

# Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY  
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency  
Public Utility Commission

(2) Agency Number: L-2014-2421001  
Identification Number: 57-307

IRRC Number: 3088

(3) PA Code Cite: 52 Pa. Code §§ 54.187 and 54.190.

(4) Short Title: Automatic Adjustment Clauses Related to Electric Default Service

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

Primary Contact: Krystle Sacavage (717) 787-5262 [ksacavage@pa.gov](mailto:ksacavage@pa.gov)

Secondary Contact: Robert Young (717) 787-4945 [ryoung@pa.gov](mailto:ryoung@pa.gov)

(6) 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

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

The Commission proposes to establish a symmetrical rate of interest which will be applicable to both over and under collections resulting from the reconciliation of utilities' actual costs and revenue collected through automatic adjustment clauses regarding electric default service. In order to fully recover the cost of providing service, public utilities are permitted to utilize automatic adjustment clauses to increase or decrease rates to reflect changes in certain costs.

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

66 Pa. C.S. §§ 501, 1301, 1307 and 2804; Sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, 45 P.S. §§ 1201-1202; 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; Section 612 of the Administrative Code of 1929, 71 P.S. § 232.

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(9) 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.

The proposed regulations are not mandated by any federal or state law or court order, or federal regulation.

(10) 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.

In order to fully recover the cost of providing service, public utilities are permitted to utilize automatic adjustment clauses to increase or decrease rates to reflect changes in certain costs. Ideally, utilities would reasonably forecast and match expenses to sales, resulting in only minor over or under collections. Unfortunately, this may not always be the case going forward. Traditional methods of reconciliation accounting and of allocating costs to rate classes could cause a great deal of volatility, especially in the electric default service market.

In addition, the rules vary as to whether interest is paid or collected on over and under collections and also as to the rate of interest that is paid or collected. Further, these interest rates are often not reflective of current market conditions. As a result, utilities may have little or no incentive to accurately forecast expenses and sales and the amount of costs that are over-collected or under-collected could potentially be significant. In order to alleviate these concerns, the regulations proposed by the Commission create uniformity as to whether interest is to be paid or collected on over or under collections and the rate of interest that is paid or collected (interest at prime rate).

Applying a uniform and symmetrical rate of interest to both over and under collections resulting from automatic adjustment clauses related to electric default service will benefit and provide equity for both customers and electric distribution companies (EDCs) as each would be compensated at the true cost of money. Additionally, establishing symmetrical interest rates for over and under collections is equitable to both customers and EDCs because it allows for identical treatment. Therefore, not only will electric default service customers benefit from the Commission's proposed symmetrical rate of interest, but also EDCs providing electric default service.

Currently, the Commission regulates 11 EDCs which provide electric default service, called "default service providers" (DSPs), throughout the Commonwealth. The Commission also estimates that there are 3.6 million total customers receiving default electric service within the Commonwealth. The exact benefits to customers and EDCs/DSPs cannot be quantified as the Commission cannot predict the exact amount of over and under collections resulting from automatic adjustment clauses related to electric default service at any given time.

(11) 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.

These proposed regulations do not contain any provisions that are more stringent than federal standards.

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

The Commission recognizes that several other states utilize a symmetrical rate of interest applicable to both over and under collections resulting from automatic adjustment clauses. However, these proposed regulations do not affect the ability of Pennsylvania to compete with other states.

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

The proposed regulations will not affect any other regulations of the Commission or other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

On May 22, 2014, the Commission issued an Advance Notice of Proposed Rulemaking Order (ANOPR Order) proposing to establish a symmetrical rate of interest which will be applicable to both over and under collections resulting from the reconciliation of utilities' actual costs and revenue collected through automatic adjustment clauses regarding electric default service. In response to the May 22, 2014 ANOPR Order, the Commission received comments generally supporting such a proposal from the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Energy Association of Pennsylvania (EAP), PPL Electric Utilities Corporation (PPL), PECO Energy Company (PECO), and the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, the First Energy Companies).

