

# Regulatory Analysis Form

(Completed by Promulgating Agency)



## SECTION I: PROFILE

(1) Agency:

Pennsylvania Public Utility Commission

(2) Agency Number:

Identification Number: L-2009-2095604

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

# 2837

IRRC Number: 57-273

(3) Short Title: Implementation of Act 129 of October 15, 2008; Default Service Regulations Proposed Rulemaking Order

(4) PA Code Cite:

52 Pa. Code Chapter 54

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

Primary Contact: Elizabeth H. Barnes (legal), 717-772-5408, fax: (717)783-3458, [ebarnes@state.pa.us](mailto:ebarnes@state.pa.us).

Secondary Contact:

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

same as above.

(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 Commission proposes amending Sections 54.181 - 54.188 to title 52 of the Pa. Code, pertaining to default service electric markets such that the Commission's current regulations reflects changes made pursuant to Act 129, October 15, 2008, P.L. 1592, No. 129. 66 Pa.C.S. §§ 2803 et seq.

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

- |   |                |
|---|----------------|
| A. The date by which the agency must receive public comments:                               | June 1, 2010   |
| B. The date or dates on which public meetings or hearings will be held:                     | N/A            |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | approx. 6/2011 |
| D. The expected effective date of the final-form regulation:                                | approx. 9/2011 |
| E. The date by which compliance with the final-form regulation will be required:            | approx. 9/2011 |
| F. The date by which required permits, licenses or other approvals must be obtained:        | _____          |

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

The regulation will be reviewed on an on-going basis as needed.

**Regulatory Analysis Form**

**SECTION II: STATEMENT OF NEED**

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

66 Pa.C.S. §§2803 et seq., the Commonwealth Documents Law, 45 P.S. §§1201, et seq., and the regulations promulgated thereunder at 52 Pa. Code §§54.181 -54.188

(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.

The adoption of the regulations will ensure consistency between the statutory provisions of Act 129 and our current regulations. Thus, there will be less confusion and ease of enforcement.

There are no specific public health, safety, environmental, or general welfare risks associated with nonregulation.

Consumers, utilities, and practitioners will benefit from consistency between the regulations and Act 129.

## 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.

None.

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

No one should be adversely affected by the regulations.

(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.

Default electric service providers and the Commission will be required to follow the proposed 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.

There is no discernable cost differential between compliance with the current regulations and the proposed amended regulations.

(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.

(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.

None.

## 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.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<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	N/A	N/A	N/A	N/A	N/A
<b>State Government</b>	minimal	minimal	minimal	minimal	minimal	minimal
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>	minimal	minimal	minimal	minimal	minimal	minimal
<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.

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>

## Regulatory Analysis Form

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

Not applicable.

(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.

None.

(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.

None.

(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.

No.

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

The regulations will not put Pennsylvania at a competitive disadvantage with other states.

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

Yes. Certain portions of the Commission's default service regulations in Chapter 54 of 52 Pa. Code are proposed to be amended.

## Regulatory Analysis Form

(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.

There is no substantial additional paperwork.

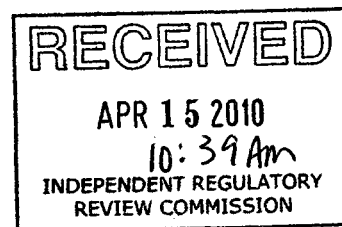
(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Not applicable.



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

**(Pursuant to Commonwealth Documents Law)**



DO NOT WRITE IN THIS SPACE

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

*Angela M. Elliott*

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

**MAR 23 2010**

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-2009-2095604/57-273

DATE OF ADOPTION January 14, 2010

BY *James J. McNulty*  
James J. McNulty

TITLE *Secy*  
(SECRETARY)

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

*Bohdan R. Pankiw*

BY \_\_\_\_\_  
Bohdan R. Pankiw  
Chief Counsel

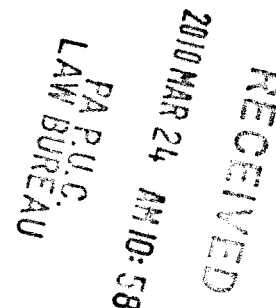
1-14-2010

DATE OF APPROVAL

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

L-2009-2095604/57-273  
Proposed Rulemaking  
Default Service Regulations  
52 Pa. Code, Chapter 54

The Pennsylvania Public Utility Commission on January 14, 2010, adopted a proposed rulemaking order which revises the Commission's default service regulations to be consistent with Act. 129. The contact person is Elizabeth Barnes, Law Bureau, 772-5408.



## **EXECUTIVE SUMMARY**

L-2009-2095604  
Proposed Rulemaking Order

Re: Implementation of Act 129 of October 15, 2008; Default Service

On October 15, 2008, Governor Edward Rendell signed House Bill 2200, Act 129, into law. The Act became effective on November 14, 2008. Act 129 has several goals including reducing energy consumption and demand. Act 129 also revises the default service requirements contained in Chapter 28 of the Public Utility Code. This Notice of Proposed Rulemaking Order hereby opens a rulemaking proceeding to consider amendments to the Commission's default service regulations as required by the enactment of Act 129 such that the Commission's regulations shall be consistent with the Act. Annex A contains proposed amendments to 52 Pa. Code §§ 54.181 – 54.188 to be consistent with Act 129.

Under the 1996 Pennsylvania electric restructuring law, the electric distribution companies (or alternative Commission-approved default suppliers) were required to serve non-shopping customers after rate caps ended by acquiring electric energy at prevailing market prices. Act 129 explicitly repealed the prevailing market prices standard, and declared instead that the utilities' generation purchases must be designed to ensure adequate and reliable service at the least cost to customers over time. 66 Pa. C.S. § 2807(e)(3.6). The Commission proposes amending 52 Pa. Code § 54.186 (relating to default service procurement and implementation plans), such that the regulation will conform to Act 129.

Another substantive change is that in reviewing a utility's default service plan, the Commission must now consider "the default service provider's

obligation to provide adequate and reliable service to customers and that the default service provider has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term, and spot market basis.” 66 Pa. C.S. §2807(e) (3.7). Proposed amendments to 52 Pa. Code §§ 54.186 and 54.188 (relating to Commission review of default service program and rates) change the current regulations such that they are in conformity with Act 129.

Yet another change is that contracts for supply formerly were defined as being up to three years in length. Now, under Act 129, a long-term purchase contract is generally defined as a contract “of more than four and not more than 20 years.” 66 Pa. C.S. §2807(e)(3.2)(iii). Accordingly, the Commission proposes amending 52 Pa. Code § 54.186 (relating to default service procurement and implementation plans).

The Commission additionally seeks comment on 14 questions regarding default service.

