

# STATEMENTS OF POLICY

## Title 52—PUBLIC UTILITIES

### PENNSYLVANIA PUBLIC UTILITY COMMISSION

[ 52 PA. CODE CH. 69 ]

[M-2008-2065532]

#### Utility Service Outage Public Notification Guidelines

The Pennsylvania Public Utility Commission (Commission) on December 15, 2011, adopted a final policy statement which establishes acceptable methods of public notification in the event of service interruptions.

Public meeting held  
December 15, 2011

*Commissioners Present:* Robert F. Powelson, Chairperson; John F. Coleman, Jr., Vice Chairperson; Wayne E. Gardner; James H. Cawley; Pamela A. Witmer

*Policy Statement Regarding Utility Service Outage Public Notification Guidelines; Doc. No. M-2008-2065532*

#### Final Policy Statement

*By the Commission:*

On November 10, 2009, the Commission entered a proposed policy statement order inviting comment regarding proposed amendments to the Commission's policy statements regarding utility service outage public notification guidelines at 52 Pa. Code §§ 69.1901, et seq., adding a section for electric distribution companies and inviting comment on whether this policy statement should apply to natural gas utilities as well. Based upon our review and consideration of the many comments filed in this proceeding by the industry, statutory advocates and other interested persons, we shall adopt a final policy statement regarding utility service outage public notification guidelines.

#### Procedural History

On September 14 and 15, 2008, Hurricane Ike swept through Pennsylvania interrupting electric service to over 450,000 customers. Prompted by this occurrence, on September 25, 2008, Vice Chairman Tyrone J. Christy and Commissioner Kim Pizzigrilli issued a Joint Motion at Docket No. M-2008-2065532, directing Law Bureau to prepare a Secretarial Letter seeking information from all jurisdictional electric distribution companies (EDCs) operating in Pennsylvania regarding their service restoration and public notice practices. On the same date, the Commission issued a Secretarial Letter and initiated an investigation into EDCs' service outage responses and restoration practices with the same information requested. EDCs filed responses. As part of this investigation, the Commission also held two public input hearings in western Pennsylvania and solicited information from EDCs regarding their current and past storm preparation and response practices.

In April, 2009, the Commission's Bureau of Conservation, Economics and Energy Planning and Office of Communications submitted a report to the Commission entitled, *Electric Distribution Company Service Outage Response and Restoration Practices Report (Report)*. This report was adopted by the Commission at Public Meeting of April 30, 2009, at Docket No. M-2008-2065532. On the same date, this Commission adopted the Joint Motion of Vice Chairman Tyrone J. Christy and Commissioner Kim

Pizzigrilli to initiate a rulemaking proceeding to revise our regulations on Service Outages at 52 Pa. Code §§ 67.1, et seq., and reportable incidents at 52 Pa. Code Sections 57.11, 59.11 and 65.2. The Joint Motion directed a Policy Statement be issued regarding utilities service outage public notification guidelines.

#### Summary of Recommendations

The Report summarized the findings of the investigation and recommended the following future actions:

- Utilities should apply the principles of the National Incident Management System (NIMS) and its Incident Command System when managing widespread service outages. Application of NIMS would include:

1. Development of written crisis communication plans consistent with national NIMS standards.

2. Establishment of a Joint Information System/Joint Information Center to coordinate responses when multiple utilities in the same region are affected by an incident.

- Utility personnel should communicate with the news media and public in a consistent fashion. Common talking points should be distributed to all utility employees who may be in contact with the public and news media.

- During incident management, utilities should establish a schedule for the regular release of information to the news media.

- Utilities should strive to use the best available technology to facilitate the sharing of information, including automated dialing systems, electronic mail and text messaging.<sup>1</sup>

#### Discussion

On November 10, 2009, we entered a Proposed Policy Statement Order inviting comment on proposed amendments to our current policy statements regarding utility service outage public notification guidelines at 52 Pa. Code §§ 69.1901, et seq., and invited comments on whether the proposed policy statement should apply to natural gas companies as well as electric companies. Our goal is to have even more effective public notification responses to future unscheduled service outages.

Based on the public's response during and immediately following the outages in 2008 and subsequent large-scale and extended duration outage events, we acknowledge that many Pennsylvania residents were frustrated with the lack of answers from their utilities regarding service restoration. In some instances, customers may have received conflicting information. These communication problems have occurred as recently as the late summer and early fall of 2011. The Commission understands that it takes time to restore power when severe storms cause significant damage to utility infrastructure. However, keeping an open, predictable line of communication with consumers eases their frustrations with the situation.

Utilities should send consistent messages to consumers, ideally using one spokesperson and should release up-

<sup>1</sup> This report also included the following recommendations which were addressed in a separate Final Rulemaking Order at Docket No. L-2009-2104274:

- Utilities should provide a greater level of detail in their written reports to the Commission for unscheduled service interruptions that meet the criteria under 52 Pa. Code § 67.1(b), including the level of damage to utility facilities, number of personnel utilized through mutual aid agreements, and other matters identified in the report.

- The Commission should establish a more uniform approach to reportable accidents involving utility facilities and operations.

dated information at regular intervals. The utilities should consider organizing all of the information related to restoration efforts throughout the utility in one unified message. One person should deliver that message at predictable timeframes to the public, media and others.

We understand that customer service representatives will be dealing with the public during outage situations. The message to the public and media should be the same no matter which utility representative or department of the utility residents contact. During the September 2008 incident, we found that different information was being given from different segments of the utility (consumer services representatives, linemen, field staff and media contacts). This caused confusion among consumers, media and the Commission.

A single set of talking points or informational sheets with a uniform message should be distributed to all within the utility who may have contact with the public. The uniform message should be updated regularly at predictable/scheduled times. Media releases, talking points and other information should be shared with the Commission's Office of Communications, its Emergency Preparedness Coordinator and the County Emergency Management Agencies.

Also, specific times should be established for release of information to the media with an opportunity for open dialogue and questions—possibly through an in-person media event conducted by the utility spokesperson. As a matter of practice, and pursuant to 52 Pa. Code § 67.1(b), the Commission and utilities will establish regular update times for extended service outages reporting. The Commission's Office of Communications can then share those times with the media to inform them when the next outage update will be available. The same should be done by the utilities in communicating with the public. Establishing a regular schedule for information updates allows the public and the media to know, specifically, when new, updated information will be available. Again, striving to follow the NIMS standards for release of public information would alleviate these concerns.

We see a benefit to a consistent message not just from the EDCs but from water and natural gas utilities as well. The NIMS-based Joint Information System/Joint Information Center would apply to efforts to work with other utilities in coordinating a message. According to NIMS standards, those contributing to joint public information management “do not lose their individual identities or responsibilities. Rather, each entity will contribute to the overall unified message.”

We also believe that modern technology is being underutilized by the utilities. Automated dialing systems, social media, electronic mail or text messaging could prove to be effective communication tools for customers. For example, customers could opt to provide cellular telephone or home telephone numbers for notification of outage updates. Customers who opt to participate in such a program would then know that they can receive updated information at a set interval or if their estimated restoration time has changed by more than two hours.

We understand that the success of the use of modern technologies such as social media, electronic mail, and text messaging is somewhat dependent upon the consumers' willingness to provide that secondary-contact information. However, we believe sufficient customer interest in receiving timely information during an outage exists, leading to willingness by those customers to voluntarily provide secondary-contact information such as e-mail and text-messaging addresses to the utilities.

Another potentially beneficial use of technology would be for the utilities to create and maintain a section on their websites specifically dedicated to outages. While it is admirable that some of the utilities are able to provide real-time, customer-specific outage-related data on their websites, we understand that type of specificity is too cumbersome for certain utilities. However, at a minimum, a section of the utilities' website should be dedicated to presenting outage information where customers could get regular updates of the number of customers without service by geographic area and estimated restoration times.

### Policy Statement

On November 9, 2006, the Commission finalized a policy statement relating to unscheduled water service interruptions and associated actions at § 69.1602 adopted December 15, 2006, effective December 16, 2006, 36 Pa.B. 7624. The document and its advice applied only to jurisdictional water and wastewater utilities, but the information contained within the policy statement provided solid guidance for all jurisdictional utilities. While the information found during the investigation leading up to the policy statement was served on all jurisdictional utilities including EDCs, the final policy statement was not. The proposed policy statement entered on November 10, 2009, at Docket No. M-2008-2065532, was served on all EDCs operating in Pennsylvania, all jurisdictional water and wastewater companies, all natural gas distribution companies (NGDCs), all jurisdictional telephone utilities, the Office of Consumer Advocate, the Office of Small Business Advocate, the AFL-CIO Utility Caucus, the Pennsylvania Utility Contractors Association, the Energy Association of Pennsylvania, The Pennsylvania Telephone Association, and the Director of the Emergency Management Agency.

Given the communication methods and reaction of consumers from the September 2008 electric outages and subsequent large-scale and extended duration outage events, including those in the late summer and fall of 2011, we are issuing a final policy statement for our EDCs and NGDCs. It is similar to the one adopted on November 9, 2006, for our jurisdictional water utilities. Additionally, we have revised the policy statement for water to make it consistent with the electric and gas sections. For example, we have revised the water section to encourage the use of social media and other emerging technology. We have also added the section on the NIMS standards that water utilities should strive to follow.