On October 2, 2014, the Commission issued a Proposed Rulemaking Order similarly proposing to establish a symmetrical rate of interest which will be applicable to both over and under collections resulting from the reconciliation of utilities' actual costs and revenue collected through automatic adjustment clauses regarding electric default service. In response to the October 2, 2014 Proposed Rulemaking Order, the Commission received comments generally supporting such a proposal from the OCA and the First Energy Companies. The Commission also received comments from the Independent Regulatory Review Commission.

The Commission reviewed and considered all of these comments in the Final Rulemaking Order and in connection with drafting the proposed regulations.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The proposed regulations to establish a symmetrical rate of interest for both over and under collections resulting from automatic adjustment clauses related to electric default service will impact both EDCs providing electric default service and customers receiving electric default service. Currently, the Commission regulates 11 electric default service providers (DSPs), which are all EDCs, throughout the Commonwealth, which include:

1. Citizens' Electric of Lewisburg
2. Duquesne Light Company
3. Metropolitan Edison Company (Met-Ed)
4. PECO Energy Company
5. Pennsylvania Electric Company (Penelec)
6. Pennsylvania Power Company (Penn Power)
7. Pike County Light & Power Company
8. PPL Electric Utilities, Inc.
9. UGI Utilities, Inc.
10. Wellsboro Electric Company
11. West Penn Power

These DSPs will be required to revise their default service tariffs filed with the Commission (beginning with the first 66 Pa. C.S. § 1307(e) reconciliation period after any of the proposed regulations take effect) to comply with the proposed symmetrical interest rate structure. As further explained below, some of these DSPs would be considered "small businesses." These DSPs will be benefited as the proposed regulations will allow DSPs to be compensated for their over and under collections resulting from automatic adjustment clauses related to electric default service at the true cost of money.

Currently, the Commission estimates that there are 3.6 million total customers receiving default electric service within the Commonwealth. The Commission notes that the number of customers affected by these regulations will constantly change due to customer "shopping" and the number of customers who chose to receive electric default service. These customers will be benefited as the proposed regulations will prevent significant over and/or under collections from customers and will allow customers to be compensated at the true cost of money.

As previously explained, applying a uniform and symmetrical rate of interest to both over and under collections resulting from automatic adjustment clauses related to electric default service will benefit both DSPs and customers. Specifically, establishing symmetrical interest rates for over and under collections is equitable to both DSPs and customers because it allows for identical treatment.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

These regulations will require compliance by DSPs as they will be required to revise their default service tariffs filed with the Commission (beginning with the first 66 Pa. C.S. 0167 1307(e) reconciliation period after the proposed regulations take effect) to comply with the proposed symmetrical interest rate structure. Currently, 8 of the 11 DSPs regulated by the Commission would be considered “small businesses.”

The Commission reviewed the standards set forth by 13 CFR § 121.201 and the U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System (NAICS) Codes to determine the applicability of this rulemaking to small businesses. The standards for small business classification for DSPs are as follows:

**Sector 22 – Utilities**

Subsector 221 – Utilities		Size Standards - # of Employees
221122	Electric Power Distribution	1,000

As per these standards, Electric Power Distribution entities (#221122) with 1,000 employees or less qualify as “small businesses.” Currently, 8 of the 11 DSPs regulated by the Commission have 1,000 employees or less and thus qualify as “small businesses.”

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The DSPs regulated by the Commission will be benefited as the proposed regulations will allow DSPs to be compensated for their over and under collections resulting from automatic adjustment clauses related to electric default service at the true cost of money. Additionally, the 3.6 million total customers receiving default electric service within the Commonwealth will be benefited as the proposed regulations will prevent significant over and/or under collections from customers and will also allow customers to be compensated at the true cost of money. Accordingly, establishing symmetrical interest rates for over and under collections is equitable to both DSPs and customers because it allows for identical treatment.

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

Although DSPs will be required to revise their default service tariffs filed with the Commission (beginning with the first 66 Pa. C.S. § 1307(e) reconciliation period after the proposed regulations take effect) to comply with the proposed symmetrical interest rate structure, these DSPs will be benefited as the proposed regulations will allow DSPs to be compensated for their over and under collections resulting from automatic adjustment clauses related to electric default service at the true cost of money.

The Commission is not aware of any added adverse effects or costs to customers receiving electric default service.

(19) 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.

