

STATEMENTS OF POLICY

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

Policy Statement Regarding Conformance of Electric Distribution Utility Rates, Rules, Regulations and Practices with Chapter 28, 66 Pa.C.S. § 2801, et seq.; Doc. No. M-00971032

Commissioners Present: John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson; Nora Mead Brownell, Concurring—Statement follows; Aaron Wilson, Jr.; Terrance J. Fitzpatrick

Public Meeting held
March 2, 2000

Order

By the Commission:

On December 19, 1997, we published a proposed policy statement interpreting the effect of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801, et seq. (Electric Competition Act), and its provisions with respect to the establishment of a new competitive market in electricity generation in this Commonwealth by January 1, 2001. The proposed policy statement was published for comment in the *Pennsylvania Bulletin* on March 21, 1998, at 28 Pa.B. 1425 and focused upon the obligations of electric distribution utilities to conform their rates, rules, regulations and practices with the new and novel restructuring requirements of the Electric Competition Act.

Comments were received from the Clean Air Council, Enron Energy Services, Inc., Office of Consumer Advocate, Pennsylvania Electric Association, Pennsylvania Gas Association, Pennsylvania Rural Electric Cooperative and Allegheny Electric Cooperative, PP&L, Inc. and West Penn Power Company t/d/b/a Allegheny Power.

Upon review of the comments, the Pennsylvania Public Utility Commission (Commission) has determined that it will not issue the proposed policy statement for the following reasons:

First, the Policy Statement is unnecessary. It is certainly true that the passage of Chapter 28 required utilities to change their tariffs and rates to conform with the policies of the General Assembly as expressed in the Electric Competition Act. That is why the General Assembly required all electric distribution companies to file restructuring plans to "implement direct access to a competitive market for the generation of electricity." 66 Pa.C.S. § 2806(d). The General Assembly also set forth the required contents of restructuring plans and required EDCs to file "revised tariffs and rate schedules" to implement the changes contained in the plans. 66 Pa.C.S. § 2806(e).

All of the EDCs in the Commonwealth filed these restructuring plans. It is unnecessary to describe here the massive effort put forth by the parties (EDCs, electricity suppliers, consumers, environmentalists and others) and the Commission to resolve these restructuring plans. The purpose of this effort was to bring the tariffs, rates, and the like of EDCs into compliance with Chapter 28.

As to future actions of EDCs, the Commission is available to adjudicate any complaint by an electricity

supplier or other interested party alleging that these actions are contrary to Chapter 28 of the Public Utility Code. In particular, the Commission is authorized to investigate allegations of "anticompetitive or discriminatory conduct and the unlawful exercise of market power," and to refer its findings to the appropriate Federal authorities. 66 Pa.C.S. § 2811(a), (d).

In light of the Commission's previous rulings on EDC restructuring filings, the Commission's ongoing authority to adjudicate complaints alleging anticompetitive conduct and the Commission's authority to initiate investigations regarding anticompetitive conduct and to refer its findings to Federal authorities, there is no need for the Commission to issue declaratory orders regarding the applicability of the State action immunity defense in Federal antitrust cases.

Secondly, the policy statement would have the Commission issue rulings on issues that are beyond the Commission's competence and jurisdiction. Responsibility to adjudicate cases arising under the Federal antitrust laws is vested in Federal courts, not this Commission. The State action immunity defense in antitrust cases has been developed and applied by the Federal courts, and there is no precedent indicating that the Federal courts would rely upon this Commission's opinion as to whether this Federal antitrust defense should apply with regard to a specific action taken by an EDC.

It is this Commission's responsibility to ensure that the EDCs comply with the Public Utility Code and it is the responsibility of the Federal courts to adjudicate any complaints that EDCs have violated the Federal antitrust laws. Accordingly, the Commission will not issue the proposed policy statement,

Therefore,

It Is Ordered That:

1. The proposed policy statement at the above docket be withdrawn.
2. A copy of this order be served on all parties that filed comments in this proceeding.
3. This docket be marked closed.

JAMES J. MCNULTY,
Secretary

Statement of Commissioner Nora Mead Brownell

The Motion now before us proposes that the Commission withdraw the proposed policy statement in this matter. The Motion is based upon the findings that the Policy Statement is unnecessary and that it would have the Commission issue rulings on issues that are beyond our competency and jurisdiction. I join the Motion to the extent that it determines that the proposed Policy Statement is unnecessary at this time. As the Motion points out, the Commission and parties have many tools with which to address anticompetitive behavior. The proposed Policy Statement merely involves one such mechanism. On that basis, I support the result which withdraws the proposal at this time.

