in improved procedures and policies for the implementation of retail choice. Issues addressed have ranged from clarifying the application of state taxes on the utility bill to considering acceleration of supplier switching time frames to addressing EGS marketing activities. The CHARGE process allows these issues to be developed in a cooperative fashion so that solutions that meet the needs of all stakeholders can be developed.

The Commission has also developed its Pa PowerSwitch website that provides crucial information to customers about supplier offers. The OCA has published a Shopping Guide since 1999 and continues to publish on its website and in hard copy form its Residential Shopping Guide. The OCA staff has worked closely with the Commission staff in developing consumer education programs and participating in such programs across the Commonwealth. Interest by residential customers in retail offers being made by alternative suppliers remains strong in many service territories and customers continue to select alternative suppliers.

The OCA recognizes that there is still work to be done to improve the provision of default service in Pennsylvania. The OCA also recognizes that there is much work to be done to identify and resolve any true impediments or barriers to the development of retail choices that can bring benefits to consumers. The OCA submits, however, that certain fundamental

consumer protections provided by the Public Utility Code, the 1996 Electric Choice Act, and Act 129 are not barriers to competition. Increased retail shopping cannot and should not be at the expense of necessary consumer protections for essential electric service. As discussed above, the provision of default service is one of these fundamental protections for consumers that is at the heart of making retail competition even possible in Pennsylvania. Other such provisions include the prohibition against switching a customer's supplier without the customer's consent and the requirement that EDCs and EGSs provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity service in an understandable format that enables consumers to compare prices and services on a uniform basis. 66 Pa.C.S. § 2807(d)(1) and (2). While issues that may impede retail choice should be addressed by the Commission, the resolution must be in accord with the Public Utility Code and preserve the necessary consumer protections for this essential service.

The OCA highlights below some issues that should be further considered in Phase 2 of this proceeding as the Commission establishes working groups to try to find ways to further the development of retail competition that will benefit customers. Some of the areas that should be subject of further work include:

- ◆ Procurement Plans for Default Service Supply—The default service procurement plans now in effect until May of 2013 will provide valuable information about the methods of procuring default supply. The OCA has continued to support a portfolio approach to the procurement as this method can best coordinate the various obligations of the default service provider under Act 129. The results of the current procurement plans should be carefully monitored and best practices to meet the requirements of Act 129 should be developed when the next set of default service procurement plans are reviewed.
- ◆ Supplier tariffs—Work should continue on attempting to develop more uniform supplier tariffs so that the rules and procedures across Pennsylvania do not vary unnecessarily and thus increase the cost to the EGS of adapting to different procedures for different EDC service territories. Best practices should be adopted and implemented to the extent cost effective.

- ◆ Communications with customers and education—Consumer education should continue and opportunities should be identified for when and how an EDC should communicate with its customers about retail choice. While the OCA does not support the “bait and switch” type referral programs that have been proposed in other states, the OCA does agree that there is a role for the EDC in fully informing customers of the opportunity to switch suppliers. Some programs that have already been undertaken include mailings from the EDC that include supplier offers for customers.
- ◆ Enrollment of new customers—Concern has been raised in the CHARGE Working Group that the process to enroll customers, which can take up to 45 days, may be too long and may present barriers to retail competition. The OCA supports the efforts of CHARGE to try to find ways to expedite the process without sacrificing the essential consumer protections that were designed to prevent slamming.
- ◆ Price to compare—The price to compare may require further discussion to determine if the current, quarterly adjustment of the price is helping or hurting customers who need to make an informed choice about their electric service. Given the potential length of time needed to effectuate a switch, and a quarterly adjustment process, a customer’s decision can be quickly overcome by the new price, perhaps making the customer think that they have made a bad decision. Additionally, the reconciliation process should be discussed to ensure some uniformity across the EDCs as well as the most appropriate method of reconciling costs without sending incorrect price signals to customers.
- ◆ Information on the Bill—For many years, the OCA has supported the inclusion of the EDC’s price to compare on the monthly bill of every customer. The price to compare is the key piece of information that a customer needs to shop for alternative supply. Having the price to compare handy on each monthly bill will keep the possibility of choice paramount in the customer’s mind and will provide the customer the needed information to consider a choice. The bill will also have on it the account number and other necessary information that the customer may need to effectuate a switch.
- ◆ Further Unbundling—While any further unbundling of procurement related costs or default service related costs must proceed cautiously so as to avoid stranded cost or cross subsidization, it may be beneficial for the stakeholders to attempt to determine what costs of the EDC or default service provider are avoided when a customer shops. Those avoidable costs should then be reflected in the price to compare.
- ◆ Customer Surveys—The Commission may wish to engage in a broad sampling of consumer experiences with retail choice. Questions that the Commission may wish to gather information on include why a customer chooses to shop; how the