DSPs will be required to revise their default service tariffs filed with the Commission (beginning with the first 66 Pa. C.S. § 1307(e) reconciliation period after the proposed regulations take effect) to comply with the proposed symmetrical interest rate structure. DSPs are currently required to file tariff supplements with the Commission any time they change their rates or otherwise revise their tariffs for compliance purposes. As such, the Commission estimates that the cost for DSPs to revise their tariffs to comply with the proposed regulations is nominal at best (and may even coincide with other required rate or compliance tariff revisions).

However, these DSPs will be benefited as the proposed regulations will allow DSPs to be compensated for their over and under collections resulting from automatic adjustment clauses related to electric default service at the true cost of money. The Commission is not able to estimate the exact amount of savings to DSPs that will result from the proposed interest rate structure as the Commission cannot predict the amount of over or under collections that will occur at any given time.

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

The Commission is not aware of any costs and/or savings to local governments resulting from the proposed regulations.

(21) Provide a specific estimate of the costs and/or savings to the **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.

The Commission is not aware of any costs and/or savings to state governments resulting from the proposed regulations.

(22) For each of the groups and entities identified in items (19)-(21) above, 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.

DSPs will be required to revise their default service tariffs filed with the Commission (beginning with the first 66 Pa. C.S. § 1307(e) reconciliation period after the proposed regulations take effect) to comply with the proposed symmetrical interest rate structure. DSPs are currently required to file tariff supplements with the Commission any time they change their rates or otherwise revise their tariffs for compliance purposes. As such, the Commission estimates that the cost for DSPs to revise their tariffs to comply with the proposed regulations is nominal at best (and may even coincide with other required rate or compliance tariff revisions).

There are no other legal, accounting or consulting procedures, or additional reporting, recordkeeping or other paperwork imposed by the proposed regulations.

(23) 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.

The Commission is not able to estimate the exact amount of savings that will result from the proposed interest rate structure as the Commission cannot predict the amount of over or under collections that will occur at any given time.

	<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	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ 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>						
<b>Local Government</b>						

State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(23a) 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	N/A	N/A	N/A	N/A

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

(a) Currently, 8 of the 11 DSPs subject to the proposed regulations are considered “small businesses.”



(b) These 8 DSPs will be required to revise their default service tariffs filed with the Commission (beginning with the first 66 Pa. C.S. § 1307(e) reconciliation period after the proposed regulations take effect) to comply with the proposed symmetrical interest rate structure. DSPs are currently required to file tariff supplements with the Commission any time they change their rates or otherwise revise their tariffs for compliance purposes. As such, the Commission estimates that the cost for DSPs to revise their tariffs to comply with the proposed regulations is nominal at best (and may even coincide with other required rate or compliance tariff revisions).

(c) The Commission is not able to estimate the cost of revising default service tariffs to comply with the proposed regulations. However, the Commission notes that DSPs are not required to revise their current tariffs on file with the Commission. Rather, DSPs would only be required to change the interest rate structure to comply with the proposed regulations in their first reconciliation period after the proposed regulations take effect.

(d) The Commission is not aware of any less intrusive or less costly alternative methods.

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

There are no special provisions that were considered.

(26) 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.

There are no less burdensome alternatives that were considered.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

There are no other regulatory methods that were considered.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is not the basis for these proposed regulations.

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

- |   |                                |
|---|--------------------------------|
| A. The date by which the agency must receive public comments:                               | <u>          N/A          </u> |
| B. The date or dates on which public meetings or hearings will be held:                     | as needed                      |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | 4 <sup>th</sup> quarter 2015   |
| D. The expected effective date of the final-form regulation:                                | upon publication as final      |
| E. The date by which compliance with the final-form regulation will be required:            | upon publication as final      |
| F. The date by which required permits, licenses or other approvals must be obtained:        | <u>          N/A          </u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Commission will continue to monitor over and under collections resulting from automatic adjustment clauses related to electric default service to determine whether further regulations are required to avoid significant over and under collections by DSPs.

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**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.

