

COMMENTS IN RESPONSE TO STAFF DISCUSSION DOCUMENT ON END-STATE  
DEFAULT SERVICE MODELS

AARP  
PULP  
CLS

April 4, 2012

As representatives of residential consumers in Pennsylvania, AARP<sup>1</sup>, The Pennsylvania Utility Law Project<sup>2</sup> (“PULP”), and Community Legal Services, Inc.<sup>3</sup> (“CLS”) support the continuation of Default Service for essential electric service pursuant to the statutory policies set forth in Pennsylvania law. These policies require the Pennsylvania Public Utility Commission (“Commission”) to maintain and adhere to the following polestar principles:

- The provision of Default Service at the “least cost to customers over time.”<sup>4</sup>
- The continuity of protections, policies and services that assist low-income customers to afford electric service;<sup>5</sup>
- The assurance that the quality of service provided does not deteriorate;
- That adequate reserve margins of electric supply are maintained; and,
- That standards and billing practices for residential utility service are maintained.<sup>6</sup>

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<sup>1</sup> AARP is a nonprofit, nonpartisan organization that helps people 50+ have independence, choice and control in ways that are beneficial and affordable to them and society as a whole. AARP has members residing in each of Pennsylvania’s counties and representing all segments of the socio-economic scale. Moreover, a substantial percentage of AARP’s members live on fixed or limited incomes and depend on reliable electric service for adequate heat, lighting, and powering life-saving medical devices. AARP has previously submitted comments on the various initiatives associated with the Commission’s Retail Markets Investigation, of which this proposal is a part.

<sup>2</sup> PULP is a specialized statewide project of the Pennsylvania Legal Aid Network designated to assist low-income utility and energy residential consumers. For over 30 years PULP has represented the interests of low income Pennsylvanians in energy and utility matters through direct representation, statewide advocacy, and support and assistance to the staff and clients of local legal aid programs, non-profits and community-based agencies. PULP staff has been actively involved in the technical conferences hosted by OCMO in this Retail Markets Investigation.

<sup>3</sup> CLS is a not for profit law firm that provides free legal service to the low-income residents of Philadelphia. Each year, CLS receives hundreds of requests for legal assistance on utility issues. CLS’s Energy Unit represents individuals and client groups in utility matters, advocates for affordable utility service on reasonable terms, and conducts community education on utility consumer rights.

<sup>4</sup> 66 Pa C.S. § 2807(e) Obligation to serve.

<sup>5</sup> 66 Pa CS §2802 (10)

<sup>6</sup> 66 Pa CS § 2809 (e)

On March 2, 2012, the Commission issued a Secretarial Letter to Interested Parties and scheduled an *en banc* hearing for March 21, 2012 to seek comments on “key issues that the PUC plans to address as part of a Long-Range Work Plan to promote electric retail competition.” As part of the materials distributed for this hearing, the Commission distributed a Staff Discussion Document that sets forth three possible End State Models for Default Service. In each of these models, the role of the Electric Distribution Company (EDC) as the Default Service Provider (DSP) is replaced by an Electric Generation Supplier (EGS.) Our comments address these End State Models, which we believe propose a radical, unnecessary and inappropriate change in the provision of electric service within the Commonwealth.

## **I. THE MODELS**

We begin with the observation that the hallmark of each of these Models is that they would result in a transfer of customers to an EGS without their affirmative consent, would result in greater inefficiencies in the provision of default service, and are contrary to the General Assembly’s legislative purpose in enacting Act 129. Each of the End State Models proposed by Commission staff identifies an EGS as providing Default Service as opposed to the current model where EDCs, as the incumbent electric companies, function as default service provider. However, none of the models totally divest the EDCs of default service roles, as each appears to require the EDCs to continue to incur costs to implement smart metering, efficiency programs, universal service programs, and continue their role to settle transactions through the wholesale market. Each of the Models calls for consolidated supplier billing or third party billing and, at least imply, the possibility of dual billing.

