

# Regulatory Analysis Form

(Completed by Promulgating Agency)



# IRRC

Independent Regulatory Review Commission

## SECTION I: PROFILE

(1) Agency:  
Pennsylvania Public Utility Commission (PUC)

(2) Agency Number:  
L-00070184  
Identification Number:  
57-255

IRRC Number: 2648

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

(3) Short Title:  
Final Rulemaking Order Re: Retail Electricity Choice Activity Reports

(4) PA Code Cite:  
52 Pa. Code Sections §§ 54.201-54.204

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact:  
Patricia Krise Burket (legal), 717-787-3464

Secondary Contact:  
Charles Covage (technical), 717-783-3835

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
  - Certification by the Governor
  - Certification by the Attorney General

## Regulatory Analysis Form

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The regulations require all electric distribution companies (“EDCs”) and active electric generation suppliers (“EGSs”) to report information relating to sales activity in the retail electric generation market by customer group. EDCs will be required to file quarterly reports while EGSs will be required to file annual reports.

(9) Include a schedule for review of the regulation including:

A. The date by which the agency must receive public comments:

Not applicable.

B. The date or dates on which public meetings or hearings will be held:

Not applicable.

C. The expected date of promulgation of the proposed regulation as a final-form regulation:

Not applicable. This is a final form regulation.

D. The expected effective date of the final-form regulation:

The regulation will become effective upon its publication in *PA Bulletin*.

E. The date by which compliance with the final-form regulation will be required:

EDCs will need to file their first quarterly reports no later than 30 days after the end of the previous quarter. Section 54.203(a)(5). EGSs will need to file their first annual report on or before April 30 of each year. Section 54.203(a)(6).

F. The date by which required permits, licenses or other approvals must be obtained: \_\_\_\_\_

Not applicable. The regulation is a reporting requirement and does not require that permits, licenses or other approvals be obtained.

(10) Provide the schedule for continual review of the regulation.

No schedule is necessary. This regulation will be continuously reviewed as EDCs and EGSs file compliance reports. The PUC will evaluate the usefulness of the reports’ content in regard to fulfilling its duties to monitor the development of the retail electric generation market, and to police and arrest instance of anticompetitive behavior.

## Regulatory Analysis Form

### **SECTION II: STATEMENT OF NEED**

(11) State the statutory authority for the regulation. Include specific statutory citation.

66 Pa.C.S. § 501(relating to general powers); § 2804 (12)(relating to standards for restructuring of electric industry; milestone reviews of retail electric generation competition market) and § 2811(a)(relating to market power remediation.)

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

This regulation will allow the PUC to fulfill its statutory duty to monitor sales activity and growth in the retail electric generation market. 66 Pa. C.S. §2804(12)(relating to standards for restructuring of electric industry; market growth milestone review) and §2811 (relating to market power remediation). It will also allow the PUC to assess the impact on customer shopping activity of its policies relating to default electric generation service.

## Regulatory Analysis Form

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

Not applicable.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

Except for the minimal costs associated with EDCs and EGSs compliance with the periodic reporting requirement discussed below at no 17, no person will be adversely affected by the regulation.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

All Pennsylvania electric distribution companies and active electric generation suppliers must comply with this regulation. There are 11 electric distribution companies and approximately 44 active electric generation suppliers are licensed to sell electric generation to retail customers. Only those electric generation suppliers who are engaged in selling electric generation to retail customers are considered to be 'active suppliers' and must comply with the regulations.

## Regulatory Analysis Form

### SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Costs of compliance with the regulations will be minimal. Both electric distribution companies and the electric generation suppliers already collect and compile sales activity information for their own use and will be provided with a form for use in reporting this information. The form will be made available electronically at the PUC's internet web site. Electric distribution companies will file reports quarterly while electric generation suppliers will file reports annually.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

None. Local governments are not affected by this regulation.

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

Monitoring the development and operation of the electric generation market is a fundamental duty of the PUC. Additional legal or accounting costs associated with the implementation of this regulation by the PUC will be minimal. There will be no, or, at most, minimal savings to the PUC as a result of implementing this regulation.

## Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$ N/A	\$	\$	\$	\$	\$
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>						
<b>COSTS:</b>						
<b>Regulated Community</b>	Minimal	Minimal	Minimal	Minimal	Minimal	Minimal
<b>Local Government</b>	N/A					
<b>State Government</b>	Minimal	Minimal	Minimal	Minimal	Minimal	Minimal
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>	N/A					
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>						

(20a) Provide the past three year expenditure history for programs affected by the regulation.

N/A

Program	FY -3	FY -2	FY -1	Current FY
N/A				

## Regulatory Analysis Form

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The regulations are not expected to result in any revenue losses, savings or costs to local governments. No revenue losses or savings are expected for the regulated community or state government. Costs associated with preparing and filing the sales activity reports for the regulated community and the PUC are expected to be minimal. PUC costs related to docketing and filing the reports, to the extent that they exist, will be further reduced with the implementation of the PUC's electronic filing and docketing system (InfoMAP).

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

On April 12, 2006, the PUC issued an order requesting public comment on establishing a reporting requirement for information relating to sales activity in Pennsylvania's electric generation market. The comment period ended June 12, 2006; the reply comment period ended July 11, 2006. Comments were filed by eight interested parties - the Energy Association of PA (EA-PA), Office of Small Business Advocate (OSBA), Office of Consumer Advocate (OCA), one electric distribution company--Pike County Power & Light Company, three suppliers -- Constellation NewEnergy, Inc., Richards Energy Group Inc., and First Energy Solutions Corp.; and Retail Energy Supply Association (RESA), a marketer trade association. Reply comments were filed by Constellation and RESA.

The proposed rulemaking was adopted on April 13, 2007 and published in the *Pennsylvania Bulletin* on November 17, 2007. Comments were filed by the EA-PA, RESA, OCA, OSBA, UGI Utilities, Inc., PECO Energy and IRRC. The PUC issued its final rulemaking order on August 7, 2008.

Subsequently, RESA filed a petition requesting the PUC reconsider the basis for grouping customers for EGS reporting purposes. By order issued December 4, 2008, the PUC granted RESA's request. A distribution company will file quarterly reports reporting by customer class as defined in its tariff. A supplier will file an annual report reporting by customer class defined by annual usage on a volumetric basis.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Not applicable. This regulation is the least burdensome means by which information necessary to the monitoring of sales activity in the electric generation market can be obtained.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

Not applicable.

## Regulatory Analysis Form

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The minimal costs for electric distribution companies and electric generation suppliers associated with this periodic sales activity reporting requirement will not place Pennsylvania at a competitive disadvantage.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Copies of the reporting forms for EDCs and EGSs are attached as an appendix to the PUC's order. They will not be published as part of the regulations, but will be made available by request and for download in electronic format at the PUC's website.

These reporting requirements have been carefully drafted to minimize the burden placed on the affected entities – EDCs and EGSs. The frequency of the reports is reasonable; EDCs will submit quarterly reports while EGSs will submit annual reports. The information to be reported is readily available “off the shelf” sales activity data that does not require additional processing. Finally, EDCs and EGSs may file the reports in electronic format thus decreasing the costs of compliance.



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(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Not applicable.

**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU**

**(Pursuant to Commonwealth Documents Law)**

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

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Copy below is hereby approved as to form and  
legality. Attorney General.

BY \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

\_\_\_\_\_  
DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached

Copy below is hereby certified to be true and  
correct copy of a document issued, prescribed or  
promulgated by:

Pennsylvania Public Utility Commission  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. L-00070184/57-255

DATE OF ADOPTION December 4, 2008

BY James J. McNulty  
James J. McNulty

TITLE Secy  
(SECRETARY)

Copy below is hereby approved as to  
form and legality. Executive or  
independent Agencies.

BY Bohdan R. Pankiw  
Bohdan R. Pankiw  
Chief Counsel

12-4-08  
DATE OF APPROVAL

Check if applicable. No Attorney General  
approval or objection within 30 days after  
submission.

