

PROPOSED RULEMAKING

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 54 AND 57]

[L-00040169]

Provisions of Default Service

The Pennsylvania Public Utility Commission, on December 16, 2004, adopted at proposed rulemaking order defining the obligation of electric distribution companies (EDCs) to serve retail customers at the conclusion of their respective transition periods.

Executive Summary

Section 2807(e)(2) of the Public Utility Code, 66 Pa.C.S. § 2807(e)(2), requires the Commission to promulgate regulations that define the obligation of electric distribution companies to serve retail customers at the end of the restructuring transition period. Section 2807(e) mandates that all customers who do not receive generation service through the competitive retail market must be provided generation service by either their incumbent electric distribution company or a Commission approved alternative provider. Generation supply provided to these customers must be acquired at prevailing market prices, and the provider may fully recover all reasonable costs associated with this service. On December 16, 2004, the Commission issued a Notice of Proposed Rulemaking that formally commenced this rulemaking process, which includes additions to and revisions of Chapters 54 and 57 of the Commission's regulations. The Commission seeks comments from all interested parties on the issues addressed in these proposed regulations.

The Commission identifies the generation service provided to customers under Section 2807 as "default service." The proposed regulations require electric distribution companies to act as the default service provider to all retail customers, unless an alternative provider is approved by the Commission. Default service providers must continue to comply with all existing regulations, statutes and orders pertaining to public utility service to the extent they are not modified by this subchapter.

In order to meet the "prevailing market price" legal standard, the default service provider must procure all generation supply through a Commission approved competitive bidding process. The regulations provide for a two phase procedure for complying with the obligation. Providers must first submit default service implementation plans for the Commission to review, which would include a proposed competitive procurement process. Upon approval of the implementation plan by the Commission, the default service provider will execute its procurement process. The prices that result from compliance with the procurement process will be deemed the "prevailing market price" for default service.

The regulations also identify the mechanisms by which the default service provider will recover its costs, the rules governing customer migration to and from default service, and provide new competitive safeguards to ensure the reliable provision of default service.

The contact person for this rulemaking is Shane Rooney, Law Bureau, (717) 787-2871.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 14, 2005, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Meeting held
December 16, 2004

Commissioners Present: Wendell F. Holland, Chairperson; Robert K. Bloom, Vice Chairperson; Glen R. Thomas; Kim Pizzingrilli, statement follows

Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant To 66 Pa.C.S. § 2807(e)(2); Doc. No. L-00040169

Provider of Last Resort Roundtable; Doc. No. M-00041792

Proposed Rulemaking Order

By the Commission:

In accordance with Section 2807(e)(2) of the Public Utility Code, 66 Pa.C.S. § 2807(e)(2), the Commission formally commences its rulemaking process to define the obligation of electric distribution companies ("EDC") to serve retail customers at the conclusion of their respective transition periods. The Commission seeks comments from all interested parties on these proposed regulations, which are found at Annex A to this Order. Additionally, the Commission will close the docket opened at M-00041792 for the Provider of Last Resort Roundtable, as that proceeding has reached its logical conclusion by way of this proposed rulemaking order.

Background

The Electricity Generation Customer Choice and Competition Act (the "Act") requires the Commission to promulgate regulations governing an EDC's obligation to serve retail customers after the conclusion of its restructuring transition period. 66 Pa.C.S. § 2807(e)(2). This duty is often referred to as the "provider of last resort" ("POLR") obligation. As the Act makes clear, the purpose of this obligation is to address the scope of retail electric service that must be provided to customers who either have not chosen an alternative electric generation supplier or who contracted for electric energy that was not delivered. Section 2807(e) of the Act provides several directives that the Commission must follow in its promulgation of regulations on this subject:

(2) At the end of the transition period, the commission shall promulgate regulations to define the electric distribution company's obligation to connect and deliver and acquire electricity under paragraph (3) that will exist at the end of the phase-in period.

(3) If a customer contracts for electric energy and it is not delivered or if a customer does not choose an alternative electric generation supplier, the electric distribution company or commission-approved alternative supplier shall acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs.

(4) If a customer that chooses an alternative supplier and subsequently desires to return to the local distribution company for generation service, the local distribution company shall treat that customer exactly as it would any new applicant for energy service.

66 Pa.C.S. § 2807(e)

The Commission entered an Order establishing interim guidelines to define the obligation to serve retail customers shortly after the passage of the Act. *Interim Guidelines Addressing Electric Distribution Companies' Activities Relating to Their Provider of Last Resort Functions*, Docket No. M-00960890F0017 (Opinion and Order entered November 19, 1998). Subsequent to this Order, the Commission convened a POLR Working Group via a Secretarial Letter issued on August 2, 2000. The purpose of this Working Group was to solicit input from interested stakeholders on the scope of final POLR regulations, and to provide a forum for the exchange of ideas. The POLR Working Group received position papers on the scope of POLR regulations from multiple parties and met periodically through late 2003.

In early 2004, the Commission determined that there were a significant number of issues that required additional review before the promulgation of POLR regulations, including the consideration of currently operational POLR service models in other jurisdictions. Therefore, pursuant to a motion adopted at the Public Meeting of March 4, 2004 the Commission established a Provider of Last Resort Roundtable ("POLR Roundtable") for the discussion of all relevant POLR issues. The Commission stated that it would promulgate a Notice of Proposed Rulemaking after the conclusion of the meetings. The POLR Roundtable was assigned docket number M-00041792. The Commission prepared a POLR issues list for public distribution and invited comments on these issues from all interested parties.

The Commission presided over five meetings of the POLR Roundtable that were held between April 8 and June 2, 2004. The meetings were attended by representatives from electric distribution companies, electric generation suppliers, wholesale energy suppliers, consumer interests, the New Jersey Board of Public Utilities, the Maryland Public Service Commission, the Federal Energy Regulatory Commission, the PJM Interconnection, LLC, the Office of Consumer Advocate, and the Office of Small Business Advocate. These parties offered testimony during sessions of the Roundtable and also filed written comments and reply comments with the Commission, which are available on our website at the above-referenced docket number. The written comments and POLR Roundtable testimony offered by these parties has been helpful to the Commission in its initiation of this formal rulemaking process.

Discussion

The intent of Section 2807(e) of the Act is to ensure that electric energy is delivered to retail customers who do not receive generation service from an alternative electric generation supplier. Specifically, this includes service provided to customers who do not seek service through an alternative supplier, those who are unable to

obtain service from an alternative supplier, those who contracted for electric service which is not delivered by an alternative supplier, and all those who terminate service with or whose service is terminated by an alternative supplier.

The Act provides the Commission with significant flexibility in defining the scope of the POLR obligation. The parties that participated in the POLR Roundtable proceeding identified numerous issues in need of resolution and the various options available to the Commission in this rulemaking process. These issues and the Commission's determinations on their resolution are discussed more fully and in context in the following sections.

In reaching its conclusion on these issues, the Commission is guided by one of the key policy declarations of the Act—that is, markets are superior to economic regulation in determining the cost of electric generation. The Act provides that "Competitive market forces are more effective than economic regulation in controlling the cost of generating electricity." 66 Pa.C.S. § 2802(5). It is our intent that these proposed regulations reflect this and other declarations of policy by the Pennsylvania General Assembly. Specifically, POLR service should be reliable, available on reasonable terms and conditions, associated with high-quality customer service, and provided consistent with the level of protections currently afforded to low-income customers. 66 Pa.C.S. §§ 2802(9), (10), (11).

Some parties have commented that the proper design of POLR service is the most important task remaining for the Commission in implementation of the provisions of the Act. The Commission agrees with this sentiment and finds that an appropriately crafted regulatory framework for POLR service will serve the public interest by fostering a robust retail market for electricity. The General Assembly's policy findings regarding the overall costs of electricity, disparities in rates across service territories, and the importance of reasonable rates in attracting and retaining businesses can best be addressed by ensuring the continued formation of a competitive marketplace for electricity. 66 Pa.C.S. §§ 2802(4), (5), (6).