The Models contain three methodologies for pricing Default Service. Under Model A, default service would be priced based on hourly wholesale market prices with an administrative adder to those wholesale market hourly prices. Under Model B, default service would be priced based on “prevailing market prices” established through an index that would reflect short-term wholesale market prices. Under Model C, default service would be priced based on the current requirements of Act 129, including a prudent mix of contracts designed to provide a price that is “least cost over time.” The Models each fail to resolve major issues relating to the identification of the costs of such a transition and who should bear those costs, how to provide and maintain basic consumer protections, how to deliver and integrate universal service programs, how an EGS could provide efficient consolidated or separate billing for low-income customers if they are unable to be a designated LIHEAP vendor and, fundamentally, what benefits would result from such a radical transformation of the existing Default Service paradigm in Pennsylvania that would justify these unknown costs. In other words, these Models presuppose a policy preference to eliminate the EDC’s role in designing, procuring, and providing Default Service to non-shopping customers without any finding of the necessity to do so, without any evident justification for such a costly and radical change in public policy and without a clear articulation of the manner in which essential consumer policies, protections and services will be provided.

It is our view that the elimination of the current Default Service Model in favor of any of the proposed Models is inconsistent with Pennsylvania’s current statutes, regulations and policies, fails to adhere to the polestar principles articulated at the opening of these comments and would not result in a desirable outcome for Pennsylvania’s residential customers. We urge the Commission to halt their consideration of these End State Models and work to implement the current policies embodied in Act 129, educate customers on how to shop for generation supply

service, and eliminate unnecessary barriers to allow the EGSs to implement their competitive options for retail customers.

**II. THERE IS NO BASIS FOR CONCLUDING THAT AN EGS COULD OR SHOULD BECOME THE DEFAULT SERVICE PROVIDER AT THIS TIME.**

All of the Staff's proposed End State Models assume that the EGS will provide Default Service and act as the DSP. This assumption is not justified or explained in any of the Staff's proposals. While Act 129 allows the Commission to approve an "alternative supplier" as the DSP, the statutory presumption is that the Electric Distribution Company (EDC) provides this service. See 66 Pa. C.S. § 2803. Furthermore, the Commission's own regulations contain this presumption and require that any change from the EDC to an EGS must occur only after a finding that such a change is necessary for the accommodation, convenience, and safety of the public and after an evaluation of the EDC's operational or financial fitness to serve retail customers and its ability to provide default service under reasonable terms and conditions. Specifically, the Commission's regulations state:

***Default service provider.***

- (a) The DSP shall be the incumbent EDC in each certificated service territory, except as provided for under subsection (b).
- (b) The DSP may be changed by one of the following processes:
  - (1) An EDC may petition the Commission to be relieved of the default service obligation.
  - (2) An EGS may petition the Commission to be assigned the default service role for a particular EDC service territory.
  - (3) The Commission may propose through its own motion that an EDC be relieved of the default service obligation.
- (c) The Commission may reassign the default service obligation for the entire service territory, or for specific customer classes, to one or more alternative DSPs when it finds it to be necessary for the accommodation, safety and convenience of

the public. A finding would include an evaluation of the incumbent EDC's operational and financial fitness to serve retail customers, and its ability to provide default service under reasonable rates and conditions. In these circumstances, the Commission will announce, through an order, a competitive process to determine the alternative DSP.

(d) When the Commission finds that an EDC should be relieved of the default service obligation, the competitive process for the replacement of the default service provider shall be as follows:

(1) An entity that wishes to be considered for the role of the alternative DSP shall file a petition under 66 Pa.C.S. § 2807(e)(3) (relating to duties of electric distribution companies).

(2) Petitioners shall demonstrate their operational and financial fitness to serve and their ability to comply with Commission regulations, orders and applicable laws pertaining to public utility service.

(3) If no petitioner can meet this standard, the incumbent EDC shall be required to continue the provision of default service.

(4) If one or more petitioners meets the standard provided in paragraph (2), the Commission will approve the DSP best able to fulfill the obligation in a safe, cost-effective and efficient manner, consistent with 66 Pa.C.S. § § 1103 and 1501 (relating to procedure to obtain certificates of public convenience; and character of service and facilities) and 2807(e).

(5) A petitioner approved to act as an alternative DSP shall comply with applicable provisions of the code, regulations and conditions imposed in approving the petition to act as an alternative DSP.