The policy statement is intended to provide guidance to the industry regarding the types of public notice necessary to meet the reasonableness standard in the Public Utility Code at 66 Pa.C.S. § 1501. The purpose of this policy statement is to help ensure that actual, timely notice to customers is provided by utilities whenever any event disrupts service or potentially endangers public safety. Our policy statement includes a series of acceptable methods for improving the timeliness and effectiveness of notice to utility customers during an outage. In addition, the final policy statement provides guidelines for public notice templates and notice to Commission personnel.

Comments have been received from the following: National Fuel Gas Distribution Corporation (NFG), Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company (FirstEnergy), PECO Energy Company (PECO), PPL Electric Utilities (PPL), Energy Association of Pennsylvania (EAP), Pennsylvania Telephone Association (PTA), Duquesne Light Company

(Duquesne Light), West Penn Power Company d/b/a Allegheny Power (Allegheny Power), Philadelphia Gas Works (PGW), Office of Consumer Advocate (OCA), UGI Utilities, Inc., UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc. (UGI), Verizon Pennsylvania, Inc., Verizon North Inc. and MCImetro Access Transmission Services, LLC, d/b/a Verizon Access Transmission Services (Verizon), and the Pennsylvania Emergency Management Agency (PEMA).

We have reviewed and will address these comments below.

## Comments

### *General Comments*

OCA asserts that the policy statement should apply to all utilities to the extent possible and that doing so will provide consistency for customers of all utilities as to where and when to obtain information regarding service interruptions. OCA Comments p. 3. PEMA stated that during Hurricane Ike in September 2008, telephone service was largely affected, and contends that the policy statement should also apply to the telephone industry. PEMA Comments p. 1. PTA does not believe that the Commission should implement the policy statement for the telephone industry absent evidence of critical telephone outage interruptions. PTA Comments, p. 7. Verizon noted that the recommendations derive from a staff report on service outages and restoration practices for the electric distribution companies and that there has been no corresponding study of the outage notification practices in the communications industry. Verizon contends that there is no demonstrated need for such a policy statement in the telephone industry and that Chapter 30, at 66 Pa.C.S. §§ 3011(13), 3015(f)(1) provides a clear stated goal to avoid additional regulatory burdens on the telephone industry. Verizon comments, pp. 10, 13.

### *Resolution*

The Commission's specific statutory authority for the amendments proposed pertaining to the telephone and the water/wastewater industry is from the Pennsylvania Public Utility Code at 66 Pa.C.S. § 1508 relating to reports of utility accidents. Additionally, the Commission has general statutory authority at § 501(a) relating to general powers, § 504 relating to reports by public utilities, § 505 relating to duty to furnish information to commission, and § 506 relating to inspection of facilities and records.

While we note that OCA and PEMA believe that the policy statement should also apply to the telephone industry, we have decided not to impose an additional policy statement for the telephone industry. However, we encourage the telephone industry to communicate consistently with the public and to follow the NIMS standards where possible.

### *Comments*

#### *Chapter 69. Public Notification guidelines.—Water Service § 69.1602*

As discussed above, OCA submitted that the policy statement should apply to all utilities to the extent possible, and asserted that doing so will provide consistency for customers of all utilities as to where and when to obtain information regarding service interruptions. OCA Comments, p. 3. No water utilities filed comments to the proposed policy statement at this docket.

### *Resolution*

The Commission agrees that the policy statement should apply to jurisdictional water and wastewater utilities. The Commission has revised the water service section at subsection 69.1602 to make it consistent with the policy statements for the electric and natural gas utilities. We made revisions stating that updates should be provided on a predictable, regular schedule for the duration of the event, and that these updates should be provided to the Commission's Office of Communications and its Emergency Preparedness Coordinator. Revisions also require that utilities' websites should include a section dedicated to presenting outage information with regular updates. The Commission further added a section to encourage the use of emerging technologies such as social media. We added a new section to provide that water utilities should strive to follow NIMS and its public information system to organize all information into one, unified message. Finally, the Commission provided that a single point of contact should be established in the form of a media spokesperson for each utility.

#### *Chapter 69. Public Notification guidelines.—Natural Gas Distribution Market*

##### *§ 69.1701*

OCA asserts that the policy statement should apply to all utilities to the extent possible. OCA Comments, p. 3. PEMA supported the Commission's recommendation to include not just EDCs in the policy statement. More specifically, PEMA supported the Commission's proposed requirement that utilities implement the NIMS communications Joint Information Center and requested that utilities also regularly communicate with PEMA during an emergency. PEMA Comments, pp. 1-2. EAP contended that the policy statement should not apply to natural gas distribution companies and noted that as stated in the comments filed by UGI, U.S. Department of Transportation's regulations provide requirements for an emergency plan during an outage of a natural gas system. EAP Comments, p. 5.

PGW contends that it is not necessary to include gas utilities in the policy statement since larger scale or recurrent gas outages have not been a problem. PGW believes that the burdens of the new requirements including potential monetary burdens, do not match a need from natural gas customers for this public notification guideline. PGW notes, however, that it has trained a number of its supervisors, managers, and executives in the NIMS principles and would utilize NIMS when managing a widespread service outage. PGW further contends that if gas utilities are included in the scope of the policy statement, acceptable methods of public notification should be at the discretion of the utility. PGW Comments, pp. 1-2. NFG and UGI contend that given the inherent differences between electric and gas distribution systems and the nature of natural gas service outages, the policy statement should not apply to NGDCs. NFG and UGI further assert that the potential costs of implementing the policy statement far outweigh any benefit to natural gas distribution customers. NFG Comments, p. 2. UGI Comments, pp. 7-9.

### *Resolution*

The Commission agrees with OCA that the policy statement should also apply to NGDCs. With regard to the NIMS standards, most county and emergency management agencies are based on NIMS. In order to adequately respond to an emergency, utilities should strive to follow NIMS in order to have a uniform and consistent message.

The Commission notes that while utilities do not need to become NIMS certified, they should attempt to comply with its standards so that they can provide one, clear, consistent message during an outage. As to PGW and NFG's concerns regarding costs, we disagree that the costs outweigh the benefits. The cost impacts are minimal and mainly involve training costs for employees in NIMS standards. Again, we see a benefit to a consistent message not just from the EDCs but from water and NGDCs as well. As noted by PEMA, the NIMS-based Joint Information System/Joint Information Center would apply to efforts to work with other utilities in coordinating a message. According to NIMS standard, those contributing to joint public information management "do not lose their individual identities or responsibilities. Rather, each entity will contribute to the overall unified message." Accordingly, the Commission includes NGDCs in the scope of the policy statement on public notification guidelines.

§ 69.1702(a)(1)

OCA generally supports the acceptable methods of public notification section of the policy statement. PGW asserts that while it agrees that media updates should be provided throughout the duration of a severe outage event, instead of a fixed schedule of updating, utilities should provide updates when it obtains new, material information. PGW Comments, p. 2. UGI asserts that installing and maintaining information systems that enable the utility to collect and communicate information on the number, location, and estimated restoration times of all of its customers during a significant outage event would be costly.

*Resolution*

To be consistent with NIMS standards, the Commission is requesting that updates be provided as often as needed and that regular updates be provided. In regards to the cost concerns of UGI, we note that an exception is included at subsection 69.1702(a)(2) that depending on NGDC system limitations, this could be as simple as a PDF or spreadsheet file of information that is updated at regular intervals.

§ 69.1702(a)(2)

OCA submits that the Commission website and utilities' websites, in some emergency cases, should be updated more frequently than twice daily. OCA believes that more frequent updates would better provide affected customers with the most recent, timely information. OCA Comments, p. 4. PGW asserts that it does not have the current systems or capability to report interruptions on a number of customer basis. PGW states that, as an example, in the event of a low pressure system area, PGW would only have knowledge of the area affected and an estimated number of customers affected. PGW concluded that if gas interruptions are generally smaller in scale then it is likely more manageable and beneficial for the utility to provide personalized updates to customers who call in by telephone. PGW Comments, p. 2.

*Resolution*

With regard to cost concerns of PGW, we note that an exception is included that depending on NGDC system limitations, this could be as simple as a PDF or spreadsheet file of information that is updated at regular intervals.

§ 69.1702(a)(3), (4), (5)

PGW does not have an automated dialer system or electronic mail/text messaging notification system which could be utilized in the manner in these subsections.

PGW asserts that larger scale outages would be unusual for PGW, so it is not cost effective to implement these systems. PGW Comments, p. 3. PGW believes that door-knob fliers are generally not as effective or practical as other methods of communication, particularly given the time required for printing flyers and distributing them. PGW Comments, p. 3. UGI also contends that communications systems such as automated dialer systems and integrated response systems are costly to purchase and install for its customers. UGI Comments, p. 7-8

*Resolution*

In response to PGW's concern, the Commission notes that if the company believes that it is more cost-effective and efficient to notify customers one-on-one through telephone calls or other means, then they may use that option. As for the use of automated dialer systems and integrated response systems, the Commission is not requiring the use of these systems but is strongly encouraging them. The goal of the policy statement is to have even more effective public notification responses to future unscheduled service outages. Accordingly, the Commission expects utilities to do more towards increasing customer communication. If the utility views it more cost-effective and efficient to notify customers one-on-one through telephone calls or other means, utilities may use that option. However, the utility should be aware that with this final policy statement, the Commission has established an expectation of regular communication with customers with suggestions of various ways that this could be accomplished.