To foster a competitive market, any POLR service model must be carefully designed to avoid distortions to the market. POLR service, as the name suggests, should primarily serve as a backstop to the competitive retail market. Therefore, POLR service should be basic generation service. The Commission is proposing a POLR service model that avoids administrative determinations and gives preference to market solutions. The Commission finds that with an appropriate design of POLR service, the market will provide the products and services that meet the needs of consumers.

In the following sections, the Commission will briefly review the key elements of the proposed POLR regulations it is releasing for public comment. The Commission will discuss the options that were available and our rationale for choices reflected in this proposed rulemaking.

A. Purpose

This section reflects a choice on the name to be given to this service. At this time we are identifying the service provided pursuant to Section 2807(e) as "default service."¹ We find that the proper focus of these regulations should be on the service being provided, not on the provider. As

¹ The term "provider of last resort" appears in the customer choice and electric service context of the Commission's regulations at 52 Pa. Code §§ 54.4(b), 54.5(b)(3), 54.5(c)(9), 54.5(h), 54.6, 54.31, 54.32(h), 54.41(b) and 57.178. Annex A includes revisions of these sections to provide for consistent terminology.

discussed in section C below, at this time, the Commission is reserving the role of default service provider to the incumbent EDC within each service territory. This decision will be discussed in more detail later in this Order.

B. Definitions

The Commission finds that defining key terms is an important element in this rulemaking process and necessary to provide a reasonable level of regulatory certainty. The Commission also recognizes that retail and wholesale energy markets will continue to evolve between now and the expiration of the last of the EDC rate caps. It is important that any regulations promulgated now be flexible enough to accommodate markets as they continue to evolve. Additionally, there is also the potential for changes in law at the State or Federal level that may impact the issues addressed in this rulemaking. Consequently, the Commission seeks to avoid overly prescriptive language that may infringe on both its and all other interested parties' ability to manage the default service obligation.

Where possible, the Commission has chosen to make use of already existing definitions for terms that are used in this subchapter. Examples include "electric distribution company," "electric generation supplier" and "retail customer." While perhaps unnecessary to reiterate a definition of these terms in this subchapter, the Commission has chosen to strike a cautious note in order to provide regulatory certainty.

This section also includes many new definitions of terms and concepts that will appear throughout this subchapter. Particularly, this section includes definitions for "prevailing market price," "competitive procurement process," "fixed rate option," and "hourly priced service."

A key concept requiring a definition is the term "prevailing market prices," which is found at 66 Pa.C.S. § 2807(e)(3). The Commission is required to ensure that generation supply for default service is acquired at "prevailing market prices." This is a variation from the standard of review for rate requests made prior to passage of the Act found in Section 1301 of the Public Utility Code, 66 Pa.C.S. § 1301, which required that rates be "just and reasonable." The conclusion arrived at by the Commission is that the prevailing market price will only be realized through a competitive procurement process approved by the Commission, and that in a competitive market the prevailing market price is analogous, though not identical, to the "just and reasonable" standard for utility rates. Accordingly, we have defined this concept as the price that will result from a default service provider's compliance with a Commission approved competitive procurement process.

Having chosen to rely on a "competitive procurement process" for the acquisition of generation supply, it is appropriate that the Commission provide a definition of this concept in its default service regulations. The definition is intended to provide some guidance on this point. The Commission recognizes that different procurement mechanisms may be appropriate in different territories or terms of service, and has attempted to avoid a narrow description of this concept. The Commission emphasizes that a bid solicitation process should be used, which could include auctions, sealed bid models, etc. The price of the service offered shall be the primary consideration in the review of bids, though price may not be the only criterion. The Commission is cognizant of the standard for review of generation procurement processes adopted by the Federal Energy Regulatory Commission in its decision at

Boston Edison Company Re. Edgar Electric Energy Company, 55 F.E.R.C. ¶61,382 (1991). In that case FERC determined that generation procurement processes must be fair, transparent and non-discriminatory in order to receive its approval. The Commission will apply similar standards in its review of any competitive procurement process involving default service.

Other definitions of note include "fixed rate option" and "hourly priced service." Many parties to POLR Roundtable recommended that a fixed rate or price option be available to residential and some or all business customers. The Commission has crafted a definition that reflects a price that is set in advance for the entire term of service, but includes the possibility of seasonal differences. With hourly priced rates, the Commission is describing a rate that may be available to large commercial and industrial customers, similar to the hourly rates in effect in New Jersey and Maryland. Both of these jurisdictions require that certain large industrial and commercial customers receive default service only at hourly priced rates.

C. Default Service Provider

As noted previously, the Commission has determined that the role of default service provider should be reserved to the incumbent EDC in each service territory at this time. The Commission acknowledges the arguments of those advocating what is sometimes referred to as a "retail POLR model," where the default service provider is determined as a result of a competitive process. The Commission has the statutory authority to require such a process, pursuant to § 66 Pa.C.S. 2807(e)(3), but concludes that the public interest, at this time, is best served by having the EDC act as the default service provider. This is consistent with the General Assembly's declaration of policy that incumbent EDCs should continue to act as the default service provider unless the Commission approves an alternative provider. 66 Pa.C.S. § 2802(16).

Specifically, the Commission notes that the competitive retail market is still in transition. Therefore, the Commission opts not to propose a retail POLR model in the current market environment. Additionally, the framework associated with implementing a retail POLR model requires further review and consideration.

However, we do recognize that under certain circumstances it may be appropriate for an EDC to exit the role of default service provider. We are therefore including the option of allowing an EDC to petition the Commission to be relieved of this obligation. The Commission may also, on its own motion, propose that an EDC be relieved of this obligation. An EDC would only be excused from this obligation upon the successful completion of a competitive replacement process. The replacement process would be open to other EDCs and licensed electric generation suppliers ("EGS").

In order to be considered for the role of the alternative default service provider in this context, a party would have to file for a certificate of public convenience, consistent with 66 Pa.C.S. § 1103(a). Applicants must demonstrate that they are financially and operationally fit, and able to comply with all Commission regulations, orders and other applicable laws pertaining to utility service. If no applicant meets this standard, the incumbent EDC must continue to serve as the default service provider. If one or more applicants can demonstrate that they can meet this standard, the Commission will grant a certificate of public convenience to the applicant best able to fulfill this obligation.

D. Default Service Provider Obligations

This section identifies the legal obligations of a default service provider. The Commission has determined that the "reliable provision of default service" is the primary obligation of a provider. In subsection (b), the Commission notes that the default service provider must comply with all other Commission regulations and orders, unless they are expressly excused from compliance through the language of this subchapter. Finally, these regulations require the default service provider to continue universal service programs beyond the end of transition period. Default service providers are given the flexibility of modifying existing programs, subject to Commission approval, so long as the overall level of quality is maintained.

E. Default Service Implementation Plans and Terms of Service

This section of the proposed regulations reflects the decision by the Commission not to require a statewide default service procurement process. The Commission has closely studied the models adopted by other jurisdictions that have made this choice, and the commentary offered about them by participants in the POLR Roundtable. Given the varying terms of the approved generation rate caps and existing POLR plans, the Commission finds that each default service provider should have the option of proposing a default service implementation plan best suited to its service territory. The Commission acknowledges that a statewide procurement process may be appropriate in the future, and has therefore preserved this option in subsection (e). A statewide or multi-service territory procurement process may either be ordered by the Commission or proposed by default service providers. Any statewide or multi-service territory procurement process would have to adhere to the same regulations that govern a single service territory procurement process found in the default service supply procurement section.

