

operating in Pennsylvania. EAP respectfully submits these comments on behalf of its EDC members.¹

II. COMMENTS ON THE MODELS IN THE STAFF DISCUSSION DOCUMENT

As stated above, the Commission staff has provided three alternative default service models for discussion. Model A would base procurement of energy for default service on real time / hourly locational marginal prices plus an adder. Model B would base procurement on “prevailing market prices.” Model C is described as a “prudent mix model” under which procurement for default service would follow the current requirements of Act 129 of 2008.

While procurement strategies under the three models would be different, the models share some common features. First, they contemplate removal of the EDC as the default supplier of electricity and delegating that responsibility to Electric Generation Suppliers (EGSs). Second, in addition to default suppliers, the models would create a separate provider of last resort (POLR) in each EDC territory, with the EDC serving as the POLR. Third, they would retain EDCs in the role of energy suppliers for net-metering customers and universal service customers, and would continue EDC obligations to meet energy efficiency requirements under Act 129. Fourth, all three models leave some questions to be resolved in the future, such as what entity would be responsible for administering consumer protections and termination of service, and what entity would have the role of billing customers.

a. Model A – Real-time / Hourly Price plus Adder

Under Model A, energy would be procured for default service customers in the wholesale real time / hourly market. This would be a significant change from the current purchasing strategy for default service under Act 129, under which default service providers must procure a “prudent mix” of spot, short term, and long term agreements. Basing default

¹ Citizens’ Electric Company; Duquesne Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; Pennsylvania Power Company; Pike County Light & Power Company; PPL Electric Utilities; UGI Utilities, Inc.-Electric Division; Wellsboro Electric Company; and West Penn Power Company.

service purchasing on short term, spot prices may have the advantage of attracting additional EGSs to enter the market in Pennsylvania, which could result in additional competitive options for customers. This is so because default service under this model would not be an attractive option for most customers due to its price volatility, and more customers could be expected to actively participate in the retail market to obtain a stable price.

The disadvantage of this model is the flip side of its advantage – customers who do not actively participate in the market would no longer be provided a default service price that is designed to be relatively stable. Some customers could be unpleasantly surprised when they see electricity prices that are much more volatile than they have experienced in the past. To prevent this, a significant effort to educate consumers will be necessary if this model is adopted.

b. Model B – Prevailing Market Prices Model

Under this model, energy would be procured for default service at “prevailing market prices,” as established through an index, auction, or other acceptable method. This model reflects the language in the original Electric Competition Act that was repealed upon passage of Act 129.² The advantage of this model is that it may be more flexible than the language of Act 129 in that it does not mention contract lengths, whereas Act 129 requires a prudent mix of spot, short term, and long term contracts. Accordingly, this model may allow the Commission to go further in basing default service prices upon shorter-term procurement strategies, which may encourage more EGSs to enter the market and create a more active retail market.

The disadvantages of the prevailing market price model are that this model was repealed by the General Assembly in 2008 because it was not viewed as providing sufficient protections for customers. In addition, there was significant debate about the meaning of this

² “If a customer contracts for electric energy and it is not delivered or if a customer does not choose an alternative electric generation supplier, the electric distribution company or commission-approved alternative supplier shall acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs.” 66 Pa.C.S. § 2807 (e) (3) (repealed).

language prior to its repeal in 2008, and it is likely that this debate would resume if the language were enacted again.

c. Model C – Prudent Mix Model

Under this model, procurement for default service would follow the current legal standards contained in Act 129 of 2008, although EGSs instead of EDCs would be providing this service. To recap briefly the relevant requirements of Act 129, default service providers (DSPs) are required to obtain Commission approval of default service plans, and the plans are subject to hearings as necessary.³ These plans are required to utilize the competitive procurement processes set out in the Act – auctions, requests for proposals, and bi-lateral agreements.⁴ The supplies procured using these competitive processes are required to include a “prudent mix” of spot purchases, short-term contracts, and long-term contracts.⁵ The prudent mix of contracts must be designed to ensure “adequate and reasonable service” and the “least cost to customers over time.”⁶

The advantage of this model is that it is designed to provide customers who do not choose an EGS with a reasonable, relatively stable price that is based on competitive procurement methods in the wholesale market. Simply put, customers who do not shop are provided with a price that is reasonably attractive, even though they might be able to obtain lower prices if they participated in the retail market. The disadvantage of this model is that providing an attractive price to customers who do not participate in the retail market may encourage many of those customers to continue their non-participation, which may contribute to a less active market.