§ 69.1702(b)

OCA supports the proposed changes to Section 1702(b) and notes that all utilities, both small and large, could conceivably use the same sources to mitigate the costs of compiling templates. OCA Comments, p. 5. UGI agrees that a utility should strive towards providing a uniform communication of its efforts to restore service after a severe outage event. However, UGI expressed concerns that outages take time to restore and utilities do not always have an accurate estimation of this time. UGI further added its concerns that providing customers with more detailed estimates of restoration timeframes, and the number of customers restored could give some customers the impression that the utility is not working towards resolving their individual situation. UGI Comments, p. 6-7. UGI and EAP also assert that the emergency plan requirements under the U.S. Department of Transportation (U.S. DOT) regulations satisfy many elements of the proposed policy. UGI Comments, p. 9; EAP Comments, p. 5.

*Resolution*

The Commission notes the concerns of commenters regarding communicating outage information to customers. However, the goal of this policy statement is to have even more effective public notification responses to future unscheduled service outages. Accordingly, the Commission expects utilities to do more towards increasing customer communication. As noted above, utilities should be aware that with this final policy statement, the Commission has established an expectation of regular communication with customers with suggestions of various ways this will be accomplished.

The Commission notes UGI's concern that its plans must meet the U.S. DOT's regulations which satisfy many elements of the policy statement. Accordingly, the Commission has modified 69.1702(b)(1) stating that NGDC's that are required to have written emergency plans pursu-

ant to U.S. DOT regulations should also be familiar with NIMS standards so that NGDCs will be able to coordinate and respond pursuant to subsection 69.1702(b)(1)(2), and (3).

§ 69.1702(b)(2)

PGW asserts that while it would provide information to customer service representatives and others likely to come in contact with the public during a large scale outage, it should not provide information designed for public communication to linepersons. PGW states that these workers' focus must remain on remedying the outage on a timely basis and that it is unsafe for workers to engage in communications with consumers and media while working on an outage. PGW Comments, p. 3.

*Resolution*

In response to the concerns expressed by PGW, the Commission has deleted the reference at subsection 69.1702(b)(2) to linepersons. The Commission maintains that anyone who comes in contact with the general public—whether the official spokesperson for the utility or not—is a utility representative. Customers who are without service during an event will be looking to these utility representatives for answers. At a minimum, linepersons should be provided with direction from the utility to advise customers to call customer service and provide them with that number, if asked about the outage. The Commission has revised this section to state that talking points and informational sheets should be provided to customer service representatives and others who may come in contact with the public during the course of the outage to strive toward consistency of message. The Commission further states that this information should also be shared with the Commission's Office of Communications, its Emergency Preparedness Coordinator and the county emergency management agencies. The Commission notes that the talking points could be as simple as one page of bullet points that allows the utility personnel to answer more effectively.

*Chapter 69. Public Notification guidelines.—Electric distribution market*

§ 69.1901

OCA supports the revised policy statement for utility service outage public notification guidelines. OCA asserts that the policy statement should apply to all utilities to the extent possible and states that doing so will provide consistency for customers of all utilities as to where and when to obtain information regarding service interruptions. OCA Comments, p. 3. Both Duquesne and PPL believe that it is appropriate and reasonable for the policy statement to apply to all fixed utility services. PPL Comments, p. 4. Duquesne further notes, that while there are operational differences across the industries, unusual events occur in each industry which bring about utility service outages, so having solid processes and effective communication plans providing clear and concise communications to customers on the utility's efforts to restore disrupted service are universal. Duquesne comments, p. 2. PECO applauds the Commission's goal of fostering better communication with customers. PECO Comments, p. 2.

FirstEnergy asserts that the Commission's existing Policy Statement at 52 Pa. Code § 69.1602 only applies to unscheduled interruptions and associated actions of jurisdictional water and wastewater utilities, and was never intended to apply to all utilities. First Energy asserts that a "one size fits all" approach to utility service outages is

not appropriate or necessary and that a policy statement for the electric utility industry is not needed. FirstEnergy Comments, p. 3.

*Resolution*

We do not believe that this policy statement provides a "one size fits all" approach to communicating with the public during an outage. Rather we agree with the commenters that this policy statement fosters better communication with customers. We further believe that the policy statement outlines general guidelines and ideas while also providing enough flexibility to allow the utilities to respond to each outage as the individual circumstances warrant. Accordingly, we have applied this policy statement to EDCs as well as to NGDCs and have further revised the section on water and wastewater utilities.

§ 69.1902(a)(2)

OCA generally supports the revisions to this section of the policy statement. OCA also recommends more frequent updates to the Commission's and utilities' websites than twice daily in order to provide customers with the most recent, timely information. OCA Comments, p. 4. Duquesne Light agrees with the Commission's proposed six communication methods of public notification section, and notes that it currently uses many of these methods to communicate with its customers. Duquesne Light Comments, p. 3.

Duquesne Light supports the Commission's proposed development of a web page whereby EDCs could upload outage information on a regular basis and believes this serves as an additional information source for customers experiencing an outage. Duquesne Light agrees with the Commission's recommendation that this new web page functionality should only be used for long-term outages. Duquesne Light Comments, p. 5. FirstEnergy and Allegheny believe the Commission's proposal of a web page for uploading current outage information is unnecessary and unduly burdensome, that it currently has an established process for its own website, and that this would take too much of its resources to manage and provide technical support, when its resources should be going towards promptly restoring service. FirstEnergy Comments, p. 4. Allegheny proposes instead that the Commission website be linked to the location where the Allegheny information would be available. Allegheny Comments, p. 1.

Duquesne Light has noted that it has also begun implementing its inbound-call integrated voice response (IVR) technology. Duquesne Light reports that the vast majority of its customers currently use its inbound IVR to report outages or to receive restoration time updates because it provides a quick, cost effective, and easy-to-use tool for its customers. Duquesne Light Comments, p. 4.

*Resolution*

The Commission understands the concerns raised by the commenters, but supports offering the information on the Commission website as another resource for consumers. Since the policy statement was issued for comment, the Commission has developed a location on its website that includes direct links to utilities' outage websites where available. This has been working well and serves as a viable alternative to developing a page where the utilities would upload data to the Commission website. Accordingly, the Commission will recommend no further action at this time.

The Commission notes OCA's concern that the websites should be updated more frequently than twice daily in

the event of a large outage event. Accordingly, the Commission has kept the language in subsection 69.1902(2) such that the updates to websites should be as often as needed.

§ 69.1902(a)(3)

OCA suggests that the use of the automated dialer system should include more than one telephone contact number to the extent that a utility has the ability to maintain this information so that there is a better chance of reaching customers with urgent messages regarding public safety. OCA Comments, p. 4. Duquesne Light reported that it does not currently have the ability to implement an outbound automated dialer system and asserts that the implementation of this new technology would be cost prohibitive with little limited benefit. Duquesne Comments, p. 4.

*Resolution*

If a utility views it more cost-effective and efficient to notify customers one-on-one through telephone calls or other means, utilities may use those options. The goal of the policy statement is to have even more effective public notification responses to future unscheduled service outages. Accordingly, the Commission expects utilities to do more towards increasing customer communication.

§ 69.1902(a)(5)

Duquesne Light and PPL noted that they have been exploring other communication tools such as “Twitter,” an internet-based social networking and micro-blogging service that enables its users to send and read messages and to keep customers and the local media well informed of restoration efforts. Duquesne Comments, pp. 3-4. PPL further recommended that the Commission modify Section 1902(a) to reflect a policy of encouraging EDCs to adapt their notification methods to reflect advances in technology and to implement notification practices that are best suited to the EDCs and their customers. PPL Comments, p. 4. Allegheny Power reported that it does not have the capability to use electronic mail or text messaging to communicate to its affected customers. However, the company’s current Smart Meter Implementation Plan includes modernization of its customer information system which will allow electronic notification to its customers. Allegheny Comments, p. 2.

*Resolution*

The Commission notes the concerns expressed by some commenters that they do not have the technology or that it is not cost effective. However, the Commission agrees with Duquesne Light and PPL’s advances towards increasing the use of emerging technology. Accordingly, we have modified subsection 6.1902(a)(5) to strongly encourage the use of emerging technology such as social media when possible.

§ 69.1902(b)(1)

OCA and Duquesne Light support subsection 1902(b)(1) that utilities should strive to adopt NIMS standards and that utilities’ crisis communication plans should be consistent with NIMS standards. OCA Comments, pp. 4-5. Duquesne Light, PPL, and FirstEnergy currently have written crisis communication plans, which closely follow approved NIMS standards. Duquesne Light Comments, p. 6; PPL Comments, p. 5; PECO Comments, p. 4.

