

# STATEMENTS OF POLICY

## Title 4—ADMINISTRATION

### PART II. EXECUTIVE BOARD

#### [ 4 PA. CODE CH. 9 ]

#### Reorganization of the Governor's Office of Administration

The Executive Board approved a reorganization of the Governor's Office of Administration effective April 15, 2010.

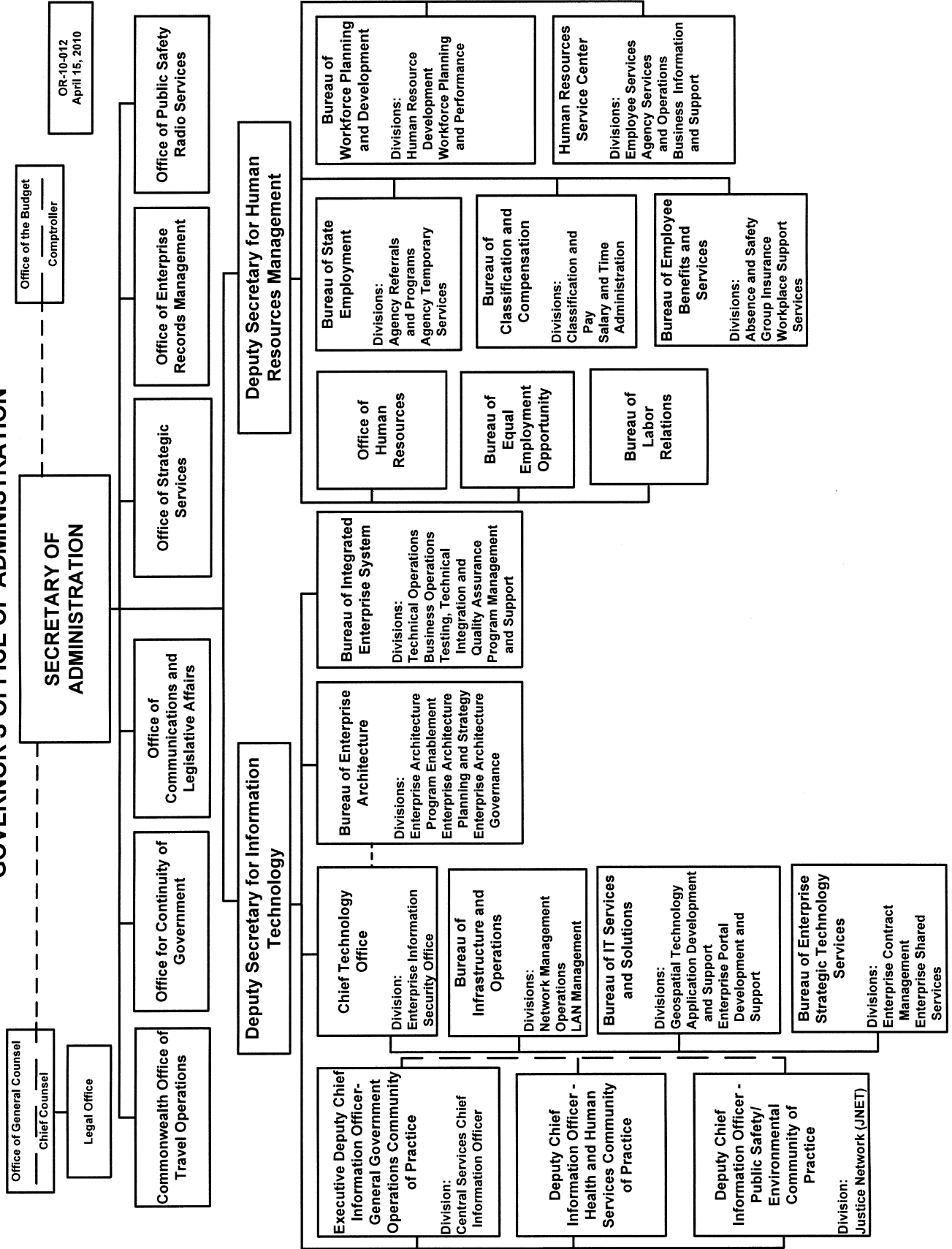
The organization chart at 40 Pa.B. 2288 (May 1, 2010) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of code).

*(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)*

[Pa.B. Doc. No. 10-775. Filed for public inspection April 30, 2010, 9:00 a.m.]