The concerns which restrict me from fully joining in the Motion are two-fold. First, the proposed Policy Statement sets forth an efficient and relatively inexpensive method by which all parties may obtain certainty on the issue of whether or not a particular rate, tariff rule or practice is consistent with Chapter 28 of the Public Utility Code, 66

Pa.C.S. § 2801, et seq. Pennsylvania’s electricity market is still in its infancy. The need for expeditious and efficient resolutions to market issues and certainty in that market remain essential if competition is to continue to grow in Pennsylvania. The declaratory order process envisioned by the proposed Policy Statement is one mechanism which can provide for prompt resolutions as well as certainty. However, as the Motion points out, other mechanisms exist and, provided that the Commission acts swiftly, those mechanisms may serve the purpose.

If this area becomes a problem, and it is determined that the other mechanisms are too unwieldy, expensive or otherwise not functioning as needed, we may wish to revisit the issue at that time. In the alternative, affected parties may petition the Commission to revisit this issue as we develop more experience.

New and innovative processes are needed to manage market issues. A recent study¹ has rated Pennsylvania as the clear leader in competitive markets for electricity across the United States. That same study also found that this Commission has not taken significant steps to change its processes in order to deal with the advent of competition. Similarly, the “FERC First” initiative now ongoing at the Federal Energy Regulatory Commission was engendered, in part, by the need of FERC to re-engineer itself to cope with emerging competitive markets. Although we decline to adopt the approach recommended today, I nonetheless applaud the effort to deal with issues in a streamlined, cost effective manner.

The second concern which requires that I concur only in the result of the Motion involves what I perceive to be a misreading of the proposed Policy Statement. The Motion states that the proposed Policy Statement encroaches on Federal antitrust matters. In fact, the proposed Policy Statement goes to some lengths to avoid just that problem. The proposed Policy Statement clearly contemplates that any opinion or order issued by the Commission in this area would restrict itself to a determination of whether or not a challenged rate, rule or practice is consistent with Chapter 28 of the Public Utility Code and is actively supervised by the Commission. Clearly, such issues are within the specific competence and jurisdiction of this Commission. Parties, and courts, are free to use such determinations as they see fit. I find nothing in such a framework which either requires parties to come before us in matters beyond our jurisdiction or which would require this Commission to issue determinations which would cross that jurisdictional line.

Finally, I note that Section 331(f) of the Public Utility Code, 66 Pa.C.S. § 331(f), expressly provides for declara-

¹ Ken Malloy & Michael Giberson, Center for the Advancement of Energy Markets, Retail Energy Deregulation Index 2000, Version 1.0, February, 2000.

tory orders. Regardless of whether a policy statement is issued or not, parties may avail themselves of that provision in order to terminate a controversy or remove uncertainty. Of course, any proceeding under that section must restrict itself to matters within the jurisdiction of this Commission. However, whether utility rates, rules and practices are consistent with Chapter 28 of the Public Utility Code would seem to meet that test.

For the foregoing reasons, I concur in the result of the Motion on this matter.

[Pa.B. Doc. No. 00-639. Filed for public inspection April 14, 2000, 9:00 a.m.]

Title 237—JUVENILE RULES

JUVENILE COURT JUDGES’ COMMISSION

[237 PA. CODE CH. 301]

[Correction]

Hearing Procedures

An error appeared in the Statement of Policy which appeared at 30 Pa.B. 1762 (April 1, 2000). There was a typographical error in the citation in § 301.2 (relating to petition). The correct version appears in Annex A, with ellipses referring to the existing text of the section.

Annex A

TITLE 237. JUVENILE RULES

PART II. STANDARDS

CHAPTER 301. HEARING PROCEDURES

INITIATION OF HEARINGS

§ 301.2. Petition.

The petition may be brought by any person, shall be verified, and shall set forth plainly:

(1) The facts which bring the child within the jurisdiction of the Court and 42 Pa.C.S. Chapter 63 (relating to Juvenile Act), a statement that it is in the interest of the child and the public that the proceedings be brought and, if delinquency is alleged, that the child is in need of treatment, supervision or rehabilitation.

* * * * *

[Pa.B. Doc. No. 00-564. Filed for public inspection March 31, 2000, 9:00 a.m.]