customer got started; what barriers or inconveniences were encountered along the way; whether the customer was readily able to compare offers; what reasons a customer gives for selecting an alternative provider; and what recommendations the customer has for making the process easier.

- ◆ EGS Marketing Practices—EGSs are as fundamental to the development of retail competition in Pennsylvania as any stakeholder or any decision that the Commission could make. It may only take one bad experience, or one bad newspaper report of a deceptive or harmful practice, to cause some customers to retreat from engagement in the retail markets. Rules and guidelines on marketing practices should be clearly developed by the Commission but the responsibility for implementing those rules and guidelines in a manner that ensures that Pennsylvania’s retail market does not suffer harm rests squarely with the EGSs.

The OCA anticipates that additional areas of inquiry may present themselves for Phase 2 of this investigation.

The OCA looks forward to continuing to work to improve default service and to remove any actual barriers to more robust retail choice that may be identified as this process moves forward. The OCA urges the Commission to proceed cautiously, however, to ensure that the “barriers” identified are not the essential consumer protections that have allowed the competitive generation market in Pennsylvania to develop. The goal should be to identify those impediments to customers making a fully informed choice for their electric service and being able to realize that choice in an efficient manner.

V. DIRECTED QUESTIONS

The Commission's Order set forth a series of questions regarding the state of the retail electricity market in Pennsylvania. In the following section the OCA will provide its answers to these questions.

Commission Question 1.

What is the present status of competition for retail electric generation for customers, by class and service territory, and for alternative suppliers?

OCA RESPONSE:

In Pennsylvania, 100% of retail customers receive competitive generation either through their default service provider or an electric generation supplier (EGS). Now that the rate caps have expired across the Commonwealth, all electric distribution companies (EDCs) are procuring power in the competitive markets. In addition, nearly every electric customer in Pennsylvania has the opportunity for retail choice.⁷ At this time, the number of customers taking service from competitive marketers varies among customer classes and between service territories. There are currently 207 licensed suppliers, including 27 EGSs making offers to residential customers in the PECO and PPL service territories. Additionally, there are a variety of types of offers being made at this time, including fixed prices, variable prices, green products, and percentage discounts.

The number of customers shopping in Pennsylvania has risen rapidly over the past two years as rate caps have been removed in all service territories. On April 1, 2009, the total number of residential customers receiving service from competitive suppliers was 127,831. On April 1, 2011, the total number of residential customers shopping was 827,757. OCA Shopping

⁷ There are some customers that are participants in a utility's Customer Assistance Program for payment troubled low income customers that are not offered choice since the benefit provided by the CAP has not been able to be addressed in the choice environment at this time.

Statistics.⁸ As of May 25, 2011, the Commission's Pa PowerSwitch website indicated that 1,131,197 customers selected an alternative provider and 916,496 of those customers were residential customers.⁹ This represents 20% of Pennsylvania electric customers and 49.7% of customer load. While the OCA does not measure the success of retail access by the number of customers switching, these numbers do indicate that customers have been taking advantage of the shopping opportunities presented to them.

The OCA would note a clarification to the question as presented. In practice, retail marketers are not producing generation as the question might suggest, but retail marketers are rather marketing wholesale generation purchased in the PJM market. Similarly, default service providers are procuring 100% of their supply in the wholesale generation markets operated by PJM. To that end, it is essential that the Commission recognize that 100% of customers in Pennsylvania are purchasing electric generation at prices that reflect the competitive cost of power – both shopping and non-shopping customers.