The contact person is Elizabeth Barnes, Law Bureau (717)772-5408, e-mail address: [ebarnes@state.pa.us](mailto:ebarnes@state.pa.us).

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

Public Meeting held January 14, 2010

Commissioners Present:

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

Implementation of Act 129 of                     :  
October 15, 2008; Default Service         :         Docket No. L-2009-2095604

**PROPOSED RULEMAKING ORDER**

**BY THE COMMISSION:**

On October 15, 2008, Governor Edward Rendell signed House Bill 2200, Act 129, into law. The Act became effective on November 14, 2008. Act 129 has several goals including reducing energy consumption and demand. Act 129 also revises the default service requirements contained in Chapter 28 of the Public Utility Code. This Notice of Proposed Rulemaking Order hereby opens a rulemaking proceeding to consider amendments to our default service regulations as required by the enactment of Act 129 such that our regulations shall be consistent with the Act.

**Procedural History**

Historically, the local electric utility company was responsible for generating or purchasing and delivering electricity to the customers' premises. However, the Electric Generation Customer Choice and Competition Act

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

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

Following the expiration of rate caps, the Competition Act provided that default service providers “acquire electric energy at prevailing market prices” to serve default service customers and that default service providers “recover fully all reasonable costs.” 66 Pa.C.S. § 2807(e)(3). There has been disagreement over what “prevailing market prices” mean as applied to default service rates.

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

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

### **Act 129**

Even though the retail provision of electric generation service has been subject to competition for nearly a decade, the vast majority of residential customers continue to obtain their generation supplies from their “default” supplier, that is, their regulated electric distribution utility. Under the 1996 Pennsylvania electric restructuring law, the electric distribution companies (or alternative Commission-approved default suppliers) were required to serve non-shopping customers after rate caps ended by acquiring electric energy “at

prevailing market prices.” Act 129 explicitly repealed the prevailing market prices standard, and declared instead that the utilities’ generation purchases must be designed to ensure adequate and reliable service at the least cost to customers over time. 66 Pa. C.S. § 2807(e)(3.6).

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

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

In summary, under Act 129, electric power shall be procured through competitive procurement processes and shall include one or more of the following: (1) auctions; (2) requests for proposals; or (3) bilateral agreements. 66 Pa. C.S. §2807(e)(3.1). Additionally, the electric power that is procured shall include a prudent mix of: (1) spot market purchases; (2) short-term contracts; and (3) long-term purchase contracts of more than 4 and not more than 20 years. 66 Pa. C.S. §2807(e)(3.2). Long term contracts may not constitute more than 25% of projected load absent a Commission determination that good cause exists for a higher percentage to achieve least cost procurement. 66 Pa.C.S. §2807(e)(3.2)(iii).

The “prudent mix” of contracts shall be designed to ensure: (1) adequate and reliable service; (2) the least cost to customers over time; (3) compliance with

the procurement methodologies described above, i.e., through auctions, requests for proposals, or bilateral agreements. 66 Pa.C.S. §§2807(e)(3.4) and (e)(3.1). “Bilateral contract” is a new term defined under 66 Pa.C.S. §2803 (relating to definitions).

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

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

Further, under Act 129, DSPs have a right to recover default service costs pursuant to a reconcilable automatic adjustment clause and residential and small commercial and industrial customers’ rates cannot change more frequently than quarterly. 66 Pa. C.S. §2807(e)(3.9). Default service plans approved by the



Commission prior to the effective date of Act 129 shall remain in effect through the approved term. However, the DSP may propose amendments to an approved plan. 66 Pa. C.S. §2807(e)(6).

### **Discussion**

Consistent with the language of Act 129, the Commission proposes to make the following revisions to our current default service regulations and invites the public to comment within 30 days of publication of this Order in the *Pennsylvania Bulletin*.

### **Definitions at 66 Pa. C.S. § 2803 - Default Service Provider.**

Act 129 adds additional language to the definition of a default service provider. Definitions at 66 Pa. C.S. § 2803 – Default Service Provider provides in pertinent part:

An electric distribution company within its certified service territory or an alternative supplier approved by the Pennsylvania Public Utility Commission that provides generation service to retail electric customers who: (1) contract for electric power, including energy and capacity, and the chosen electric generation supplier does not supply the service; or (2) do not choose an alternative electric generation supplier.

Whereas, 52 Pa. Code § 54.182 (Definitions) provides:

“Default Service Provider – DSP” The incumbent EDC within a certificated service territory or a Commission approved alternative supplier of electric generation service.

Because the new definition of default service provider includes alternative supplier approved by the Commission, we propose to amend 52 Pa. Code § 54.182 such that it mirrors verbatim the definition in 66 Pa. C.S. §2803. Comment is sought on this determination.

## **Definitions at 66 Pa. C.S. § 2803 - Bilateral contract**

“Bilateral contract” is a new term and is defined in Section 2803 as follows.

An agreement, as approved by the Commission, reached by two parties, each acting in its own independent self-interest, as a result of negotiations free of undue influence, duress or favoritism, in which the electric energy supplier agrees to sell and the electric distribution company agrees to buy a quantity of electric energy at a specified price for a specified period of time under terms agreed to by both parties, and which follows a standard industry template widely accepted in the industry or variations thereto accepted by the parties. Standard industry templates may include the EEI Master Agreement for physical energy purchases and sales and the ISDA Master Agreement for financial energy purchases and sales.

66 Pa. C.S. §2803.

Bilateral agreements are referenced in 66 Pa. C.S. §2807(e)(3.1)(iii). We propose to amend 52 Pa. Code § 54.182 such that it mirrors verbatim the definition in 66 Pa. C.S. §2803. Comment is sought on this determination.

## **52 Pa. Code § 54.184 (Default Service Provider Obligations).**

66 Pa. C.S. § 2807(e) states the duties of an EDC’s obligation to serve. Specifically, it adds a qualifier that while an EDC collects either a competitive transition charge or an intangible transition charge or until 100% of an EDC’s customers have electric choice, whichever is longer, an EDC as a default service provider is responsible for reliable provision of default service to retail customers. Accordingly, we propose the following language be added to 52 Pa. Code § 54.184(a).

- (A) While an EDC collects either a competitive transition charge or an intangible transition charge or until 100% of an EDC’s customers have electric choice, whichever is longer, an EDC as 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 or whose alternative EGS has failed to deliver electric energy.

66 Pa. C.S. §2807(e)(1) provides that the obligation to serve includes: (1) the connection of customers; (2) the delivery of electricity; and (3) the production or acquisition of electricity for customers. We propose adding the same language to our regulations.