L-00070184/57-255  
Final Rulemaking  
Retail Electricity Choice Activity Reports  
52 Pa. Code, Chapter 54

The Pennsylvania Public Utility Commission on December 4, 2008, adopted a final rulemaking order which adopts reporting requirements regarding electric generation market activity to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power. The contact persons are Charles Covage, CEEP, 783-3835 and Patricia Krise Burket, Law Bureau, 787-3464.

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**  
Harrisburg, PA. 17105-3265

Public Meeting held December 4, 2008

Commissioners Present:

James H. Cawley, Chairman  
Tyrone J. Christy, Vice Chairman  
Robert F. Powelson  
Kim Pizzingrilli  
Wayne E. Gardner

Petition for Reconsideration of the Retail Energy  
Supply Association: re: Final Rulemaking on Retail  
Electricity Choice Activity Reports

Docket No. L-00070184

**FINAL RULEMAKING  
RECONSIDERATION AND ORDER**

**BY THE COMMISSION:**

On August 8, 2008, the Commission entered a final rulemaking order at the above-captioned docket. These final regulations set forth reporting requirements for retail electricity sales for electric distribution companies ("EDCs") and electric generation suppliers ("EGSs"). Two subsequent events occurred before our order moved from the Commission to the remaining stages of the regulatory review process. First, on August 25, 2008, the Retail Energy Supply Association ("RESA")<sup>1</sup> filed a petition for reconsideration of the order's changes to the proposed EGS reporting requirements. The second event was the enactment of Act 129 of 2008 ("Act 129") which adds certain defined terms to the Public Utility Code. By this order, we will (1) grant RESA's petition

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<sup>1</sup> Commerce Energy Inc., Consolidated Edison Solutions, Inc., Direct Energy Services, LLC; Gexa Energy, Hess Corporation, Integrys Energy Services Inc. Liberty Power Corps, Reliant Energy Retail

for reconsideration, (2) revise certain definitions in the final regulations to be consistent with Act 129, (3) withdraw the order entered on August 8, 2008, and (4) issue the revised final regulations in this final rulemaking reconsideration and order.

## DISCUSSION

### Background

On February 9, 2006, the Commission adopted an order soliciting comments at Docket No. M-00061939. *Development and Production of Retail Electricity Choice and Activity Reports*. Order entered April 12, 2006. The deadline for filing comments/reply comments was June 12, 2006 and July 11, 2006 respectively. Comments were filed by Constellation NewEnergy, Inc. (“Constellation”), Office of Consumer Advocate (“OCA”), Office of Small Business Advocate (“OSBA”), Energy Association of Pennsylvania (“EAPA”), Pike County Power & Light Company (“Pike”), Richards Energy Group Inc. (“Richards”), RESA, First Energy Solutions Corp. (“FirstEnergy”). Two parties filed reply comments: Constellation and RESA.

On April 13, 2007, the Commission adopted a proposed rulemaking order and requested comments at Docket No. L-00070184. *Retail Electricity Choice Activity Reports*, Order entered April 17, 2007. The proposed regulations were published in the *Pennsylvania Bulletin* on November 3, 2007. Comments were received from EAPA, PECO, UGI, OCA, OSBA, RESA and the Independent Regulatory Review Commission (“IRRC”).

The final rulemaking order we adopted on August 8, 2008 established reporting requirements for electric generation suppliers and electric distribution companies

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Services, LLC., Sempra Energy Solutions; Strategis Energy LLC; SUEZ Energy Resources NA, Inc./ and US Energy Savings Corp.

regarding sales of electric generation. These reporting requirements will enable the Commission to collect data to monitor the development of Pennsylvania's competitive retail electricity market and to take steps, when necessary, to prevent anticompetitive or discriminatory conduct and the unlawful exercise of power in that market. As discussed above, we are withdrawing the prior order and issuing this new final rulemaking order.

This Final Rulemaking Reconsideration and Order first discusses and disposes of RESA's petition for reconsideration and the OSBA's answer in opposition. The substantive comments made in these two pleadings are discussed under the specific section of the proposed regulations to which they were directed together with comments previously filed to our Proposed Rulemaking Order. The changes made to the Public Utility Code by Act 129 will be incorporated within our discussion of the comments filed in response to Section 54.202 (relating to definitions) of the proposed regulations.

### **RESA Petition for Reconsideration**

In its petition, RESA states that in the prior order the Commission incorporated the concerns raised by the Energy Association of Pennsylvania in its comments opposing the classification of customers for EDC reporting by Peak Load Contribution ("PLC"). RESA Pet. at ¶7. RESA asserts that the Energy Association did not oppose the Commission classifying customers for EGS reporting by PLC. RESA Pet. at ¶8. However, RESA asserts the Commission's final order changed both EGS and EDC reporting by PLC to EGS and EDC reporting by EDC rate class. RESA Pet. at ¶9.

Since there was no opportunity given to file reply comments, RESA now states that it would like the Commission to reconsider one issue in its final rules. The issue involves the requirement that EGSs report sales activity for commercial and industrial (“C&I”) or non-residential customers based on the EDC’s rate classification or, where applicable, the default service plan classification. RESA states that requiring EGSs, who report on a statewide basis, to modify their systems to classify customers based on specific EDC classifications would be costly, burdensome and time consuming and is not in accord with the PUC’s stated goals in regard to this issue. *RESA Petition*, p. 3, ¶ 5.

### **OSBA’s Answer**

OSBA opposes RESA’s petition for reconsideration. OSBA’s position is that granting the petition would further delay the collection of important shopping data while the Commission considers the possible revisions and seeks additional public comment. *OSBA Answer*, p. 4, ¶ 10. OSBA states that there is no support given for RESA’s assertion that modifying the customer data base would be costly and burdensome. RESA also made no estimate of the costs or the time involved. *OSBA Petition*, p. 4, ¶ 11.

### **Standard for Granting Reconsideration**

Petitions for reconsideration are governed by the provisions of Sections 703(f) and (g) of the Public Utility Code, 66 Pa.C.S. §703(f) and (g), which state respectively as follows:

**(f) Rehearing.** -- After an order has been made by the commission, any party to the proceedings may, within 15 days after the service of the order, apply for a rehearing in respect of any matters determined in such proceedings and specified in the application for rehearing, and the commission may grant and hold such rehearing on such matters. No application for a rehearing shall in anywise operate as a supersedeas, or in any manner stay or postpone the enforcement of any

existing order, except as the commission may, by order, direct. If the application be granted, the commission may affirm, rescind, or modify its original order.

**(g) Rescission and amendment of orders.** -- The commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders.

The standard for determining whether the Commission should exercise its discretion to grant a petition for reconsideration under the provisions of 66 Pa.C.S. §§703(f) and (g) was stated in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982). *Duick* held that a petition for rehearing must allege newly-discovered evidence not discoverable through the exercise of due diligence prior to the close of the record. *Duick at 558*. A petition for reconsideration under Subsection 703(g), however, may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, in whole or in part. Furthermore, such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed by us. *Duick at 559*.

### **Discussion and Disposition**

The Proposed Rulemaking Order noted that the issue of grouping retail customers into categories based on rate classes or on consumption has been debated in several Commission proceedings and no uniform solution has been reached. Proposed Rulemaking Order at 12. The Commission crafted the PLC classification method as its attempt for a workable solution to the issue. In addressing the EDCs' concerns, the Commission's prior final order did not review sufficiently the impact of the chosen classification method on the EGSs. Accordingly, after review of RESA's petition and

OSBA's answer in opposition, we will grant reconsideration of our final rulemaking order.

The EDCs and EGSs each claim that classifying their reporting on the other's method will be unduly costly and burdensome. "[T]his change in reporting will require costly programming changes which will delay implementation and impose addition expenses plus a significant administrative burden on many of the EDCs." Comments of the Energy Association of Pennsylvania ("EAPA") at p. 5. "Such data gathering and sorting will be very costly, logistically cumbersome and potentially impossible for EGSs, many of which operate on a national basis and each of which generally categorizes based on their own individual criteria." RESA Pet. at ¶13.