Having chosen to allow for individual filings, this section provides a standard that must be met by any default service implementation plan. Default service implementation plans shall be filed fifteen months prior to expiration of either the approved generation rate cap or currently effective default service plan, unless another due date is requested and approved by the Commission. The Commission has decided that the approved POLR plans currently in operation should be allowed to continue through their expiration date. This includes plans for Citizens Electric Company, Duquesne Light Company, Pike County Light & Power Company, URI Utilities, Inc. - Electric Division, and Wellsboro Electric Company.² The Commission recognizes that, given the expected length of this rulemaking process, some of these plans may expire prior to the effective date of final default service regulations. The Commission also recognizes that the effective date of the final regulations may not directly correspond with the expiration of Penn Power Company's generation rate caps on December 31, 2006. The Commission therefore will need to approve interim default service plans for some of the above-named EDC's until final regulations take effect, as has been done previously.

² Citizen's current POLR plan will expire on December 31, 2004. UGI's current POLR plan is effective through December 31, 2005. Pike County's current POLR plan is effective through December 31, 2005. Duquesne's recently approved POLR plan expires on December 31, 2007. Wellsboro's current POLR plan does not have a definitive expiration date and the Commission will require that Wellsboro file a default service plan for a term of service commencing on January 1 of the year following the year of effective date of these proposed regulations. The remaining generation rate caps include Allegheny Power, December 31, 2008; PPL Electric Utilities Corp., December 31, 2009; PECO Energy Company, December 31, 2010; Metropolitan Edison Company, December 31, 2010; Pennsylvania Electric Company, December 31, 2010.

A key element to any implementation plan is the term of service. At this time we are proposing that a term of service be for at least one year.³ Longer terms may also be proposed. We have not included a maximum term length. We recognize that allowing for a longer length of term may allow a default service provider to attract needed capital investment necessary for the reliable provision of service. We also acknowledge that a longer term could lead to lower default service prices from suppliers, who may be attracted by the opportunity of securing long-term customers. At the same time, we are aware that a longer term may lead to divergence from the prevailing market price, which is the legal standard that controls default service rates.

The implementation plan must also include a competitive procurement process for acquiring generation supply. The specific standards for this process are discussed in more detail in the next section. The plan should also document its compliance with the RTO's or ISO's technical and legal requirements in which service is being offered, and the proposed method for complying with the Alternative Energy Portfolio Standards Act, No. 213 of 2004. The plan should include a schedule of rates, the terms and conditions of default service, the reasonable and identifiable costs to be recovered, and reasonable credit requirements for suppliers who serve default service load. The plan should also include proposed confidentiality agreements that govern the procurement process and protect proprietary information of the default service provider and generation suppliers. The default service implementation plan should also identify any currently effective long term generation contracts between the incumbent EDC and a retail customer in that particular service territory.

The Commission recognizes the possibility that a supplier may fail to deliver energy that was acquired through an approved competitive procurement process during the term of service. In order to mitigate the negative consequences of such an event, a default service implementation plan shall identify a replacement procurement process.

As stated previously, this section provides a general standard to be met by EDCs in their default service filings that is based on the best information available to the Commission at this time. Through subsection (m), this Commission simply notes that it may need to issue orders to establish interim rules governing the form and content of default service plans if amendments to any final regulations are required.

F. Default Service Supply Procurement

In this section the Commission provides standards to govern the competitive procurement process that a default service provider must use to secure generation supply.

Section 54.185(d) of the proposed regulations states that a default service provider's implementation plan must include a competitive procurement process that is fair, transparent, and non-discriminatory. The Commission is requiring the default supplier to use a transparent market mechanism, instead of an administratively-determined process, in order that competition among potential suppliers may determine the price and allocation of load.

³ The Commission is aware that the initial terms of service for default service plans filed under this regulation may need to be longer, given our directive that plans be aligned with the RTO's planning year. For example, PJM Interconnection's planning year commences on June 1. As the Commission approved rate caps all expire on December 31, the initial service plans for those EDCs in PJM's control area will need to have terms of at least 17 months.

A transparent process is one that is both open and fair. Transparency is the free flow of information to all parties. Section 54.186(b)(2)(i)–(vii) identifies the information that should be made available to all potential bidders. In a transparent process, no party, particularly the affiliate, should have an informational advantage in any part of the solicitation process. The competitive procurement process and all relevant information about it should be released to all potential bidders at the same time. Furthermore, bidders should have equal access to data relevant to the competitive procurement process in order to ensure a fair process. Section 54.186(b)(2)(vii) attempts to list the relevant data that should be made transparent to potential bidders. In addition, the products sought through the competitive procurement process should be clearly defined.

A nondiscriminatory process means that all interested parties, subject to reasonable qualifications, have the ability to bid in the competitive procurement process. Instead of individually inviting specific bidders, the default service provider should allow all interested and qualified suppliers to participate in the competitive procurement process. Default service provider supplier affiliates may participate in the competitive procurement process, but there must be direct competition between the affiliate and competing, unaffiliated suppliers. Further, the relationship between the affiliate and the utility will continue to be governed by the competitive safeguards at Sections 54.121 and 54.122, 52 Pa. Code §§ 54.121–122, of the Commission's regulations.

Section 54.186(d) states that the competitive procurement process may be subject to independent monitoring by the Commission or a third party. Any third party involved in oversight of the process shall be independent from the default service provider and the participating bidders. A minimum criterion for independence is that the third party has no financial interest in any of the potential bidders, including the affiliate, or the outcome of the process. The Commission shall monitor the competitive procurement process to determine that the process is fair, transparent, and non-discriminatory. The Commission will be reviewing the bids based on both price and non-price evaluation criteria defined in the competitive procurement process.

The default service provider's competitive procurement process must meet the transparent and non-discriminatory standards, as discussed in the *Edgar* decision and further detailed in this section of the proposed regulations. At this point, the Commission envisions the use of request for proposals ("RFP") or auctions as potential procurement processes to meet these standards, although the Commission realizes there may be other procurement processes that are appropriate.

Section 54.186(e) addresses bid evaluation standards. The competitive procurement process should clearly specify the price and non-price criteria under which the bids are evaluated. Price criteria should include the relative importance of each item. Non-price criteria should specify the relative importance of items, such as firm transmission reservation requirements; credit evaluation criteria, such as bond rating; alternative energy standard portfolio components; etc.

The Commission's review of the results of the competitive procurement process will be expedited. To minimize the regulatory uncertainty or risk associated with the competitive procurement process, the Commission's review must occur within a time period specified in the approved competitive procurement process, but this pe-

riod may not be less than three business days. The Commission shall certify whether or not the implementation of the competitive procurement process and the results thereto demonstrate compliance with the approved default service implementation plan. The prices that result from a certified process will be considered the prevailing market price for default service.

In the event that an approved process does not result in the acquisition of sufficient generation supply, the default service provider will repeat the previously approved process. However, if the default service provider believes that amendments to the approved default service plan are needed to correct any deficiencies, it may petition the Commission to request these amendments. In the event that there is insufficient time to execute such process before the expiration of a current default service plan, the default service provider will acquire generation to meet demand through the energy markets administered by the RTO or ISO in which service is being offered, until the completion of a new procurement process. In such an event, the prevailing market price for that generation supply will be the price obtained in those energy markets. The default service provider shall fully recover the reasonable costs of this activity consistent with 66 Pa.C.S. § 2807(3).

G. Default Service Rates and the Recovery of Reasonable Costs

This section addresses the nature of the costs to be recovered and the mechanisms for recovery. The Commission finds that all reasonable, identifiable costs associated with providing default service should be fully allocated to default service rates. The Commission is aware of the comments made by various parties that some costs associated with providing generation service are currently being recovered through Commission approved distribution rates, to the detriment of ratepayer interests and the formation of a competitive retail market for electric generation service.