Furthermore, Act 129 states that following the expiration of an EDC's obligation to provide electric generation supply service to retail customers at capped rates, if a customer contracts for electric generation supply service and the chosen electric generation supplier does not provide the service or if a customer does not choose an alternative electric generation supplier, the default service provider shall provide electric generation supply service to that customer pursuant to a Commission-approved competitive procurement process including one or more of the following: (1) auctions, (2) requests for proposals, or (3) bilateral agreements entered into at the sole discretion of the DSP which shall be at prices that are no greater than the cost of obtaining generation under comparable terms in the wholesale market or consistent with a Commission-approved competition procurement process. 66 Pa. C.S. §2807(e)(3.1). Affiliated interest agreements are subject to Commission review and approval. This underlined language adds new requirements to our existing regulations, and we propose to modify 52 Pa. Code § 54.184 to reflect the additional requirements.

Furthermore, we propose to amend the following language in 52 Pa. Code § 54.184 to reflect the recent passage of Act 129 as follows.

A DSP shall continue the universal service and energy conservation program in effect in the EDC's certificated service territory or implement, subject to Commission approval, similar programs consistent with the 66 Pa.C.S. § § 2801-- [2812] 2815(relating to Electricity Generation Customer Choice

and Competition Act and Act 129 providing for energy efficiency and conservation programs). The Commission will determine the allocation of these responsibilities between an EDC and an alternative DSP when an EDC is relieved of its DSP obligation.

**52 Pa. Code § 54.185**

We propose adding language to subsection (b) to reflect the new nine month deadline for Commission review in Act 129. 66 Pa.C.S. §2807(e)(3.6). If the Commission fails to issue a final order on the plan within nine months of the date that the plan is filed, then the plan shall be deemed approved and the DSP may implement the plan as filed. Costs incurred through an approved competitive procurement plan shall be deemed to be the least cost over time as per Act 129. 66 Pa.C.S. §2807(e)(3.6). This language will replace existing subsection (b)'s language. The old language will be moved to subsection (c). Subsequent sections will move down one letter as well.

**52 Pa. Code § 54.186 (Default Service Procurement and Implementation Plans).**

Act 129 sets forth different standards from our current regulations that a DSP's procurement plan must adhere to. We propose deleting the old standard and replacing it with the "prudent mix" standard as outlined in Act 129. For example instead of a plan being "designed to acquire electric generation supply at prevailing market prices to meet the DSP's anticipated default service obligation at reasonable costs," as specified in Section 54.186, Act 129 now requires the plan "include a prudent mix of: (a) spot market purchases; (b) short-term contracts; and (c) long-term (5-20 year) contracts. 66 Pa. C.S. §2807(e)(3.2)(i),(ii), and (iii).

A prudent mix of contracts must be designed to ensure: (1) adequate and reliable service; (2) the least cost to customers over time; and (3) compliance with the requirements of subsection (e)(3.1) regarding competitive procurement. 66 Pa.

C.S. §2807(e)(3.4). We will add this language to our regulation. There are two exceptions to the long-term purchase contracts under Act 129 which will be added to our regulations at subsection (b)(1)(iii)(A) and (B).

Act 129 provides that the DSP may petition for modifications to the approved procurement and implementation plans when material changes in wholesale energy markets occur to ensure the acquisition of sufficient supply at prevailing market prices. 66 Pa.C.S. § 2807(e)(6). Also, the DSP is obligated to monitor changes in wholesale energy markets to ensure that its procurement plan continues to reflect the incurrence of reasonable costs, consistent with 66 Pa.C.S. § 2807(e)(3.4) (relating to the prudent mix).

Accordingly, we will add the following language to this section in conformance with Act 129:

(e) At the time the Commission evaluates the plan and prior to its approval, in determining if the DSP's Plan obtains generation supply at the least cost, the Commission shall consider the DSP's obligation to provide adequate and reliable service to customers and that the DSP has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis. The Commission shall make specific findings which shall include the following:

1. The DSP's plan includes prudent steps necessary to negotiate favorable generation supply contracts.
2. The DSP's plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term, and spot market basis.
3. Neither the DSP nor its affiliated interest has withheld from the market any generation supply in a manner that violates federal law.

We invite comment on this addition.

**52 Pa. Code § 54.187 (Default Service Rate Design and the Recovery of Reasonable Costs)**

Act 129 states that costs incurred for providing default service shall be recovered through a reconcilable automatic adjustment clause under Section 1307, all reasonable costs incurred under 66 Pa. C.S. § 2807 and a Commission-approved competitive procurement plan. 66 Pa.C.S. § 2807(e)(3.9). This language will be added to Section 54.187 and the phrase “default service rate schedule . . . designed to recover fully all reasonable costs incurred by the DSP during the period default service is provided to customers, based on the average-cost to acquire supply for each customer class shall be stricken as the methodology has changed.

Additionally, consistent with 66 Pa. C.S. §2807(e)(3.8), we propose to add language under Section 54.187(a) regarding when the Commission may modify contracts or disallow costs when after a hearing the party seeking recovery of the costs of a procurement plan is found to be at fault for either (1) not complying with the Commission-approved procurement plan; or (2) the commission of fraud, collusion, or market manipulation with regard to these contracts. We invite comment on the proposed changes to this Section.

We further propose, consistent with 66 Pa. C.S. §2807(e)(3.8), changing language in Subsection (b) allowing for recovery through reconcilable automatic adjustment under 66 Pa. C.S. § 1307. We are combining the first two sentences of Subsection (g) into (b) as they are redundant. We propose removing the phrase “or more frequently” from Subsection (i) to comply with Act 129. We invite comment on these proposed changes.

**52 Pa. Code § 54.188 (Commission Review of Default Service Program and Rates).**

Act 129 provides that a DSP shall file a plan for competitive procurement with the Commission and obtain Commission approval of the plan considering the standards in paragraphs (3.1), (3.2), (3.3) and (3.4) before the competitive process is implemented. 66 Pa. C.S. § 2807(e)(3.6). The Commission is required to hold hearings as necessary on the proposed plan and if the Commission fails to issue a final order on the plan within nine months of the date the plan is filed, the plan is deemed to be approved and a DSP may implement the plan. 66 Pa. C.S. §2807(e)(3.6).

Additionally, Section 2813 (relating to Procurement of power) provides that the Commission may not order a DSP to procure power from a specific generation supplier, from a specific generation fuel type or from new generation only. This is except as provided under the act of November 30, 2004, (P.L. 1672, No. 213), known as the Alternative Energy Portfolio Standards Act.

We are also taking this opportunity to codify the provisions of House Bill 1530 of 2007, which was signed into law on July 17, 2007. This law added Section 2807(e)(5) to the Public Utility Code, and authorized electric distribution companies to offer negotiated rates to some very large industrial customers, subject to Commission review. It also permitted some electric distribution companies to construct or acquire an interest in an electric generation facilities for

the purposes of serving very large industrial customers, subject to certain conditions. We are addressing this change under Section 54.188(h).