52 Pa Code § 54.183

Pursuant to these regulations, prior to determining that an EGS is the preferred entity to be the DSP, it is first necessary for the Commission to find that such a change is "necessary for the accommodation, safety and convenience of the public" through an adjudicated proceeding, demonstrating through clear and compelling testimony, evidence and analysis that a particular EDC was no longer the appropriate entity to provide DSP service. This has not taken place and any Model that presupposes within its End State, the replacement of an EDC by an EGS in this role is inherently flawed.

In addition to these existing regulatory constraints relating to the pursuit of these End State Models, there are important policy and efficiency reasons why such a radical change is likely to adversely impact residential customers.

First, there is no obvious benefit to retail customers in changing the identity of the DSP in light of the potential for additional costs associated with this transformation, the customer education costs to respond to the obvious customer questions and concerns about this policy, and the potential for deterioration in customer service compared to the existing EDC customer service and customer care systems already in place. A detailed analysis of the costs and benefits of such a dramatic change in Pennsylvania's implementation of retail competition must first be completed and the clear benefits of such an approach clearly demonstrated prior to it being seriously considered, let alone representing the sole End State Model. Yet, there does not appear to be any factual information reflected in the Staff Discussion Document or any intent to gather the necessary facts to allow a rational and cost effective approach. We are concerned that these End State Models are a reflection of a desire to move all retail customers to receive service directly from an EGS based on a policy view alone. We do not agree with such an approach.

Furthermore, there are additional issues relating to the potential conflict of interest between the EGS role as the DSP with the EGS's role as a competitive provider of generation service. It would be improper to allow an EGS that is appointed to provide Default Service to market competitive electricity supply in the same service territory without the development of "code of conduct" regulations and the potential consideration of a structural separation between the regulated DSP and the unregulated retail marketer. There is no apparent recognition of these issues in the Staff Discussion Document.

### **III. NO OTHER ELECTRIC RESTRUCTURING STATE HAS SOUGHT TO ELIMINATE THE ROLE OF THE DISTRIBUTION UTILITY IN PROVIDING DEFAULT SERVICE IN THE MANNER PROPOSED BY THE PENNSYLVANIA PUC'S STAFF PROPOSED END STATE DEFAULT SERVICE MODELS**

The changes evidenced by these models would be unprecedented. No other electric restructuring state has sought to eliminate the role of the distribution utility in providing Default Service in the manner proposed by the Commission's proposed End State Default Service Models (in Texas, the distribution utility never had the role of default service supplier because there is no default service). This is particularly true for the PJM states in which the electric distribution utility is charged with the obligation to procure default service under statutory or regulatory policies, many of which are similar to the directives of Act 129.

Under the typical approach, the electric distribution utility acquires default service pursuant to a portfolio policy set forth in the state statute and commission regulations and orders. While there are several states that have created a new state agency to develop an implementation plan which is subject to commission review and approval, the distribution utility is responsible for acquiring default service and billing and collecting for default service.

- The Massachusetts Electric Industry Restructuring Act states that, as of March 1, 2005, default service is the generation service that is provided by distribution companies to those customers who are not receiving service from a competitive supplier. As such default service acts as a "generation service of last resort." The Department established two pricing options for default service customers: (1) a variable pricing option in which the price changes monthly; and (2) a fixed pricing option in which the variable monthly prices are averaged and remain constant for six-month periods. Customers are assigned to the six-month fixed rate as a default service and must affirmatively request the monthly variable rate option. In June 2002, the Department revised default service pricing and procurement policies. For residential and small commercial and industrial customers, the Department directed each distribution company to procure 50 percent of its default service supply semi-annually, for 12-month terms. As a result, default service prices for these smaller customers (for both the monthly and the six-month pricing options) are now based on an average of the results of two separate procurements. [D.T.E. 02-40-B](#)