However, most EDCs and EGSs appear to agree that reporting is feasible when based on broad customer classifications. EAPA Comments at p. 6 (proposing broad classifications of residential, commercial and industrial); RESA Petition at ¶¶13, 14 (proposing EGS reporting of non-residential customers on a volumetric basis). Therefore, in the regulations we will direct reporting by EDCs and EGSs on these respective classifications.

At this early point in the development of competitive markets we are hesitant to impose a reporting requirement on either EDCs or EGSs when each believes it to be costly and burdensome. We are hopeful that the differences in classifications will provide sufficiently useful data. However, we are mindful that the differences may not provide sufficiently useful information and that we may have to return to this issue in the future.



Following is a discussion and disposition of additional comments to specific sections made by various parties as well as other Commission-initiated changes and corrections to the August 8, 2008 Rulemaking Order.

***Section 54.201. Purpose.***

An error was identified in the last sentence of this section regarding the scope of the milestone review. This error has been corrected by deleting the words “and distribution” so that this sentence now reads as follows:

The information shall be used to conduct milestone reviews of the development of the retail market for the supply of electricity. (See 66 Pa.C.S. § 2804(12) (relating to standards for restructuring of electric industry).)

***Section 54.202. Definitions.***

**A. Change in EDC and EGS Reporting Requirements and Definitions**

In the proposed rulemaking, the use of “peak load contribution” (PLC) was proposed as a means to classify customers for the purpose of reporting EDC and EGS sales activity. Because we have dropped the use of PLC to classify customers into groups for the purpose of reporting sales activity in Section 54.203, we have deleted definitions for the terms “Peak Load Contribution – PLC,” “Small C&I customers,” “Medium C&I customers” and “Large C&I customers.”

On the other hand, we have added new definitions for “small non-residential customers,” “medium non-residential customers” and “large non-residential customers” since we have adopted new customer classification criteria for EGS reporting of sales activity. The classification is based on usage on a volumetric basis (kWh) rather than on demand. See Section 54.203(a)(4).

## **B. Definitions and Uniform Data**

IRRC indicated that reporting requirements in Section 54.203(a)(4) use undefined terms “hybrid rate customer accounts” in subparagraph (v) and “green power customer accounts” in subparagraph (vii). IRRC recommends defining these terms so that uniform data is reported. OSBA adds that Time of Use (TOU) should also be defined.

We agree with IRRC’s comments, and have added the following definitions: “Capped Electric Generation Rates,” “Flat Rate Customer Account,” “Green Power Customer Account,” and “Hybrid Rate Customer Account.” The addition of definitions relating to “Time of Use” is discussed in the next section.

## **C. Definitions and Act 129**

Act 129 has made two revisions to the Public Utility Code that must be recognized in these final regulations. First, Act 129 has deleted as a named Commission unit the Bureau of Conservation, Economics and Energy Planning (CEEP), the bureau that has been designated to be recipient of these reports in Section 54.203(a)(5)&(6). While we have not finalized any decision in regard to the continuation of CEEP as a bureau, the continuation of our duty to monitor the market for anti-competitive behavior and abuse of market power is certain. Accordingly, we have revised the definition of “CEEP” in Section 54.202 to provide for a successor unit that will receive and process/evaluate the EGS and EDC sales activity reports.

Act 129 also has added to the Public Utility Code a definition for the term “time-of-use rate.” *See* Act 129, Section 2, p. 62, amending Title 66 to add § 2806.1(m) (relating to energy efficiency and conservation program; definitions). Thus, we have

added a definition for “time of use customer account” and the new statutory definition for “time of use rate.”

***Section 54.203. Reporting requirements.***

**A. Change in EDC and EGS Reporting Requirements**

In its comments, the EAPA expressed concerns regarding the proposed use of PLC for classifying customers for reporting purposes. Specifically, EAPA indicated that using PLC would require costly programming changes and impose administrative burdens on its member EDCs. In addition, EAPA noted that as energy use changes, the customer may move from one rate classification to another. UGI voiced similar concerns. Both EAPA and UGI believe that using the EDC’s traditional rate schedules for reporting purposes is understood by all parties and will not require costly programming changes. IRRC indicated the Commission should provide a dollar estimate of the costs to EDCs and EGSs for reporting data according to PLC. In addition, the Commission should explain why classifying customer classes based on existing rate schedules is not sufficient.

RESA opposed the proposed reporting scheme whereby EGSs would need to report sales activity data for customer groups as defined by individual EDC rate schedules (for its customers located in EDC service territories where rate caps have not yet expired) or default service programs (for its customers located in those EDC service territories where rate caps have expired). RESA argued that the requirement would be burdensome and cumbersome. *RESA Petition*, p. 5, ¶11. RESA also argued that the reporting scheme would not provide the Commission with any meaningful data on the status of competition in Pennsylvania since the commercial and industrial reporting buckets will vary drastically from one EDC to the next, resulting in an “apples to oranges” categorization that will obscure any trends in customer or EGS behavior. *RESA Petition*, pp. 6-7, ¶ 13.

As an alternative to requiring the EGSs to report sales activity for non-residential customers divided into classes established in each EDC's tariff or default program filing, RESA suggested that the Commission require EGSs to classify customers into the following categories: "small non-residential," "medium non-residential" and "large non-residential." For each category, RESA recommended that the Commission require EGSs to report on a volumetric basis, *i.e.*, kWh basis rather than on a demand, *i.e.*, kW basis as follows:

Small Non-Residential	0 to 120,450 kWh annual usage (25 kW * 55% load factor * 8760 hours in the year)
Medium Non-Residential	120,451 to 2,409,000 kWh annual usage (500 kW * 55% load factor * 8760 hours in the year)
Large Non-Residential	2,409,001 kWh annual usage and greater

RESA explained that all energy companies use kWh to determine the amount of energy consumed by a home or a business for billing purposes, this information is readily available to all EGSs (and EDCs as well). *RESA Petition*, p. 7, ¶ 15. RESA states that by adopting its suggestions, the Commission will be creating a manageable way for EGSs to report data on a statewide basis to provide the Commission with the information that it needs. *RESA Petition*, p. 8, ¶16.

OSBA responded that adopting the customer classification proposed by RESA would cause confusion. For example, an EDC would report its shopping statistics by customer classification, *i.e.*, either the customer classes on which generation rates are capped or the customer classifications approved in EDC's most recent default service proceeding. *OSBA Answer*, p. 6, ¶14. Under RESA's proposal, the EGSs would report on

an entirely different basis. Consequently, it would be very difficult, if not impossible, to determine the portion of the EDC classification which is being served by each particular EGS and what product type is being purchased by a substantial number of customers in each classification. Without this information, it would be difficult to respond to arguments of a particular EGS in favor of pro-competition proposals in a default service proceeding. *OSBA Answer*, p. 6, ¶15.

### **Disposition**

The Commission accepts EAPA and UGI arguments on this issue regarding the classification of non-residential customers for the purpose of EDC reporting. The Commission recognizes that using traditional rate classes is understood by all parties. Likewise, the Commission recognizes that using PLC would impose costs and administrative burden on the EDCs. Using PLC would also cause confusion by creating a fluid classification wherein a customer may move from one classification to another depending on peak usage at a specific time. For these reasons, we will abandon the use of PLC for purposes of customer classification.

The Commission however needs to have data reported in a way that will facilitate our understanding of default service policy and its impact on electric competition and customer shopping. The objective is to track the level of customer switching from the EDC to EGS for electric generation supply as well as customer preference for other products/services. To accomplish this objective, the Commission will require EDCs to report electric generation sales based on customer rate class. For an EDC under a generation rate cap<sup>2</sup>, the customer rate classes will be those defined in its tariffs. For an EDC not under a generation rate cap, the customer rate classes will be defined by the default service program approved by the Commission.