⁸ See <http://www.oca.state.pa.us/Industry/Electric/elecstats/ElectricStats.htm>

⁹ See <http://extranet.papowerswitch.com/stats/PAPowerSwitch-Stats.pdf?/download/PAPowerSwitch-Stats.pdf>.

Commission Question 2.

Does the existing retail market design in Pennsylvania present barriers that prevent customers from obtaining and suppliers from offering the benefits of a fully workable and competitive retail market? To the extent barriers exist, do they vary by customer class?

OCA RESPONSE:

No. The existing retail market design in Pennsylvania allows 100% of customers to have access to competitive generation service, consistent with the 1996 Electric Choice Act and Act 129 of 2008. In addition, over 1.1 million customers are receiving generation service from competitive retail suppliers. The OCA has not identified any systemic barriers in the retail market for Pennsylvania.

The Pennsylvania retail market remains a hybrid – by design. If default service is stable and low priced, customers may not want to choose to switch to an alternative retail marketer. That is the design of the Pennsylvania market and nearly every other restructured state.

As to customer classes, in general, the residential class is less engaged in following electric pricing trends than are larger customers, and more apt to need further educational opportunities regarding the benefits and risks of retail shopping. Residential customers have shown an interest in, and tendency to make a choice when EGSs offer appreciably lower prices or other products that the customer wants. The success of renewable or green products in the early stages of market development in Pennsylvania and the continued attraction of green products today is a good example.

The OCA expects that there may be impediments identified from time to time to the efficient operation of the retail markets. These issues may be distinct from EGS to EGS and from EDC to EDC. These issues may also be distinct among customer classes. The Commission

should continue to address these issues through its current processes and working groups as they arise.

Commission Question 3.

What are the economic and managerial costs associated with electric distribution companies (EDCs) fulfilling the default service role?¹⁰ Are the EDCs accurately passing those costs along to default service customers? Do default service rates include any elements that are not cost-based? Is an examination of distribution rates needed to ensure proper cost allocation? Are there barriers to competition as a result of having EDCs provide default service?

OCA RESPONSE:

By law, each EDC must stand ready to ensure that its distribution system operates safely and efficiently. Moreover, the EDC must be prepared to “keep the lights on” throughout its service territory at all times. It is probably not possible to remove the EDC from the role of the true “provider of last resort” for example, if there is a disruption in the generation market. Given these realities, the OCA submits that the EDC likely remains the most viable and cost-effective Default Service Provider.

Many EDC costs are incurred whether they serve 100% of the customers or 50% of the customers. If there are costs of fulfilling the default service role that are avoidable when a customer leaves the system, those costs could be considered for further unbundling and inclusion in the price to compare.

There are no inherent barriers to retail competition as a result of the EDC providing default service. No matter the identity of the default service provider, the functions that must be performed are the same and the role is the same. For an EDC, codes of conduct and the rules governing the provision of the service ensure that there is no barrier from the EDC fulfilling this role. This is particularly true under the Pennsylvania model where EDCs no

¹⁰

See generally 52 Pa. Code §§ 54.182 and 54.184.

longer obtain embedded cost based power from their former monopoly generating units but obtain all power through open and competitive processes approved by the Commission.

Commission Question 4.

Are there unintended consequences associated with EDCs providing default service, and related products, such as time-of-use rates?

OCA RESPONSE:

While there almost certainly are “unintended consequences” that result from the EDCs providing default service, or from any entity providing any service, those consequences could be both good and bad. What is paramount is to identify those unintended consequences that present a true barrier and address those issues specifically.