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GOVERNOR'S OFFICE OF ADMINISTRATION



# Title 52—PUBLIC UTILITIES

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### [ 52 PA. CODE CH. 69 ]

[M-2009-2140580/57-272]

#### Default Service and Retail Electric Markets

Public Meeting held  
January 14, 2010

*Commissioners Present:* James H. Cawley, Chairperson;  
Tyrone J. Christy, Vice Chairperson; Kim Pizzingrilli;  
Wayne E. Gardner; Robert F. Powelson

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

#### *Proposed Policy Statement*

#### *By the Commission:*

On October 15, 2008, Governor Edward Rendell signed House Bill 2200, Act 129, into law. Act 129 became effective on November 14, 2008. Act 129 has several goals including reducing energy consumption and demand. Act 129 also revises the default service requirements contained in Chapter 28 of the Public Utility Code. This proposed policy statement hereby opens a proceeding to consider amendments to our current policy statement regarding Default Service and Retail Electric Markets in 52 Pa. Code §§ 69.1801, 1817, as required by the enactment of Act 129 so that our policy statement shall be consistent with the Act.

#### *Procedural History*

Historically, the local electric utility company was responsible for generating or purchasing and delivering electricity to the customers' premises. However, the Electric Generation Customer Choice and Competition Act (Competition Act) of December 3, 1996 (P.L. 802, No. 138), codified at 66 Pa.C.S. §§ 2801, *et seq.*, required electric distribution companies (EDCs) to unbundle transmission, distribution and generation rates for retail customers. The Competition Act deregulated electricity generation and provided all customers in Pennsylvania the opportunity to choose their electric generation supplier (EGS). 66 Pa.C.S. § 2806(a). The EDC is responsible for delivering the electricity to those customers who choose to buy from an EGS. Additionally, the EDC is responsible for both acquiring and delivering electricity for those customers who do not shop or buy their electricity from an EGS, or whose EGS fails to provide the promised electricity.

When an EDC acquires electricity for customers not served by an EGS, the EDC is functioning as the "default service provider" (DSP). Currently, the rates charged to most Pennsylvania customers are capped. The Competition Act provided that an EDC's generation rates be capped until the EDC had completed its stranded cost recovery. Many of the larger EDCs agreed to extend rate caps as part of their electric restructuring settlements. For most of these companies, generation rate caps do not expire until December 31, 2010. Other EDCs, most notably Duquesne Light Company and several smaller EDCs had shorter stranded cost recovery periods that expired much sooner, as early as 1999 for Citizens Electric Company of Lewisburg, Inc.

Following the expiration of rate caps, the Competition Act provided that default suppliers "acquire electric energy at prevailing market prices" to serve default service

customers and that default suppliers "recover fully all reasonable costs." 66 Pa.C.S. § 2807(e)(3). There has been disagreement over what "prevailing market prices" means as applied to default service rates.

#### *History of Default Service Regulations and Policy Statement*

On February 9, 2007, the Commission issued a Proposed Policy Statement Order regarding default service at Docket No. M-00072009. On May 10, 2007, the Commission entered a Final Rulemaking Order at Docket No. L-00040169. The default service regulations became effective on September 15, 2007. The policy statement contained guidelines for DSPs in the areas of procurement, rate design, and cost-recovery. The default service regulations set forth detailed requirements for default service plans. The regulations require DSPs to acquire default supply at prevailing market prices. The regulations further require that electric generation supply be acquired by competitive bid solicitations, spot market purchases or a combination of both. 52 Pa. Code § 54.186(b)(4). Competitive bid processes are subject to monitoring by the Commission. 52 Pa. Code § 54.186(c)(3). The regulations allow DSPs to use automatic adjustment clauses for recovery of non-alternative energy default service costs. 52 Pa. Code § 54.187(f). The default service Policy Statement provides additional guidance to EDCs regarding energy procurement, bid solicitation processes, default service cost elements, rate design, rate change mitigation, rate and bill ready billing, purchase of receivables programs, customer referral programs and supplier tariff uniformity.

#### *Act 129*

Even though the retail provision of electric generation service has been subject to competition for nearly a decade, the vast majority of residential customers continue to obtain their generation supplies from their "default" supplier, that is, their regulated electric distribution utility. Under the 1996 Pennsylvania electric restructuring law, the electric distribution companies (or alternative Commission-approved default suppliers) were required to serve non-shopping customers after rate caps ended by acquiring electric energy "at prevailing market prices." Act 129 explicitly repealed the prevailing market prices standard, and declared instead that the utilities' generation purchases must be designed to ensure adequate and reliable service at the least cost to customers over time. 66 Pa.C.S. § 2807(e)(3.4).