EAP and Allegheny have requested further clarification about the proposed policy statement from the Commission regarding the training required for NIMS, whether utilities should adopt a multi-agency approach, whether utili-

ties should adopt the NIMS preparedness cycle for training and drilling, and regarding whether a utilities’ existing plans must comply with NIMS. EAP Comments, pp. 4-5; Allegheny Power Comments, pp. 2-3. PPL and PECO contend that their current systems adequately meet the purpose of the proposed subsection 1902(b) and it is not necessary to adopt NIMS standards. PPL Comments, p. 5. PPL Comments, p. 3. First Energy asserts that not all components of NIMS apply to electric utilities and that certain provisions may actually conflict with FirstEnergy’s negotiated collective bargaining agreements. FirstEnergy Comments, p. 4.

*Resolution*

In response to the concerns of EAP, Allegheny, PPL, and FirstEnergy the Commission has revised this subsection from the proposed policy statement removing the word “adopt” and adding that utilities should strive to “follow” NIMS and its Public Information System. The Commission further notes that utilities do not have to follow exact NIMS standards as reflected in this change—instead the Commission is requesting that every attempt should be made to be consistent with the NIMS standards. NIMS is designed to be scale-able and adaptable to each organization. At a minimum, the Commission is providing guidance that utilities should have communication plans in place to effectively communicate during an emergency with first responders, county emergency management, and the press; and to have key utility personnel take the introductory NIMS training.

This NIMS and Incident Command System (ICS) training is available online at no cost from the Federal Emergency Management Agency (FEMA) Emergency Management Institute: <http://training.fema.gov/IS/Nims.asp>. The recommended courses are IS-700.a (NIMS introduction), IS-702.a (NIMS Public Information Systems), and ICS-100.b (Introduction to the Incident Command System (ICS)). The Commission has had management and key staff complete NIMS training. The Commission’s Continuity of Operations Plan is structured on the ICS and NIMS.

§ 69.1902(b)(2)

OCA and PEMA support the Commission’s proposed coordination of messages including implementing the NIMS based Joint Information System/Joint Information Center (JIC). OCA adds that implementing this JIC would allow coordination of information, especially with regard to universal messages to customers regarding safety. OCA Comments, p. 4. PEMA also stated that this would include communicating with the county emergency management agencies and that utilities should also communicate regularly with PEMA regarding their activities during a disaster. PEMA Comments, p. 2.

EAP, Duquesne Light, PECO, FirstEnergy, and Allegheny Power expressed concerns with implementing NIMS principles and stated that to comply would require additional staffing and infrastructure, for coordination and operations through the NIMS standard with agencies such as county and township road departments. PECO Comments, p. 4; FirstEnergy Comments, p. 4; Allegheny Power Comments, pp. 3-4. EAP further indicated that implementing the JIC would require significant organization prior to the emergency. EAP Comments, p. 4. Duquesne Light further suggested that storms affect different service territories differently and in the alternative, JIC would be better implemented state-wide by an agency such as PEMA. Duquesne Light Comments, pp. 6-7. FirstEnergy and Allegheny Power expressed concern

with the need under NIMS to have staffing to support the JIC, and asserted that this need to have key resources off-site during critical times would be disruptive and counterproductive. FirstEnergy Comments, p. 5; Allegheny Power Comments, pp. 3-4.

*Resolution*

The Commission notes the staffing, coordination, organization, and territorial concerns of the commenters. However, we agree with OCA and PEMA that strong consideration should be given to implementing the NIMS based Joint Information System/Joint Information Center, if more than one EDC is affected in the same geographic region. Additionally, strong consideration should be given to coordinating messages on safety and other consumer information tips during outages to allow for coordination and integration of information across jurisdictions.

§ 69.1902(b)(3)

OCA and Duquesne Light support the Commission's proposed public notice templates section. OCA Comments, p. 8. OCA further notes that all utilities, both small and large, could conceivably use these same sources to mitigate the costs of compiling such templates. OCA Comments, p. 5.

PECO suggests that the Commission remove the guideline that utilities adopt public notice templates. PECO asserts that while it understands the Commission's desire to have templates prepared in advance of emergency situations, it believes that each emergency situation is unique and that the standard information contained in templates may not be helpful to each situation. PECO Comments, pp. 4-5.

*Resolution*

The Commission agrees with OCA and Duquesne Light that utilities should have public notice templates prepared in advance to be available when needed and avoid wasting critical time in the event of an emergency.

§ 69.1902(c)

OCA and Duquesne Light agree with the Commission's proposed subsection 1902(c) that utilities should consider having a knowledgeable contact person stationed in the area of the outage during an emergency. OCA Comments, p. 5; Duquesne Light Comments, p. 8.

PECO suggests that the Commission revise the proposed section to require a knowledgeable contact person be stationed in the area of the outage only if the event is of a serious magnitude. PECO Comments, p. 5. FirstEnergy believes that this subsection conflicts with that of subsection 1902(b)(2) regarding having someone stationed at the JIC. FirstEnergy Comments, p. 5. Allegheny Power asserts that more than one contact person may be required to respond to all of the media inquiries in a widespread outage event, due to varying levels of expertise not found in a single spokesperson, and due to its wide and diverse geographic service area. Allegheny Power, p. 4. PPL disagrees with the Commission's proposed subsection 1902(c) regarding contact information because PPL currently has a notification system in place that effectively notifies customers of service outages through the use of a unified message that has been approved by PPL. PPL Comments, pp. 5-6.

*Resolution*

The Commission has noted the staffing concerns of the utilities regarding the proposed requirement to have a knowledgeable contact person stationed in the area of the outage. However, we agree with OCA and Duquesne Light

and have kept the language from the proposed policy statement that, if possible, utilities should consider having a knowledgeable contact person stationed in the area of the outage during the emergency.

§ 69.1902(c)(2)

OCA supports the Commission proposed subsection 1902(c)(2) that provides for talking points or informational sheets and that this information should also be provided to the Commission's Office of Communication, its Emergency Preparedness Coordinator and the county emergency management agencies. OCA Comments, p. 5.

Duquesne Light and Allegheny Power agree with the intent of this subsection to strive toward consistency of message, however, Duquesne Light and Allegheny Power are concerned and disagree that these talking points should be provided to linepersons. Duquesne Light Comments, p. 10; Allegheny Power Comments, p. 5.

*Resolution*

In response to the concerns expressed by Duquesne Light and Allegheny Power, the Commission deleted the reference at subsection 69.1902(b)(2) to linepersons. The Commission maintains that anyone who comes in contact with the general public—whether the official spokesperson for the utility or not—is a utility representative. Customers who are without service during an event will be looking to these utility representatives for answers. At a minimum, linepersons should be provided with direction from the utility to advise customers to call customer service and provide them with that number, if asked about the outage. The Commission has revised this section to state that talking points and informational sheets should be provided to customer service representatives and others who may come in contact with the public during the course of the outage to strive toward consistency of message. The Commission further states that this information should also be shared with the Commission's Office of Communications, its Emergency Preparedness Coordinator and the county emergency management agencies. The Commission notes that the talking points could be as simple as one page of bullet points that allows the utility personnel to answer inquiries more effectively.

**Conclusion**

The policy statement is intended to provide guidance to the industry regarding the types of public notice necessary to meet the reasonableness standard in the Public Utility Code at 66 Pa.C.S. § 1501. The purpose of this policy statement is to help ensure that actual, timely notice to customers is provided by utilities whenever any event disrupts service or potentially endangers public safety. Our policy statement includes a series of acceptable methods for improving the timeliness and effectiveness of notice to utility customers during an outage. It is understood that not all of our utilities have the technological or fiscal ability to comply with all of the standards recommended in this policy statement. However, the Commission expects that when possible, utilities will attempt to follow the established guidelines. While we recognize that a policy statement is not binding on a utility in the manner of a regulation, utilities should be aware that with this final policy statement, the Commission has established an expectation of regular communication with customers with suggestions of various ways of how this could be accomplished.

Accordingly, pursuant to Sections 501, 504, 505, 506, 1501, and 2801, et seq., and the regulations promulgated thereunder at 52 Pa. Code §§ 57.191—57.197; and Sections 201 and 202 of the act of July 31, 1968 P. L. 769,

No. 240, 45 P. S. §§ 1201 and 1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; Section 204(b) of the Commonwealth Attorneys Act, 71 P. S. § 732.204(b); Section 745.5 of the Regulatory Review Act, 71 P. S. § 745.5 and Section 612 of the Administrative Code of 1929, 71 P. S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.234, we will adopt as final the proposed revisions to Section 69 as set forth in Annex A; *Therefore,*

*It Is Ordered That:*

1. The regulations of the Commission, 52 Pa. Code Chapter 69, are amended by adding §§ 69.1701, 69.1702, 69.1901 and 69.1902 and by amending § 69.1602 to read as set forth in Annex A.

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 duly certify this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4. This policy statement shall become effective upon publication in the *Pennsylvania Bulletin*.

5. This Final Order and Annex A be posted on the Commission's web site.

6. The contact persons for this final policy statement are Jennifer Kocher, Office of Communications, (717) 783-6152 (technical), Daniel Searfoorce, Bureau of Technical Utility Services, (717) 783-6159 (technical) and Patricia T. Wiedt, Law Bureau, (717) 787-5755 (legal). Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Review Assistant, Law Bureau, (717) 772-4597.