³ 66 Pa. C.S. § 2807 (e) (3.6)

⁴ 66 Pa. C.S. § 2807 (e) (3.1)

⁵ 66 Pa. C.S. § 2807 (e) (3.2)

⁶ 66 Pa. C.S. § 2807 (e) (3.4)

III. ALL OF THE DEFAULT SERVICE MODELS PROPOSED BY THE STAFF WOULD REQUIRE LEGISLATIVE AUTHORIZATION TO IMPLEMENT.

Administrative agencies such as the Commission must operate within the scope of authority delegated to them by the legislature. The Commission's policymaking role is limited by the bounds of the statutes it administers.⁷ For the reasons explained below, all of the alternative models for default service set forth by the Staff would require legislative authorization before they could be implemented because they are inconsistent with Act 129 and other provisions of the Electric Competition Act.

Before discussing the specific provisions of Models A, B, and C, it should be noted that all of these models require legislative authorization because all of them require EDCs to serve as a "provider of last resort" (POLR) that would serve customers in the event that a DSP would exit the market. This POLR role is not authorized by the statute. The statute provides that if a customer does not choose an EGS or if an EGS does not provide service, then the DSP "shall" provide electric generation supply service to the customer under a Commission-approved procurement plan.⁸ The Act further defines a DSP as an EDC within its service territory or an alternate supplier approved by the Commission.⁹ However, the Act does not authorize the Commission to appoint a POLR to provide supply service in the event a DSP exits the market. In the event that a DSP would exit the market, the Commission's recourse under the statute would be to appoint another DSP. This conclusion is buttressed by the fact that Act 129 contains detailed procurement standards applicable to DSPs, but it does not contain any procurement standards, or other provisions, applicable to POLRs.¹⁰

⁷ See, *Philadelphia Suburban Water Co. v. Pennsylvania Public Utility Commission*, 663 A.2d 1044 (Pa. Commw. 1995).

⁸ 66 Pa. C.S. § 2807 (e) (3.1).

⁹ 66 Pa. C.S. § 2803 (definition of "default service provider")

¹⁰ As noted above, each of the models leaves some questions yet to be resolved. EAP notes that, depending upon the resolution pursued for any individual question, legislative authorization may be required relative to those issues as well.

Turning to the specific provisions of the three models, Model A clearly requires legislative authorization. This model would establish a general policy under which purchasing for default service would be in the “spot” market. It is based on an underlying philosophy that default service is a temporary backstop service that is not designed to be attractive as a long-term option for customers, because customers should be required to shop in order to obtain more attractive options. Stated differently, Model A relies solely on the competitive market to provide an attractive, reasonably stable price to customers.

It is apparent that a model which relies exclusively on spot market purchases for default service, without regard to market conditions or other relevant circumstances, may conflict with a statute (Act 129) that requires default service purchasing to include a “prudent mix” of spot, short-term, and long-term contracts. Moreover, Model A is based upon different policy goals than the procurement provisions of Act 129. Act 129 was intended to provide a reasonably attractive, regulated default option for customers. The underlying policy of Model A that default service is strictly a temporary backstop cannot be squared with the detailed regulatory requirements of Act 129 that are designed to produce a price that is “least cost over time” and that provides “adequate and reasonable service” to customers.¹¹

Model B – the “prevailing market price” model – also requires legislative authorization. As stated above, this model is based upon the standard that was contained in the original Competition Act governing procurement of energy for default service. In 2008, the General Assembly eliminated this standard and replaced it with the detailed regulatory requirements of Act 129. Since the legislature eliminated this standard, only the legislature can resurrect it as the standard for default service procurement.

¹¹ The reference to “adequate and reasonable service” in the default service provisions of Act 129 is very similar to the traditional requirement that “[e]very public utility shall furnish and maintain adequate, efficient, safe, and reasonable service. . . .” 66 Pa. C.S. § 1501 (entitled “Character of service and facilities”).

Finally, Model C requires legislative authorization because of the separate POLR role it creates for EDCs, as described above. However, the procurement provisions of Model C appear to be identical to those of Act 129 and do not require a legislative amendment.

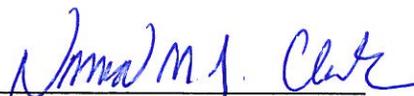
IV. CONCLUSION

The Energy Association of Pennsylvania respectfully requests that the Commission consider these comments in determining what, if any, structural changes should be made to the current model for providing default service in the Commonwealth.

Respectfully submitted,



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