

Comments of the Independent Regulatory Review Commission



Pennsylvania Public Utility Commission Regulation #57-307 (IRRC #3088)

Automatic Adjustment Clauses Related to Electric Default Service

May 13, 2015

We submit for your consideration the following comments on the proposed rulemaking published in the March 14, 2015 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (PUC) to respond to all comments received from us or any other source.

Section 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. – Reasonableness; Economic Impact; Impact on Small Business; Implementation procedure; Clarity.

Subsection (c)

The proposed regulation establishes the prime interest rate to be applied to the reconciliation of over and under collections. In this subsection, the prime interest rate is specified “as reported in the *Wall Street Journal* or other publically available source identified by the Commission.” We have two concerns. First, in support of the phrase “or other publically available source identified by the Commission,” the PUC’s order states it cannot predict whether the *Wall Street Journal* will continue to be the most appropriate market index for purposes of determining the prime rate of interest, and if the PUC switches to a different index it will properly notify all interested parties. It is not clear what other rate the PUC would contemplate in the future, who would be notified, how notice would be provided or what opportunity there would be for comment prior to the change. Why wouldn’t the PUC’s general powers to rescind and modify regulations under 66 Pa.C.S.A. §§ 501 (a) and (b) be sufficient? The PUC could then rescind the regulation and modify it by a rulemaking with review by the public, utilities, legislature and this commission. For these reasons, we recommend deleting the phrase “or other publically available source identified by the Commission.” Alternatively, the PUC should explain and support the need for the phrase and how changing the interest rate outside of the rulemaking process is in the public interest.

Second, if the PUC maintains the phrase, the language of the proposed regulation would permit a utility to choose between the *Wall Street Journal* rate “or” the new rate identified by the PUC. We recommend that the PUC clarify the language of the regulation to specify which rate must be used by the utility should the PUC specify a source other than the *Wall Street Journal*.

Reliance on the prime rate of interest

First Energy observed that while the prime rate of interest recently has been low, it was as high as 21.5% in the 1970s and 1980s. First Energy recommends an “escape hatch” so that customers are not exposed to significant swings in interest rates and also recommends simply using the current legal interest rate of 6%. We recognize that 52 Pa. Code § 54.187(g) of the existing regulation relies on “the legal rate of interest,” so the PUC has experience with using the legal rate of interest. The PUC should explain why the regulation’s reliance on the prime rate of interest is the best alternative.

Implementation of the new interest charge computation

PECO commented that its currently approved default service plan runs into the year 2017 and would potentially conflict with a finalized regulation until PECO could accommodate the change in its next default service plan. First Energy requests that the PUC allow them to maintain the interest charge calculation specified in its tariffs until the process in the proposed regulation can be adequately transitioned, reviewed and audited. In the final rulemaking, the PUC should explain how the implementation timeline of the new requirements is reasonable.