Accordingly, we propose adding the following language under this section to reflect changes in Act 129.

(a) The DSP shall file a plan for competitive procurement with the Commission and obtain Commission approval of the plan considering the standards in 66 Pa. C.S. § 2807(e)(3.1), (3.2), (3.3), and (3.4) before the competitive process is implemented. The Commission shall hold hearings as necessary on the proposed plan. A default service program will initially be referred to the Office of Administrative Law Judge for further proceedings as may be required.

(b) If the Commission fails to issue a final order on the plan within 9 months of the date the plan is filed, the plan shall be deemed approved and the DSP may implement the plan as filed. Costs incurred through an approved competitive procurement plan shall be deemed to be the least cost over time as required under 66 Pa. C.S. § 2807(e)(3.4)(ii). [The Commission will issue an order within 7 months of a program's filing with the Commission on whether the default service program demonstrates compliance with this subchapter and 66 Pa.C.S. § 2801—2812 (relating to the Electricity Generation Customer Choice and Competition Act).]

(d) [Upon receiving written notice, the Commission will have 1 business day, to approve or disapprove the results of a competitive bid solicitation process used by a DSP as part of its procurement plan. When the Commission does not act within 1 business day the results of the process will be deemed approved. The Commission will not certify or otherwise approve or disapprove a DSP's spot market energy purchases made pursuant to a Commission-approved procurement plan. The Commission will monitor the DSP's adherence to the terms of the approved default service program and 66 Pa.C.S. §§ 2801—2812 (relating to the Electricity Generation Customer Choice and Competition Act).] The Commission may initiate an investigation regarding implementation of the DSP's default service program and, at the conclusion of the investigation, order remedies as may be lawful and appropriate. The Commission will not deny the DSP the recovery of its reasonable costs for purchases made pursuant to an approved competitive procurement process unless the DSP concealed or misled the Commission regarding its adherence to the program, or otherwise violated the provisions of this subchapter or the code. Except as provided under the act of November 30, 2004, (P.L. 1672, No. 213), known as the Alternative Energy Portfolio Standards Act,



the Commission may not order a DSP to procure power from a specific generation supplier, from a specific generation fuel type or from new generation only. At the time the Commission evaluates the plan and prior to approval, the Commission shall consider the default service provider's obligation to provide adequate and reliable service to customers and the DSP has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis. The Commission shall make specific findings which include:

(1) The DPS's plan includes prudent steps necessary to negotiate favorable generation supply contracts.

(2) The DSP's plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis.

(3) Neither the DSP nor its affiliated interest has withheld from the market any generation supply in a manner that violates Federal law.

(f) A DSP shall submit tariff supplements on a quarterly or more frequent basis, consistent with § 54.187(h) and (i) (pertaining to default service rate design and recovery of reasonable costs), to revise default service rates to ensure the recovery of costs reasonably incurred in acquiring electricity [at prevailing market prices]. The DSP shall provide written notice to the named parties identified in § 54.185(b) of the proposed rates at the time of the tariff filings. The tariff supplements shall be posted to the DSP's public internet domain at the time they are filed with the Commission. A customer or the parties identified in § 54.185(b) may file exceptions to the default service tariffs within 20 days of the date the tariffs are filed with the Commission. The exceptions shall be limited to whether the DSP has properly implemented the procurement plan approved by the Commission and accurately calculated the rates. The DSP shall post the revised PTC for each customer class within 1 business day of its effective date to its public internet domain to enable customers to make an informed decision about electric generation supply options.

(g) 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.

(h) The DSP may, in its sole discretion, offer large customers with a peak demand of 15 megawatts or greater at one meter location in its service territory any

negotiated rate for service at all of the customers' locations within the service territory for any duration agreed upon by the DSP and the customer.

(1) Contract rates shall be subject to Commission review to ensure all costs are borne by the parties to the contract and no one else.

(2) If no costs related to the rates are borne by other customers, the Commission shall approve the contract within 90 days of its filing at the Commission, or it shall be deemed approved.

(i) The DSP shall offer residential and small business customers a generation supply service rate that shall change no more frequently than on a quarterly basis. All default service rates shall be reviewed by the Commission to ensure that the costs of providing service to each customer class are not subsidized by any other class.

We invite comment regarding this proposal.

#### **52 Pa. Code § 54.189 (Default Service Customers)**

We propose that this section remain unchanged as it describes the default service customers and directs how they are to be treated by a DSP. These procedures need not be amended to be consistent with Act 129.

#### **Additional Issues**

This Commission is proposing regulations that generally adopt Act 129 procurement requirements verbatim. As there remains some ambiguity in the statutory interpretation of Act 129 procurement requirements, we seek comment on how Act 129 should be interpreted in order to ensure adequate and reliable service at the least cost to customers over time, and on how the proposed regulations should be revised to reflect the interpretation recommended by the person filing the comments.

Therefore, additional comments are sought on the following questions:

1. What is meant by “least cost to customers over time?”<sup>1</sup>
2. What time frame should the Commission use when evaluating whether a DSP’s procurement plan produces least cost to customers over time?
3. In order to comply with the requirement that the Commission ensure that default service is adequate and reliable, should the Commission’s default service regulations incorporate provisions to ensure the construction of needed generation capacity in Pennsylvania?
4. If the Commission should adopt a provision to ensure the construction of needed generation capacity, how should the default service regulations be revised?
5. Which approach to supply procurement – a managed portfolio approach or a full requirements approach – is more likely to produce the least cost to customers over time?
6. What is a “prudent mix” of spot, long-term, and short-term contracts?
7. Does a “prudent mix” mean that the contracts are diversified and accumulated over time?
8. Should there be qualified parameters on the prudent mix? For instance, should the regulations preclude a DSP from entering into all of its long-term contracts in one year?
9. Should the DSP be restricted to entering into a certain percentage of contracts per year?
10. Should there be a requirement that on a total-DSP basis, the “prudent mix” means that some quantity of the total-DSP default service load must be served through spot market purchases, some quantity must be served through short-term contracts, and some quantity must be served through long-term contracts?
11. Should there be a requirement that some quantity of each rate class procurement group’s load be served by spot market purchases, some quantity

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<sup>1</sup> See 66 Pa. C.S. § 2807(e)(3.2), (3.4) and (3.7).

through short-term contracts, and some quantity through long-term contracts? In contrast, should a DSP be permitted to rely on only one or two of those product categories with the choice depending on what would be the prudent mix and would yield the least cost to customers over time for that specific DSP?

12. Should the DSP be required to hedge its positions with futures including natural gas futures because of the link between prices of natural gas and the prices of electricity?

13. Is the “prudent mix” standard a different standard for each different customer class?

14. What will be the effects of bankruptcies of wholesale supplier to default service suppliers on the short and long term contracts?

