

TO THE
INDEPENDENT REGULATORY REVIEW COMMISSION

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Pennsylvania Public Utility Commission :
Provisions of Default Services : Reg. No. 57-237
PUC Docket L-00040169 :

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

At its meeting of July 19, 2007, the Independent Regulatory Review Commission will be considering the Final Rulemaking Order of the Pennsylvania Public Utility Commission in 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), Docket No. L-00040169. The Office of Consumer Advocate (OCA) respectfully requests that these final form regulations be disapproved at this time. The OCA respectfully submits that these regulations are inconsistent with the intent of the General Assembly in enacting the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §2801, *et seq.* (1996 Act).!

The OCA participated extensively in the Commission rulemaking process, as well as in prior proceedings and working groups involving the default service obligation of electric distribution companies. The OCA filed several rounds of extensive comments in the currently pending docket, and related dockets, on the default service obligation under 66 Pa.C.S. §2807.

Since at least 2004, the OCA has stressed that the fundamental goal of the Pennsylvania Electricity Generation Customer Choice and Competition Act (1996 Act) was to provide reliable service to consumers at lower prices than they would pay under the prior regulatory model. The need to provide reasonably priced service was considered essential for consumer welfare and economic development by the General Assembly. 66 Pa.C.S. §2802(9). As a means of achieving that goal, the 1996 Act sought to ensure that Pennsylvania electric consumers gained access to a competitive generation market. The Act set forth two ways to gain access to the competitive generation market. One is through the customer choosing to receive retail electric service from an alternative generation supplier. The second way is through the default service provider (the electric distribution company) acquiring supply in these competitive wholesale generation markets to serve its retail customers.

Equally important under the 1996 Act is that electric service should be available to all customers on reasonable terms and conditions. 66 Pa.C.S. §2802(16). In its Comments regarding the default service obligation, the OCA has consistently supported the use of a “portfolio” approach to meeting the default service obligation as a means to accomplish the stated goals of the 1996 Act. As detailed in the OCA’s Comments, the default service provider should assemble a portfolio of resources on behalf of its customers designed to provide reliable service at the lowest reasonable rates over time. The portfolio of resources should include a diverse array of contract lengths and products. A portfolio should include long-term contracts, short term contracts, spot market purchases, demand side resources, and resources needed to comply with the Alternative Energy Portfolio Standards Act, 73 P.S. §1648.1, *et seq.* The use of a diverse

portfolio with a variety of products, resources, contracts and financial instruments can mitigate the various risks of the service and result, over the long term, in reasonable and stable costs for the service being provided. The use of long-term contracting is particularly important to support the development of new resources needed for reliable service as well as for compliance with the Alternative Energy Portfolio Standards Act. The construction of new resources – that require long-term contracts in order to secure financing at reasonable costs – will be crucial to the development of reasonable, stable prices for all Pennsylvania consumers.

Through these comments, the OCA wishes to highlight several key points that it has made throughout this process, identifying areas where the OCA believes that the final form regulations are inconsistent with the intent of the Electricity Generation Customer Choice and Competition Act, where the regulations will fail to result in reasonable rates that are affordable to the public and protect the economic welfare of the Commonwealth, and where the regulations make policy decisions that require legislative review. 71 P.S. §745.5b.

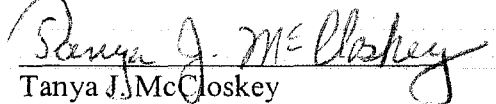
The OCA would also note that the Governor and General Assembly are currently, and actively, considering changes to the 1996 Act. Legislation under consideration as these Comments are being written could have a substantial impact on these regulations. Furthermore, the Governor and the General Assembly have announced that a Special Session of the General Assembly will be convened in September 2007 to further address these critical energy issues. Resolution of this legislative debate will more clearly delineate the policy decisions necessary to arrive at regulations for default service that best serve the interests of Pennsylvania.

At this time, the OCA would respectfully urge this Commission to disapprove the proposed regulations of the Pennsylvania Public Utility Commission for the reasons detailed in its Comments throughout the PUC proceedings. By way of summary, the OCA highlights the following areas of concern with respect to the final form regulations:

- By relying so heavily on short-term prices and short-term procurements, the final form regulations will fail to support the development of the lowest reasonable prices necessary to meeting the requirement that electric service, essential to the health and well-being of residents, public safety, and orderly economic development, be available to all customers on reasonable terms and conditions (66 Pa.C.S. §2802(9)).
- The final form regulations provide an overly narrow interpretation of the term “prevailing market prices” that will not allow for the development of procurement strategies designed to provide the lowest reasonable stable rate for reliable electric service, thus compromising the affordability of utility service and the further economic development of the Commonwealth intended by the 1996 Act (66 Pa.C.S. §2802(6), (7)).
- The final form regulations unduly restrict the procurement methods that an electric distribution company can utilize to meet its default service obligation to only requests for proposals and auctions, without permitting bilateral contracts, an accepted and often used procurement methodology in the wholesale markets. Without the greater flexibility provided by the use of bilateral contracts, the Commission regulations, for example, may actually prohibit continuation of the methodology used by Duquesne Light Company that has successfully managed the end of its rate cap period for residential customers through the provision of stable rates, without severe resulting rate shock.
- The final form regulations, and accompanying Policy Statement at Docket M-00072009, unduly restrict the use of long term contracts that will be critical in supporting the construction of new resources needed to provide reliable electric service (66 Pa.C.S. §2802(12), (20));
- The final form regulations mandate frequent price changes to customers, resulting in volatile and unstable rates that will jeopardize the ability of all customers, particularly low income customers, to afford basic electric service. 66 Pa.C.S. §2802(9), (10).

The OCA respectfully submits that for the reasons it has detailed throughout the rulemaking proceedings and as highlighted in these Comments, the Independent Regulatory Review Commission should disapprove the final form regulations of the Pennsylvania Public Utility Commission, promulgated at 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), Docket No. L-00040169, at this time. The final form regulations do not carry out the intent of the General Assembly, could result in rates for essential utility service that are unreasonable, and could negatively impact the economic well-being of the Commonwealth. In addition, these regulations may well need to be modified as a result of legislative changes that are now under consideration in the General Assembly.

Respectfully Submitted,


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Dated: July 16, 2007
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