During our POLR Roundtable, the Office of Small Business Advocate ("OSBA") also raised the issue of cost allocation among customer classes. The OSBA noted in its testimony that current electric distribution companies' rates reflected cost of service studies performed prior to the passage of the Act, and that it believed that some misallocation of costs existed. The public interest is served by both the appropriate allocation of costs among customers and recovery of those costs through the correct rates. 66 Pa.C.S. §§ 1301, 1304. The Commission understands that further examination of this issue and the proper allocation of costs to the appropriate rates will require additional on the record proceedings before the Commission. If this aspect of the proposed regulations becomes final, the Commission will issue orders requiring EDCs to conduct cost of service studies as part of distribution and transmission rate cases in order to achieve this objective.

This section provides for the recovery of default service costs through two charges, and one automatic adjustment clause. The first charge, the "Generation Supply Charge," shall be used to recover the costs associated with the acquisition of generation supply and related services. The Commission has reviewed the comments offered by the parties to the POLR Roundtable on this topic, and has crafted a recovery mechanism to fully capture the non-alternative energy costs associated with acquiring generation. The proposed charge would recover the costs of energy, capacity, FERC approved ancillary services and

transmission charges, RTO and ISO charges, taxes, and other reasonable and identifiable costs.

The second charge is a "Customer Charge," to recover the non-generation supply costs associated with providing default service. This charge would recover the costs to the default service provider for functions such as billing, meter reading, collections, uncollectible debt, customer service, a return component, taxes, and other reasonable and identifiable costs. The Commission finds that the above-mentioned customer care costs may be more appropriately recovered through default service rates than distribution rates. The Commission's intent is that any reallocation of cost categories between distribution and default service rates should have a generally neutral impact on overall rates. Any increase in default service rates resulting from reallocation should be matched by a near corresponding drop in distribution rates.

The Commission is aware that EGSs are not currently providing customer care services such as meter reading, etc. Accordingly, a customer receiving generation service through an EGS will still be entitled to receive these customer care services through the default service provider. The default service provider can recover these costs through a modified customer charge that recovers the costs for those specific customer care services being provided to shopping customers.

This section also reflects the passage of the Alternative Energy Portfolio Standards Act, No. 213 of 2004, which was signed into law on November 30, 2004. Section 54.187(a)(3) of the proposed regulations provides for the recovery of all reasonable cost associated with this obligation through an automatic adjustment clause, consistent with 66 Pa.C.S. § 1307, as required by this law.

Comments and testimony were offered during the POLR Roundtable that the public interest would be served by requiring large commercial and industrial customers to take default service at hourly priced rates. We note that New Jersey and Maryland have adopted this approach for some of their larger non-residential customers. For example, representatives from New Jersey Board of Public Utilities testified at the POLR Roundtable that, in its 2004 Basic Generation Service auction, all customers whose peak load share was 1,500 kilowatts or greater would only receive an hourly rate option. This hourly rate was tied to the spot price of energy in the PJM Interconnection LLC's energy markets. Other parties asserted that while hourly rates should be offered, all customers should be entitled to a fixed rate option.

The Commission has addressed this issue as recently as our disposition of Duquesne Light Company's POLR III filing. *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service*, Docket No. P-00032071 (Opinion and Order entered August 23, 2004); *Petition for Reconsideration of Duquesne Light Company*, Docket No. P-00032071 (Opinion and Order entered October 5, 2004). The Commission recognizes the benefits associated with hourly priced service, including the fostering of a competitive marketplace and demand side response. At the same time, we are sensitive to the arguments of those who believe that customers may face financial difficulty in managing utility service provided at hourly rates. The proposed regulations provide that all non-residential customers whose peak registered demand is greater than 500 kilowatts shall be offered service at hourly priced rates, unless the

Commission authorizes a fixed rate option. The Commission describes the components of an hourly priced rate in subsection (e).

Subsection (f) requires that the proposed schedule of rates identify demand side response options that may be available to retail customers in that particular service territory. For example, this could include time-of-use rates. The Commission recently circulated a draft policy statement to the members of the Demand Side Response Working Group that found that the public interest would be served by giving retail customers the option of managing their electricity usage in response to price signals. Additionally, one of the ways the recently passed Alternative Energy Portfolio Standards Act allows EDC's to meet their legal obligations is through demand side management programs. To the extent that an EDC implements demand side response programs in response to either a Commission policy statement or in order to comply with the above mentioned legislation, those programs and their terms and conditions should be identified in the default service implementation filing.

In subsection (g), the Commission addresses the subject of price adjustments during the term of service. The Commission recognizes that there are risks associated with being a default service provider and that to the extent that flexibility is provided in managing these risks, retail customers will likely enjoy more reasonable rates. Such risks could include, but are not limited to, the risk of customer migrations or behavior by an EGS to exploit seasonal variations in the market. In allowing for reasonable price adjustments during the term of service, conditioned on compliance with certain standards, such flexibility is provided.

The Commission took particular note of Maryland's customer migration cost recovery mechanism that was discussed during the POLR Roundtable. This mechanism allowed standard offer service providers to recover the reasonable costs associated with significant customer migration to alternative service providers during a term of service. The mechanism was only triggered when certain thresholds were met. New Jersey has addressed this same risk by approving a fixed rate option where basic generation service is provided at rates that reflect the seasonal market costs of electricity. The price charged customers in warm weather months is somewhat higher than in the remaining part of the year. As noted previously, our definition of a fixed rate option does allow for seasonal pricing. Accordingly the price for default service under this rate, while known in advance, may vary as frequently as monthly. The Commission does not intend to endorse any particular mechanism, and will allow the default service provider to propose reasonable methods of managing this risk.

The Commission understands that unforeseen, extraordinary circumstances can occur during a term of service which will materially impact the costs of providing service to retail customers. In subsection (h) the Commission states its position that, as a general rule, default service rates should not be subject to review and reconciliation at the conclusion of the term of service. Default service providers are assured of full recovery of reasonable costs through Section 2807(e)(3) of the Public Utility Code. These regulations are intended to allow the necessary flexibility for default service providers to manage their risk prospectively. Default service providers are expected to review their incurred costs at the conclusion of each term of service and make the appropriate adjustments for their future default service plan filings. However, to the

extent that unforeseen, extraordinary circumstances jeopardize the reliable provision of default service, a provider may petition the Commission pursuant to Section 2807(e)(3) to seek additional cost recovery. It is expected that such requests would be rarely made to the Commission.

Finally, the Commission addresses the potential of supplier failure in subsection (i). It will be the obligation of the default service provider to procure replacement supply in the event that a supplier fails to deliver energy as contracted under the terms and conditions of the procurement process. Replacement energy will be acquired at prevailing market prices, and the default service provider will fully recover the reasonable costs of procuring such energy. The default service provider will execute its already approved replacement procurement process in such an event. When necessary due to time constraints, a default service provider shall acquire supply through the energy markets administered by the RTO or ISO in whose control area service is being provided. The price for replacement energy acquired in those markets will be deemed the "prevailing market price." The default service provider is expected to pursue acquisition strategies that reflect the incurrence of reasonable costs, consistent with 66 Pa.C.S. § 2807(e)(3), when selecting from the various options available in these energy markets.

The Commission has proposed this language as it recognizes that there may be different strategies, depending on the particular circumstances, that are appropriate in the immediate aftermath of supplier failure. It is the Commission's intent to give the default service provider sufficient flexibility to manage such an event in a way that minimizes costs and ensures the reliable provision of default service to customers.

H. Commission Review of Default Service Implementation Plans

The Commission establishes a schedule and process for the review of default service implementation plans in this section. A two phase process is appropriate for the evaluation of default service plans. In the initial phase, the Commission will review a proposed plan's compliance with applicable regulations, statutes, and orders, including a complete description of its proposed generation procurement process. After Commission approval is given, the default service provider will implement its competitive procurement process. The Commission will review the results of the competitive procurement process, and verify compliance with the approved default service implementation plan.

