

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

**Implementation of the Alternative Energy
Portfolio Standards Act of 2004**

Docket No. M-0051865

**Rulemaking Re. Electric Distribution
Companies' Obligation to Serve Retail
Customers at the Conclusion of the Transition
Period Pursuant To 66 Pa. C.S. §2807(e)(2)**

Docket No. L-00040169

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PROPOSED DEFAULT SERVICE RULEMAKING**

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**REPLY COMMENTS OF RELIANT ENERGY, INC. ON
PROPOSED RULEMAKING ORDER**

Reliant Energy, Inc., (“Reliant”) is pleased to offer reply comments in the Pennsylvania Public Utility Commission’s (“Commission”) proposed rulemaking (“Rule”) for default service in the Commonwealth. Reliant will be responding to various parties on the following issues:

- 1) Long-term contracting for alternative energy resources;
- 2) Long-term contracting for default service supply;
- 3) Reconciliation of Alternative Energy Portfolio Standards (“AEPS”) costs; and
- 4) Reconciliation of default service costs.

Introduction

BP Solar, the Pennsylvania Department of Environmental Protection, and DTE Energy Company among others support long-term contracting for renewable resources. As explained in Initial Comments,

Reliant does not support the use of regulatory-mandated long-term contracting for alternative energy resources or extraordinary reconciliation of AEPS costs.¹ Reliant, like other Electric Generation Suppliers (“EGS”), and as a wholesale generator, believes that regulatory-mandated contracting and ex-post reconciliations² for renewable resources will have detrimental effects on the development of a competitive retail market.³ Further, establishing default service prices through long-term contracts allows the default prices to become out- of-market for sustained periods, which creates a barrier to entry for competitive providers or force customers to bear the costs through regulatory-based long-term contracts.⁴ Furthermore, allowing default service prices to be reconciled ex-post can cause unintended results that will ultimately harm a competitive market.

Reply Comments

1) Long-term contracting for alternative energy resources

In its Initial Comments on the Commission’s Issue List filed on March 3, 2006, Reliant stated that mandatory long-term contracting is not

¹ Cost recovery for alternative energy resources is provided for in Reliant’s Market Responsive Pricing (“MRPM”) Proposal through the market adjustment mechanism that the default service provider would use to adjust the default service price for changing market conditions.

² Under Reliant’s MRPM, the default service provider can make a financial integrity filing if needed.

³ Constellation Energy and Direct Energy Services commented on the impact of long-term contracting for renewables on a competitive market. Dominion Retail, and Strategic Energy also commented on the impacts of renewable cost reconciliation.

⁴ Recent developments regarding Pike County show that locking customers into long-term contracts may not be a desired result.

necessary for the development of alternative energy resources. Act 213 established the level of alternative compliance payments. Thus, other than the rules to comply with the statutory requirement and the means to account for compliance, regulating the terms and conditions of contractual arrangements in the competitive marketplace is unnecessary. In fact, there is market evidence that renewable contracting can occur without regulated procurement.⁵

With rules that clearly state the annual AEPS requirements for both EDCs and EGSs, these companies will procure in the manner that best fits their own procurement strategy. If the default service provider wants to pursue long-term contracts with alternative energy resources to meet their Act 213 obligations, they can. However, they should do so with the risk being borne by their shareholders, not ratepayers.

2) Long-term contracting for default service supplies

Several EDCs⁶, along with the Office of Consumer Advocate (“OCA”) filed comments that supported the ability of the EDCs to pursue long-term contracts for default service supply at their discretion. These

⁵ As part of its restructuring legislation passed in 1999, Texas did not require default service providers to procure any resources through long-term contracts, including renewable energy. Texas initially called for 2000 MWs by 2009, with the level raised to 5000 MWs by 2015 during a 2005 legislative session. Even without a requirement that default service providers procure resources through long-term contracts, Texas has met its annual renewable resource requirements. Since 1999, an influx of 2055 MWs of renewable resource capacity has been installed in Texas. <https://www.texasrenewables.com/publicReports/rpt5.asp>

⁶ Citizens and Wellsboro Electric Company, FirstEnergy, Exelon Companies, and PPL Electric Utilities Corporation

EDCs are attempting to craft a default service rule that allows them as much latitude as they desire to procure supply and price default service, but at the same time minimizing their risk by shifting it to customers. While such a format is understandable in a regulatory paradigm, if crafted incorrectly, default service structured in such a manner will not allow a competitive market to develop.