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)

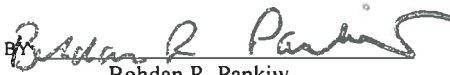
DOCUMENT/FISCAL NOTE NO. L-2014-2421001/57-307

DATE OF ADOPTION June 11, 2015

BY   
Rosemary Chiavetta

TITLE Secy  
(SECRETARY)

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

BY   
Bohdan R. Pankiw  
Chief Counsel

6-11-15  
DATE OF APPROVAL

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

L-2014-2421001/57-307  
Final Rulemaking  
Automatic Adjustment Clauses  
Related to Electric Default Service  
52 Pa Code, Chapter 54

The Pennsylvania Public Utility Commission on June 11, 2015, adopted a final rulemaking order establishing a symmetrical rate of interest which will be applicable to both over and under collections resulting from the reconciliation of utilities' actual costs and revenue collected through automatic adjustment clauses regarding electric default service. The contact person is Deputy Chief Counsel Robert Young, Law Bureau, 717 787-4945.

## **EXECUTIVE SUMMARY**

**L-2014-2421001/57-307**

### **Final Rulemaking**

#### **Automatic Adjustment Clauses Related to Electric Default Service**

On May 22, 2014, the Pennsylvania Public Utility Commission (Commission) issued an Advance Notice of Proposed Rulemaking Order (ANOPR Order) proposing to establish a symmetrical rate of interest which will be applicable to both over and under collections resulting from the reconciliation of utilities' actual costs and revenue collected through automatic adjustment clauses regarding electric default service. On October 2, 2014, the Commission issued a Proposed Rulemaking Order setting forth similar proposals. The Commission received comments in response to the May 22, 2014 ANOPR Order and the October 2, 2014 Proposed Rulemaking Order from the Office of Consumer Advocate, the Office of Small Business Advocate, the Independent Regulatory Review Commission, the Energy Association of Pennsylvania, PPL Electric Utilities Corporation, PECO Energy Company, and the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company.

The Commission proposed to establish a symmetrical rate of interest applicable to over and under collections resulting from reconciliation of automatic adjustment clause costs and revenues related to electric default service to better ensure that utilities' current prices reflect current costs as accurately as is feasible. Based upon our review and consideration of the comments filed in response to our May 22, 2014 ANOPR Order and the October 2, 2014 Proposed Rulemaking Order, the Commission proposes to adopt the final regulations as set forth in Annex A of the Final Rulemaking Order.

The contact persons for this Final Rulemaking are Assistant Counsel Krystle Sacavage (717) 787-5262 and Deputy Chief Counsel Robert Young (717) 787-4945.

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

Public Meeting held June 11, 2015

Commissioners Present:

Gladys M. Brown, Chairman  
John F. Coleman, Jr., Vice Chairman  
James H. Cawley  
Pamela A. Witmer  
Robert F. Powelson

Automatic Adjustment Clauses  
Related to Electric Default Service

Docket No. L-2014-2421001

**FINAL RULEMAKING ORDER**

**BY THE COMMISSION:**

On October 2, 2014, the Pennsylvania Public Utility Commission (Commission) issued a Proposed Rulemaking Order proposing to establish a symmetrical rate of interest which will be applicable to both over and under collections resulting from the reconciliation of default service providers' (DSPs) actual costs and revenue collected through automatic adjustment clauses regarding electric default service. In order to fully recover the cost of providing service, DSPs, which currently are electric distribution companies (EDCs), are permitted to utilize automatic adjustment clauses to increase or decrease rates to reflect changes in certain costs. The Commission has determined that traditional methods of reconciliation accounting could, however, cause a great deal of volatility in default service rates associated with the recovery of revenue and cost imbalances created by the use of these automatic adjustment clauses.

In order to alleviate these concerns, the Commission proposed to establish a uniform policy regarding whether interest is recoverable when reconciling costs through automatic adjustment clauses and the rate of interest that is paid or collected. Based upon our review and consideration of the comments filed by the Office of Consumer Advocate (OCA), the Independent Regulatory Review Commission (IRRC), and Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, the First Energy Companies), we shall adopt the final regulations as set forth in Annex A to this Order.