As stated previously, the default service plans should be filed 15 months prior to the conclusion of either the currently effective Commission approved POLR plan or generation rate cap. The Commission proposes that it will enter a final order on these plans within 6 months of the date of the filing with the Commission. During the review period, plans will be referred to the Office of Administrative Law Judge proceedings as may be necessary. The default service provider will execute its competitive procurement process for the acquisition of supply upon Commission approval of the implementation plan. The Commission will be notified in writing of the results, and will have no less than 3 business days to verify compliance with the approved plan. The default service provider must provide notice of the rates, and terms and conditions of service 60 days before their effective date.

The process described above allows at least seven months for a default service provider to implement its

competitive procurement process. The Commission is cognizant of the challenges that a default service provider may face in procuring large quantities of generation, and wishes to make certain that adequate time has been provided. By requiring the filing of plans fifteen months prior to the effective date, the Commission seeks to ensure that there is sufficient time for it to review the plans and for providers to implement them.

Finally, the Commission includes its standard for waiver of default service in subsection (h). The Commission's preference is to provide a general standard at this time in order to preserve its flexibility in addressing such requests.

I. Default Service Customers and the Standards for Transferring Customer Accounts to Default Service Providers

Section 54.189 identifies the standards governing customer choice in the context of default service. The Commission finds that it is in the public interest for non-shopping customers to be assigned to default service plans at the conclusion of either the currently effective rate caps or POLR plans. As this service will be the only alternative to the retail market, default service providers will be required to accept all new requests for service, provided that the individual customer complies with Commission regulations governing applications for utility service.

These regulations do not provide for restrictions on the ability of customers to move from default to competitive service, and vice versa. Given the Act's clear policy preference for customer choice, and the express language of Section 2807(e)(4) regarding the treatment of customers, we decline to endorse restrictions such as minimum stay provisions or switching fees at this time. We conclude that these proposed regulations give default service providers the flexibility to effectively manage the risks associated with customer migration without restricting choice.

In an effort to limit potential abuse of default service by the competitive marketplace, we do include restrictions on the transfer of retail customers' accounts to default service by electric generation suppliers. We are addressing this issue through an amendment to the competitive safeguards found at 52 Pa. Code §§ 54.122—54.128. The new section provides that the transfer of customer accounts to default service may not be initiated without the consent of the default service provider, except for the non-payment by a retail customer for services rendered by an EGS, to remedy unauthorized or inadvertent transfers of a customer's account away from the default service provider, upon the normal expiration of a contract not designed to exploit seasonal price variations, and when the Commission has approved the abandonment, cancellation or suspension of an EGS license.

The Commission recognizes that the subject of competitive safeguards is broad and includes many issues other than the transfer of customer accounts to default service. The Commission finds it to be in the public interest that this particular issue is addressed through this proposed rulemaking. However, the Commission notes that it may be appropriate to further examine Chapters 54 and 57 of our regulations with the objective of ensuring that adequate competitive safeguards are in place. Interested parties are encouraged to comment on whether this rulemaking should be expanded to address other issues involving competitive safeguards or if, rather, those issues are better addressed in a separate proceeding.

Conclusion

The Commission welcomes the filing of comments and reply comments by all interested parties on all aspects of these regulations. Given the importance and complexity of the issues now being considered, the normal comment period will be extended to sixty days. No extensions will be granted for the filing of comments.

The Commission is particularly interested in comments on a number of areas of importance, including: definitions, the replacement of default service providers pursuant to § 54.183(b), the length of the term of default service, the structure of the procurement process, cost recovery allocation and recovery mechanisms, hourly priced service, the review process for implementation plans, and customer migration. To the extent that a party believes any sections of these proposed regulations need revising, we ask that alternative language be suggested. This is particularly important in the area of definitions. If a party believes that additional definitions are required, specific language should be proposed. For the supply procurement process and the Commission review process, we are particularly interested in whether appropriate time has been allotted.

Accordingly, under sections 501 and 2807(e)(2) of the Public Utility Code, 66 Pa.C.S. §§ 501, 2807(e)(2); sections 201 and 202 of the act of July 31, 1968, P. L. 769 No. 240, 45 P. S. §§ 1201—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 are considering adopting the proposed regulations set forth in Annex A, attached hereto; *Therefore,*

It Is Ordered That:

1. The Proposed Rulemaking at L-0040169 will consider the regulations set forth in Annex A.
2. The Secretary shall submit this order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.
3. The Secretary shall submit this order and Annex A for review and comments to IRRC and the Legislative Standing Committees.
4. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.
5. An original and 15 copies of any written comments referencing the docket number of the proposed rulemaking be submitted within 60 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn.: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265. Reply comments will be due 30 days from the last date of the 60 day comment period.
6. A copy of this order and Annex A shall be served on all jurisdictional electric distribution companies, all licensed electric generation suppliers, the Office of Trial Staff, the Office of Consumer Advocate, the Office of Small Business Advocate and all other parties of record in the Provider of Last Resort Roundtable at M-00041792.
7. The contact persons for this Proposed Rulemaking are Robert Bennett, Bureau of Fixed Utility Services, (717) 787-5553 (technical), and Shane Rooney, Law Bureau, (717) 787-2871 (legal).

8. The Commission docket opened for the Provider of Last Resort Roundtable at M-00041792 be marked closed.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-237. No fiscal impact; (8) recommends adoption.

Statement of Commissioner Kim Pizzigrilli

Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa.C.S. § 2807(e)(2); Public Meeting December 16, 2004; DEC-2004-L-0101; DOC. NO. L-00040169*

Provider of Last Resort Roundtable; M-00041792

Today the Commission issues a significant Notice of Proposed Rulemaking in the ongoing development of Pennsylvania's competitive retail electric market. The proposed default service regulations will serve as the basis for final regulations of this important service. As retail electric competition continues to evolve in Pennsylvania, it is vital that the Commission ensure that all Pennsylvania electric customers continue to receive safe and reliable electric service. I wish to commend the efforts of those that have significantly contributed in the Commission's efforts, including representatives from Pennsylvania's electric distribution companies, competitive electric generation suppliers, consumer advocates and leaders of both small and large businesses. The continued participation of these parties to offer well-grounded solutions to many complex issues has been an invaluable asset to the Commission in developing this rulemaking.

Throughout the past year these parties along with the Commission and our staff have delved into the myriad of issues associated with the provision of default electric service. Often the resolution of one issue resulted in the identification of a multitude of equally difficult tangential issues. The proposed regulations address the majority of the core issues related to default service with the intent of providing sufficient flexibility for the competitive market, its participants and this Commission to respond to any new developments that arise in the future. While I support the proposed regulations I note that one area requires further consideration and likely additional regulatory language.

Specifically, the proposed regulations provide restrictions on the transfer of retail customers' accounts to default service by electric generation suppliers. By adding a new section to the Commission's preexisting Competitive Safeguard Regulations⁴ (Chapter 54) we are addressing this issue through an amendment. The proposed new section restrains the transfer of customer accounts to default service without the consent of the default service provider, except under specific circumstances. This is the sole addition proposed to our Competitive Safeguard Regulations but unlikely to be the only means by which Pennsylvania's competitive market could be unduly influenced via anti-competitive behavior.

The Order recognizes that the subject of competitive safeguards is broad and includes many issues beyond this one and calls for the potential need to further examine Chapters 54 and 57⁵ of our Regulations with the objective of ensuring that adequate competitive safeguards are in place. For this reason, I encourage parties to submit comments on other issues involving competitive safe-

⁴ 52 Pa. Code § 54.121 et seq.