In its Initial Comments in the POLR Rulemaking filed April 27, 2005, Reliant supported the default service provider being able to procure supply in any manner it chooses, so long as the default service provider was a competitive affiliate of the utility.⁷ In this scenario, the default service provider is free to pursue long-term contracts if it desires, but it also assumes the risk of those contracts becoming out-of-market, not its default service customers.

The problem with the utility pursuing long-term contracts is the regulated structure under which it recovers expenditures from customers. The utility simply passes on supply costs to customers, with presumed Commission approval, and recovers the cost regardless of the effectiveness of such a procurement process. That is just one anti-competitive reason to prevent such events from occurring. Pennsylvania ratepayers went through one round of stranded cost recovery already, and do not need to have a

⁷ Reliant noted in its Initial Comments that its MRPM proposal could also work if the EDC remained in the role of default provider.

system that would require another round of stranded cost recovery.

Competitive suppliers on the other hand may not be able to pass on long-term contract costs to customers and still be able to compete with the default price. Clearly, the playing field is not level in this situation.

3) Reconciliation of Alternative Energy Portfolio Standards (“AEPS”) costs

Several parties, including First Energy, Exelon Companies, and PPL Electric Utilities support the reconciliation of AEPS costs. As stated in its Initial Comments filed on March 8, 2006, Reliant believes that reconciliation of AEPS costs is not necessary because mandated, long-term contracting for alternative energy resources is not needed. Reliant’s proposed Market Responsive Pricing Model (“MRPM”) does not entail administratively-determined procurement processes for default supply or renewable energy. Under the MRPM, an initial retail price is established that would cover the costs of the default service provider’s Act 213 obligations. This is not to say that providers of default service would not be allowed to recover increased AEPS expenses. However, going forward into a competitive market, any changes associated with Act 213 should be made at the time that the default service provider came in for one of its allowed adjustments per a known index.

4) Reconciliation of default service costs

As noted above, Reliant's does not believe that the default service costs should be reconcilable because ex-post reconciliations are a regulated construct, not a competitive market construct. Imposing regulated constructs into the competitive market can cause unintended results that ultimately harm market participants. Consider the example given in Reliant's Reply Comments filed on June 27, 2005. Assume a retail market that allows customers to freely switch providers. The reconcilable charges can allow regulatory based arbitrage to occur because customers can switch to an alternative EGS when fuel surcharges go up to get out of paying their fair share of electricity costs. Conversely, they can then switch back to the default provider when the prices charged by the default provider falls below prevailing market prices due to reconciliation rebates. While one may argue that a fix to such an arbitrage is to have minimum stay provisions on default service, those making that argument are exposing their objections to competition and their preference for regulated markets, rather than allowing for competitive markets. Thus, the Commission should avoid imposing regulated constructs, such as reconcilable default prices, on the competitive retail market to avoid market destructive outcomes that serve to introduce significant barriers to market entry. The Commission's Rule correctly recognizes that the default service price should not be reconcilable, and the

parties'⁸ attempts to suggest once again that the default price should be reconcilable should be rejected.

Summary

Reliant appreciates the opportunity to offer reply comments in this Rulemaking regarding default service in the Commonwealth. It is imperative that the Commission not impede the goals of the Choice Act in order to implement Act 213 cost recovery. Both pieces of legislation are intended to bring important benefits to the citizens of Pennsylvania, but one cannot be given precedence over the other, nor do they need to as both can be achieved hand-in-hand. The Commission should avoid implementing the provisions of Act 213 in a manner that will thwart the development of a robust, sustainable competitive retail market. Reliant urges the Commission to find that mandated long-term contracting and cost reconciliation by EDCs will be detrimental to a competitive market.

⁸ Citizens and Wellsboro Electric Company, FirstEnergy, Exelon Companies, and PPL Electric Utilities Corporation.