In reviewing a utility's default service plan, the Commission must consider "the default service provider's obligation to provide adequate and reliable service to customers and that the default service provider has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis." 66 Pa.C.S. § 2807(e)(3.7).

Another substantive change is that contracts for supply formerly were defined as being up to 3-years in length. Now, under Act 129, a long-term purchase contract is generally defined as a contract "of more than four and not more than 20 years." 66 Pa.C.S. § 2807(e)(3.2)(iii).

In summary, under Act 129, electric power shall be procured through competitive procurement processes and shall include one or more of the following: (1) auctions; (2) requests for proposals; or (3) bilateral agreements. 66 Pa.C.S. § 2807(e)(3.1). Additionally, the electric power that is procured shall include a prudent mix of: (1) spot market purchases; (2) short-term contracts; and (3) long-term purchase contracts of more than 4 and not more than 20 years. 66 Pa.C.S. § 2807(e)(3.2). Long-term con-

tracts may not constitute more than 25% of projected load absent a Commission determination that good cause exists for a higher percentage to achieve least cost procurement. 66 Pa.C.S. § 2807(e)(3.2)(iii).

The “prudent mix” of contracts shall be designed to ensure: (1) adequate and reliable service; (2) the least cost to customers over time; (3) compliance with the procurement methodologies described previously, that is, through auctions, requests for proposals; or bilateral agreements. 66 Pa.C.S. § 2807(e)(3.4) and (e)(3.1). “Bilateral contract” is a new term defined under 66 Pa.C.S. § 2803 (relating to definitions).

In terms of process, the DSP must file a plan for competitive procurement with the Commission and obtain Commission approval of the plan considering certain factors and standards under 66 Pa.C.S. § 2807(e) before the competitive process is implemented. The Commission shall hold hearings as necessary on the proposed plan. If the Commission fails to issue a final order on the plan within 9 months of the date that the plan is filed, the plan is deemed to be approved and the default service provider may implement the plan as filed. 66 Pa.C.S. § 2807(e)(3.6).

When evaluating a default service plan, the Commission must consider the DSP’s obligation to provide adequate and reliable service to the customers and that the DSP has obtained a prudent mix of contracts to obtain the least cost on a long-term, short-term and spot market basis. The Commission is required to make specific findings that include: (1) the DSP’s plan includes prudent steps necessary to negotiate favorable generation supply contracts; (2) the DSP’s plan includes prudent steps necessary to obtain least cost generation contracts on a long-term, short-term and spot market basis; and (3) neither the DSP nor its affiliated interest has withheld generation supply from the market as a matter of Federal law. 66 Pa.C.S. § 2807(e)(3.7).

Further, under Act 129, DSPs have a right to recover default service costs pursuant to a reconcilable automatic adjustment clause and residential and small commercial and industrial customers’ rates cannot change more frequently than quarterly. 66 Pa.C.S. § 2807(e)(3.9). Default service plans approved by the Commission prior to the effective date of Act 129 shall remain in effect through the approved term. However, the DSP may propose amendments to an approved plan. 66 Pa.C.S. § 2807(e)(6).

#### *Discussion*

Consistent with the language of Act 129, the Commission proposes to make the following revisions to our policy statement regarding default service and retail electric markets, and invites the public to comment within 30 days of publication of this proposed policy statement in the *Pennsylvania Bulletin*.

#### *§ 69.1803. Definitions.*

We propose adding definitions for “bilateral contract” and “default service provider” such that the definitions mirror 66 Pa.C.S. § 2803.

#### *§ 69.1805. Electric generation supply procurement.*

We propose amending this section to define long-term contracts as being neither less than 4 nor greater than 20 years in length. The section already states a prudent mix of arrangements should be included in a proposed procurement plan.

#### *§ 69.1806. Alternative energy portfolio standard compliance.*

We propose updating this section to reflect that the DSP should procure electric generation supply for default service customers in compliance with Act 129. We invite comment on this section.

Although we see no need to amend §§ 69.1809—69.1817 of the policy statement, we invite comments on those sections as well.

Interested parties will be given 30 days from the date of publication of the proposed policy statement in the *Pennsylvania Bulletin* for the submission of an original and 15 copies of comments. The contact person is Elizabeth Barnes, Law Bureau, (717) 772-5408 (legal). A copy of all comments should be electronically mailed to Elizabeth Barnes at ebarnes@state.pa.us.