15. Does Act 129 allow for an after-the-fact review of the “cost reasonableness standard” in those cases where the approved default service plan gives the EDC substantial discretion regarding when to make purchases and how much electricity to buy in each purchase? <sup>2</sup>

16. How should the requirement that “this section shall apply” to the purchase of AECs be implemented. Section 2807(e)(3.5) states that “. . . the provisions of this section shall apply to any type of energy purchased by a default service provider to provide electric generation supply service, including energy or alternative energy portfolio standards credits required to be purchased, etc.”

Interested parties will be given 30 days from the date of publication of the Notice of Proposed Rulemaking in the *Pennsylvania Bulletin* for the submission of an original and 15 copies of comments and 45 days from the date of publication to submit an original and 15 copies of reply comments. A copy of all comments should be electronically mailed to Elizabeth Barnes at

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<sup>2</sup> See Section 2807(e)(3.9), which provides the EDC with the right to recover “all reasonable costs” incurred under Section 2807 and under an approved competitive procurement plan.

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

Accordingly, under 66 Pa.C.S. §501, §1501 and §§2801, *et seq.*, and the regulations promulgated thereunder at 52 Pa. Code §§ 57.191-57-197; and sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240)(45 P.S. §§1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P.S. §732.204(b)); section 5 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; **THEREFORE,**

**IT IS ORDERED:**

1. That this Proposed Rulemaking docket be opened to consider the regulations as set forth in Annex A.
2. That the Secretary submit this Proposed Rulemaking 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. That the Secretary shall submit this Order and Annex A for review and comment by the designated standing committees of both Houses of the General Assembly, and for review and comment by the Independent Regulatory Review Commission.

4. That the Secretary certify this Order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. That interested parties shall have 30 days from the date of publication in the *Pennsylvania Bulletin* of the Proposed Rulemaking Order and Annex A to file an original and fifteen (15) written comments to the Pennsylvania Public Utility Commission, Attention: Secretary James J. McNulty, P.O. Box 3265, Harrisburg, PA 17105-3265. Reply comments shall be due in 45 days after publication.

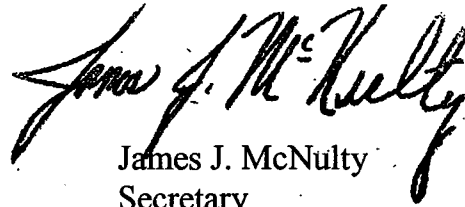
6. That a copy of the comments should be electronically mailed to Elizabeth Barnes, Assistant Counsel, at [ebarnes@state.pa.us](mailto:ebarnes@state.pa.us), and these comments in turn will be placed on the Commission's website for public viewing at [www.puc.state.pa.us](http://www.puc.state.pa.us).

7. That comments should, where appropriate, address the issues identified in this Order and should include, where applicable, a numerical reference to the attached Annex A which the comment(s) address, proposed language for revision, and a clear explanation for the recommendation.

8. That a copy of this Order and Annex A be served upon all electric distribution companies and electric generation suppliers operating in Pennsylvania, the Office of Consumer Advocate, the Office of Small Business Advocate, the AFL-CIO Utility Caucus, the Pennsylvania Utility Contractors Association, and the Energy Association of Pennsylvania.

9. That the contact person for this rulemaking is Elizabeth Barnes, Law Bureau, (717)772-5408, e-mail address: [ebarnes@state.pa.us](mailto:ebarnes@state.pa.us).

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "James J. McNulty". The signature is written in a cursive style with a large, prominent initial "J".

James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: January 14, 2010

ORDER ENTERED: January 19, 2010

ANNEX A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 54. ELECTRICITY GENERATION CUSTOMER CHOICE

Subchapter G. DEFAULT SERVICE

**§ 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 or other approved entity shall fully recover all reasonable costs for acting as a default service provider of electric generation supply 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:

\* \* \* \* \*

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

\* \* \* \* \*

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



\* \* \* \* \*

**§ 54.184. Default service provider obligations.**

(a) [A DSP] While an EDC collects either a competitive transition charge or an intangible transition charge or until 100% of an EDC's customers have electric choice, whichever is longer, an EDC as 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 or whose alternative EGS has failed to deliver electric energy.

(b) The obligation to serve includes:

- (1) The connection of customers.
- (2) The delivery of electricity.
- (3) The production or acquisition of electricity for customers.

[A DSP shall comply with the code and Chapter 1 (relating to rules of administrative practice and procedure) to the extent that the obligations are not modified by this subchapter or waived under § 5.43 (relating to petitions for issuance, amendment, repeal or waiver of regulations).]

(c) Following the expiration of an EDC's obligation to provide electric generation supply service to retail customers at capped rates, if a customer contracts for electric generation supply service and the chosen electric generation supplier does not provide the service, or if a customer does not choose an alternative electric generation supplier, the default service provider shall provide electric generation supply service to that customer pursuant to a Commission-approved competitive procurement process that shall include one or more of the following:

- (1) Auctions.
- (2) Requests for proposals.
- (3) Bilateral agreements entered into at the sole discretion of the default service provider which shall be at prices that are:

(i) No greater than the cost of obtaining generation under comparable terms in the wholesale market, as determined by the Commission at the time of execution of the contract.

(ii) Consistent with a Commission-approved competition procurement process. All agreements between affiliated parties shall be subject to review and approval of the Commission under 66 Pa. C. S. §§ 2101-2107 (relating to relations with affiliated interests). The cost of obtaining generation from any affiliated interest may not be greater than the cost of obtaining generation under comparable terms in the wholesale market at the time of execution of the contract.

[(c)] (d) A DSP shall continue the universal service and energy conservation program in effect in the EDC's certificated service territory or implement, subject to Commission approval, similar programs consistent with the 66 Pa.C.S. § § 2801—[2812] 2815 (relating to Electricity Generation Customer Choice and Competition Act and Act 129 providing for energy efficiency and conservation programs). The Commission will determine the allocation of these responsibilities between an EDC and an alternative DSP when an EDC is relieved of its DSP obligation.

#### **§ 54.185. Default service programs and periods of service.**

(a) A DSP shall file a default service program with the Commission's Secretary's Bureau no later than 12 months prior to the conclusion of the currently effective default service program or Commission-approved generation rate cap for that particular EDC service territory, unless the Commission authorizes another filing date. Thereafter, the DSP shall file its programs consistent with schedules identified by the Commission.

(b) The Commission shall hold hearings as necessary on the proposed plan. If the Commission fails to issue a final order on the plan within 9 months of the date that the plan is filed, the plan shall be deemed to be approved and the default service provider may implement the plan as filed. Costs incurred through an approved competitive procurement plan shall be deemed to be the least cost over time.