In the case of time-of-use rates, the OCA agrees that there can be unintended consequences when an EDC provides time-of-use rates that are not properly aligned with their overall default service procurement plan. For example, the Commission recently recognized the inconsistency between a default service procurement plan that relied exclusively on full requirements products and the other provisions of Act 129. On March 9, 2010, the Commission entered its Order in the PPL Time of Use Rate proceeding at Docket No. R-2009-2122718. In that proceeding, PPL filed a Time of Use Rate proposal as required by Section 2807(f)(5) of Act 129. In its Order, the Commission rejected the Company’s proposal to recover the “savings” achieved by customers shifting usage from on-peak to off-peak hours from all default service customers through future rates. Chairman Cawley explained how there would be no reduction in wholesale costs under PPL’s proposal, as follows:

Because all the payments to PPL’s wholesale default service suppliers are based on a fixed rate regardless of when the energy is used by the customer, the wholesale market cost reductions from shifting demand from on-peak to off-peak periods is not passed directly on to default service customers, but to default service suppliers.

Statement of Chairman Cawley, Re: PPL Electric Utilities Corporation Supplement No. 71 to Tariff Electric-Pa. P.U.C. No. 201 Regarding Its Proposed Time-of-Use Rate Program, Public Meeting of January 28, 2010, Docket No. R-2009-2122718 (2122718-OSA).

The OCA recognizes that the design and cost recovery for time-of-use rates present a potential problem for default service providers. There may also be problems with the on-going phase out of legacy rates such as PECO's Rate RH (residential heating) and Rate OP (off peak water heating); and PPL's Rate RTS (residential thermal storage). During the phase out of these legacy rates there will be a mismatch between costs incurred by the utility and the rates for those services. These issues are being addressed during the current default service plans with phase outs slated to be completed for most rates by 2013.

In the long run, the OCA submits that it may be best if the residential default rate is a single "plain vanilla" service that customers can easily understand and marketers can clearly compete against. Competitive marketers are in the best position, then, to provide a broad array of pricing and generation options that may be of interest to more consumers over time.

Commission Question 5.

Should default service continue in its current form? Does default service impede competition or otherwise prevent customers from choosing electricity products and services tailored to their individual needs? Does default service provide an advantage to the incumbent EDC and/or its generation affiliate(s)?

OCA RESPONSE:

Yes. The basic structure of default service should continue in place. The OCA submits that the Commission should, however, proceed with revisions to its current regulations and policy statement to reflect passage of Act 129. Such revisions should reflect the OCA's Comments and Reply Comments, as well as the Comments provided by IRRC. The Commission should also monitor the results of the different default service plans now in place through May 2013 to determine what programs are most beneficial to all customers.

Default service does not provide an impediment to customers who seek to shop. Customers who wish to engage in the retail market for electric generation supply are completely free to do so, just as EGSs are also completely free to advertise and market to those customers who wish to shop. The availability of default service makes it possible for customers to shop with the knowledge that they can return to default service even if something goes wrong.

Additionally, default service does not provide an advantage to the incumbent EDC and/or its generation affiliates. The default service plans are designed in accordance with the law, which requires that generation be procured through competitive processes. If anything, default service is a more difficult service to provide because the default service provider must be ready to serve all customers coming and going from the service at any time.

Commission Question 6.

Can/should the default service role be fulfilled by an entity, or group of entities, other than the EDC? If the default service role should be filled by an entity other than an EDC, what mechanisms could be employed to transition the default service role away from the EDC and onto competitive electric generation suppliers (EGSs)? Are different approaches appropriate for different customer classes? What criteria should be used to ensure that EGSs are qualified to assume the default service role and maintain reliable service?

OCA RESPONSE:

At this time, it is the OCA's view that the EDC is best positioned to provide default service in the most cost-effective manner. As stated in the OCA response to Question 3, the EDC must stand ready to "keep the lights on" at all times no matter which entity serves as the default service provider. As a result, the EDC must incur costs associated with a default supplier. The OCA submits that the EDC should remain the default service provider absent a showing that customers will benefit if the Commission approves a different DSP.

A non-EDC may provide default service under the Electric Choice Act. 66 Pa. C.S. §2807(e)(3) and 52 Pa. Code §54.183. It is not clear what the benefit would be of such an approach on a generic basis, but if an EGS assumes the default service role, that EGS must meet all legal requirements for the provision of default service. Chief among these requirements is the obligation to procure a mix of products designed to achieve the least cost to customers over time as called for in Act 129.