### **BACKGROUND**

On May 22, 2014, the Commission issued an Advance Notice of Proposed Rulemaking Order (ANOPR Order) proposing to establish a symmetrical rate of interest which will be applicable to both over and under collections resulting from the reconciliation DSPs actual costs and revenue collected through automatic adjustment clauses regarding electric default service. Based upon our review and consideration of the comments filed in response to the May 22, 2014 ANOPR Order by the OCA, the Office of Small Business Advocate, the Energy Association of Pennsylvania, PPL Electric Utilities Corporation, PECO Energy Company, and the FirstEnergy Companies, the Commission proposed the regulations set forth in the October 2, 2014 Proposed Rulemaking Order.<sup>1</sup>

In the October 2, 2014 Proposed Rulemaking Order, the Commission proposed to establish a symmetrical rate of interest which will be applicable to over and under collections resulting from the reconciliation of DSPs' costs and revenues resulting from automatic adjustment clauses related to electric default service. The proposed applicable rate of interest on over and under collections would be interest at the prime rate for commercial borrowing in effect on the last day of the month the over or under collection

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<sup>1</sup> The comments filed in response to the ANOPR Order were considered, reviewed and discussed by the Commission in the October 2, 2014 Proposed Rulemaking Order.

occurred, as reported in the Wall Street Journal (or other publically available source identified by the Commission). For example, the interest rate applied to over or under collections in the month of March would be the prime rate that was in effect on March 31 as reported in the Wall Street Journal.

This proposed rate of interest would be computed monthly from the month the over collection or under collection occurs to the effective month that the over collection is refunded to customers or the under collection is collected from customers. Additionally, this rate of interest would apply universally to all over and under collections reconciled through automatic adjustment clauses related to electric default service filed with the Commission pursuant to 52 Pa. Code § 54.187(b) (relating to default service rate design and the recovery of reasonable costs), including:

- Price-to-Compare (PTC)
- Hourly Pricing Default Service Rider (HPDSR)
- Transmission Service Charge (TSC)
- Generation Supply Charges 1 & 2 (GSC-1 & GSC-2)
- Generation Supply Adjustment 1, 2, 3, 4 (GSA 1, 2, 3, 4)
- Generation Supply Service Rate (GSSR)
- Default Service (DS)
- Default Service Supply (DSS)
- Generation Supply Rate (GSR)

## **DISCUSSION**

In response to our proposed regulations set forth in the October 2, 2014 Proposed Rulemaking Order and Annex A thereto, the Commission received comments from the OCA, First Energy Companies and IRRC. In their comments, both the OCA and the First Energy Companies generally support the Commission's proposal to establish a symmetrical rate of interest which will be applicable to over and under collections

resulting from the reconciliation of electric default service rates. Specifically, the OCA commented that a “symmetric market-based approach to the application of interest might make some EDCs [DSPs] more amenable to reconciliation periods which will better serve customers and make price comparisons easier.” OCA Comments at 5. Similarly, the First Energy Companies comment that “[e]stablishing symmetrical interest rates for over and under collections is equitable to both customers and EDCs [DSPs] because it provides for identical treatment.” First Energy Comments at 2.

Although the First Energy Companies support the Commission’s proposed application of a symmetrical rate of interest to default service reconciliations, they have a concern with the use of the prime rate for commercial borrowing as the applicable symmetrical rate of interest due to its “historical volatility.”<sup>2</sup> First Energy Comments at 2. The First Energy Companies comment that customers could be exposed to significant swings in interest rates if the prime rate of interest is symmetrically applied to default service reconciliations without providing for an “escape hatch.”<sup>3</sup> *Id.* at 3. Accordingly, the First Energy Companies suggest that the Commission use a symmetrical interest rate at the legal rate of interest. *Id.*

As explained in the October 2, 2014 Proposed Rulemaking Order, the Commission believes that using the prime interest rate is the most appropriate rate of interest to apply to default service reconciliations as it is the rate which is most commensurate with market rates. Additionally, the prime interest rate is publicly known, available, and transparent. Further, the prime interest rate reflects the terms and risks inherent in the utility reconciliation process.

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<sup>2</sup> The OCA supports either the use of the prime rate of interest, as the Commission proposes to use, or a rate reflective of residential interest for residential customers as the rate of interest which will be applicable to over and under collections resulting from the reconciliation of electric default service rates. OCA Comments at 6.