Accordingly, EDCs currently operating under electric generation rate caps will report data according to residential, commercial and industrial rate classes. For commercial and industrial customers, data will be reported according to the EDC's specific rate schedules within these rate classifications or according to customer groups that are defined in Commission-approved EDC default service programs. On the report form, EDCs must identify each rate schedule within these rate classes, briefly define criteria for customer inclusion in that rate class, and report the level of customer shopping for that rate class. Residential customer shopping data will be reported in the aggregate without using the rate schedule breakdown. The EDCs are also required to report the total number of commercial and industrial customers being served.

This adjustment to the reporting requirements will provide relevant data for the analysis of the impact of default service on electric customer shopping without requiring costly programming changes or imposing additional administrative burden on EDCs. The EDCs are already using these rate schedules and should have readily available data on customer counts, shopping, etc.

For suppliers, we will adopt RESA's suggestion for classifying customers for reporting purposes based on usage. Under this change, instead of reporting customers based on PLC, suppliers will report sales activity for "small non-residential," "medium non-residential" and "large non-residential" classified by a volumetric basis, *i.e.*, kWh, rather than on a demand basis, *i.e.*, kW. This will not only make reporting more manageable for suppliers, but also will allow the Commission staff to make direct comparisons of supplier market share between NGDC service territories. Moreover, we are replacing a proposed EGS reporting requirement, which would have elicited substantially the same information as the EDC reporting requirement, with one that will

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<sup>2</sup> A rate cap is the set point above which a utility's regulated price for generation may not rise.

provide different data. This will enable Commission staff to perform other analysis/evaluations that should provide us with a broader view of the retail market and greater insight into its operation.

To make this change in the proposed EGS reporting requirement, we added definitions for “small non-residential customers,” “medium non-residential customers” and “large non-residential customers” to Section 54.202. We then revised Section 54.203(a)(4) by inserting these now-defined terms for non-residential customer groups and by deleting the references to the EDC tariff or EDC default service plan for purpose of reporting data for non-residential customers. We have also revised Form 5<sup>3</sup> to reflect the revisions made to Section 54.203(a)(4).

Section 54.203(b)(2) has been revised by adding a sentence explaining that report forms will be available for downloading at the Commission’s website, or will be provided in another medium upon request to the Commission’s form officer.

**B. “Total sales,” “total customers” and “total sales of all EGSs serving the territory”**

IRRC suggests that the Commission consider the addition of “total sales,” “total customers” and “total sales of all EGSs serving the territory” to the reporting requirements in Section 54.203(a)(2). OCA provided specific language to address this concern.

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<sup>3</sup> These forms are not part of the regulation, but are provided to facilitate reporting. When the revised final regulations become effective, the forms will be made available on the Commission website.

## **Disposition**

The Commission agrees and has added these terms to the list of information that is to be reported. Annex A is amended accordingly. Also, for parallel construction, we have added an opening sentence to Section 54.203 (3) that is similar to the opening sentence of Section 54.203 (2). This sentence states that an EDC shall report sales activity of EGSs operating in its service territory.

### **C. EDC Deadlines for Submission of Quarterly Reports**

EAPA, PECO and UGI suggest that Section 54.203 (a)(5) be changed to allow for an extension of thirty (30) instead of fifteen (15) days for the submission of EDC quarterly reports. The parties argue that additional time is needed for the EDC to reconcile sales data. IRRC indicates that the Commission should explain why data is needed “no later than 15 days” after the end of the quarter and how EDCs can reasonably meet that requirement.

## **Disposition**

The Commission agrees with the parties and has revised Section 54.203(a)(5) in Annex A to reflect a thirty (30) day period.

### **D. Request for Clarification**

EAPA requests clarification on Section 54.203(a)(2)(v) “Number of time of use customer accounts served by EGSs;” on Section 54.203(a)(2)(vii) “Number of hourly/real time priced customer accounts served by EGSs” and on Section 54.203(a)(2)(ix) “Sales by EGSs to hourly/real time priced customer accounts (MWh).” EAPA suggests there are



two interpretations of this request. One way would be to interpret Section 54.203(2)(v) would be to provide the number of EDC's TOU accounts being served by an EGS. A second way to interpret this request is to provide the number of accounts an EGS is serving and pricing on a TOU basis for each EDC. Similar interpretations can be made for paragraph numbers (vii) and (ix). EAPA indicates that EDCs will not have, and cannot readily obtain information for the second interpretation.

## **Disposition**

The Commission agrees and has revised Section 54.203(a)(2) to clarify that EDCs shall report the number of EDC "TOU customer accounts" and the hourly/real time priced customer accounts served by EGSs. EDCs are also required to report their sales volume (MWh) to these customers. Also, for clarity, we have revised Subsections (a)(2)(i) – (a)(2)(xiii) so that the wording of the regulation and the report form will be consistent.<sup>4</sup> Subsections (a)(2)(i) – (a)(2)(xiii) list the specific data that the EDCs are required to report. We have made similar revisions at Subsection (a)(4) to ensure consistency between the regulations and the reporting form.<sup>5</sup>

## **E. Consistent Reporting Requirements**

Section 54.203 (a)(5)(6) requires EDCs and EGSs to submit reports on a quarterly and annual basis respectively. EAPA and PECO argue that there should be consistent reporting requirements for EDCs and EGSs.

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<sup>4</sup> Citations to the regulations have been added to the corresponding line in the reporting form for EDCs for clarity. *See* Form at Tables 1 - 3.

<sup>5</sup> Citations to the regulations have been added to the corresponding line in the reporting form for EGSs for clarity. *See* Form at Tables 4 - 5.

## **Disposition**

The Commission will retain the existing reporting frequency. The majority of the comments received under the proposed rulemaking, including EAPA, favor quarterly reporting for EDCs. Therefore, the Commission retains the requirement that EDCs file quarterly reports with the Commission's Secretary and CEEP. These reports are due 30 days after the end of the previous quarter.

The Commission will retain requirements that an EGS file its sales activity report with the Secretary and CEEP on an annual basis. The Commission previously ruled that annual reports are appropriate for EGSs at 52 Pa. Code § 54.39 (b) (relating to electricity generation supplier licensing; reporting requirements). The Commission will continue this schedule and require that EGSs file an annual report under these regulations at the same time as the annual report is to be filed at 52 Pa. Code § 54.39 (b). This will enable the EGS to coordinate submission of the two separate reports. EGSs are therefore required to file an annual report for the previous calendar year on or before April 30 of each year.

### ***Section 54.204. Public Information.***

#### **Confidentiality**

IRRC indicates that the Commission has not explained how confidentiality of EGS information will be accomplished. IRRC asks the Commission to establish protocols and procedures to protect the confidentiality of EGS information in its possession. EAPA, PECO, RESA and OSBA indicate that the regulations should ensure that EGS market share information is kept confidential. RESA adds that a confidential notation should be added to the EGS reporting form and Annex A.

## Disposition

In the proposed rulemaking order on page 17, the Commission states that EDC information/data that does not disclose individual EGS market share is not confidential and may be made public.<sup>6</sup> *See* Annex A, Section 54.204. Consistent with this determination, only page 2 (Section 6) of the attached EDC report form that solicits EGS market share information, reported as number of customer accounts served by EGS and the total sales in MWh that these accounts represent, will be marked as being “CONFIDENTIAL.” Section 6 of the EDC report form is entitled “EGS Market Share Reports.” *See* Annex A, report forms.<sup>7</sup> In addition, the Commission has added language in Section 54.203 (a)(3) ensuring this information is marked confidential. Likewise, a confidential notation has been added to the EGS reporting form and Section 54.203 (a)(4) in Annex A.