#### *Conclusion*

The Commission welcomes comments on all aspects of this proposed policy statement. It must be observed that this policy statement is closely related to the final outcome of the default service regulations rulemaking at Docket No. L-2009-2095604. A final policy statement will be promulgated for publication in the *Pennsylvania Bulletin* before the Commission issues its Final Rulemaking Order. Should the Independent Regulatory Review Commission or other entity require changes to the final-form version of the rulemaking, this policy statement may need to be revised for consistency; *Therefore,*

#### *It Is Ordered That:*

1. The proposed amendments to 52 Pa. Code §§ 69.1803, 69.1805 and 69.1806, as set forth in Annex A, are issued for comment.

2. The Secretary shall submit this order and Annex A to the Governor’s Budget Office for review of fiscal impact.

3. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4. Interested parties shall have 30 days from the date of publication in the *Pennsylvania Bulletin* of the proposed policy statement and Annex A to file an original and 15 written comments to the Pennsylvania Public Utility Commission, Attention: Secretary Rosemary Chiavetta, P. O. Box 3265, Harrisburg, PA 17105-3265.

5. A copy of the comments should be electronically mailed to Elizabeth Barnes, Assistant Counsel at ebarnes@state.pa.us, and these comments in turn will be placed on the Commission’s web site for public viewing at www.puc.state.pa.us. Attachments may not exceed three megabytes.

6. Comments should, where appropriate, address the issues identified in this order and should include, where applicable, a numerical reference to the attached Annex A which the comments address, proposed language for revision, and a clear explanation for the recommendation.

7. A copy of this order and Annex A be filed at Docket No. M-2140580 and Docket No. L-2009-2095604 and be served upon all electric distribution companies and all electric generation suppliers operating in the Commonwealth, the Office of Consumer Advocate, the Office of Small Business Advocate, the AFL-CIO Utility Caucus, the Pennsylvania Utility Contractors Association and the Energy Association of Pennsylvania.

8. The contact person is Elizabeth Barnes, Law Bureau, (717) 772-5408, ebarnes@state.pa.us.

By the Commission

ROSEMARY CHIAVETTA, Secretary

Fiscal Note: 57-272. No fiscal impact; (8) recommends adoption.

(Editor's Note: For a proposed rulemaking relating to this proposed statement of policy, see 40 Pa.B. 2267 (May 1, 2010).)

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

DEFAULT SERVICE AND RETAIL ELECTRIC MARKET—STATEMENT OF POLICY

§ 69.1803. Definitions.

The following words and terms, when used in this section and §§ 69.1801, 69.1802 and 69.1804—69.1817, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

Bilateral contract—The term has the same meaning as defined in 66 Pa.C.S. § 2803 (relating to definitions).

\* \* \* \* \*

DSP—Default service provider—The [ incumbent EDC within a certificated service territory or a Commission approved alternative supplier of electric generation service ] term has the same meaning as defined in 66 Pa.C.S. § 2803 (relating to definitions).

\* \* \* \* \*

§ 69.1805. Electric generation supply procurement.

A proposed procurement plan should balance the goals of allowing the development of a competitive retail supply

market and also including a prudent mix of arrangements to minimize the risk of over-reliance on any energy products at a particular point in time. In developing a proposed procurement plan, a DSP should consider including a prudent mix of supply-side and demand-side resources such as long-term, short-term, staggered-term and spot market purchases to minimize the risk of contracting for supply at times of peak prices. Short-term contracts are contracts up to and including 3 years in length. Long-term contracts are contracts neither less than 4 years nor greater than 20 years in length. Long-term contracts should only be used when necessary and required for DSP compliance with alternative energy requirements, and should be restricted to covering a relatively small portion of the default service load. An over-reliance on long-term contracts would mute demand response, create the potential for future default service customers to bear future above market costs and limit operational flexibility for DSPs to manage their default service supply. The plan should be tailored to the following customer groupings, but DSPs may propose alternative divisions of customers by registered peak load to preserve existing customer classes.

\* \* \* \* \*

§ 69.1806. Alternative energy portfolio standard compliance.

In procuring electric generation supply for default service customers, the DSP shall comply with the Alternative Energy Portfolio Standards Act (73 P. S. §§ 1648.1—1648.8) and the amendments provided under the act of October 15, 2008 (P. L. 1592, No. 129) (Act 129). [ The Commission's default service regulations neither prohibit nor mandate the use of long-term contracts to satisfy the use of long-term contracts to satisfy the alternative energy portfolio standards obligation. In satisfying their obligation, a DSP's procurement strategy should reflect the incurrence of reasonable costs. ]

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[Pa.B. Doc. No. 10-776. Filed for public inspection April 30, 2010, 9:00 a.m.]