- Rhode Island enacted The Comprehensive Energy Conservation, Efficiency and Affordability Act of 2006 (2006 General Assembly, S. 2903, signed June 30, 2006). Under the Rhode Island electric restructuring model, the electric utilities remained responsible for acquiring Standard Offer Service (SOS) for non-shopping customers which had been done under a series of relatively short term wholesale market contracts. After proposed rate increases of up to 25% by the largest electric utilities due to the impact of short-term wholesale market prices, the Rhode Island General Assembly enacted a comprehensive bill that contained reforms for SOS policies and procurement, new low income bill payment assistance programs, and a significant increase in funding and implementation of energy efficiency and demand response programs. The obligation of the electric utilities to arrange for Standard Offer Service was extended from 2009 through 2020 and the obligation to plan and acquire the necessary resources is now governed by a “least cost procurement” policy. This term is defined to include system reliability, energy efficiency and conservation procurement, and supply procurement. The electric utilities are responsible for procurement plans, which must be approved by the PUC.
- Connecticut adopted reforms to its electric restructuring law in 2007 following a two-year debate about the nature of the reforms that should be adopted. First, the legislation requires the Department of Public Utility Control (DPUC) to order the utilities to obtain Default Service (called Generation Service Charge in Connecticut) on a quarterly basis through the wholesale market. Presently, the utilities rely on laddered full-requirements contracts. However, the utilities are also required to develop a new long term integrated procurement plan for future energy and capacity resources, with the objective of first meeting all resource needs through available energy efficiency and demand reduction resources. The plan must reflect an assessment of needs for the next 3, 5, and 10 years. The utilities must submit the plan to the Connecticut Energy Advisory Board (a new agency). This agency will first decide on the proposed plan and then send it to the DPUC for its approval process. Distribution utilities are also now authorized to propose building new generation and enter into long term contracts directly with generators.  
<http://www.cga.ct.gov/2007/ACT/PA/2007PA-00242-R00HB-07432-PA.htm>
- New York utilities acquire default service on relatively short-term wholesale market contracts pursuant to oversight by the New York Public Service Commission. There are no statutory policies that specifically govern the acquisition of default service. The New York Commission has authorized the use of “hedging” and other contracts to avoid volatility in pricing for default service customers.
- Maryland adopted statutory reforms to its Standard Offer Service (SOS) in July 2006, but the electric distribution utility remains responsible for designing and procuring the approved SOS portfolio. The obligation to provide SOS was extended indefinitely and the service must be structured to “obtain the best price for residential and small commercial customers in light of market conditions at the time of procurement and the need to protect these customers from excessive price increases.” The contracts may include those acquired through a competitive process, as well as one or more bilateral contacts, all of which must be approved by the Commission. The contracts must result in

a “portfolio of blended wholesale supply contracts of short, medium or long terms, and other appropriate electricity products and strategies, as needed to meet demand in a cost effective manner.” In addition, the procurement may include “cost effective energy efficiency and conservation measures and services.” The Maryland Commission has retained the RFP process with laddered full requirements contracts obtained through the wholesale market. Baltimore Gas & Electric (the largest electric utility) conducts RFPs twice per year, seeking 25% of the residential load for a 24-month period. The contracts are fixed price for the contract term.

- Illinois adopted reforms to its default service Legislature adopted restructuring reform legislation on August 28, 2007. Default Service must now be provided under a procurement plan that must assure “adequate, reliable, affordable, efficient and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability....” The procurement plan must be developed and submitted for public review and comment in an open and transparent process and the plan must rely on competitive procurement that is monitored by neutral parties and personnel. The bill creates a new state entity, the Illinois Power Authority, which is given a wide range of authority to consider various types of wholesale market contracts for default supply and prepare future procurement plans that the Commission must review and then order the distribution utilities to implement.

The only electric restructuring state that has departed from the model in which the electric utility purchases default service in the wholesale market is Maine. The Maine model is somewhat unique and similar to the Model C provided under the proposed End State Default Service Models. Under the Maine statutory policies the electric distribution utilities do not procure default service. Rather, the Maine Public Utilities Commission solicits and approves a retail default service provider, thus combining the roles of the state procurement agency in some states, as well as the role of the distribution utility in other states with regard to the actual procurement function. The Maine distribution electric utilities list the winning default service supplier on customer bills, but the distribution utilities bill and collect for Standard Offer Service. The winning SOS providers have no direct interaction with SOS customers. The Maine statutory SOS portfolio policies are similar to those adopted in Pennsylvania’s Act 129: “For the purpose of providing over a reasonable time period the lowest price for standard-offer service to residential and small commercial customers, the commission, with respect to