## CONCLUSION

The Commission adopts the regulations revised herein as final and imposes reporting requirements on EDCs and EGSs consistent with our statutory duty to monitor the retail electric generation market in Pennsylvania. 66 Pa.C.S. § 2804(12) and § 2811(a). To facilitate reporting, the Commission has developed separate forms – for EDCs and for EGSs – that shall be used for submitting the required information. The information will be used to monitor the retail electric generation market and to measure the impact of the Commission’s default service policy on customer shopping. For this

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<sup>6</sup> This decision is consistent with the Commonwealth’s new Right to Know Law at Section 67.708(d), 65 P.S. § 67.708 (d)(relating to exceptions for public records; aggregated data), that permits public access to aggregated data that is not otherwise protected. *See* 65 P.S. § 67.708(b)(1)-(5)(information related to the security of public utility facilities, service or operations is protected from public disclosure).

<sup>7</sup> The report forms will not be published as part of the regulations in Title 52. Instead, the Commission will provide electronic and paper copies upon request. The report forms will also be accessible on the Commission’s website.

endeavor to be successful, cooperation is expected from all parties in timely submission of the reports.

Accordingly, under sections 501, 504 and 2801-2812 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504 and 2801-2812; 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 will adopt as final the proposed regulations to require reporting of data related to sales of electric generation that are set forth in Annex A, attached hereto; **THEREFORE**,

**IT IS ORDERED:**

1. That the *Petition for Reconsideration of the Retail Energy Supply Association: re: Final Rulemaking on Retail Electricity Choice Activity Reports* is granted.
2. That the *Final Rulemaking on Retail Electricity Choice Activity Reports* entered August 8, 2008 is withdrawn.
3. That the regulations of the Commission, 52 Pa. Code Chapter 54 are amended by adding Subchapter H. Retail Electricity Choice Sales Activity Reports consisting of §§ 54.201 – 54.204 to read as set forth in Annex A.
4. That the Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.
5. That the Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

6. That the Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by the Independent Regulatory Review Commission.

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

8. That these regulations shall become effective upon publication in the *Pennsylvania Bulletin*.

9. That the contact persons for this final-form rulemaking are Charles F. Covage, CEEP, (717) 783-3835 (technical), Patricia Krise Burket, Assistant Counsel, (717) 787-3464. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Review Assistant, Law Bureau, (717) 772-4597.

BY THE COMMISSION

James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: December 4, 2008

ORDER ENTERED: December 4, 2008

ANNEX A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 54. ELECTRICITY GENERATION CUSTOMER CHOICE

**Subchapter H. RETAIL ELECTRICITY CHOICE SALES ACTIVITY REPORTS**

**§ 54.201. Purpose.**

This subchapter establishes reporting requirements applicable to EDCs and active EGSs and requires the reporting of information related to retail electric generation sales activity. The Commission will use this information to fulfill its duty to monitor the Commonwealth's retail electric generation market and to police and arrest instances of market power abuse and discriminatory conduct. (See 66 Pa.C.S. § 2811 (relating to market power remediation).) The information shall be used to conduct milestone reviews of the development of the retail market for the supply and distribution of electricity. (See 66 Pa.C.S. § 2804(12) (relating to standards for restructuring of electric industry).)

**§ 54.202. Definitions.**

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

*Active EGS*--An EGS that is licensed to provide retail electric generation service and is providing **THAT** service to one or more customers.

***CAPPED ELECTRIC GENERATION RATES -- ELECTRIC GENERATION RATES ESTABLISHED THROUGH RESTRUCTURING PLANS APPROVED BY***

**THE COMMISSION UNDER 66 PA.C.S. §§ 2801, ET SEQ. (THE ELECTRICITY GENERATION CUSTOMER CHOICE AND COMPETITION ACT).**

**CEEP--The Bureau of Conservation, Economics and Energy Planning OR A SUCCESSOR COMMISSION BUREAU ASSIGNED THE TASK OF MONITORING THE RETAIL ELECTRIC GENERATION MARKET FOR ANTI-COMPETITIVE BEHAVIOR AND ABUSE OF MARKET POWER.**

**EDC--Electric Distribution Company--The term as defined in 66 Pa.C.S. § 2803 (relating to definitions).**

**EGS--Electric Generation Supplier--The term as defined in 66 Pa.C.S. § 2803.**

***FLAT RATE CUSTOMER ACCOUNT -- A CUSTOMER ACCOUNT THAT IS CHARGED A FIXED CENTS PER KWH RATE THAT CHANGES NO MORE FREQUENTLY THAN MONTHLY, EXCLUDING SEASONAL RATES.***

***GREEN POWER CUSTOMER ACCOUNT -- A RETAIL CUSTOMER ACCOUNT INCORPORATING ELECTRIC POWER SUPPLY THAT HAS GREATER THAN REQUIRED RENEWABLE CONTENT AS SPECIFIED IN 73 P.S. § 1648.3 (RELATING TO ALTERNATE ENERGY PORTFOLIO STANDARDS).***

***HYBRID RATE CUSTOMER ACCOUNT -- A RETAIL CUSTOMER ACCOUNT THAT IS CHARGED VIA AN ELECTRIC GENERATION PRICING ARRANGEMENT THAT INCORPORATES HOURLY AND BLOCK RATES.***

**kW--Kilowatts.**

***KWH -- KILOWATTHOUR.***

**Large C & I customers--Commercial and industrial customers with PLCs greater than 500 kW.**

~~*Medium C & I customers* – Commercial and industrial customers with PLCs ranging from 25 kW up to and including 500 kW.~~

**LARGE NON-RESIDENTIAL CUSTOMERS -- COMMERCIAL AND INDUSTRIAL CUSTOMERS WITH ANNUAL USAGE GREATER THAN 2,409,001 KWH.**

**MEDIUM NON-RESIDENTIAL CUSTOMERS -- COMMERCIAL AND INDUSTRIAL CUSTOMERS WITH ANNUAL USAGE RANGING FROM 120,451 UP TO AND INCLUDING 2,409,000 KWH.**

*MWh*--Megawatthours.

~~*PLC* – *Peak Load Contributions* – The highest level of demand for a particular customer, based on the PJM Interconnection, LLC, peak load contribution standard, or its equivalent for a Pennsylvania EDC outside of PJM.~~

~~*Small C & I customer* – Commercial and industrial customers with PLCs less than 25 kW.~~

**SMALL NON-RESIDENTIAL CUSTOMERS -- COMMERCIAL AND INDUSTRIAL CUSTOMERS WITH ANNUAL USAGE RANGING FROM 0 UP TO AND INCLUDING 120,450 KWH.**

**TOU CUSTOMER ACCOUNT -- TIME OF USE CUSTOMER ACCOUNT -- A RETAIL CUSTOMER ACCOUNT THAT IS CHARGED A TIME OF USE RATE.**

**TIME-OF-USE RATE -- TOU -- A RATE THAT REFLECTS THE COSTS OF SERVING CUSTOMERS DURING DIFFERENT TIME PERIODS,**



**INCLUDING OFF-PEAK AND ON-PEAK PERIODS, BUT NOT AS FREQUENTLY AS EACH HOUR.**

**§ 54.203. Reporting requirements.**

**(a) Reporting requirements.**

**(1) An EDC or an active EGS shall report the information regarding retail sales of electric generation in accordance with this subchapter.**

**(2) An EDC shall report retail sales activity in its service territory. The EDC shall report the following information by customer class for residential, COMMERCIAL, small C & I customers, medium C & I customers and INDUSTRIAL large C & I customers. AN EDC WITH CAPPED ELECTRIC GENERATION RATES SHALL REPORT INFORMATION IN THE AGGREGATE FOR RESIDENTIAL CUSTOMERS, AND BY RATE SCHEDULE AND IN THE AGGREGATE FOR COMMERCIAL AND INDUSTRIAL CUSTOMERS. AN EDC THAT DOES NOT HAVE CAPPED ELECTRIC GENERATION RATES SHALL REPORT INFORMATION FOR RESIDENTIAL, COMMERCIAL AND INDUSTRIAL CUSTOMERS BY RATE CLASS AS DEFINED BY THE DEFAULT SERVICE PROGRAM APPROVED BY THE COMMISSION. THE EDC SHALL REPORT THE FOLLOWING INFORMATION:**

**(i) TOTAL NUMBER ~~Number of customer accounts~~ SERVED BY EGSS.**

**(ii) ~~Sales by EGS (MWh)~~ TOTAL NUMBER OF CUSTOMER ACCOUNTS BEING SERVED BY EGSS AND THE EDC.**

**(iii) ~~Sales by the EDC (MWh)~~ MWH SALES OF EGSS.**

(iv) Number MWH SALES of EGSS AND THE EDC serving customer accounts.