[(b)] (c) Default service programs must comply with Commission regulations pertaining to documentary filings in Chapter 1 (relating to rules of administrative practice and procedure), except when modified by this subchapter. The DSP shall serve copies of the default service program on the Pennsylvania Office of

Consumer Advocate, Pennsylvania Office of Small Business Advocate, the Commission's Office of Trial Staff, EGSs registered in the service territory and the RTO or other entity in whose control area the DSP is operating. Copies shall be provided upon request to other EGSs and shall be available at the DSP's public internet domain.

[(c)] (d) The first default service program shall be for a period of 2 to 3 years, or for a period necessary to comply with subsection (d)(4), unless another period is authorized by the Commission. Subsequent program terms will be determined by the Commission.

[(d)] (e) A default service program must include the following elements:

(1) A procurement plan identifying the DSP's electric generation supply acquisition strategy for the period of service. The procurement plan should identify the means of satisfying the minimum portfolio requirements of the Alternative Energy Portfolio Standards Act (73 P. S. §§ 1648.1—1648.8) for the period of service.

(2) An implementation plan identifying the schedules and technical requirements of competitive bid solicitations and spot market energy purchases, consistent with § 54.186 (relating to default service procurement and implementation plans).

(3) A rate design plan recovering all reasonable costs of default service, including a schedule of rates, rules and conditions of default service in the form of proposed revisions to its tariff.

(4) Documentation that the program is consistent with the legal and technical requirements pertaining to the generation, sale and transmission of electricity of the RTO or other entity in whose control area the DSP is providing service. The default service procurement plan's period of service must align with the planning period of that RTO or other entity.

(5) Contingency plans to ensure the reliable provision of default service when a wholesale generation supplier fails to meet its contractual obligations.

(6) Copies of agreements or forms to be used in the procurement of electric generation supply for default service customers. This includes all documents used as part of the implementation plan, including supplier master agreements, request for proposal documents, credit documents and confidentiality agreements. When applicable, the default service provider shall use standardized forms and agreements that have been approved by the Commission.

(7) A schedule identifying generation contracts of greater than 2 years in effect between a DSP, when it is the incumbent EDC, and retail customers in that service territory. The schedule should identify the load size and end date of the contracts. The schedule shall only be provided to the Commission and will be treated as confidential.

[ (e)] (f) The Commission may, following notice and opportunity to be heard, direct that some or all DSPs file joint default service programs to acquire electric generation supply for all of their default service customers. In the absence of such a directive, some or all DSPs may jointly file default service programs or coordinate the scheduling of competitive bid solicitations to acquire electric generation for all of their default service customers. A multiservice territory procurement and implementation plan must comply with § 54.186.

[(f)] (g) DSPs shall include requests for waivers from the provisions of this subchapter in their default service program filings. For DSPs with less than 50,000 retail customers, the Commission will grant waivers to the extent necessary to reduce the regulatory, financial or technical burden on the DSP or to the extent otherwise in the public interest.

#### **§ 54.186. Default service procurement and implementation plans.**

(a) A DSP shall acquire electric generation supply at prevailing market prices for default service customers in a manner consistent with procurement and implementation plans approved by the Commission.

(b) A DSP's procurement plan must adhere to the following standards:

(1) The procurement plan shall be designed [to acquire electric generation supply at prevailing market prices to meet the DSP's anticipated default service obligation at reasonable costs.] so that the electric power procured pursuant to Section 54.184(c) shall include a prudent mix of the following:

(i) Spot market purchases.

(ii) Short-term contracts.

(iii) Long-term purchase contracts, entered into as a result of auction, request for proposal or bilateral contract that is free of undue influence, duress or favoritism of more than 4 and not more than 20 years. The default service provider shall have sole discretion to determine the source and fuel type. Long-term purchase contracts shall be 25% or less of the DSP's

projected default service load unless the commission determines for good cause that a greater portion of load is necessary to achieve least cost procurement.

(A) EDCs or Commission-approved alternative suppliers may offer large customers with a peak demand of 15 megawatts or greater at one meter at a location in its service territory any negotiated rate for service at all of the customers' locations within the service territory for any duration agreed upon by the EDC or alternative supplier and the large customer.

(B) The Commission may determine that a contract is required to be extended for a period longer than 20 years if the extension is necessary to ensure adequate and reliable service at least cost to customers over time.

(2) A prudent mix of contracts shall be designed to ensure:

(i) Adequate and reliable service.

(ii) The least cost to customers over time.

(iii) Compliance with the requirements of subparagraph (b)(1)(iii).

[(2)] (3) DSPs with loads of 50 mW or less shall evaluate the cost and benefits of joining with other DSPs or affiliates in contracting for electric supply.

[(3)] (4) Procurement plans may include solicitations and contracts whose duration extends beyond the program period.

[(4)] (5) Electric generation supply shall be acquired by competitive bid solicitation processes, spot market energy purchases, short and long-term contracts, auctions, bilateral contracts or a combination of [both]them.

[(5)] (6) The DSP's supplier affiliate may participate in a competitive bid solicitation process used as part of the procurement plan subject to the following conditions:

(i) The DSP shall propose and implement protocols to ensure that its supplier affiliate does not receive an advantage in the solicitation and evaluation of competitive bids, or other aspect of the implementation plan.

(ii) The competitive bid solicitation process shall comply with the codes of conduct promulgated by the Commission in § 54.122 (relating to code of conduct).

(c) A DSP's implementation plan must adhere to the following standards:

(1) A competitive bid solicitation process used as part of the default service implementation plan must provide, to the extent applicable and at the appropriate time, the following information to suppliers:

(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) A time period during which the power will need to be supplied for each power supply product.

(v) Bid submission instructions and format.

(vi) Price-determinative bid evaluation criteria.

(vii) Current load data for rate schedules or maximum registered peak load groupings, including the following:

(A) Hourly usage data.

(B) Number of retail customers.

(C) Capacity peak load contribution figures.

(D) Historical monthly retention figures.

(E) Estimated loss factors.

(F) Customer size distribution.

(2) The default service implementation plan must include fair and nondiscriminatory bidder qualification requirements, including financial and operational qualifications, or other reasonable assurances of a supplier of electric generation services' ability to perform.

(3) A competitive bid solicitation process used as part of the implementation plan will be subject to monitoring by the Commission or an independent third party evaluator selected by the DSP in consultation with the Commission. A third party evaluator shall operate at the direction of the Commission. Commission staff and a third party evaluator involved in monitoring the procurement process shall have full access to all information pertaining to the competitive procurement process, either remotely or where the process is administered. A third party evaluator retained for purposes of monitoring the competitive procurement process shall be subject to confidentiality agreements identified in § 54.185(d)(6) (relating to default service programs and periods of service).