residential and small commercial standard-offer service, may, in addition to incorporating cost-effective demand response and energy efficiency pursuant to subsection 4-B and to the extent authorized in section 3210-C, incorporating the energy portion of any contracts entered into pursuant to section 3210-C, establish various standard-offer service contract lengths and terms.” §3212 (4-C). This portfolio is met by relying on full-requirements contracts from the SOS retail supplier. The Commission has adopted a Standard Offer Service Rule (chapter 301) that requires that the SOS rate reflect a fixed price that does not vary by level of usage or time of day. See <http://www.maine.gov/sos/cec/rules/65/407/407c301.doc> The Commission conducts an annual RFP for one-third of the SOS load for residential and small commercial customers; as a result the customer SOS price changes annually. The Maine distribution utilities are responsible for the implement of approved low-income programs, which are integrated into the collection of the total bills, including SOS.

**IV. DEFAULT SERVICE SHOULD NOT BE PROVIDED PURSUANT TO MODEL A OR MODEL B SINCE BOTH HAVE ALREADY BEEN REJECTED BY THE PENNSYLVANIA LEGISLATURE, AND MODEL C CONFLICTS WITH THE PROVISIONS OF ACT 129.**

Both Model A and Model B methodologies for procuring and pricing Default Service are not acceptable and would conflict with the statutory policies reflected in Act 129. We agree with the Pennsylvania Legislature’s rejection of the “prevailing market prices” policy that was included in the initial Restructuring Act and its replacement with the current guidance in Act 129 with regard to the portfolio approach and the “least cost over time” mandate. Furthermore, our policy preference has been reflected in most retail restructuring reforms adopted in other states in recent years. Moreover, our preference for the current statutory policies for Default Service is a reflection of our experience that most customers prefer stability and predictability in their utility

rates. Though consumers understand that utility rates are subject to change, it is difficult for households (or businesses) to budget for essential electricity when those prices can change substantially every hour (as recommended by Model A) or based on short-term wholesale market price indicators (as reflected in Model B). Relying on short-term prices for Default Service transfers an enormous risk to residential consumers that their essential electricity service will change frequently and, ultimately, be unaffordable.

To suggest, as some have done, that consumers who want to avoid volatile prices can choose a fixed price service in the competitive market misses the point. The law requires that the Default Service provide the stable and “least cost” benchmark for consumers to use to shop and compare offers from EGSs and not the other way around. Our recommendation has consistently been to explore the potential for including longer-term contracts for a portion of the Default Service portfolio to enhance the long stability of electricity prices for residential and mass-market customers.

Furthermore, Model C, while ostensibly complying with Act 129’s procurement strategy, conflicts with Act 129 in that it suggests that the statute would permit one entity to be a default service provider and another to be the “provider of last resort.” No such division of the default service role is contemplated or permitted by Act 129. Thus, while the procurement requirements under Model C appear to comply with Act 129, the model itself is inherently flawed and statutorily impermissible.

Our policy vision for Default Service does not conflict with the obligation of Pennsylvania utilities to implement retail electric competition. Customers are free to choose competitive retail suppliers to the extent that those suppliers can provide an even lower cost service or provide some other value, such as “green” electricity. Indeed, residential customers

have documented that they can and will leave Default Service and enter into a contract with an EGS in Pennsylvania in droves. But the goal is not to promote retail shopping for the sake of retail shopping alone. Rather, it is to encourage the DSP to offer customers reliable, safe service procured at least cost over time and then permit retail competitors to try to beat those prices or offer some other benefit to customers that will encourage them to switch.

