

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation of Pennsylvania's
Retail Electricity Market

:
:

Docket No. I-2011-2237952

COMMENTS OF THE OFFICE OF CONSUMER
ADVOCATE ON STAFF DEFAULT SERVICE
MODELS AND CONSUMER EDUCATION

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I. INTRODUCTION

On March 2, 2012, the Commission issued a Secretarial Letter establishing an *en banc* hearing in the above-captioned case for the purpose of receiving additional input on key issues that the Commission plans to address as part of a long range work plan to support retail electric competition. Attached to the Secretarial Letter was a Staff Discussion Document setting forth three possible models for default service in the future. In each of these three models, electric generation suppliers (EGSs) would serve in the default service role responsible for procuring the default service supply product. The electric distribution companies (EDCs), however, would retain an obligation termed the provider of last resort and described as a backstop service. The EDC would also retain several other obligations under each model, including serving as the default service provider for Customer Assistance Program (CAP) customers and net metering customers, the PJM settlement process and attendant obligations, universal service program delivery, and Act 129 energy efficiency program delivery. Several key issues, including billing, consumer protections, termination of service, long term contracts for alternative energy credits (AECs) and PUC assessments remain the subject of further discussion. The Staff Discussion Document envisioned that a revised default service model would be put in place beginning June 1, 2015 with a review of that model in the first half of 2016.

By way of introduction, the OCA urges the Commission to maintain its longstanding and highly successful collaborative approach that has been the hallmark of Pennsylvania's electric restructuring model since 1996. Through this process, the Commission should set forth principles to guide the stakeholders as we continue to explore the evolution of electricity markets in Pennsylvania. Rather than attempt to select a particular "end state" model

at this time – which may or may not require legislative changes – the OCA would urge the Commission to continue its exploratory process; to see what is working in Pennsylvania and in other states, including the impact of the competitive enhancements recommended in the Commission’s recent Intermediate Work Plan Order; and to continue to support the evolution of our competitive wholesale and retail electric generation markets in a manner that best serves consumers and the Pennsylvania economy as a whole.

As set forth in the OCA’s written comments submitted in this Investigation on January 24, 2012, the OCA continues to support many elements of the default service model that has been implemented by the majority of Pennsylvania EDCs as part of the Default Service Plans filed in response to the 2008 amendments to Pennsylvania’s restructuring law. 2008 Pa. Laws 129 (Act 129 of 2008). The OCA generally envisions residential default service as a single “plain vanilla” service that will be available to all residential customers who do not choose an alternative electric generation supplier *or* whose chosen supplier fails to provide them with service.

In OCA’s view, the price charged for default service should be market-based. That is, the default service provider should secure all of its generation from the competitive wholesale markets. In that way, default service customers receive the benefit of competitive generation markets even if they do not choose an alternative supplier in the retail market. The OCA remains of the view that residential default service customers are best served by a mix of competitively-sourced generation products including long-term, short-term and spot market purchases that are designed to produce the least cost over time. The retail default service rate to residential customers should be a flat cents per kilowatthour rate. It should change periodically (no more frequently than quarterly) and be subject to dollar for dollar reconciliation on a 12-

month rolling average basis. Because the costs of the service are recoverable on a dollar-for-dollar reconcilable basis, the default service should be provided to residential customers at cost, *i.e.* with no markup or profit. The default service provider should not promote default service and should present all information about this service in a neutral manner.