(4) The DSP or third party evaluator shall review and select winning bids procured through a competitive bid solicitation process in a nondiscriminatory manner based on the price determinative bid evaluation criteria set forth consistent with paragraph (1)(vi).

(5) The bids submitted by a supplier in response to a competitive bid solicitation process shall be treated as confidential pursuant to the confidentiality agreement approved by the Commission under § 54.185(d)(6). The DSP, the Commission and a third party involved in the administration, review or monitoring of the bid solicitation process shall be subject to this confidentiality provision.

(d) The DSP may petition for modifications to the approved procurement and implementation plans when material changes in wholesale energy markets occur to ensure the acquisition of sufficient supply at prevailing market prices. The DSP shall monitor changes in wholesale energy markets to ensure that its procurement plan continues to reflect the incurrence of reasonable costs, consistent with 66 Pa.C.S. § 2807(e)(3) (relating to duties of electric distribution companies).

(e) At the time the Commission evaluates the plan and prior to its approval, in determining if the DSP's plan obtains generation supply at the least cost, the Commission shall consider the DSP's obligation to provide adequate and reliable service to customers and that the DSP has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis. The Commission shall make specific findings which include the following:

1. The DSP's plan includes prudent steps necessary to negotiate favorable generation supply contracts.

2. The DSP's plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term, and spot market basis.

3. Neither the DSP nor its affiliated interest has withheld from the market any generation supply in a manner that violates federal law.

**§ 54.187. Default service rate design and the recovery of reasonable costs.**

(a) The Commission may modify contracts or disallow costs when after a hearing the party seeking recovery of the costs of a procurement plan is found to be at fault for the following:

- (1) Not complying with the Commission-approved procurement plan.
- (2) The commission of fraud, collusion, or market manipulation with regard to these contracts.

(b) The costs incurred for providing default service [shall] may be recovered through a reconcilable automatic adjustment clause under Section 1307 (relating to sliding scale of rates; adjustments), all reasonable costs incurred under 66 Pa.C.S. § 2807(e)(3.9) (relating to obligation to serve) and a Commission-approved competitive procurement plan. The use of an automatic adjustment clause shall be subject to audit and annual review, consistent with 66 Pa.C.S. § 1307(d) and (e). [default service rate schedule. The rate schedule shall be designed to recover fully all reasonable costs incurred by the DSP during the period default service is provided to customers, based on the average cost to acquire supply for each customer class.]

[(b)] (c) Except for rates available consistent with subsection [(f)] (g), a default service customer shall be offered a single rate option, which shall be identified as the PTC and displayed as a separate line item on a customer's monthly bill.

[(c)] (d) The rates charged for default service may not decline with the increase in kilowatt hours of electricity used by a default service customer in a billing period.

[(d)] (e) The PTC shall be designed to recover all default service costs, including generation, transmission and other default service cost elements, incurred in serving the average member of a customer class. An EDC's default service costs may not be recovered through the distribution rate. Costs currently recovered through the distribution rate, which are reallocated to the default service rate, may not be recovered through the distribution rate. The distribution rate shall be reduced to reflect costs reallocated to the default service rate.



[(e)] (f) A DSP shall use an automatic energy adjustment clause, consistent with 66 Pa.C.S. § 1307 (relating to sliding scale of rates; adjustments) and Chapter 75 (relating to alternate energy portfolio standards), to recover all reasonable costs incurred through compliance with the Alternative Energy Portfolio Standards Act (73 P. S. § § 1648.1—1648.8). The use of an automatic adjustment clause shall be subject to audit and annual review, consistent with 66 Pa.C.S. § 1307(d) and (e), regarding fuel cost adjustment audits and automatic adjustment reports and proceedings.

[(f)] (g) [A DSP may use an automatic energy adjustment clause to recover reasonable nonalternative energy default service costs. The use of an automatic adjustment clause shall be subject to audit and annual review, consistent with 66 Pa.C.S. § 1307(d) and (e).] A DSP may collect interest from retail customers on the recoveries of under collection of default service costs at the legal rate of interest. Refunds to customers for over recoveries shall be made with interest, at the legal rate of interest plus 2%.

[(g)] (h) The default service rate schedule must include rates that correspond to demand side response and demand side management programs, as defined in section 2 of the Alternative Energy Portfolio Standards Act (73 P. S. § 1648.2), when the Commission mandates these rates pursuant to its authority under 66 Pa.C.S. Chapter 1 (relating to general provisions).

[(h)] (i) Default service rates shall be adjusted on a quarterly basis[, or more frequently,] for all customer classes with a maximum registered peak load up to 25 kW, to ensure the recovery of costs reasonably incurred in acquiring electricity at prevailing market prices and to reflect the seasonal cost of electricity. DSPs may propose alternative divisions of customers by maximum registered peak load to preserve existing customer classes.

[(i)] (j) Default service rates shall be adjusted on a quarterly basis, or more frequently, for all customer classes with a maximum registered peak load of 25 kW to 500 kW, to ensure the recovery of costs reasonably incurred in acquiring electricity at prevailing market prices and to reflect the seasonal cost of electricity. DSPs may propose alternative divisions of customers by maximum registered peak load to preserve existing customer classes.

[(j)] (k) Default service rates shall be adjusted on a monthly basis, or more frequently, for all customer classes with a registered peak load of equal to or greater than 500 kW to ensure the recovery of costs reasonably incurred in acquiring electricity at prevailing market prices and to reflect the seasonal cost of electricity. DSPs may propose alternative divisions of customers by registered peak load to preserve existing customer classes.

[(k)](1) When a supplier fails to deliver electric generation supply to a DSP, the DSP shall be responsible for acquiring replacement electric generation supply consistent with its Commission-approved contingency plan. When necessary to procure electric generation supply before the implementation of a contingency plan, a DSP shall acquire supply at prevailing market prices and fully recover all reasonable costs associated with this activity that are not otherwise recovered through its contract terms with the default supplier. The DSP 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 programs and rates.**

(a) A DSP shall file a plan for competitive procurement with the Commission and obtain Commission approval of the plan considering the standards in 66 Pa. C.S. § 2807(e)(3.1), (3.2), (3.3), and (3.4) before the competitive process is implemented. The Commission shall hold hearings as necessary on the proposed plan. A default service program will initially be referred to the Office of Administrative Law Judge for further proceedings as may be required.

(b) If the Commission fails to issue a final order on the plan within 9 months of the date the plan is filed, the plan shall be deemed approved and the DSP may implement the plan as filed. Costs incurred through an approved competitive procurement plan shall be deemed to be the least cost over time as required under 66 Pa. C.S. § 2807(e)(3.4)(ii). [The Commission will issue an order within 7 months of a program's filing with the Commission on whether the default service program demonstrates compliance with this subchapter and 66 Pa.C.S. § § 2801—2812 (relating to the Electricity Generation Customer Choice and Competition Act).]