⁵ Standards for Changing A Customer's Electricity Generation Supplier. 52 Pa. Code § 57.171 et seq.

guards that may be required to ensure the proper functioning of Pennsylvania's competitive retail markets.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 54. ELECTRICITY GENERATION CUSTOMER CHOICE

Subchapter A. CUSTOMER INFORMATION

§ 54.4. Bill format for residential and small business customers.

* * * * *

(b) The following requirements apply only to the extent to which an entity has responsibility for billing customers, to the extent that the charges are applicable. The [provider of last resort] default service provider will be considered to be an EGS for the purposes of this section. Duplication of billing for the same or identical charges by both the EDC and EGS is not permitted.

* * * * *

§ 54.5. Disclosure statement for residential and small business customers.

* * * * *

(b) The EGS shall provide the customer written disclosure of the terms of service at no charge whenever:

* * * * *

(3) Service commences from a [provider of last resort] default service provider.

(c) The contract's terms of service shall be disclosed, including the following terms and conditions, if applicable:

* * * * *

(9) The name and telephone number of the [provider of last resort] default service provider.

* * * * *

(h) If the [provider of last resort] default service provider changes, the new [provider of last resort] default service provider shall notify customers of that change, and shall provide customers with their name, address, telephone number and Internet address, if available.

§ 54.6. Request for information about generation supply.

(a) EGSs shall respond to reasonable requests made by consumers for information concerning generation energy sources.

* * * * *

(2) The [provider of last resort] default service provider shall file at the Commission the annual licensing report as required by the Commission's licensing regulations in this chapter and shall otherwise comply with paragraph (1).

* * * * *

Subchapter B. ELECTRICITY GENERATION SUPPLIER LICENSING

§ 54.31. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicate otherwise:

* * * * *

Default service provider—The incumbent EDC within a certificated service territory or a Commission approved alternative default service provider.

* * * * *

[**Provider of last resort**]—A supplier approved by the Commission under section 2807(e)(3) of the code (relating to duties of electric distribution companies) to provide generation service to customers who contracted for electricity that was not delivered, or who did not select an alternative electric generation supplier, or who are not eligible to obtain competitive energy supply, or who return to the provider of last resort after having obtained competitive energy supply.]

* * * * *

§ 54.32. Application process.

* * * * *

(h) An EDC acting within its certificated service territory as a [provider of last resort] default service provider is not required to obtain a license.

§ 54.41. Transfer or abandonment of license.

* * * * *

(b) A licensee may not abandon service without providing 90 days prior written notice to the Commission, the licensee's customers, the affected distribution utilities and [providers of last resort] default service providers prior to the abandonment of service. The licensee shall provide individual notice to its customers with each billing, in each of the three billing cycles preceding the effective date of the abandonment.

Subchapter E. COMPETITIVE SAFEGUARDS

§ 54.123. Transfer of customers to default service.

The following standards apply to the transfer of a retail customer's electric generation service from an EGS to a default service provider within the meaning of § 54.182 (relating to definitions):

(1) An EGS may not transfer a retail customer from its electric generation service to the default service provider without the consent of the default service provider, except in the following situations:

(i) Upon Commission approval of the abandonment, suspension or revocation of an EGS license, consistent with §§ 54.41 and 54.42 (relating to transfer or abandonment of license and license suspension; license revocation).

(ii) Upon nonpayment by a retail customer for services rendered by the EGS.

(iii) To correct an unauthorized or inadvertent switch of a retail customer's account from default service to an alternative EGS's service.

(iv) Upon the normal expiration of contracts that are not structured in a way to exploit seasonal variations in market prices for electric generation service.

(2) An EGS may initiate transfers in the situations set forth in paragraph (1) through standard electronic data interchange protocols.

(3) An EGS may not initiate or encourage transfers of service to a default service provider from

the EGS to exploit seasonal variations in market prices for electric generation service.

(4) The Commission may impose a penalty for every retail customer transferred to default service in violation of this section, consistent with 66 Pa.C.S. §§ 3301–3316 (relating to violations and penalties).

Subchapter G. DEFAULT SERVICE

Sec.	Purpose.
54.181.	Purpose.
54.182.	Definitions.
54.183.	Default service provider.
54.184.	Default service provider obligations.
54.185.	Default service implementation plans and terms of service.
54.186.	Default service supply procurement.
54.187.	Default service rates and the recovery of reasonable costs.
54.188.	Commission review of default service implementation plans.
54.189.	Default service customers.

§ 54.181. Purpose.

This subchapter implements 66 Pa.C.S. § 2807(e) (relating to duties of electric distribution companies), pertaining to an EDC's obligation to serve retail customers at the conclusion of the restructuring transition period. The provisions in this subchapter ensure that retail customers who do not choose an alternative EGS, or who contract for electric energy that is not delivered, have access to generation supply at prevailing market prices. The EDC shall fully recover all reasonable costs for acting as a default service provider of electricity to all retail customers in its certificated distribution territory.

§ 54.182. Definitions.

The following words and terms, when used in this subchapter, 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 be derived from alternative energy sources, as defined in the Alternative Energy Portfolio Standards Act (73 P.S. §§ 1647.1–1647.7).

Commission—The Pennsylvania Public Utility Commission.

Competitive procurement process—A fair, transparent and nondiscriminatory process by which a default service provider acquires electric generation supply to serve its default service customers through a bid solicitation process.

Default service—

(i) Electric generation service provided by a default service provider to a retail electric customer who does not choose an alternative EGS or who contracts for electric energy and it is not delivered.

(ii) Electric generation service provided pursuant to a Commission approved default service plan.

Default service implementation plan—A filing submitted by a default service provider to the Commission that identifies the means for procuring generation supply for default service customers at prevailing market rates, the reasonable costs associated with default service and all other necessary terms and conditions of service.

Default service provider—The incumbent EDC within a certificated service territory or a Commission approved alternative default service provider.

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

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

FERC—The Federal Energy Regulatory Commission.

Fixed rate option—A default service price that is set in advance for the entire term of the default service implementation plan that may include seasonal differences.

Hourly priced service—A default service price where the energy component of the generation supply charge is based on the RTO or ISO's LMP for energy, or other similar, mechanism.

ISO—A FERC-approved independent transmission system operator.

LMP—*Locational marginal pricing*—A pricing mechanism used by some RTOs and ISOs, as defined in their FERC approved tariffs.

Prevailing market price—

(i) The price of electric generation supply for a term of service realized through a default service provider's implementation of and compliance with a Commission-approved default service implementation plan.

(ii) The price of electric generation supply in the RTO or ISO administered energy markets in whose control area default service is being provided, acquired under the conditions specified in § 54.186(g), § 54.187(i) or § 54.188(e) (relating to default service supply procurement; default service rates and the recovery of reasonable costs; and Commission review of default service implementation plans).

Replacement procurement process—A Commission-approved process, submitted as part of the default service implementation plan, which provides for the acquisition of generation supply if a supplier fails to deliver generation contracted for under the terms of a competitive procurement process.

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

RTO—A FERC-approved regional transmission organization.

§ 54.183. Default service provider.

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

(b) An EDC may petition the Commission to be relieved from the default service obligation. In the alternative, the Commission may propose through its own motion that an EDC be relieved from the default service obligation. The Commission may approve those request if it is in the public interest. In such circumstances, the Commission will announce through an order a competitive process to determine the alternative default service provider, which may be either an EDC or a licensed EGS.

(c) When the Commission finds that an EDC should be relieved of the default service obligation, the competitive process for the replacement of the default service provider shall be as follows:

(1) Any EDC or EGS that wishes to be considered for the role of the alternative default service provider shall apply for a certificate of public convenience, consistent with 66 Pa.C.S. §§ 1101–1103 (relating to organization of public utilities and beginning of service; enumeration of acts requiring certificate; and procedure to obtain certificates of public convenience).