7. A copy of this order and Annex A be served on all parties that filed comments at Docket No. M-2008-2065532 Utility Service Outage Public Notification Guidelines, the Office of Small Business Advocate, the AFL-CIO Utility Caucus, the Pennsylvania Utility Contractors Association, the Energy Association of Pennsylvania, and the Director of PEMA.

ROSEMARY CHIAVETTA,  
*Secretary*

**Fiscal Note:** Fiscal Note 57-270 remains valid for the final adoption of the subject regulations.

#### **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**

#### **UNSCHEDULED WATER SERVICE INTERRUPTIONS AND ASSOCIATED ACTIONS**

##### **§ 69.1602. Public notification guidelines.**

(a) *Acceptable methods of public notification.* In the event of an unscheduled water service interruption, the following acceptable methods of public notification should be considered and utilized as appropriate:

(1) *Mass media.* Facsimile/electronic mail notification to local radio and television stations, cable systems, newspapers and other print and news media as soon as possible after the event occurs. These notifications must

provide relevant information about the event, such as the affected locations, its potential impact including the possible duration of the outage, the possible adverse health effects and the population or subpopulation particularly at risk, and a description of actions affected ratepayers/occupants should take to ensure their safety, with updates as often as needed. Updates should be provided on a predictable, regular schedule for the duration of the event. The Commission's Office of Communications and Emergency Preparedness Coordinator should also receive these notifications.

(2) *Web site.* Use of the utility's own Internet web site and 24/7 emergency phone line and integrated voice response system to provide relevant information about the event, such as the affected locations, estimated duration, its potential impact including possible adverse health effects and the population or subpopulation particularly at risk, and a description of actions affected ratepayers/occupants should take to ensure their safety, with updates as often as needed. A section of the utility's web site shall be dedicated to presenting outage information where regular updates of the number of customers without service by geographic area and estimated restoration times are available. Depending on the utility's system limitations, this could be as simple as a PDF or spreadsheet file of information that is updated at regular intervals.

(3) *Automated dialer system.* Automated dialer system (outbound dialing) notification to affected ratepayers/occupants' landline or wireless phones. Updates should be provided at regular intervals or if the estimated restoration time changes by more than 2 hours.

(4) *Actual notice.* Actual notice to affected health care and child care facilities and other facilities, for example, schools and restaurants, as determined by consultation with the Department of Environmental Protection, the Department of Agriculture, the Department of Health, the Department of Aging and other State agencies as necessary.

(5) *Miscellaneous.* Other types of direct or actual notice, such as doorknob flyers distributed to affected ratepayers/occupants, when feasible.

(6) *Electronic mail and other emerging technology.* Electronic mail and text message notification to affected customers who have opted to receive notice through use of these methods. The use of emerging technology such as social media is strongly encouraged.

(7) *Emergency alert system.* Coordination with State and local emergency management agencies as needed to use the emergency alert system for qualifying situations.

(b) *NIMS standards.* Utilities should strive to follow the National Incident Management System (NIMS) and its Public Information System to organize all information throughout the utility into one unified message.

(1) *Crisis communication plans.* Utility crisis communication plans should be in writing and every attempt should be made to be consistent with Nationally-approved NIMS standards.

(2) *Coordination.* If more than one utility is affected in the same geographic region, strong consideration should be given to implementing the NIMS based Joint Information System/Joint Information Center, including coordinating messages on safety and other consumer information tips during outages. This would allow for coordination and integration of information across juris-



dictions, especially on universal messages such as actions residents should take to ensure safety.

(3) *Public notice templates.* Utilities should have public notice templates prepared in advance to be available when needed to avoid wasting critical time developing materials when confronted with an unscheduled service interruption or emergency situation. The notices should cover all possible scenarios from water conservation to boil water alerts to contaminants of concern and associated health effects, safety and shelter information, estimated restoration times and times when updated information will be provided. Smaller utilities can refer to resources that are available on the web sites of the Department of Environmental Protection, the United States Environmental Protection Agency, the Pennsylvania Section of the American Water Works Association and the Pennsylvania Chapter of the National Association of Water Companies for assistance in developing public notice templates.

(c) *Contact information.* To ensure that the public is informed, utilities should have a knowledgeable contact person stationed onsite during the emergency, if possible, to communicate to the public and media on behalf of the company. Regular media updates should be scheduled at predictable times.

(1) *Spokesperson.* A single point of contact should be established as the sole media spokesperson for the utility for that time period. During extended outages, a secondary media spokesperson could be utilized as the sole contact for a specific period of time.

(2) *Talking points and informational sheets.* Talking points or informational sheets should be provided to customer service representatives and others who may come in contact with the public during the course of the outage to strive toward consistency of message. This information should also be shared with the Commission's Office of Communications, its Emergency Preparedness Coordinator and county emergency management agencies. For employees that may have contact with the public but will not be able to receive up-to-date outage information in the course of their duties, the utility should instruct those employees to direct the public to appropriate information sources.

#### UTILITY SERVICE OUTAGE PUBLIC NOTIFICATION GUIDELINES—NATURAL GAS DISTRIBUTION MARKET

##### § 69.1701. Scope.

This section and § 69.1702 (relating to notification guidelines) provide guidelines to the natural gas distribution market regarding the restoration practices of service.

##### § 69.1702. Notification guidelines.

(a) *Acceptable methods of public notification.* In the event of a service interruption, the following acceptable methods of public notification should be considered and utilized as appropriate:

(1) *Mass media.* Facsimile/electronic mail notification to local radio and television stations, cable systems, newspapers and other print and news media as soon as possible after the event occurs. These notifications must provide relevant information about the event, such as the affected locations, its potential impact including the possible duration of the outage, and a description of actions affected ratepayers/occupants should take to ensure their safety, with updates as often as needed. Updates should be provided on a predictable, regular schedule for the duration of the event. The Commission's Office of Com-

munications and Emergency Preparedness Coordinator should also receive these notifications.

(2) *Web site.* Use of the utility's own Internet web site, emergency phone line and integrated voice response system to provide relevant information about the event, such as the affected locations, its potential impact and estimated duration, and a description of actions affected ratepayers/occupants should take to ensure their safety, with updates as often as needed. A section of the utility's web site shall be dedicated to presenting outage information where regular updates of the number of customers without service by geographic area and estimated restoration times are available. Depending on natural gas distribution company (NGDC) system limitations, this could be as simple as a PDF or spreadsheet file of information that is updated at regular intervals.

(3) *Automated dialer system.* Automated dialer system (outbound dialing) notification to affected ratepayers/occupants' landline or wireless phones. Updates should be provided at regular intervals or if the estimated restoration time changes by more than 2 hours.

(4) *Miscellaneous.* Other types of direct or actual notice, such as doorknob flyers distributed to affected ratepayers/occupants with actions affected ratepayers/occupants should take to ensure their safety, when feasible.

(5) *Electronic mail and other emerging technology.* Electronic mail and text message notification to affected customers who have opted to receive notice through use of these methods. The use of emerging technology such as social media is strongly encouraged.

(6) *Emergency alert system.* Coordination with State and local emergency management agencies as needed to use the emergency alert system for qualifying situations.

(b) *NIMS standards.* Utilities should strive to follow the National Incident Management System (NIMS) and its public information system to organize all information throughout the utility into one unified message.

(1) *Crisis communication plans.* NGDC crisis communications plans should be in writing and every attempt should be made to be consistent with Nationally-approved NIMS standards. NGDCs required to have written emergency plans under United States Department of Transportation regulations should also be familiar with NIMS standards so that NGDCs will be able to coordinate and respond under this paragraph and paragraphs (2) and (3).

(2) *Coordination.* If more than one NGDC is affected in the same geographic region, strong consideration should be given to implementing the NIMS based Joint Information System/Joint Information Center, including coordinating messages on safety and other consumer information tips during outages. This would allow for coordination and integration of information across jurisdictions, especially on universal messages such as actions residents should take to ensure safety.

(3) *Public notice templates.* NGDCs should have public notice templates prepared in advance to be available when needed to avoid wasting critical time developing materials when confronted with an unscheduled service interruption or an emergency situation. The notices should cover many possible scenarios from safety and shelter information, estimated restoration times and times when updated information will be provided.

(c) *Contact information.* To ensure that the public is informed, if possible, utilities should consider having a knowledgeable contact person stationed in the area of the

outage, if possible, during the emergency to communicate to the public and media on behalf of the company. Regular media updates should be scheduled at predictable times.

(1) *Spokesperson.* A single point of contact should be established as the sole media spokesperson for the utility for that time period. During extended outages, a secondary-media spokesperson could be utilized as the sole contact for a specific period of time.

(2) *Talking points and informational sheets.* Talking points or informational sheets should be provided to customer service representatives and others who may come in contact with the public during the course of the outage to strive toward consistency of message. This information should also be shared with the Commission's Office of Communications, its Emergency Preparedness Coordinator and county emergency management agencies. For employees that may have contact with the public but will not be able to receive up-to-date outage information in the course of their duties, the utility should instruct those employees to direct the public to appropriate information sources.

#### UTILITY SERVICE OUTAGE PUBLIC NOTIFICATION GUIDELINES—ELECTRIC DISTRIBUTION MARKET

##### § 69.1901. Scope.

This section and § 69.1902 (relating to notification guidelines) provide guidelines to the electric distribution market regarding the restoration practices of service.