The OCA further submits that the Commission's regulations at 52 Pa. Code §54.183 set forth the appropriate standards for consideration of an alternative default service provider.

Commission Question 7.

How can Pennsylvania's electric default service model be improved to remove barriers to achieve a properly functioning and robust competitive retail electricity market? Are there additional market design changes that should be implemented to eliminate the status quo bias benefit for default service?

OCA RESPONSE:

As detailed in these Comments, every Pennsylvania retail electricity customer receives the benefit of competitive generation markets through either their default service provider or their EGS. In addition, over 1.1 million customers currently receive generation service through a competitive retail supplier. The EGSs are involved and actively participating in the CHARGE working group and the cases that come before the Commission to identify problems and resolve them. The EGSs are helping to shape the future of the retail markets in every one of these matters.

The OCA has identified some areas in Section IV of these Comments that warrant further consideration. Among the issues that require further development are the price to compare, customer education, EDC bill formats, customer communications, improvements in the enrollment process, more uniformity in supplier tariffs and further unbundling of avoidable costs.

Commission Question 8.

What modifications are needed to the existing default service model to remove any inherent procurement (or other cost) advantages for the utility?

OCA RESPONSE:

Other than economies of scale that might come from serving large numbers of customers, there are no inherent procurement or cost advantages for the utility in the existing default service model. All supply is procured through competitive procurement process from the wholesale generation markets. To some extent, the default service provider may have a cost disadvantage because the obligation to be ready to serve all customers at all times carries with it additional costs that are not incurred by other providers.

Commission Question 9.

What changes, to Regulations or otherwise, can the Commission implement on its own under the existing default service paradigm to improve the current state of competition in Pennsylvania?

OCA RESPONSE:

The Commission should finalize its rulemaking addressing the necessary changes to its regulations occasioned by Act 129. Implementation of Act 129 of October 15, 2008, Default Service, Dock. No. L-2009-2095604 (Proposed Rulemaking Order entered Jan. 19, 2010). The Commission should also continue its consumer education efforts and consider some of the improvements identified by the OCA in Section IV of these Comments.

Commission Question 10.

What legislative changes, including changes to the current default service model, should be made that would better support a fully workable and competitive retail market?

OCA RESPONSE:

The Pennsylvania model is working and further legislative changes are not necessary or appropriate at this time. As detailed in these Comments, every retail electricity customer is receiving the benefit of competitive generation markets and over 1.1 million customers currently receive generation service from a competitive retail supplier. The Commission and all stakeholders should monitor the operation of each of the current default service plans through May 2013 to see how well they are working and if any legislative changes are necessary.

Commission Question 11.

Are there, or could there be, potential barriers being created by the implementation of the EDC Smart Meter plans?

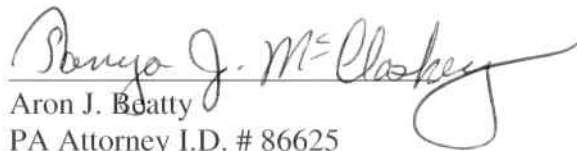
OCA RESPONSE:

The OCA does not see the EDC smart meter plans as barriers to customers receiving reasonably priced generation service offers from competitive marketers. These plans impact distribution rates only and provide for the deployment of smart meters over reasonable time horizons. As discussed in response to Question 4, the provision of time-of-use rates by the default service provider for customers with smart meters could introduce some problems that have not yet been fully resolved. The information provided by the smart meters once deployed should enable EGSs to make more narrowly tailored, usage based offers to customers and should facilitate a more expeditious enrollment procedure.

VI. CONCLUSION

The OCA appreciates this opportunity to submit Comments in this investigation of the retail electricity market in Pennsylvania. The OCA looks forward to working with the Commission and the other stakeholders to improve default service while enhancing the ability of consumers to benefit from retail competitive opportunities in the Pennsylvania market.

Respectfully Submitted,



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