(v) Number of time of use customer accounts served by EGSS SERVING CUSTOMER ACCOUNTS BY CLASS.

(vi) Number of time of use customer accounts served by the EDC TOTAL NUMBER OF EDC TOU CUSTOMER ACCOUNTS SERVED BY EGSS.

(vii) Number TOTAL NUMBER of EDC TOU hourly/real time price customer accounts served by EGSS AND THE EDC.

(viii) Number of hourly/real time price customer accounts served by the EDC MWH SALES OF EGSS TO EDC TOU CUSTOMER ACCOUNTS.

(ix) MWH Sales by SALES OF EGSS AND THE EDC to EDC TOU hourly/real time priced customer accounts (MWh).

(x) Sales by the EDC to hourly/real time priced customer accounts (MWh) TOTAL NUMBER OF EDC HOURLY/REAL TIME PRICE CUSTOMER ACCOUNTS SERVED BY EGSS.

**(XI) TOTAL NUMBER OF HOURLY/REAL TIME PRICE CUSTOMER ACCOUNTS SERVED BY EGSS AND THE EDC.**

**(XII) MWH SALES BY EGSS TO EDC HOURLY/REAL TIME PRICED CUSTOMER ACCOUNTS.**

**(XIII) MWH SALES BY EGSS AND THE EDC TO EDC HOURLY/REAL TIME PRICED CUSTOMER ACCOUNTS.**

**(3) AN EDC SHALL REPORT RETAIL SALES ACTIVITY OF EGSS OPERATING IN ITS SERVICE TERRITORY. An EDC shall report the following information for an EGS providing service in the EDC's service territory, MARKING SUCH INFORMATION AS CONFIDENTIAL:**

(i) Identity of the EGS.

(ii) By customer class for residential customers, small C & I customers, medium C & I customers and large C & I customers and number of customer accounts served by the EGS **NUMBER OF CUSTOMER ACCOUNTS SERVED BY THE EGS BY CUSTOMER CLASS FOR RESIDENTIAL, COMMERCIAL AND INDUSTRIAL CUSTOMERS.**

(iii) By customer class for residential customers, small C & I customers, medium C & I customers and large C & I customers and sales in MWh to customer accounts **SALES IN MWH OF CUSTOMER ACCOUNTS SERVED BY THE EGS BY CUSTOMER CLASS FOR RESIDENTIAL, COMMERCIAL AND INDUSTRIAL CUSTOMERS.**

(4) An active EGS shall report retail sales activity on a Statewide basis. The EGS shall report the following information by customer class for residential, SMALL NON-RESIDENTIAL CUSTOMERS, MEDIUM NON-RESIDENTIAL CUSTOMERS AND LARGE NON-RESIDENTIAL ~~small C & I customers, medium C & I customers and large C & I customers,~~ **MARKING SUCH INFORMATION AS CONFIDENTIAL:**

(i) Number of customer accounts.

(ii) Number of flat rate customer accounts.

(iii) Number of seasonal rate customer accounts.

(iv) Number of ~~time of use~~ TOU customer accounts.

(v) Number of hybrid rate customer accounts.

(vi) Number of fixed term contract customer accounts by length of term-  
**THE ORIGINAL PRIMARY CONTRACT, SPECIFYING THE LENGTH IN  
NUMBER OF YEARS.**

(vii) Number of green power customer accounts.

(viii) Number of mandatory curtailable customer accounts.

(ix) Number of voluntary curtailable customer accounts.

(x) Number of customer accounts based on billing methods.

**(XI) NUMBER OF HOURLY/REAL TIME PRICING CUSTOMER  
ACCOUNTS.**

(5) An EDC shall file quarterly sales activity reports with the Commission's  
Secretary AND CEEP. A quarterly report shall be filed no later than ~~15~~ 30 days after the  
end of the previous quarter.

(6) An active EGS shall file an annual sales activity report for the previous  
calendar year WITH THE COMMISSION'S SECRETARY AND CEEP on or before  
April 30 of each year.

(b) Report forms.

(1) The Commission shall provide separate report forms for EDC and EGS use.  
An EDC or an active EGS shall use the applicable report form.

(2) Report forms shall be made available in both paper and electronic format.  
**REPORT FORMS IN ELECTRONIC FORMAT MAY BE DOWNLOADED AT  
THE COMMISSION'S WEBSITE, OR WILL BE PROVIDED IN PAPER  
FORMAT UPON REQUEST TO THE COMMISSION'S FORMS OFFICER.**

(3) An EDC or active EGS shall file an original and two copies of a completed  
paper report form with the Commission's Secretary AND CEEP. When the report form is

filed electronically, one paper copy of the report form shall be filed with the Commission's Secretary no later than 15 days after the report is due.

(c) *Compliance monitoring and enforcement.* CEEP is the Commission bureau responsible for retaining reports filed pursuant to this subchapter, and for monitoring and enforcing compliance with this subchapter.

**§ 54.204. Public information.**

The Commission will make available to the public on an aggregated basis information contained in sales activity reports that does not disclose individual EGS market shares.

**Form 1. Pennsylvania Retail Electricity Choice Activity Report: Electric Distribution Company (EDC) Survey  
Reported By EDC Territory: Residential**

**EDC Name:**

**Reporting Period Date:**

<b>Data from EDC</b>	<b>Residential Totals</b>
<b>1. Number of Customer Accounts by Service Type §54.203 (a)(2)(i)(ii)</b>	
Total Number of Customer Accounts Served by EGSs	
Total Number of Customer Accounts Served by EGSs & EDC	
Percent of Customer Accounts Served by EGSs	%
<b>2. MWh Sales by Service Type §54.203 (a)(2)(iii)(iv)</b>	
MWh Sales of EGSs	
MWh Sales of EGSs & EDC	
Percent of MWh Sales of EGSs	%
<b>3. Total Number of EGSs Serving Customer Accounts by Class § 54.203 (a)(2)(v)</b>	
<b>4a. Time of Use (A retail customer account that is charged a rate that changes at different times of the day or night, or at different times during a 24 hour period or 7 day period but not as frequently as each hour to reflect the costs of serving the customer during different time periods)</b>	
Total Number of EDC TOU Customer Accounts Served by EGSs §54.203 (a)(2)(vi)	
Total Number of EDC TOU Customer Accounts Served by EGSs & EDC § 54.203 (a)(2)(vii)	
Percent of EDC TOU Customer Accounts Served by EGSs	%
<b>4b. MWh Sales: Time of Use Customer Accounts §54.203 (a)(2)(viii)(ix)</b>	
MWh Sales of EGSs	
MWh Sales of EGSs & EDC	
Percent of MWh Sales of EGSs	%
<b>5a. Number of Customer Accounts on Hourly/Real Time Priced Service §54.203 (a)(2)(x)(xi)</b>	
Total Number of EDC Hourly/Real Time Priced Customer Accounts Served by EGSs	
Total Number of EDC Hourly/Real Time Priced Customer Accounts Served by EGSs & EDC	
Percent of EDC Hourly/Real Time Priced Customer Accounts Served by EGSs	%
<b>5b. MWh Sales: Hourly/Real Time Priced Customer Accounts §54.203 (a)(2)(xii)(xiii)</b>	
MWh Sales of EGSs	
MWh Sales of EGSs & EDC	
Percent of MWh Sales of EGSs	%

**Form 2. Pennsylvania Retail Electricity Choice Activity Report: Electric Distribution Company (EDC) Survey  
Reported By EDC Territory: Commercial & Industrial Rate Class Schedules**