<sup>3</sup> In their comments, IRRC echoes the First Energy Companies’ recommendation of providing for an “escape hatch” so that customers are not exposed to significant swings in interest rates. IRRC Comments at 2.



Although the Commission believes that using the prime rate of interest is most appropriate here, the Commission will slightly modify our proposed regulations to alleviate the concerns raised by the First Energy Companies (and echoed by IRRC). Specifically, we will revise our proposed regulations to provide that the applicable rate of interest on over and under collections will be interest at the prime rate for commercial borrowing, **which rate shall not exceed the legal rate of interest.** The Commission believes that this modification will protect customers from significant swings in interest rates and will provide the “escape hatch” the First Energy Companies have requested in the event the prime rate of interest becomes volatile in the future.

Additionally, in the October 2, 2014 Proposed Rulemaking Order, the Commission proposed to use the prime rate of interest “as reported in the *Wall Street Journal* or other publically available source identified by the Commission.” In their comments, IRRC recommends deleting the phrase “or other publically available source identified by the Commission” to avoid confusion in the future. IRRC Comments at 1. Specifically, IRRC mentions that including the phrase “or other publically available source identified by the Commission” creates ambiguity as to: (1) what other rate source the Commission would contemplate in the future, (2) how notice of a different rate source would be provided, and (3) what opportunity there would be for comment prior to a change in rate source. *Id.* Additionally, IRRC notes that such proposed phrase technically permits a utility to choose between the *Wall Street Journal* rate “or” a new rate identified by the Commission in the future. *Id.*

The Commission agrees that the phrase “or other publically available source identified by the Commission” creates ambiguity in the proposed regulations and should be deleted. The Commission also agrees with IRRC that should the *Wall Street Journal* no longer be the most appropriate market index for purposes of determining the prime rate of interest in the future, the Commission can use its general powers to rescind or modify regulations pursuant to 66 Pa. C.S. §§ 501(a) and (b) in order to determine a more

appropriate rate source. As such, the Commission will revise Section 54.190(c) of the proposed regulations to state as follows:

(c) *Interest collectible on over collections and under collections.* When revenues exceed costs, the over collections shall be refunded to customers with interest. When costs exceed revenues, the under collections shall be collected from customers with interest. Interest on over collections and under collections shall be computed at the prime rate of interest for commercial banking, **not to exceed the legal rate of interest**, in effect on the last day of the month the over or under collection occurs, as reported in the *Wall Street Journal*.

In their comments, the First Energy Companies request that the Commission allow them to maintain their current interest charge calculation process until the new process can be “adequately transitioned, reviewed and audited.”<sup>4</sup> First Energy Comments at 3. As set forth in the October 2, 2014 Proposed Rulemaking Order, all electric DSPs, other than the First Energy Companies, are using the interest calculation proposed by the Commission for purposes of their automatic adjustment clauses related to electric default service. Additionally, as stated in our Proposed Rulemaking Order, the Commission will only require DSPs to implement the proposed interest rate methodology commencing with the first 66 Pa. C.S. § 1307(e) reconciliation period *after the effective date of any regulations adopted pursuant to this rulemaking process*.

To illustrate, if the effective date of the regulations adopted by this rulemaking is December 31, 2015,<sup>5</sup> the First Energy Companies will not be required to transition their current interest charge calculation until the 66 Pa. C.S. § 1307(e) reconciliation period beginning June 1, 2016. At a minimum, the First Energy Companies will have six months to transition their current interest charge calculation process prior to their first

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<sup>4</sup> In their comments, IRRC echoes the comments of the First Energy Companies in this regard and asks that the Commission explain how the implementation timeline for the regulations set forth in this rulemaking are reasonable. IRRC Comments at 2.

<sup>5</sup> As set forth on the Regulatory Analysis Form, the effective date of any final form regulations adopted by this rulemaking is estimated to be during or before the fourth quarter of 2015.

66 Pa. C.S. § 1307(e) reconciliation period following the effective date of any regulations adopted by this rulemaking. The Commission, however, estimates that such transition will merely involve changing the interest charge calculation method on the First Energy Companies' accounting spreadsheets, which will require minimal time (less than one month) to complete. As such, the First Energy Companies will have a reasonable amount of time to transition their current interest calculation practices to conform to those proposed by the Commission herein.