What we have in Pennsylvania is working. The procurement and delivery of default service in Pennsylvania by EDCs over the past number of years in the wholesale market has reduced the cost of electricity for all Pennsylvania consumers. Pennsylvania utilities have, under the Choice Acts, also effectively integrated universal service programs into the delivery of default service. These programs, while not yet achieving full maturity or penetration, have significantly improved the affordability of electricity for many low-income Pennsylvanians. Finally, Pennsylvania consumers also have the choice of competitive retail suppliers who serve a significant portion of the commercial and industrial classes and a growing portion of the residential class.<sup>7</sup>

**V. ALL OF THE POSSIBLE “END STATE” MODELS WOULD THREATEN LONG STANDING AND STATUTORILY REQUIRED PROTECTIONS FOR LOW-INCOME CUSTOMERS, INCLUDING THOSE SERVED UNDER UNIVERSAL SERVICE PROGRAMS**

There are nearly 1.3 million low-income households (incomes at or below 150% of poverty) within the EDC service territories in the Commonwealth of Pennsylvania. In assessing any change to the current default service model, the Commission must maintain the protections,

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<sup>7</sup> There is no better example of the growing shopping statistics for residential customers than the latest shopping rates from the FirstEnergy companies. Based on the March 14, 2012 information issued by FirstEnergy to the Commission, 17.2% of Met-Ed’s residential customers, 21% of Penelec’s residential customers 24.8% of Penn Power’s residential customers, and 17.6% of West Penn’s residential customers are served by an EGS. These shopping rates exceed those of many restructuring states.

policies and services that assist low-income customers to be able to afford their bills and cannot adopt models which do not assure that those protections are maintained. The statutory responsibility of the Commission under the Choice Act is to all low-income customers. In addition, the Commission is charged with ensuring that the Universal Service Programs remain available and appropriately funded within each service territory. These are two separate and independent obligations. Since the majority of low-income households are not enrolled in a CAP program and, consequently are paying bills at full-tariff rates, the Commission must ensure that default service to these households remains affordable, and that any change to the current Default Service model is completed only after ensuring that consumer protections, policies and services directed to assist low-income customers afford electric service are in place.

Each of the End State Models is devoid of any guidance, let alone assurance, that consumer protections, policies and services that assist low-income customers to afford essential electric service would be in place. The Models each defer the consideration and determination of consumer policies and protections to be considered at an undetermined future date. This is one cart that cannot go before the horse. Without a clear articulation and promulgation of appropriate policies and regulations assuring that low-income customers will be able, under an EGS as Default Service Provider, to continue to afford electric service, the models are unacceptable as a matter of policy and law.

In addition, each of the End State Models purports to incorporate consolidated supplier billing or third party billing and implies, the possibility of dual billing. Each of these scenarios would mean that LIHEAP recipients could not receive the coordinated benefit of direct vendor payment because EGSs and third party billing entities cannot be LIHEAP vendors under the Pennsylvania LIHEAP State Plan. The Plan states:

Vendor – An agent or company that directly distributes home-heating energy or service in exchange for payment. **The term does not include** landlords, housing authorities, hotel managers or proprietors, rental agents, **energy suppliers or generators and other parties who are not direct distributors of home-heating energy or service.**(§601.3 Definitions (emphasis added.)

CAP customers are required to apply for LIHEAP and designate the entity administering the CAP as the recipient of the LIHEAP grant. However, there would appear to be an inability for a CAP participant to designate LIHEAP directly to a vendor if the billing entity is an energy supplier or generator. Furthermore, the majority of low-income LIHEAP recipients, who are not on CAP, have the same inability to designate an EGS or supplier as the LIHEAP vendor.

Moreover, each of the Models designate the EDC as the provider of Universal Services, but fails to address any of the extraordinarily difficult issues surrounding the ability of as well as the procedures and protections of CAP shopping.<sup>8</sup> This omission is a fatal deficiency. Without clarity regarding CAP customer shopping procedures and protections, the Models are unacceptable. While the Models purport that EDCs would retain Universal Service obligations, there are silent as to what this would mean. For example, there has been no analysis of whether having EDCs procure power for low-income CAP customers alone would result in increased price and unaffordable service. This inattention to the complexities of the Universal Service requirements is fatal to each of the models and, we submit, is one of the core reasons why the Commission must, if it is intent on removing EDCs from the role of DSP, initiate a process to do so that is consistent with its regulations found at 52 Pa. Code § 54.183.

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<sup>8</sup> The Comments of PULP and CLS submitted to the RMI Universal Services Working Group regarding CAP shopping are enclosed as an attachment.