(2) Applicants shall demonstrate their operational and financial fitness to serve and their ability to comply with Commission regulations, orders and applicable laws pertaining to public utility service.

(3) If no applicant can meet this standard, the incumbent EDC will be required to continue the provision of default service.

(4) If one or more applicants meet the standard provided in paragraph (2), the Commission will grant a certificate of public convenience to act as a default service provider to the applicant best able to fulfill the obligation.

(5) An EGS that is granted a certificate of public convenience to act as an alternative default service provider will be considered a public utility within the meaning of 66 Pa.C.S. § 102 (relating to definitions).

§ 54.184. Default service provider obligations.

(a) A default service provider shall be responsible for the reliable provision of default service to retail customers who are not receiving generation services from an alternative EGS within the certificated territory of the EDC that it serves.

(b) A default service provider shall comply with applicable Commission regulations and orders to the extent that the obligations are not modified by this subchapter.

(c) A default service provider shall continue the universal service program in effect in the EDC's certificated service territory or implement, subject to Commission approval, a similar customer assistance program consistent with 66 Pa.C.S. §§ 2801—2812 (relating to Electricity Generation Customer Choice and Competition Act).

§ 54.185. Default service implementation plans and terms of service.

(a) A default service provider shall file a default service implementation plan with the Commission's Secretary's Bureau no later than 15 months prior to the conclusion of the currently effective default service plan or Commission-approved generation rate cap for that particular EDC service territory, unless the Commission authorizes another filing date.

(b) Default service implementation plans must comply with Commission regulations pertaining to documentary filings, except when modified by this subchapter. The default service provider shall serve copies of the default service implementation plan on the Pennsylvania Office of Consumer Advocate, Pennsylvania Office of Small Business Advocate, the Commission's Office of Trial Staff, and the RTO or ISO in whose control area the default service provider is operating.

(c) A default service implementation plan must propose a minimum term of service of at least 12 months, or multiple 12 month periods, or for a period necessary to comply with subsection (f).

(d) A default service implementation plan must propose a fair, transparent and nondiscriminatory competitive procurement process consistent with § 54.186 (relating to default service supply procurement) for the acquisition of sufficient electric generation supply, at prevailing market prices, to meet the demand of all of the default service provider's retail electric customers for the term of service. The default service plan must identify its method of compliance with the Alternative Energy Portfolio Standards Act (73 P. S. §§ 1647.1—1647.7).

(e) The Commission may direct that some or all default service providers file joint default service implementation plans that propose a competitive procurement process to

procure electric generation supply for all of their default service customers. In the absence of such a directive, some or all default service providers may jointly file default service plans that propose a competitive procurement process to procure electric generation for all of their default service customers. A multi-service territory competitive procurement process must comply with § 54.186.

(f) A default service provider shall document that its proposal is consistent with the legal and technical requirements pertaining to the generation, sale and transmission of electricity of the RTO or ISO in whose control area it is providing service. The default service plan's term of service and generation supply acquisition processes must align with the planning period of that RTO or ISO.

(g) The default service implementation plan must include a schedule of rates, rules and conditions of default service in the form of proposed revisions to its tariff. The default service provider may use the already effective retail customer classes in the EDC's service territory, or may propose a reclassification of retail customers.

(h) The default service implementation plan must identify the costs, consistent with § 54.187 (relating to default service rates and the recovery of reasonable costs), that will be recovered through a schedule of rates for the provision of default service.

(i) The default service implementation plan must include reasonable credit requirements, or other reasonable assurances of any supplier of electric generation services' ability to perform, as approved by the Commission.

(j) The default service implementation plan must identify the load size and end date of all existing long-term generation contracts that are in effect between the EDC and a retail customer within its service territory.

(k) The default service implementation plan should include copies of any proposed confidentiality agreements for the protection of proprietary information of the default service provider and generation suppliers. The Commission will approve reasonable confidentiality agreements, including expiration provisions, that will be binding on the default service provider, generation suppliers and any third party involved in the administration, review or monitoring of a default service supply procurement process.

(l) The default service provider shall include in its implementation plan a replacement procurement process to ensure the reliable provision of default service if a supplier fails to deliver electric generation supply it has agreed to provide under the terms of a Commission-approved competitive procurement process.

(m) The Commission may issue orders further specifying the form and content of default service implementation plans when necessary to enforce or carry out the provisions of 66 Pa.C.S. §§ 2801—2812 (relating to Electricity Generation Customer Choice and Competition Act), and other applicable law.

§ 54.186. Default service supply procurement.

(a) A default service provider shall procure the electricity needed to provide default service only through a competitive procurement process or replacement procurement process approved by the Commission, with the following exceptions:

(1) Hourly priced service provided under § 54.187(e) (relating to default service rates and the recovery of reasonable costs).

(2) Supply procured through RTO or ISO administered energy markets consistent with subsection (g), § 54.187(i) or § 54.188(e) (relating to Commission review of default service implementation plans).

(b) A default service provider's competitive procurement process shall adhere to the following standards:

(1) A default service provider's supplier affiliate may participate in any competitive procurement process. The default service provider shall propose and implement protocols to ensure that its supplier affiliate does not receive an advantage in either the solicitation and evaluation of competitive bids, or any other aspect of the competitive procurement process. The process must comply with the codes of conduct promulgated by the Commission in § 54.122 (relating to code of conduct).

(2) A default service provider's proposed competitive procurement process must include:

- (i) A bidding schedule.
- (ii) A definition and description of the power supply products on which potential suppliers shall bid.
- (iii) Bid price formats.
- (iv) The time period during which the power will need to be supplied for each power supply product.
- (v) Bid submission instructions and format.
- (vi) Bid evaluation criteria.
- (vii) Relevant load data, including the following:
 - (A) Aggregated customer hourly usage data for all retail customers.
 - (B) Number of retail customers.
 - (C) Capacity peak load contribution figures by rate schedule.
 - (D) Historical monthly retention figures by rate schedule.
 - (E) Estimated loss factors by rate schedule.
 - (F) Customer size distribution by rate schedule.

(c) A default service provider may employ a third-party to design and implement the competitive procurement process.

(d) The competitive procurement process may be subject to direct oversight by the Commission or an independent third party. Any third party shall report to the Commission. Commission staff and any third party involved in oversight of the procurement process shall have full access to all information pertaining to the competitive procurement process, and may monitor the process either remotely or where the process is administered. Any third party retained for purposes of monitoring the competitive procurement process shall be subject to confidentiality agreements identified in § 54.185(k) (relating to default service implementation plans and terms of service).

(e) The default service provider shall evaluate and select winning bids in a nondiscriminatory manner based on bid evaluation criteria set forth consistent with subsection (b)(2)(vi).

(f) The Commission will review the acquisition of generation supply and verify compliance with the approved competitive procurement process as follows:

(1) The Commission's review will occur within a time period as specified in the approved competitive procurement process.

(2) The review period may not be less than 3 business days.

(3) The Commission's verification of compliance with an approved competitive procurement process will constitute its certification of the default service provider's compliance with the approved default service implementation plan.

(g) If the implementation of a competitive procurement process under this section does not result in sufficient electric supply to meet the default service provider's full load requirements, the default service provider shall repeat the competitive procurement process. The default service provider may petition for necessary changes to the previously approved competitive procurement process to ensure the acquisition of sufficient supply. When necessary to procure electric generation supply before the completion of another competitive procurement process, a default service provider shall acquire supply at prevailing market prices and shall fully recover reasonable costs associated with this activity. In this circumstance, the prevailing market price shall be the price of electricity in the RTO or ISO's administered energy markets in whose control area that service is being provided. The default service provider shall follow acquisition strategies that reflect the incurrence of reasonable costs, consistent with 66 Pa.C.S. § 2807(e)(3) (relating to duties of electric distribution companies), when selecting from the various options available in these energy markets.