(c) Upon entry of the Commission's final order, a DSP shall acquire generation supply for the period of service in a manner consistent with the terms of the approved procurement and implementation plans and consistent with the standards identified in § 54.186 (relating to default service procurement and implementation plans).

(d) [Upon receiving written notice, the Commission will have 1 business day, to approve or disapprove the results of a competitive bid solicitation process used by a DSP as part of its procurement plan. When the Commission does not act within 1 business day the results of the process will be deemed approved. The Commission will not certify or otherwise approve or disapprove a DSP's spot market energy purchases made pursuant to a Commission-approved procurement plan. The

Commission will monitor the DSP's adherence to the terms of the approved default service program and 66 Pa.C.S. §§ 2801—2812 (relating to the Electricity Generation Customer Choice and Competition Act).] The Commission may initiate an investigation regarding implementation of the DSP's default service program and, at the conclusion of the investigation, order remedies as may be lawful and appropriate. The Commission will not deny the DSP the recovery of its reasonable costs for purchases made pursuant to an approved competitive procurement process unless the DSP concealed or misled the Commission regarding its adherence to the program, or otherwise violated the provisions of this subchapter or the code. Except as provided under the act of November 30, 2004, (P.L. 1672, No. 213), known as the Alternative Energy Portfolio Standards Act, the Commission may not order a DSP to procure power from a specific generation supplier, from a specific generation fuel type or from new generation only. At the time the Commission evaluates the plan and prior to approval, the Commission shall consider the default service provider's obligation to provide adequate and reliable service to customers and that the DSP has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis. The Commission shall make specific findings which include:

(1) The DSP's plan includes prudent steps necessary to negotiate favorable generation supply contracts.

(2) The DSP's plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis.

(3) Neither the DSP nor its affiliated interest has withheld from the market any generation supply in a manner that violates Federal law.

(e) A DSP shall adhere to the following procedures in obtaining approval of default service rates and providing notice to default service customers:

(1) A DSP shall provide all customers notice of the filing of a default service program in a similar manner as found in § 53.68 (relating to notice requirements).

(2) A DSP shall provide all customers notice of the initial default service rates and terms and conditions of service 60 days before their effective date, or 30 days after bidding has concluded, whichever is sooner, unless another time period is approved by the Commission. The DSP shall provide written notice to the named parties identified in § 54.185(b) (relating to default service programs and periods of service) containing an explanation of the methodology used to calculate the price for electric service.

(3) After the initial steps of a default service procurement and implementation plan are completed, the DSP shall file with the Commission tariff supplements designed to reflect, for each customer class, the rates to be charged for default service. The tariff supplements shall be accompanied by supporting documentation adequate to demonstrate adherence to the procurement plan approved by the Commission, the procurement plan results and the translation of those results into customer rates.

(4) A customer or party identified in § 54.185(b) may file exceptions to the initial default service tariffs within 20 days of the date the tariffs are filed with the Commission. The exceptions shall be limited to whether the DSP properly implemented the procurement plan approved by the Commission and accurately calculated the rates. The Commission will resolve filed exceptions by order. The Commission may allow the default rates to become effective pending the resolution of those exceptions.

(f) A DSP shall submit tariff supplements on a quarterly or more frequent basis, consistent with § 54.187(h) and (i) (pertaining to default service rate design and recovery of reasonable costs), to revise default service rates to ensure the recovery of costs reasonably incurred in acquiring electricity [at prevailing market prices]. The DSP shall provide written notice to the named parties identified in § 54.185(b) of the proposed rates at the time of the tariff filings. The tariff supplements shall be posted to the DSP's public internet domain at the time they are filed with the Commission. A customer or the parties identified in § 54.185(b) may file exceptions to the default service tariffs within 20 days of the date the tariffs are filed with the Commission. The exceptions shall be limited to whether the DSP has properly implemented the procurement plan approved by the Commission and accurately calculated the rates. The DSP shall post the revised PTC for each customer class within 1 business day of its effective date to its public internet domain to enable customers to make an informed decision about electric generation supply options.

(g) If a customer 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.

(h) A DSP may, in its sole discretion, offer large customers with a peak demand of 15 megawatts or greater at one meter location in its service territory any negotiated rate for service at all of the customers' locations within the service territory for any duration agreed upon by the DSP and the customer.

(1) Contract rates shall be subject to Commission review to ensure all costs are borne by the parties to the contract and no one else.

(2) If no costs related to the rates are borne by other customers, the Commission shall approve the contract within 90 days of its filing at the Commission. If the Commission does not approve the contract within the 90-day period, it shall be deemed approved.

(i) The DSP shall offer residential and small business customers a generation supply service rate that shall change no more frequently than on a quarterly basis. All default service rates shall be reviewed by the Commission to ensure that the costs of providing service to each customer class are not subsidized by any other class.

\* \* \* \* \*



PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG, PENNSYLVANIA

JAMES H. CAWLEY  
CHAIRMAN

April 15, 2010

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

Re: L-2009-2095604/57-273  
Proposed Rulemaking  
Default Service Regulations  
52 Pa. Code, Chapter 54

Dear Chairman Coccodrilli:

Enclosed please find 1 copy of the proposed rulemaking and the Regulatory Analysis Form prepared in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." Pursuant to Section 5(a) of the Regulatory Review Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15), the Commission is submitting today a copy of the proposed rulemaking and Regulatory Analysis Form to the Chairman of the House Committee on Consumer Affairs and to the Chairman of the Senate Committee on Consumer Protection and Professional Licensure.

The purpose of this proposal is to revise the Commission's default service regulations to be consistent with Act 129. The contact person is Elizabeth Barnes, Law Bureau, 772-5408.

The proposal has been deposited for publication with the Legislative Reference Bureau.

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, sweeping "J" and "C".

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  
Assistant Counsel Barnes  
Regulatory Coordinator DeBiondo  
Judy Bailets, Governor's Policy Office

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT  
TO THE REGULATORY REVIEW ACT

ID Number: L-2009-2095604/57-273

Subject: Proposed Rulemaking Re Default Service Regulations

Pennsylvania Public Utility Commission

RECEIVED

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10:39 AM

INDEPENDENT REGULATORY  
REVIEW COMMISSION

TYPE OF REGULATION

- X   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

Date

Signature

Designation

4/15/10

T. Bauer

HOUSE COMMITTEE (Preston)

Consumer Affairs

4/15/10

May Walmer

SENATE COMMITTEE (Tomlinson)

Consumer Protection and  
Professional Licensure

4/15/10

K. Cooper

Independent Regulatory  
Review Commission

Attorney General

Legislative Reference  
Bureau