**VI. ALL OF THE POSSIBLE “END STATE” MODELS THREATEN THE IMPLEMENTATION OF EXISTING CONSUMER PROTECTIONS AND ACT 129’s EFFICIENCY PROGRAM MANDATES**

All of the proposed End State Default Service Models list Consumer Protections and Termination of Service, as an issue but defer resolution. They each state, “need to address.” Moreover, all the Models propose that the EDC will remain responsible for the implementation of Act 129 Efficiency Programs.

Both of these important obligations of Pennsylvania law are threatened by the proposed End State Default Service Models in which an EGS serves as the DSP, particularly when that role is combined with the proposal that all the Models must allow supplier consolidated billing, thus eliminating the EDC role in issuing and collecting bills to retail customers. Under Pennsylvania law, the EDC has the obligation to assure compliance with consumer protection requirements and policies and design and implement efficiency programs.

The consumer protection programs that EDCs are required to offer are deeply embedded in its customer care, billing services, and interactions with residential customers. It does not appear either efficient or desirable from a policy perspective to eliminate the EDC from interacting with customers if the EGS takes over consolidated billing for Default Service or uses consolidated billing for retail customers who have migrated affirmatively to the EGS. Either the EGS would have to replicate the entire range of consumer protections and customer care functions to interact directly with customers (with all the incremental costs that such an approach would require, as well as the enhanced regulatory oversight by the Commission of these EGS activities) or the EGS would have to pay the costs to contract with the EDC to provide these customer care support systems in a wholesale transaction, thus adding to the costs associated with offering generation supply service. Neither approach appears either efficient or desirable.

Finally, The EDCs have developed and are implementing Act 129 efficiency programs, the costs of which are reflected in ratepayer rates and that cannot be avoided by a customer's selection of an EGS. Those services are intricately connected to the EDC's role in billing and communicating with customers to collect the bill, respond to high bill questions, market the approved efficiency programs at the point of contact with the customer, and handle disputes and payment plans relating to termination of service. These programs are required by Act 129 to be designed and implemented by the EDC and not the DSP. While the End State Default Service Models suggest that these obligations will continue to rest with the EDC, the bifurcation of the EDC's current role as the DSP from its obligations to design and implement efficiency and consumer protection obligations is not easily done. Any such step is likely to result in customer confusion, reduce the chance that the statutory goals to achieve the efficiency goals will be met, as well as eliminating the obvious efficiencies associated with the coordinating the EDC's billing and service functions with the promotion and marketing of its efficiency programs.

**VII. THE PROPOSAL TO CREATE A NEW SERVICE CALLED PROVIDER OF LAST RESORT IS UNNECESSARY AND LIKELY TO RESULT IN DISCRIMINATION AGAINST PAYMENT TROUBLED CUSTOMERS.**

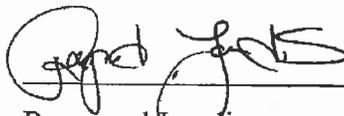
Each of the End State Models proposes a new service to be provided by the EDC called Provider of Last Resort or Backstop Service. Such a service is likely to be provided to customers who are temporarily without a supplier. It is not clear why the EDC would provide this service or under what policy that would govern the procurement of generation supply for these customers. However, if the size of the customer group being served by Provider of Last Resort is relatively small and it is a transitory service, the pricing will of necessity reflect short-term wholesale market prices and all the volatility that this implies. This type of service is not

required under current Default Service policies. We see no reason to tear apart the current system only to create two versions of “default” or “backstop” generation supply service when the current single system works well. Furthermore, we are concerned that lower income and payment troubled customers could end up with this service for whatever reason, thus threatening the affordability of essential electric service.

### VIII. CONCLUSION

Policies that expose residential customers to risky and volatile prices for essential electricity service are not consistent with Pennsylvania law and policy. We support the current statutory policies and do not believe that there has been a factual case made to change those policies. The changes to default service that have been proposed by the Commission to date are likely to increase costs and risks to residential consumers with no apparent benefits to anyone other than EGSs. We urge the Commission to implement the Default Service “End State” that is consistent with its present state, which is a default service model that is reflected in Act 129 and has functioned well for all Pennsylvania consumers.

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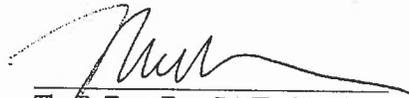
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