##### § 69.1902. Notification guidelines.

(a) *Acceptable methods of public notification.* In the event of a service interruption, the following acceptable methods of public notification should be considered and utilized as appropriate:

(1) *Mass media.* Facsimile/electronic mail notification to local radio and television stations, cable systems, newspapers and other print and news media as soon as possible after the event occurs. These notifications must provide relevant information about the event, such as the affected locations, its potential impact including the possible duration of the outage, and a description of actions affected ratepayers/occupants should take to ensure their safety, with updates as often as needed. Updates should be provided on a predictable, regular schedule for the duration of the event. The Commission's Office of Communications and Emergency Preparedness Coordinator should also receive these notifications.

(2) *Web site.* Use of the utility's own Internet web site, emergency phone line and integrated voice response system to provide relevant information about the event, such as the affected locations, its potential impact and estimated duration, and a description of actions affected ratepayers/occupants should take to ensure their safety, with updates as often as needed. A section of the utility's web site shall be dedicated to presenting outage information where regular updates of the number of customers without service by geographic area and estimated restoration times are available. Depending on electric distribution company (EDC) system limitations, this could be as simple as a PDF or spreadsheet file of information that is updated at regular intervals.

(3) *Automated dialer system.* Automated dialer system (outbound dialing) notification to affected ratepayers'/occupants' landline or wireless phones. Updates should be provided at regular intervals or if the estimated restoration time changes by more than 2 hours.

(4) *Miscellaneous.* Other types of direct or actual notice, such as doorknob flyers distributed to affected ratepayers/occupants with actions affected ratepayers/occupants should take to ensure their safety, when feasible.

(5) *Electronic mail and other emerging technology.* Electronic mail and text message notification to affected customers who have opted to receive notice through use of these methods. The use of emerging technology such as social media is strongly encouraged.

(6) *Emergency alert system.* Coordination with State and local emergency management agencies as needed to use the emergency alert system for qualifying situations.

(b) *NIMS standards.* Utilities should strive to follow the National Incident Management System (NIMS) and its Public Information System to organize all information throughout the utility into one unified message.

(1) *Crisis communication plans.* EDC crisis communications plans should be in writing and every attempt should be made to be consistent with Nationally-approved NIMS standards.

(2) *Coordination.* If more than one EDC is affected in the same geographic region, strong consideration should be given to implementing the NIMS based Joint Information System/Joint Information Center, including coordinating messages on safety and other consumer information tips during outages. This would allow for coordination and integration of information across jurisdictions, especially on universal messages such as actions residents should take to ensure safety.

(3) *Public notice templates.* The EDCs should have public notice templates prepared in advance to be available when needed to avoid wasting critical time developing materials when confronted with an unscheduled service interruption or an emergency situation. The notices should cover many possible scenarios from safety and shelter information, estimated restoration times and times when updated information will be provided.

(c) *Contact information.* To ensure that the public is informed, if possible, utilities should consider having a knowledgeable contact person stationed in the area of the outage, during the emergency to communicate to the public and media on behalf of the company. Regular media updates should be scheduled at predictable times.

(1) *Spokesperson.* A single point of contact should be established as the sole media spokesperson for the utility for that time period. During extended outages, a secondary-media spokesperson could be utilized as the sole contact for a specific period of time.

(2) *Talking points and informational sheets.* Talking points or informational sheets should be provided to customer service representatives, and others who may come in contact with the public during the course of the outage to strive toward consistency of message. This information should also be shared with the Commission's Office of Communications, its Emergency Preparedness Coordinator and county emergency management agencies. For employees that may have contact with the public but will not be able to receive up-to-date outage information in the course of their duties, the utility should instruct those employees to direct the public to appropriate information sources.

[Pa.B. Doc. No. 12-330. Filed for public inspection February 24, 2012, 9:00 a.m.]

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
**[ 52 PA. CODE CH. 69 ]**  
**[M-2009-2140580]**  
**Default Service and Retail Electric Markets**

The Pennsylvania Public Utility Commission (Commission) on September 22, 2011, adopted a final policy statement which revises the Commission's current policy statement regarding default service and retail electric markets to be consistent with the act of October 15, 2008 (P. L. 1592, No. 129).

Public meeting held  
September 22, 2011

*Commissioners Present:* Robert F. Powelson, Chairperson; John F. Coleman, Jr., Vice Chairperson; Wayne E. Gardner; James H. Cawley; Pamela A. Witmer, statement follows

*Proposed Policy Statement Regarding Default Service and Retail Electric Markets; M-2009-2140580*

**Final Policy Statement**

*By the Commission:*

On October 15, 2008, Governor Edward Rendell signed House Bill 2200, Act 129, into law. The Act 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. By Order entered January 19, 2010, we issued a Proposed Policy Statement opening a proceeding to consider amendments to our current Policy Statement regarding Default Service and Retail Electric Markets at 52 Pa. Code §§ 69.1801, et seq., as required by the enactment of Act 129 so that our Policy Statement will be consistent with the Act.

**Procedural History**

Historically, a local electric utility company was responsible for generating or purchasing and delivering electricity to a customer's 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 when the 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). 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 expired December 31, 2010. Other EDCs, most notably Duquesne Light Company (Duquesne) 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" mean 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 three 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 contracts 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 above, i.e., through auctions, requests for proposals; or bilateral agreements. 66 Pa.C.S. § 2807(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 nine 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 customers’ rates cannot change more frequently than quarterly. 66 Pa.C.S. § 2807(e)(7). 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. If the Commission fails to issue a final order within nine months, the amended plan shall be deemed to be approved and the default service provider may implement the amendments as filed. 66 Pa.C.S. § 2807 (e)(6).

As a result of the passage of Act 129, the Commission deemed it necessary to amend its existing Policy Statement regarding Default Service and Retail Electric Markets at 52 Pa. Code §§ 69.1801 et seq. By Order entered January 19, 2010, the Commission issued a Proposed Policy Statement at this docket seeking comments within 30 days of entry. No opportunity for Reply Comments was provided. We are now issuing amendments to the Policy Statement at 52 Pa. Code §§ 69.1801 et seq.

#### Parties Filing Comments

Comments were filed by a number of parties. Those parties filing separate comments under Docket No. M-2009-2140580 include: PECO Energy Company (PECO), Duquesne Light Company (Duquesne), Citizens

Electric Company/Wellsboro Electric Company (Citizens/Wellsboro), Office of Consumer Advocate (OCA), Office of Small Business Advocate (OSBA), Retail Electric Supply Association (RESA) and Industrial Customers Group (ICG). Energy Association of PA and Allegheny Power submitted letters endorsing the Proposed Policy Statement. A number of other parties filed comments under both Docket Nos. M-2009-2140580 (Policy Statement) and Docket No. L-2009-2095604 (Default Service Regulations) but did not expressly comment on the Proposed Policy Statement.

#### Discussion

Consistent with the language of Act 129, the Commission makes the following revisions to our Policy Statement regarding default service and retail electric markets.

##### *52 Pa. Code § 69.1802 (Purpose)*

OCA has proposed language to the Purpose section of the regulations to recognize the obligation of the default service provider to provide adequate and reliable service at the least cost over time. OCA contends this change is consistent with the intent of Act 129. The proposed language would retain the present language that states that the “goal of default service regulations is to bring competitive market discipline to historically regulated markets” but relocate this language to later in the “Purpose” provision. (See Annex A).

We have reviewed this proposed change and accept it. The OCA’s proposed language correctly recognizes the import of the new standard reflected in Act 129, specifically Section 2807(e)(3.4), that of ensuring “adequate and reliable service at the least cost to customers over time” while retaining the Commission’s parallel obligation to promote competitive market discipline.

##### *52 Pa. Code § 69.1803 (Definitions)*

We proposed adding definitions for “Bilateral contract” and amending the existing definition of “Default service provider” such that the definitions mirror 66 Pa.C.S. § 2803.

OCA proposes to remove the definition of “prevailing market prices” from the definition section as it contends the term is no longer relevant as the standard for procurement under Act 129. No other party has offered comment on this provision. We accept OCA’s suggested deletion of this definition coupled with removal of the term from later sections of the Policy Statement as we believe the term is no longer the relevant standard under Act 129. Since the standard for review of DSPs has now changed in light of Act 129, the retention of this term in our Policy Statement is unnecessary and potentially confusing.

Duquesne filed comments requesting that both the definitions for “Bilateral contract” and “Default service provider” contain the specific definitional language from Section 2803 of the Public Utility Code instead of simply incorporating the definition by reference. We decline to accept this suggested change as the convention utilized by the Commission has been to incorporate by reference the appropriate definitional language from Section 2803 in these definitions and elsewhere in the Commission’s regulations.

Citizens/Wellsboro suggests that the Commission confirm in its Policy Statement that the definition of “Bilateral contract” apply to both physical and financial transactions. These electric utilities have had default service plans approved that included financial products. No other

party suggested this change. On review, we decline to adopt this change as it injects too much specificity into what is intended to be a general definition.

DSPs, such as Citizens/Wellsboro, have the opportunity to propose financial products as part of their default service plan filings and the Commission retains the discretion to review and approve these products.