**EDC Name:**

**Reporting Period Date:**

**Note: Use Additional Sheets As Necessary**

<b>Data from EDC</b>	<b>Schedule</b>	<b>Schedule</b>	<b>Schedule</b>	<b>Schedule</b>	<b>Total</b>
<b>1. Number of Customer Accounts by Service Type §54.203 (a)(2)(i)(ii)</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	
Total Number of Customer Accounts Served by EGSs					
Total Number of Customer Accounts Served by EGSs & EDC					
Percent of Customer Accounts Served by EGSs					
<b>2. MWh Sales by Service Type §54.203 (a)(2)(i)(i)(v)</b>					
MWh Sales of EGSs					
MWh Sales of EGSs & EDC					
Percent of MWh Sales of EGSs					
<b>3. Total Number of EGSs Serving Customer Accounts by Class § 54.203 (a)(2)(v)</b>					
<b>4a. Time of Use (A retail customer account that is charged a rate that changes at different times of the day or night, or at different times during a 24 hour period or 7 day period but not as frequently as each hour to reflect the costs of serving the customer during different time periods)</b>					
Total Number of EDC TOU Customer Accounts Served by EGSs §54.203 (a)(2)(vi)					
Total Number of EDC TOU Customer Accounts Served by EGSs & EDC § 54.203 (a)(2)(vi)					
Percent of EDC TOU Customer Accounts Served by EGSs					
<b>4b. MWh Sales: Time of Use Customer Accounts §54.203 (a)(2)(viii)(ix)</b>					
MWh Sales of EGSs					
MWh Sales of EGSs & EDC					
Percent of MWh Sales of EGSs					
<b>5a. Number of Customer Accounts on Hourly/Real Time Priced Service §54.203 (a)(2)(x)(xi)</b>					
Total Number of EDC Hourly/Real Time Priced Customer Accounts Served by EGSs					
Total Number of EDC Hourly/Real Time Priced Customer Accounts Served by EGSs & EDC					
Percent of EDC Hourly/Real Time Priced Customer Accounts Served by EGSs					
<b>5b. MWh Sales: Hourly/Real Time Priced Customer Accounts §54.203 (a)(2)(xi)(xii)</b>					
MWh Sales of EGSs					
MWh Sales of EGSs & EDC					
Percent of MWh Sales of EGSs					

**Form 2 Attachment**

**Summary of Commercial & Industrial Rate Class Schedule Definitions**

*Use Additional Rows As Necessary*

<b>Rate Schedule Name</b>	<b>Criteria for Inclusion in Rate Class: Usage Level, Etc.</b>
1	
2	
3	
4	
5	
6	
7	
8	



**Form 3. Pennsylvania Retail Electricity Choice Activity Report: EDC Survey  
Reported by EDC Territory**

**EDC Name:**

**Reporting Period Date:**

<b>6. EGS Market Share Reports: Confidential</b>			
		<b>\$54,203 (X3)00000</b>	
<b>Data from EDC</b>	<b>EDC Territory</b>	<b>Number of Customer Accounts</b>	<b>MWh Sales</b>
<b>EGSs Serving Residential Rate Class Schedules</b>			
EGS Name			
EGS Name			
EGS Name			
EGS Name			
EGS Name			
EGS Name			
EGS Name			
EGS Name			
EGS Name			
<b>EGSs Serving Commercial &amp; Industrial Rate Class Schedules</b>			
EGS Name			
EGS Name			
EGS Name			
EGS Name			
EGS Name			
EGS Name			
EGS Name			
EGS Name			
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**Form 4. Pennsylvania Retail Electricity Choice Activity Report: Electric Generation Supplier (EGS) Survey  
Reported on a Statewide Basis: Residential**

**EGS Name:**

**Reporting Period Date:**

**Confidential**

<b>Data from EGS</b>	<b>Residential Totals</b>
<b>1. Total Number of Customer Accounts Served §54.203 (a)(4)(i)</b>	
<b>2. Number of Customer Accounts- Flat Rate* §54.203 (a)(4)(ii)</b>	
<b>3. Number of Customer Accounts- Seasonal Rates* §54.203 (a)(4)(iii)</b>	
Seasonal rates differ in summer/non-summer.	
<b>4. Number of Customer Accounts- Time of Use Rates* §54.203 (a)(4)(iv)</b>	
A retail customer account that is charged a rate that charges at different times of the day or night, or at different times during a 24 hour period or 7 day period but not as frequently as each hour to reflect the costs of serving the customer during different time periods.	
<b>5. Number of Customer Accounts-Hybrid Rate Schedule* §54.203 (a)(4)(v)</b>	
Includes any pricing arrangement which incorporates hourly rates and block rates.	
<b>6. Number of Customer Accounts-Other Categories*</b>	
(Do not include Customers in #2-5 or #8.) Please Specify:	
<b>7a. Number of Customer Accounts in #2-6 on 1 year fixed term contract §54.203 (a)(4)(vi)</b>	
<b>7b. Number of Customer Accounts in #2-6 on 2 year fixed term contract</b>	
<b>7c. Number of Customer Accounts in #2-6 on 3 year fixed term contract</b>	
<b>8. Number of Customer Accounts- Hourly/Real Time Rates* §54.203 (a)(4)(xi)</b>	
Includes any pricing arrangement based on hourly or daily energy prices. Example: LMP based rate or rate based on prior-day announced price.	
<b>9a. Number of Customer Accounts-Mandatory Curtailable §54.203 (a)(4)(viii)</b>	
<b>9b. Number of Customer Accounts-Voluntary Curtailable §54.203 (a)(4)(ix)</b>	
<b>10. Number of Customer Accounts- Green Power §54.203 (a)(4)(vii)</b>	
Defined as electric supply that has been promoted as having greater than required renewable content & exceeds existing minimum renewable content requirements for retail power. Products offered to customer when customer requests specialized service.	
<b>11. Number of Customer Accounts-Supplier Billing §54.203 (a)(4)(x)</b>	
Includes all customers who are not billed by the utility for the supplier's services. Includes customers billed by a billing service other than the utility.	
<b>12. Number of Customer Accounts- Auto Payment §54.203 (a)(4)(x)</b>	
Includes customers indicated in #11 who are billed automatically on credit cards or other automatic payment arrangement. (i.e. bank transfer)	
<b>13. Number of Customer Accounts- Budget Billing §54.203 (a)(4)(x)</b>	

\* Do Not Include A Customer Under More Than 1 Rate Schedule in #2-6 & 8.

Note: Items # 7a,b,c-- Number of fixed term customer accounts by length of the original primary contract, specifying length in number of years.

**Form 5. Pennsylvania Retail Electricity Choice Activity Report: Electric Generation Supplier (EGS) Survey  
Reported on a Statewide Basis: Small, Medium & Large Non-Residential Classifications**