(h) The bids submitted by a supplier under the competitive procurement process shall be treated as confidential through the expiration date identified in the confidentiality agreement approved by the Commission under § 54.185(k). The default service provider, the Commission, and any third party involved in the administration, review or monitoring of the procurement process, shall be subject to this confidentiality provision.

§ 54.187. Default service rates and the recovery of reasonable costs.

(a) The costs incurred for providing default service shall be recovered through the following mechanisms or charges:

(1) The generation supply charge is a nonreconcilable charge that includes all reasonable costs associated with the acquisition of generation supply, exclusive of the costs of generation supply recovered through paragraph (3), to meet default service demand. The associated costs with this charge include:

- (i) The prevailing market price of energy.
- (ii) The prevailing market price of RTO or ISO capacity or any similar obligation.
- (iii) FERC-approved ancillary services and transmission charges.
- (iv) Required RTO or ISO charges.
- (v) Applicable taxes.
- (vi) Other reasonable, identifiable generation supply acquisition costs.

(2) The customer charge is a nonreconcilable, fixed charge, set on a per customer class basis, that includes all identifiable, reasonable costs associated with providing default service to an average member of that class,

exclusive of generation supply costs and costs recovered through paragraph (3). The associated costs with this charge include:

(i) Default service related costs for customer billing, collections, customer service, meter reading and uncollectible debt.

(ii) A reasonable return or risk component for the default service provider.

(iii) Applicable taxes.

(iv) Other reasonable and identifiable administrative or regulatory expenses.

(3) A default service provider shall use an automatic energy adjustment clause, consistent with 66 Pa.C.S. § 1307 (relating to sliding scale of rates; adjustments) to recover reasonable costs incurred through compliance with the Alternative Energy Portfolio Standards Act (73 P. S. §§ 1647.1—1647.7).

(4) The costs recovered through the preceding charges and mechanisms may not be recovered by an EDC acting as a default service provider through its Commission approved distribution rates.

(b) A default service plan must include a fixed rate option for all residential customers.

(c) A default service implementation plan must include a fixed rate option for nonresidential default service customers whose load test indicates a registered peak demand of 500 or less kilowatts.

(d) The default service provider shall include an hourly rate in its implementation plan for all default service customers whose load test indicates a registered peak demand of greater than 500 kilowatts. The default service provider may propose a fixed rate for these customers in its default service implementation plan.

(e) The rate for hourly priced service shall include:

(1) The RTO's or ISO's LMP or the equivalent pricing mechanism.

(2) The prevailing market price of RTO or ISO capacity or any similar obligation.

(3) FERC-approved ancillary services and transmission charges.

(4) Required RTO or ISO charges.

(5) Applicable taxes.

(6) Other FERC-approved or reasonable, identifiable RTO or ISO charges and costs directly related to the hourly priced service.

(7) Other reasonable and identifiable administrative or regulatory expenses.

(f) The default service implementation plan must include rates that correspond to demand side response and demand side management programs available to retail customers in that EDC service territory.

(g) The default service implementation plan may include mechanisms that allow default service providers to adjust their prices during the term of service to recover reasonable, incremental costs of significant changes in the number of default service customers or reasonable, incremental costs of other events that would materially prejudice the reliable provision of default service and the full recovery of reasonable costs.

(h) The default service provider's projected and actual incurred costs for providing service may not be subject to

Commission review and reconciliation except in extraordinary circumstances, or as provided in subsection (a)(3).

(i) When a generation supplier fails to deliver generation supply to a default service provider, the default service provider shall be responsible for acquiring replacement generation supply consistent with its Commission-approved replacement procurement process. When necessary to procure electric generation supply before the completion of the replacement procurement process, a default service provider shall acquire supply at prevailing market prices and shall fully recover reasonable costs associated with this activity. In this circumstance, the prevailing market price will be the price of electricity in the RTO or ISO's administered energy markets in whose control area the default service is being provided. The default service provider shall follow acquisition strategies that reflect the incurrence of reasonable costs, consistent with 66 Pa.C.S. § 2807(e)(3) (relating to duties of electric distribution companies), when selecting from the various options available in these energy markets.

§ 54.188. Commission review of default service implementation plans.

(a) A default service implementation plan shall initially be referred to the Office of Administrative Law Judge for further proceedings as may be required.

(b) The Commission will issue an order within 6 months of a plan's filing with the Commission on whether the default service implementation plan demonstrates compliance with this subchapter and 66 Pa.C.S. §§ 2801—2812 (relating to Electricity Generation Customer Choice and Competition Act). The Commission may order modification of the terms of the proposed plan to ensure that a default service plan is compliant.

(c) The Commission will evaluate the default service implementation plan to ensure that it includes a fair, transparent and nondiscriminatory competitive procurement process for all potential suppliers provided under § 54.186 (relating to default service supply procurement).

(d) Upon entry of the Commission's final order, the default service provider shall acquire generation supply for the term of service in a manner consistent with the terms of the approved competitive procurement process provided under § 54.186, and report the bids submitted by EGSS in writing to the Commission.

(e) The Commission will certify the results of a competitive procurement process in their entirety or reject them due to noncompliance with the approved procurement process. If the Commission rejects the results due to noncompliance, the default service provider shall repeat the approved competitive procurement process. When necessary to procure electric generation supply before the completion of the subsequent competitive procurement process, a default service provider shall acquire supply at prevailing market prices and shall fully recover reasonable costs associated with this activity. In this circumstance, the prevailing market price will be the price of electricity in the RTO or ISO's administered energy markets in whose control area that service is being provided. The default service provider shall follow acquisition strategies that reflect the incurrence of reasonable costs, consistent with 66 Pa.C.S. § 2807(e)(3) (relating to duties of electric distribution companies), when selecting from the various options available in these energy markets.

(f) Upon completion of the competitive procurement process, the default service provider shall provide written notice to default service customers and the named

parties identified in § 54.185(b) (relating to default service implementation plans and terms of service) of the Commission-certified default service prices and terms and conditions of service no later than 60 days before their effective date, unless another time period is approved by the Commission. The default service provider shall also provide written notice to the named parties identified in § 54.185(b) containing an explanation of the methodology used to calculate the price for electric service.

(g) A default service provider may petition for a waiver of any part of this subchapter, in a manner consistent with § 5.43 (relating to petitions for issuance, amendment or waiver of regulations). The Commission may grant waivers of this subchapter to ensure the reliable provision of default service and to enforce and carry out the provisions of 66 Pa.C.S. §§ 2801—2812 and other applicable laws.

§ 54.189. Default service customers.

(a) At the conclusion of an EDC's Commission-approved generation rate cap, retail customers who are not receiving generation service from an EGS shall be assigned to the Commission-approved default service implementation plan.

(b) A default service provider shall accept applications for default service from new retail customers and retail customers who switch from an EGS, if the customers comply with all Commission regulations pertaining to applications for service.

(c) A default service provider shall treat a customer who leaves an EGS and applies for default service as it would a new applicant for default service.

(d) A default service customer may choose to receive its generation service from an EGS at any time, if the customer complies with Commission-regulations pertaining to changing generation service providers.

(e) A default service provider may not charge a fee to a retail customer that changes its generation service provider in a manner consistent with Commission regulations.

CHAPTER 57. ELECTRIC SERVICE

Subchapter M. STANDARDS FOR CHANGING A CUSTOMER'S ELECTRIC GENERATION SUPPLIER

§ 57.178. [Provider of last resort] Default service provider.

This subchapter does not apply when the customer's service is discontinued by the EGS and subsequently provided by the **[provider of last resort] default service provider** because no other EGS is willing to provide service to the customer.

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