Although all electric DSPs, other than the First Energy Companies, are using the *interest calculation* proposed by the Commission, the Commission recognizes that the *interest rate structure* proposed herein does not currently comply with the Commission's regulations, 52 Pa. Code §§1.1-111.14, and/or DSPs' current tariffs regarding electric default service. Therefore, commencing with the first 66 Pa. C.S. § 1307(e) reconciliation period after the effective date of any regulations adopted pursuant to this rulemaking process, all electric DSPs must revise their tariffs and tariff riders to implement the proposed interest rate methodology set forth in Annex A of this Final Rulemaking Order.

In addition to the proposed interest rate structure set forth herein, the Commission reminds DSPs to consider filing an interim rate adjustment and/or cost reconciliation when the DSP anticipates substantial over or under collections. In fact, the Commission recognizes that such interim rate adjustments and cost reconciliations are in the public interest as they provide DSPs with a mechanism to reduce significant imbalances in over and under collections. For example, Section 69.1809(c) of the Commission's regulations regarding default service provide in relevant part that:

It may be in the public interest to reconcile default service costs more frequently than at each PTC [price-to-compare] adjustment interval. The DSP [default service provider] should propose interim reconciliation prior to the next subsequent PTC adjustment interval when current monthly revenues have diverged from current monthly costs, plus any cumulative

over/under recoveries, by greater than 4% since the last rate adjustment. . . . Interim reconciliation proposals should result in a PTC adjustment that will resolve cumulative under or over recoveries by the time of the next PTC adjustment interval.

52 Pa. Code § 69.1809(c).

Although the Commission cannot completely eradicate all imbalances in the amount of costs that are over and under collected, the proposed symmetrical interest rate structure set forth herein is designed to deter DSPs from inaccurately forecasting costs and sales to improperly increase interest earnings. This symmetrical application of interest to over and under collections uses the prime rate of interest which is not only commensurate with market rates, but is also publicly known, available and transparent. Overall, application of the symmetrical rate of interest, at prime rate, to over and under collections reflects the terms and risks inherent in the utility reconciliation process.

### CONCLUSION

Establishing a symmetrical rate of interest applicable to over and under collections resulting from reconciliation of automatic adjustment clause costs and revenues is designed to better ensure that DSPs' current prices reflect current costs as accurately as is feasible. The Commission, therefore, formally adopts the final regulations as set forth in Annex A to this Final Rulemaking Order.

Accordingly, pursuant to its authority under Sections 501, 1301, 1307 and 2804 of the Public Utility Code, 66 Pa. C.S. §§ 501, 1301, 1307 and 2804, and 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 regulations as set forth in Annex A, attached hereto;

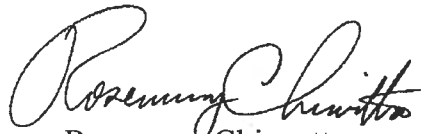
**THEREFORE,**

**IT IS ORDERED:**

1. That the Commission adopt the final regulations as set forth in Annex A.
2. That the Secretary shall submit this Order and Annex A to the Office of Attorney General for approval as to legality.
3. That the Secretary shall submit this Order and Annex A to the Governor's Budget Office for review of fiscal impact.
4. 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.
5. That the Secretary shall duly certify this Order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
6. That these regulations shall become effective upon publication in the *Pennsylvania Bulletin*.
7. That all electric default service providers must revise their tariffs and tariff riders regarding electric default service to implement the proposed interest rate methodology set forth in Annex A of this Order commencing with the first 66 Pa. C.S. § 1307(e) reconciliation period after the effective date of any regulations adopted pursuant to this rulemaking process.

8. That this Order and Annex A be posted on the Commission's website.
  
9. That a copy of this Order and Annex A shall be served on the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and all parties who commented in response to the October 2, 2014 Proposed Rulemaking Order.
  
10. That the contact person for legal matters for this final rulemaking is Krystle J. Sacavage, Assistant Counsel, Law Bureau, (717) 787-5262. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597.

**BY THE COMMISSION,**

  
Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: June 11, 2015

ORDER ENTERED: June 11, 2015

**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**

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

\* \* \* \* \*

[(g)] 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%.

