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COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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April 10, 2015

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17101

RE: Automatic Adjustment Clauses Related to  
Electric Default Service  
Docket No. L-2014-2421001

Dear Secretary Chiavetta:

Enclosed for filing please find the Office of Consumer Advocate's Comments in the above-referenced proceeding.

If you have any questions, please feel free to contact me at the number listed above.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Aron J. Beatty".

Aron J. Beatty  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 86625

Enclosure

cc: Krystle J. Sacavage, Law Bureau  
Sherri DelBiondo, Regulatory Coordinator  
(Law Bureau)

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Automatic Adjustment Clauses	:	
Related to Electric	:	Docket No. L-2014-2421001
Default Service	:	

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COMMENTS OF THE OFFICE OF CONSUMER ADVOCATE

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On October 2, 2014, the Pennsylvania Public Utility Commission (Commission) entered a Proposed Rulemaking Order at the above-captioned docket (Proposed Rulemaking Order) addressing treatment of interest charges on over and under collections of revenues associated with default electric service. The Commission's Proposed Rulemaking Order invited parties to file Comments within 30 days of publication of the Order in the Pennsylvania Bulletin. Proposed Rulemaking Order, Ordering Paragraph 5. On March 14, 2015, the Proposed Rulemaking Order was published in the Pennsylvania Bulletin. The Office of Consumer Advocate (OCA) hereby submits these timely Comments in support of the Proposed Rulemaking Order.

In developing the proposed regulations contained in the Proposed Rulemaking Order, the Commission considered the prior comments filed in response to the Commission's May 22, 2014, Advance Notice of Proposed Rulemaking for Revision of the Commission's Regulations on Automatic Adjustment Clauses Related to Electric Default Service, Docket No. L-2014-2421001 (Order entered May 22, 2014) (ANOPR). In response to the ANOPR addressing electric default service interest issues, the following parties provided Comments: the

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 FirstEnergy utilities (Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company). In its Comments, the OCA supported the Commission's proposal to modify the interest rates utilized by Default Service Providers.

Through its Proposed Rulemaking Order, the Commission proposes to modify its existing Regulations at Chapter 54 (Electricity Generation Customer Choice), Section 54.187. Currently, a Default Service Provider (DSP) may collect interest from retail customers at the legal rate of interest (currently 6%) for under collections. 54 Pa. Code §54.187(g). The current regulations require that a DSP shall refund to customers all over recoveries plus interest, calculated at the legal rate of interest plus 2%. 54 Pa. Code §54.187(g).

In its Proposed Rulemaking Order, the Commission proposes to modify its Regulations by eliminating the asymmetrical interest requirements found at 54 Pa. Code §54.187(g). In its place, the Commission proposes a new regulation, codified at 54 Pa. Code §54.190. Proposed Section 54.190 states, in relevant part, as follows:

(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).

\* \* \*

(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 in effect on the last day of the month the over 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.

Proposed Rulemaking Order, Annex A.

The OCA submits that this new regulation takes two major steps. First, the proposed regulation eliminates the existing asymmetrical interest requirement contained in the current regulations. Second, the proposed regulation requires that all default service interest charges be calculated in a uniform manner, using the prime rate of interest for commercial banking (as reported in the Wall Street Journal) in effect on the last day of the month the over or under collection occurred.

In the Proposed Rulemaking Order, the Commission stated its intent “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” with regard to electric default service. Proposed Rulemaking Order at 1-2. The OCA fully supports the Commission’s efforts in this regard. As the Commission recognized, the interest on under collections of Generation Supply Charges (GSC) are currently calculated at the legal rate of interest, or 6%, while the interest on over collections of Generation Supply Charges is currently calculated at legal rate of interest plus two percent, or 8%. Proposed Rulemaking Order at 6. As the Commission noted, the September 2014 prime interest rate was 3.25%. Proposed Rulemaking Order at 7.

The Commission explained the underlying basis for its proposed Regulations as follows:

The Commission's current use of the legal rate of interest for under collections and the legal rate of interest plus 2% for over collections, used for most electric default service automatic adjustment clauses, results in interest rates that are well above current market-based rates. This Order will recommend the use of the prime interest rate for the calculation of interest on both over and under collections resulting from automatic adjustment clauses related to electric default service. The Commission believes that using the prime interest rate is most appropriate here as this rate is most commensurate with market rates. Additionally, the prime interest rate is publicly known and available, and transparent. Further, the prime interest rate also reflects the terms and risks inherent in the utility reconciliation process.

Proposed Rulemaking Order at 7-8 (footnote omitted).

These concerns are similar to those the OCA previously addressed in Comments submitted in the Commission's Default Service Reconciliation Interim Guidelines at Docket No. M-2012-2314313 and in its ANOPR Comments. In the ANOPR, the Commission noted the OCA's prior support for modifications of the interest calculation for default service, as follows:

The Office of Consumer Advocate (OCA) identified the same concerns as the aforementioned stakeholders. As the legal rate of interest is greater than short term interest rates, there may be an improper incentive to under collect in order to take advantage of the 6% rate. Also, the 8% rate on over collections is a heavy penalty for over collections which adds to the incentive to "underestimate costs and 'err on the side of caution.'" OCA Comments at 5. The OCA submitted that "[i]t would be appropriate to adjust the interest rate to more closely align with current short term interest rates." OCA Comments at 5.

ANOPR at 10.

As to the proper interest rate, the OCA agrees with the Commission that for the residential customer class, the interest rate for all default service related surcharges should be the same. The OCA also agrees with the Commission that the interest rate should be more closely

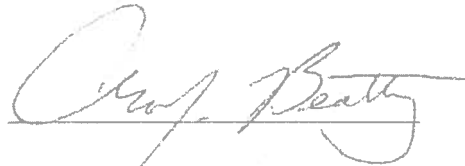
aligned with current market interest rates. The OCA also commented that it agrees with the Commission “that the interest rate should be more closely aligned with current market rates,” as the prime rate of interest is the rate most reflective of market conditions. Proposed Rulemaking Order at 11. The OCA submits that the Commission’s proposal to use the prime rate is reasonable for the reconciliation of default service costs.

With regard to the “asymmetric” interest practice currently in place, the OCA submits that, as a general matter, utilities should be discouraged from over collecting ratepayer funds for the service provided. The current use of an asymmetric rate of interest in the context of default service, however, creates incentives for the DSP to underestimate its costs and thus experience an under collection. As the Commission noted, the OCA has taken the position that a “symmetric market-based approach to the application of interest might make some EDCs more amenable to reconciliation periods which will better serve customers and make price comparisons easier.” Proposed Rulemaking Order at 10. For default service, the asymmetric interest charges in place may create too strong of an incentive for DSPs to under collect costs, inadvertently resulting in the distortion of default service rates.

The asymmetric nature of the interest provisions may create additional concerns for DSPs over the course of a reconciliation period. A symmetric market-based approach to the application of interest might make some EDCs more amenable to reconciliation periods which will better serve customers and make price comparisons easier. For these reasons, the OCA submits that the interest rates used for under collection and over collections should be the same.

The OCA supports the Commission's proposal to improve the reconciliation calculation of default service costs. The OCA submits that the interest rates used for under collection and over collections should be the same and that the Commission's proposed use of the prime rate of interest or a rate reflective of residential interest for residential customers should be adopted.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Aron J. Beatty", written over a horizontal line.

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