The Commission herein adopts the Definitions for “Bilateral contract” and “Default service provider” pursuant to 52 Pa. Code § 69.1803 as modified herein and as these terms appear in final form in Annex A to this Order. We also delete the term “Prevailing market prices” from the current definitions.

*52 Pa. Code § 69.1805 (Electric Generation Supply Procurement)*

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

This amendment generated a number of comments. Because this provision is somewhat controversial, we recite the proposed changes suggested by the Commission in its Proposed Policy Statement herein by italicizing the relevant language:

**§ 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.

(1) Residential customers and nonresidential customers with less than 25 kW in maximum registered peak load. Initially, the DSP should acquire electric generation supply for these customers using a mix of resources as described in the introductory paragraph to this section. Consideration should be given to procuring most fixed-term supply through full requirements or block contracts of 1 to 3 years in duration. Contracts should be laddered to minimize risk, in which a portion of the portfolio changes at least annually, with a minimum of two competitive bid solicitations a year to further reduce the risk of acquisition at a time of peak prices. In subsequent

programs, the percentage of supply acquired through shorter duration full requirements contracts and spot market purchases should be gradually increased, depending on developments in retail and wholesale energy markets.

(2) Nonresidential customers with 25—500 kW in maximum registered peak load. The DSP should acquire electric generation supply for these customers using a mix of resources as described in the introductory paragraph to this section. Fixed-term contracts should be 1 year in length and may be laddered to minimize risk, with a minimum of two competitive bid solicitations a year to further reduce the risk of acquisition at a time of peak prices. In subsequent programs, the percentage of supply acquired through shorter duration purchases and spot market purchases should gradually be increased, depending on developments in retail and wholesale energy markets.

(3) Nonresidential customers with greater than 500 kW in maximum registered peak load. Hourly priced or monthly-priced service should be available to these customers. The DSP may propose a fixed-price option for the Commission’s consideration.

In the introductory section, OCA proposes to extend the definition of short-term contracts to include contracts of 4 years in length instead of 3 years. OCA proposes to define long-term contracts as “more than 4 years and not more than 20 years.” OCA proposes to delete the next two sentences that define when long-term contracts should be used and insert some additional language which would limit the percentage of the default service provider’s percentage load that could be represented by long-term contracts to 25% which language parallels the language used in Act 129.

PECO also addresses this issue by suggesting language that defines short-term contracts as contracts of up to and including 4 years in length and long-term contracts as contracts greater than 4 years in length but not greater than 20 years. OSBA also suggests clarification of the definition of short-term contracts.

In contrast, ICG suggests that Act 129 and the Legislature intended a 4-year contract to be a long-term contract and the Commission should clarify the ambiguity in the language.

We agree that this is a point in need of clarification. Our proposed language does not clearly state whether a 4-year contract is a short-term or long-term contract. By adopting the language of Section 2703(e)(3.2)(iii), we only perpetuated the ambiguity.

We believe the Legislature’s intent was to define 4-year contracts as short-term contracts and contracts greater than 4 years but not greater than 20 years as long-term contracts. We accept the change suggested by OCA and PECO on this point and adopt PECO’s proposed language.

We also adopt OCA’s proposed change to the language of the introductory section of Section 1805 to delete language that appears to unduly restrict the use of long-term contracts to situations involving compliance with alternative energy requirements and adoption of language that conforms with the 25% limitation on long-term contracts contained in Section 2807(e)(3.2)(iii). Under OCA’s proposed change, long-term contracts would constitute no more than 25% of the DSP’s projected load unless the Commission determines a greater portion of

load is necessary to achieve least cost procurement. These changes were also suggested by Citizens/Wellsboro and Duquesne.

The Commission continues to maintain the position that EDCs should have maximum flexibility to design their supply portfolios but should strive to utilize short duration full requirements contracts, spot market purchases, intermediate term and long-term contracts when market conditions dictate such an approach. The proposed language in Section 1805 appears to limit the use of long-term contracts only to meeting the requirements of the AEPS which is too restrictive. As Citizens/Wellsboro aptly notes in its comments, as long as a DSP's procurement portfolio includes a "prudent mix" of contracts, the DSP should be permitted to use long-term contracts to procure all products in the procurement plan.

OCA additionally proposed changes in Section 69.1805(1) as follows: (1) deletion of language specifying procurement of fixed term supply through contracts of 1 to 3 years in duration; and (2) deletion of language encouraging the increase of spot market purchases over time and inserting language that encourages EDCs to obtain a "mix of supply through long-term, short-term and spot purchases to be adjusted depending on developments in the retail and wholesale energy markets to ensure least cost to customers."

We adopt both changes. First, deletion of the reference to procuring fixed supply of contracts of 1-3 years is appropriate as the Commission believes EDCs are best suited to design their portfolios of energy supply including fixed term purchases under contracts of varied duration. Additionally, this language unnecessarily contradicts our prior interpretation of short-term contracts as extending to 4 years.

OCA's second change which removes the emphasis on increasing the percentage of supply from short-term and spot sources and substitutes language that gives DSPs the latitude to obtain a prudent mix of long-term, short-term and spot purchases is appropriate to correctly reflect the language of the Choice Act as modified by Act 129 in Section 2807(e)(3.2)(iii).

OSBA proposes to delete the language in Section 69.1805(2) requiring contracts for customers with 25kW-500kW peak load preferably be 1 year in length. OSBA argues this is inconsistent with the language in Section 69.1805(1) which recommends contracts of 1-3 years in length for fixed term supply. We have previously adopted OCA's proposed deletion of this language specifying contract length in Section 69.1805(1) as unnecessary in light of our clarification of the definition of short-term contract. Similarly, we adopt OSBA's suggested change as it appears unnecessary to specify a particular contract length. We will delete the language "should be one year in length and" while retaining the rest of the language. This parallels the deletion of the contract length language in Section 1805. In this section, we also insert the same language as in Section 1805(1) deleting that language expressing a preference for increases in short duration and spot purchases and inserting language that more clearly reflects the Act 129 language regarding "prudent mix" in Section 2807(3.2).

Citizens/ Wellsboro also suggest deleting the last sentence from Sections 69.1805(1) and (2) which recommends gradually increasing the percentage of supply obtained through short-term contracts and spot purchases. Citizens/Wellsboro suggests this change because it contends the required procurement approach has shifted

from "prevailing market price" to "least cost procurement" using a "prudent mix of contracts." We have essentially adopted this change by virtue of the language changes to these sections discussed previously.

Duquesne is generally comfortable with the Commission's proposed changes to Section 69.1805. However, Duquesne seeks to delete the language in Section 1805 that prescribes when long-term contracts should be used, e.g., when necessary to meet alternative compliance standards and be restricted to a small portion of default service load. Duquesne also proposes deleting entirely Sections 69.1805(1) through (3) entirely as they provide guidance for procurement by particular customer groups and are in conflict with the procurement requirements of Act 129.

We accept Duquesne's first proposed change as it is the same change to Section 1805 discussed above request proposed by both the OCA and Citizens/Wellsboro. We decline to accept Duquesne's other proposed changes to delete Sections 69.1805(1)—(3). We do not interpret Act 129 as limiting our ability to provide guidance to EDCs in their procurement practices for particular customer groups and will retain this language subject to other language modifications discussed previously.

ICG seeks revisions to Section 69.1805(3) (non-residential customers with greater than 500 kW peak load) to provide for language encouraging a more prudent mix of products. The current provision states that "Hourly priced or monthly priced serviced should be available to these customers. The DSP may propose a fixed price option for the Commission's consideration." ICG suggests adding language to provide for a more "prudent mix" of products and that the current language does not meet the "prudent mix" standard.

We do not read the current language as limiting the types of products which the DSP may procure on behalf of large customers. The provision merely provides guidance as to the types of products to be considered. Moreover, ICG did not provide suggested language for our consideration. We decline to accept ICG's proposed revision.

*52 Pa. Code § 69.1806 (Alternative energy portfolio standard compliance)*

We proposed updating this Section to reflect that the DSP should procure electric generation supply for default service customers in compliance with Act 129.

PECO suggests some minor language changes to better conform the regulation to Act 129. We adopt those changes as reflected in Annex A.

*52 Pa. Code § 69.1807 (Competitive bid solicitation processes)*

Both OCA and OSBA suggest that Section 69.1807 be amended to provide for the general release by DSPs of winning bid information and posting of this information on the Commission's website. FirstEnergy and other parties oppose this unilateral change insofar as no other parties had an opportunity to comment on the revision.

We note that this suggested change was not part of our Proposed Policy Statement but represents a potentially useful modification which increases transparency for customers in making retail supply choices. We do not believe it is appropriate to institute this change in this Policy Statement as we are not fully aware of the proprietary concerns of the EDCs associated with release of this

information. However, we believe this is an appropriate topic for consideration in either our current Investigation into the Operation of Retail Electric Markets or each individual EDC's default service plan proceeding. Interested parties should provide input where appropriate on this proposal.