(h)] (g) 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).

[(i)] (h) Default service rates may not be adjusted more frequently than on a quarterly basis 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 the least cost to customers over time. DSPs may propose alternative divisions of customers by maximum registered peak load to preserve existing customer classes.

[(j)] (i) 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 the least cost to customers over time. DSPs may propose alternative divisions of customers by maximum registered peak load to preserve existing customer classes.

[(k)] (j) 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 the least cost to customers over time. DSPs may propose alternative divisions of customers by registered peak load to preserve existing customer classes.

[(l)] (k) 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 the least cost to customers over time 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), when selecting from the various options available in these energy markets.

**§ 54.190. Universal interest applicable to over collections and under collections resulting from reconciliation of automatic adjustment clauses costs and revenues related to electric default service.**

(a) General rule. This section applies to automatic adjustment clauses related to electric default service filed with the Commission by a DSP under § 54.187(b) (relating to default service rate design and the recovery of reasonable costs).

(b) Definitions. The following words and terms, when used in this section, have the following meaning, unless the context clearly indicates otherwise:

Commission – The Pennsylvania Public Utility Commission.

Costs – The total amount of expenses, or class of expenses incurred, which is the basis of the automatic adjustment clause.

Over collection – The amount equal to revenues received under an automatic adjustment clause which exceeds the amount of costs incurred.

Revenue – The total proceeds received under the automatic adjustment clause.

Under collection – The amount equal to costs incurred under an automatic adjustment clause which exceeds the amount of revenues received.

(c) Interest collectible on over collections and under collections. When revenues exceed costs, the over collections shall be refunded to customers with interest. When costs exceed revenues, the under collections shall be collected from customers with interest. Interest on over collections and under collections shall be computed at the prime rate of interest for commercial banking, NOT TO EXCEED THE LEGAL RATE OF INTEREST, in effect on the last day of the month the over collection or under collection occurs, as reported in the Wall Street Journal or other publically available source identified by the Commission. Interest shall be computed monthly from the month the over collection or under collection occurs to the effective month that the over collection is refunded or the under collection is collected.



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COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
400 NORTH STREET  
HARRISBURG, PA 17120

GLADYS M. BROWN  
CHAIRMAN

September 24, 2015

The Honorable John F. Mizner  
Chairman  
Independent Regulatory Review Commission  
14th Floor, Harrisstown II  
333 Market Street  
Harrisburg, PA 17101

**Re: L-2014-2421001/57-307; Automatic Adjustment Clauses Related to Electric Default Service,  
52 Pa. Code, Chapter 54**

Dear Chairman Mizner:

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 February 27, 2015, submitted a copy of the Notice of Proposed Rulemaking to the Senate Committee on Consumer Protection and Professional Licensure, the House Consumer Affairs Committee and the Independent Regulatory Review Commission (IRRC). This notice was published at 45 *Pa.B.* 1258 on March 14, 2015. The Commission also provided the Committees and IRRC with copies of all comments received in compliance with Section 745.5(b.1).

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

Sincerely,

Gladys M. Brown  
Chairman

Enclosures

pc: The Honorable Robert M. Tomlinson  
The Honorable Lisa Boscola  
The Honorable Robert Godshall  
The Honorable Peter J. Daley, II  
Legislative Affairs Director Perry  
Chief Counsel Pankiw  
Deputy Chief Counsel Young  
Regulatory Coordinator DelBiondo

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT  
TO THE REGULATORY REVIEW ACT

ID Number: L-2014-2421001/57-307

Subject: Final Rulemaking Re Automatic Adjustment Clauses Related  
to Electric Default Service  
52 Pa. Code Chapter 54

Pennsylvania Public Utility Commission

2015 SEP 24 PM 2:06

RECEIVED  
IRRC

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>
9/24/15	[Signature]	HOUSE COMMITTEE (Godshall)
9/24/15	Jamie Maca	Consumer Affairs
9/24/15	[Signature]	SENATE COMMITTEE (Tomlinson)
9-24-15	[Signature]	Consumer Protection and Professional Licensure
9/24/15	K Cooper	Independent Regulatory Review Commission
		Attorney General
		Legislative Reference Bureau