**EGS Name:**

**Reporting Period Date:**

<i>Data from EGS: Confidential</i>	<b>Small</b>	<b>Medium</b>	<b>Large</b>	<b>Total</b>
	<b>Non-Residential</b>	<b>Non-Residential</b>	<b>Non-Residential</b>	
<b>1. Total Number of Customer Accounts Served §54.203 (a)(4)(i)</b>				
<b>2. Number of Customer Accounts- Flat Rate* §54.203 (a)(4)(ii)</b>				
<b>3. Number of Customer Accounts- Seasonal Rates* §54.203 (a)(4)(iii)</b>				
Seasonal rates differ in summer/non-summer.				
<b>4. Number of Customer Accounts- Time of Use Rates* §54.203 (a)(4)(iv)</b>				
A retail customer account that is charged a rate that changes at different times of the day or night, or at different times during a 24 hour period or 7 day period but not as frequently as each hour to reflect the costs of serving the customer during different time periods.				
<b>5. Number of Customer Accounts-Hybrid Rate Schedule* §54.203 (a)(4)(v)</b>				
Includes any pricing arrangement which incorporates hourly rates and block rates.				
<b>6. Number of Customer Accounts-Other Categories*</b>				
(Do not include Customers in #2-5 or #8.) Please Specify:				
<b>7a. Number of Customer Accounts in #2-6 on 1 year fixed term contract</b>				
<b>7b. Number of Customer Accounts in #2-6 on 2 year fixed term contract</b>				
<b>7c. Number of Customer Accounts in #2-6 on 3 year fixed term contract</b>				
<b>8. Number of Customer Accounts- Hourly/Real Time Rates* §54.203 (a)(4)(xi)</b>				
Includes any pricing arrangement based on hourly or daily energy prices. Example: LMP based rate or rate based on prior-day announced price.				
<b>9a. Number of Customer Accounts-Mandatory Curtailable §54.203 (a)(4)(viii)</b>				
<b>9b. Number of Customer Accounts-Voluntary Curtailable §54.203 (a)(4)(ix)</b>				
<b>10. Number of Customer Accounts- Green Power §54.203 (a)(4)(vii)</b>				
Defined as electric supply that has been promoted as having greater than required renewable content & exceeds existing minimum renewable content requirements for retail power. Products offered to customer when customer requests specialized service.				
<b>11. Number of Customer Accounts-Supplier Billing §54.203 (a)(4)(x)</b>				
Includes all customers who are not billed by the utility for the supplier's services. Includes customers billed by a billing service other than the utility.				
<b>12. Number of Customer Accounts- Auto Payment §54.203 (a)(4)(x)</b>				
Includes customers indicated in #11 who are billed automatically on credit cards or other automatic payment arrangement. (i.e. bank transfer)				
<b>13. Number of Customer Accounts- Budget Billing §54.203 (a)(4)(x)</b>				

\* Do Not Include A Customer Under More Than 1 Rate Schedule in #2-6 & 8.

Note: Items # 7a,b,c-- Number of fixed term customer accounts by length of the original primary contract, specifying length in number of years.

**Form 5 Attachment**  
**Classification Definitions**

<b>Classifications</b>	<b>Criteria for Inclusion in Classification</b>
<b>Small Non-Residential</b>	<b>0 to 120,450 kWh annual usage (25 kW * %55 load factor * 8760 hours in the year)</b>
<b>Medium Non-Residential</b>	<b>120,451 to 2,409,000 kWh annual usage (500kW * 55%load factor * 8760 hours in the year)</b>
<b>Large Non-Residential</b>	<b>2,409,001 kWh annual usage and greater</b>

DONNA M J CLARK  
V PRES & GENERAL COUNSEL  
ENERGY ASSN OF PA  
800 N THIRD ST STE 301  
HARRISBURG PA 17102

MARK C MORROW ESQ  
UGI UTILITIES INC  
460 NORTH GULPH ROAD  
KING OF PRUSSIA PA 19406

WILLIAM R LLOYD JR  
SMALL BUSINESS ADVOCATE  
OFFICE OF SMALL BUSINESS  
ADVOCATE  
SUITE 1102 COMMERCE BLDG  
300 NORTH SECOND STREET  
HARRISBURG PA 17101

JENNIFER L WALKER ESQ  
PECO ENERGY CO  
2301 MARKET STREET S23-1  
P O BOX 8699  
PHILADELPHIA PA 19101-8699

DAVID T EVRARD ESQ  
OFFICE OF CONSUMER  
ADVOCATE  
555 WALNUT STREET 5<sup>TH</sup> FLOOR  
FORUM PLACE  
HARRISBURG PA 17101-1923

DEANNE M O'DELL  
WOLF BLOCK SCHORR & SOLIS-  
COHEN LLP  
213 MARKET ST 9<sup>TH</sup> FLOOR  
P O BOX 865  
HARRISBURG PA 17108-0865

## EXECUTIVE SUMMARY

L-00070184/57-255

### Retail Electricity Choice Activity Reports

52 Pa. Code Sections §§ 54.201-54.204

On April 12, 2006, the PUC entered an order soliciting comments on establishing reporting requirements on sales activity the retail electric generation market. *See* 66 Pa.C.S. § 2811. The reporting requirements would apply to all electric distribution companies and active electric generation suppliers. Order entered April 12, 2006 at Docket No. M-00061939. Eight comments and two reply comments were filed.

After reviewing the comments, the PUC issued its proposed rulemaking on *Retail Electricity Choice Activity Reports* on April 13, 2007. The proposed order was published in the *Pa. Bulletin* on November 3, 2007. IRRC and six other interested persons filed comments. The PUC issued its *Final Rulemaking Order* on August 7, 2008. On August 25, 2008, RESA filed a petition for reconsideration of the requirement that suppliers report data by customer class as defined in each distribution company's tariff. After notice and opportunity to be heard, the PUC granted RESA's request, and issued its *Final Rulemaking Reconsideration and Order* on December 4, 2008.

The regulations at 52 Pa. Code §§ 54.201-54.204 require that all electric distribution companies and active electric generation suppliers report sales activity information. A distribution company will file quarterly reports reporting by customer class as defined in its tariff. A supplier will file an annual report reporting for customer groups defined by annual usage. Reports must be filed using the appropriate report form that may be obtained from the PUC's Secretary's Bureau or the forms officer, or may be down-loaded from the PUC's internet website.

The PUC will use the sales activity information collected to monitor the retail electric generation market to prevent market power abuse and discriminatory conduct. The information will also be used to conduct milestone reviews of the development of the retail market for generation. *See* 66 Pa.C.S. § 2804 (12).

The PUC contact persons are Charles F. Covage, 717-783-3835 (technical), and Patricia Krise Burket, 717-787-3463 (legal).



PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG, PENNSYLVANIA

JAMES H. CAWLEY  
CHAIRMAN

March 12, 2009

The Honorable Arthur Coccodrilli  
Chairman  
Independent Regulatory Review Commission  
14th Floor, Harristown II  
333 Market Street  
Harrisburg, PA 17101

Re: L-00070184/57-255  
Final Rulemaking  
Retail Electricity Choice Activity Reports  
52 Pa. Code, Chapter 54

Dear Chairman Coccodrilli:

Enclosed please find one (1) copy of the regulatory documents concerning the above-captioned rulemaking. Under Section 745.5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission, on October 18, 2007, submitted a copy of the Notice of Proposed Rulemaking to the House Committee on Consumer Affairs, the Senate Committee on Consumer Protection and Professional Licensure and to the Independent Regulatory Review Commission (IRRC). This notice was published at 37 *Pa.B.* 5895 on November 3, 2007. In compliance with Section 745.5(b.1) copies of all comments received were provided to your Commission and the Committees.

In preparing this final form rulemaking, the Public Utility Commission has considered all comments received from the Committees, IRRC and the public.

Very truly yours,

A handwritten signature in black ink that reads "James H. Cawley". The signature is written in a cursive style with a large, prominent initial "J".

James H. Cawley  
Chairman

Enclosures

cc: The Honorable Robert M. Tomlinson  
The Honorable Lisa Boscola  
The Honorable Robert Godshall  
The Honorable Joseph Preston, Jr.  
Legislative Affairs Director Perry  
Chief Counsel Pankiw  
Regulatory Coordinator DelBiondo  
Assistant Counsel Burket  
Mr. Covage  
Judy Bailets, Governor's Policy Office



TRANSMITTAL SHEET FOR REGULATIONS SUBJECT  
TO THE REGULATORY REVIEW ACT

ID Number: L-00070184/57-255



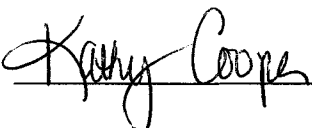
Subject: Rulemaking Re Retail Electricity Choice Activity  
Reports

Pennsylvania Public Utility Commission

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted.
- Final Regulation
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

FILING OF REPORT

<u>Date</u>	<u>Signature</u>	<u>Designation</u>
3/12/09		HOUSE COMMITTEE (Preston) Consumer Affairs
3/12/09		SENATE COMMITTEE (Tomlinson) Consumer Protection and Professional Licensure
3/12/09		Independent Regulatory Review Commission Attorney General
		Legislative Reference Bureau

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