

**INDEPENDENT REGULATORY REVIEW COMMISSION
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held March 15, 2012

Silvan B. Lutkewitte, III, Chairman
George D. Bedwick, Vice Chairman
Arthur Coccodrilli, Abstained
John F. Mizner, Esq.
Lawrence J. Tabas, Esq.

Regulation No. 57-273 (#2837)
Pennsylvania Public Utility Commission
Default Service Regulations

On April 15, 2010, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Pennsylvania Public Utility Commission (PUC). This rulemaking amends 52 Pa. Code Chapter 54. The proposed regulation was published in the May 1, 2010 *Pennsylvania Bulletin* with a 45-day public comment period. The final-form regulation was submitted to the Commission on January 27, 2012.

This final-form rulemaking aligns the PUC's existing default service regulations with Act 129 of 2008 (Act 129). Act 129 had several key elements, including changes to the way electric distribution companies serving as the default service provider (DSP) for non-shopping customers (or alternative PUC-approved DSPs) purchase electricity for sale to non-shopping customers. Under the original deregulation law, the Electric Generation Customer Choice and Competition Act of 1996, DSPs were required to purchase the electricity at "prevailing market prices." (*See former* 66 Pa.C.S § 2807(e)(3).) Act 129 repealed that standard and now requires the purchases to be designed to ensure adequate and reliable service at the "least cost to customers over time."

The PUC has noted that the rulemaking generally incorporates Act 129 procurement requirements verbatim. When the proposed rulemaking was published, the PUC sought comment on 16 questions pertaining to how Act 129 should be interpreted "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."

Our comments expressed concern with the approach taken by PUC for the promulgation of the rulemaking and questioned the need for the regulation in this form and at this time. We recommended that the PUC withdraw the proposed rulemaking, evaluate the feedback provided by the regulated community on the 16 questions, and draft a new proposed regulation that does more than recite the Act 129 revisions, especially as the PUC has acknowledged that the statute is subject to interpretation. There have been no substantive changes made to the final-form version of the rulemaking.

The PUC reported to the Commission that in April of 2011, the PUC launched an investigation into Pennsylvania's competitive electricity retail market. It is our understanding that part of the investigation will focus on "end state default service models."

Since the PUC is still in the process of determining how the procurement provisions of Act 129 as they relate to default service should be interpreted and applied, and as the final-form regulation largely reiterates language from the statute without providing a clear interpretation of the statute, we question whether the regulation is premature or needed at this time. (71 P.S. § 745.5b(b)(3)(iii)). We do not believe the PUC has adequately demonstrated that the rulemaking is in the public interest prior to the completion of its investigation and submission of a clearly defined standard of interpretation of Act 129's requirements.

We have determined this regulation is consistent with the statutory authority of the PUC (66 Pa.C.S. §§ 501 and 2807) and the intention of the General Assembly. However, we have determined that the regulation does not meet the criterion of need under the Regulatory Review Act as discussed above and find promulgation of this regulation is not in the public interest.

BY ORDER OF THE COMMISSION:

The regulation #57-273 (IRRC #2837) from the _____
Pennsylvania Public Utility Commission

was disapproved on March 15, 2012.



Silvan B. Lutkewitte, III, Chairman