52 Pa. Code § 69.1809

Both OCA and OSBA recommend changing the language of Section 69.1809(a) to be consistent with the Act 129 language that rates to residential and small commercial business customers may change no more frequently than on a quarterly basis for residential and small business customers. Currently, Section 69.1809 (a) permits rate changes on quarterly basis for residential customers and a monthly basis for large business customers. OCA proposes to delete this provision and offers corrective language which provides for adjustment of default service rates "no more frequently than on a quarterly basis for residential and small business customers." This change is needed, avers OCA, to accurately reflect the language of Act 129 at Section 2807(e)(7).

We have reviewed this proposed change and adopt it. OCA and OSBA are correct that an inconsistency exists with regard to rate change frequency between the current Policy Statement and Act 129 regarding the frequency when default service rate changes may occur and we have revised the language herein at Annex A to reflect that change.

OSBA suggests further changes to Section 1809(c) and Section 1810 which it purports are necessary to be consistent with Section 2807(e)(7) but offers no concrete language to support its modifications. We decline to accept OSBA's proposed changes to Sections 1809 and 1810.

### Conclusion

Accordingly, pursuant to its authority under Section 501 of the Public Utility Code, 66 Pa.C.S. § 501, the Commission proposes to adopt the attached policy statement; *Therefore,*

*It Is Ordered That:*

1. The regulations of the Commission, 52 Pa. Code Chapter 69, are amended by amending §§ 69.1802, 69.1803, 69.1805, 69.1806 and 69.1809 to read as set forth in Annex A.

2. The Secretary 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. This final policy statement shall become effective upon publication in the *Pennsylvania Bulletin*.

5. A copy of this order and Annex A be filed at Docket No. M-2009-2140580 and Docket No. L-2009-2095604 and be served upon all parties of record and statutory advocates.

6. The contact person for this matter is James P. Melia, Assistant Counsel, Law Bureau, (717) 787-1859.

ROSEMARY CHIAVETTA,  
*Secretary*

**Fiscal Note:** Fiscal Note 57-272 remains valid for the final adoption of the subject regulations.

*Statement of Commissioner Pamela A. Witmer*

Prior to joining my staff, Shelby Linton-Keddie was employed by a law firm that served as counsel to a party

in that submitted comments in the above-referenced proceeding. Therefore, to avoid any appearance of impropriety arising from her previous employment, I wish to note that I have not been advised by Shelby Linton-Keddie regarding this matter.

PAMELA A. WITMER,  
*Commissioner*

### 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 MARKETS—STATEMENT OF POLICY

##### § 69.1802. Purpose.

(a) The Commission has adopted regulations governing the default service obligation in §§ 54.181—54.189 (relating to default service), as required by 66 Pa.C.S. § 2807(e) (relating to duties of electric distribution companies). The regulations address the elements of a default service regulatory framework. The goal of the default service regulations is to ensure that each DSP provides default service customers with adequate and reliable service at the least cost to customers over time. This goal can be accomplished by structuring default service in a way that brings competitive market discipline to historically regulated markets and by encouraging the entry of new retail and wholesale suppliers. Greater diversity of suppliers will benefit ratepayers and the Commonwealth. However, those rules are not designed to resolve every possible issue relating to the acquisition of electric generation supply, the recovery of reasonable costs, the conditions of service and the relationship with the competitive retail market.

(b) The Commission is very cognizant of the practical limits of regulating large, complex markets. Changes in Federal or State law, improvements in technology, and developments in wholesale energy markets may render obsolete any all-inclusive regulatory approach to this Commonwealth's retail electric market.

(c) The Commission has devised an approach that will allow this Commonwealth to adapt to changes in energy markets and the regulatory environment. The regulations in Chapter 54 (relating to electricity generation customer choice) will serve as a general framework for default service and provide an appropriate measure of regulatory certainty for ratepayers and market participants. This section and §§ 69.1801 and 69.1803—69.1817 will provide guidelines on those matters when a degree of flexibility is required to respond effectively to regulatory and market challenges. The Commission anticipates that the initial guidelines will be applied to the first set of default service plans following expiration of the generation rate caps, and that the guidelines will be reevaluated prior to the filing of subsequent default service plans.

##### § 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:

*Alternative energy portfolio standards*—A requirement that a certain percentage of electric energy sold to retail

customers in this Commonwealth by EDCs and EGSs be derived from alternative energy sources, as defined in the Alternative Energy Portfolio Standards Act (73 P.S. §§ 1648.1—1648.8).

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

*Competitive bid solicitation process*—A fair, transparent and nondiscriminatory process by which a DSP awards contracts for electric generation to qualified suppliers who submit the lowest bids.

*DSP—Default service provider*—The term has the same meaning as defined in 66 Pa.C.S. § 2803.

*Default service*—Electric generation supply service provided pursuant to a default service program to a retail electric customer not receiving service from an EGS.

*Default service implementation plan*—The schedule of competitive bid solicitations and spot market purchases, technical requirements and related forms and agreements.

*Default service procurement plan*—The electric generation supply acquisition strategy the DSP will utilize in satisfying its default service obligations, including the manner of compliance with the alternative energy portfolio standards requirement.

*Default service program*—A filing submitted to the Commission by the DSP that identifies a procurement plan, an implementation plan, a rate design to recover all reasonable costs and all other elements identified in § 54.185 (relating to default service programs and periods of service).

*EDC—Electric distribution company*—The term has the same meaning as defined in 66 Pa.C.S. § 2803.

*EGS—Electric generation supplier*—The term has the same meaning as defined in 66 Pa.C.S. § 2803.

*Maximum registered peak load*—The highest level of demand for a particular customer, based on the PJM Interconnection, LLC, “peak load contribution standard,” or its equivalent, and as may be further defined by the EDC tariff in a particular service territory.

*PTC—Price-to-compare*—A line item that appears on a retail customer’s monthly bill for default service. The PTC is equal to the sum of all unbundled generation and transmission related charges to a default service customer for that month of service.

*RTO—Regional transmission organization*—A Federal Energy Regulatory Commission (FERC)-approved regional transmission organization.

*Retail customer or retail electric customer*—These terms have the same meaning as defined in 66 Pa.C.S. § 2803.

*Spot market energy purchase*—The purchase of an electric generation supply product in a FERC-approved real time or day ahead energy market.

#### § 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 4 years in length. Long-term contracts are contracts more than 4 years in length but not more than 20 years. Long-term contracts of more than 4 years in length but not more than 20 years should not constitute more than 25% of the DSP’s projected load unless the Commission determines that a greater portion of load is necessary to achieve least cost procurement. 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.

(1) *Residential customers and nonresidential customers with less than 25 kW in maximum registered peak load.* Initially, the DSP should acquire electric generation supply for these customers using a prudent mix of resources as described in the introductory paragraph to this section. Contracts should be laddered to minimize risk, in which a portion of the portfolio changes at least annually, with a minimum of two competitive bid solicitations a year to further reduce the risk of acquisition at a time of peak prices. In subsequent programs, the mix percentage of supply acquired through long-term and short-term contracts and spot market purchases should be adjusted, depending on developments in retail and wholesale energy markets to ensure least cost to customers.

(2) *Nonresidential customers with 25—500 kW in maximum registered peak load.* The DSP should acquire electric generation supply for these customers using a mix of resources as described in the introductory paragraph to this section. Fixed-term contracts may be laddered to minimize risk, with a minimum of two competitive bid solicitations a year to further reduce the risk of acquisition at a time of peak prices. In subsequent programs, the mix percentage of supply acquired through long-term and short-term contracts and spot market purchases should be adjusted, depending on developments in retail and wholesale energy markets to ensure least cost to customers.

(3) *Nonresidential customers with greater than 500 kW in maximum registered peak load.* Hourly priced or monthly-priced service should be available to these customers. The DSP may propose a fixed-price option for the Commission’s consideration.

#### § 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 66 Pa.C.S. § 2814 (relating to additional alternative energy sources).

#### § 69.1809. Interim price adjustments and cost reconciliation.

(a) Consistent with the default service regulations, default service rates, and correspondingly the PTC, may not be adjusted more frequently than on a quarterly basis for residential and small business customers to reflect changes in and ensure the recovery of reasonable costs resulting from changes in wholesale energy prices or other costs from the introduction of new, differently priced energy supply products to the DSP’s portfolio, and to correct the under and over collection of costs. This PTC adjustment may be driven by changes in spot market prices, the use of laddered contracts, the use of seasonal rate design, and the like.

(b) The public interest may be served if default service and alternative energy compliance costs and the revenues received through default service rates are reconciled as



part of the PTC adjustment process. Reconciliation would ensure that DSPs fully recover their actual, incurred costs without requiring customers to pay more than is required. The PTC adjustment will therefore also reflect changes required due to the reconciliation of costs and revenues. Reconciliation proposals should result in a PTC adjustment that will resolve cumulative under or over recoveries by the time of the next PTC adjustment interval.

(c) It may be in the public interest to reconcile default service costs more frequently than at each PTC adjustment interval. The DSP should propose interim reconcili-

ation prior to the next subsequent PTC adjustment interval when current monthly revenues have diverged from current monthly costs, plus any cumulative over/under recoveries, by greater than 4% since the last rate adjustment. When the divergence is less than 4%, the DSP has the discretion to propose interim reconciliation prior to the next PTC adjustment interval. Interim reconciliation proposals should result in a PTC adjustment that will resolve cumulative under or over recoveries by the time of the next PTC adjustment interval.

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