One question that has been raised in this Investigation and through the Staff Discussion Document is whether default service should continue to be provided by the electric distribution companies in their respective service territories or by one or more electric generation suppliers. Under both the original 1996 restructuring law and Act 129 of 2008, the Commission is authorized to designate an alternative electric supplier to fulfill the vital default service functions. See, 66 Pa.C.S. §§ 2802(16), 2803 (Definitions), and 2807(e)(3). The Commission has issued regulations regarding the standards that it will apply in determining whether and when to reassign the default service function to an alternative supplier. 52 Pa. Code §54.183. Specifically, the Commission has stated that it will evaluate “the incumbent EDC’s operational and financial fitness to serve retail customers, and its ability to provide default service under reasonable rates and conditions.” 52 Pa. Code §54.183(c). If the Commission determines that an EDC should be relieved of its default service obligation, the Commission will conduct a “competitive process for the replacement of the default service provider” and will approve the alternative default service provider “best able to fulfill the obligation in a safe, cost-effective and efficient manner” consistent with the Public Utility Code. 52 Pa. Code §54.183(d).

Given the nature of default service and other obligations of electric distribution companies at both the wholesale and retail levels, the OCA submits that the optimal default service approach is one in which the EDC remains the default service provider in its certificated service territory. At the same time, the Commission should continue to explore cost-effective

competitive enhancements to support retail alternatives for consumers. Competitive enhancements that inform, educate and facilitate a customer's choice of supplier should continue to be developed. Operational processes should also continue to be reviewed, and modified if necessary, to remove any operational barriers to a customer's choice.

The OCA appreciates the efforts of the Staff to develop several models for the provision of default service for consideration by the Commission. As will be discussed in more detail below, and as the Staff recognized in the Secretarial Letter, the Staff Models may require significant statutory, regulatory and system changes. The Staff Models also reflect a significant change in the policy that has guided Pennsylvania's restructuring efforts. As many commentators at the *en banc* hearing noted, such a significant shift in public policy requires a thorough understanding of all of the ramifications of such a change, and requires the engagement of the General Assembly that has established direction for the Commonwealth in its restructuring efforts. The OCA recognizes that the General Assembly is free to change the language of the Public Utility Code, but first, the General Assembly must identify the goals it seeks to implement through changes in the Commonwealth's Restructuring Law.

In 1996, the General Assembly determined that "Competitive forces are more effective than economic regulation in controlling the cost of generating electricity." 66 Pa.C.S. §2802(5). This policy was furthered by the provisions of Act 129 of 2008, which required that after the end of the generation rate cap period, electric distribution companies must provide default service through market-based competitive procurement processes. As a result, all Pennsylvania consumers are receiving generation service from competitive generation markets, whether they purchase their retail service from their EDC or from an alternative retail supplier.

In 2008, when faced with the upcoming end of rate caps, and the potential for dramatic price increases to consumers that had plagued other states, the General Assembly reaffirmed its faith in competitive generation markets. The General Assembly did not extend the rate caps; it did not re-regulate or re-bundle utility generation service. Instead, the General Assembly required that default service providers purchase all of their generation in competitive wholesale markets and placed restrictions on the ability of EDCs to acquire generation from their own affiliates. See, e.g., 66 Pa.C.S. §2807(e)(3.1)(B).

At the same time, the General Assembly recognized and reaffirmed the need for affordable, stable prices for customers whether or not they choose to shop for retail supply. In the Preamble to Act 129, the General Assembly stated:

The General Assembly recognizes the following public policy findings and declares that the following objectives of the Commonwealth are served by this act:

(1) The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account any benefits of price stability over time and the impact on the environment.

(2) It is in the public interest to adopt energy efficiency and conservation measures and to implement energy procurement requirements designed to ensure that electricity obtained reduces the possibility of electric price instability, promotes economic growth and ensures affordable and available electric service to all residents.

See, Preamble to Act 129, 2008 Pa. Laws 129

In the OCA's view, the General Assembly has given us the guidance that retail choice and stable, least cost default service can coexist and must work together. The OCA submits that these principles can work together through a default service model that can respond

over time to changes that are yet to come in the wholesale and retail electricity markets. It is the OCA's view that default service must operate efficiently and effectively in any market condition and be able to serve the diverse needs of customers whether they remain on default service or choose an alternative supplier. Any default service model should also be able to adapt to developing retail choice markets and support the further development of the retail markets while at the same time providing customers with the assurance that essential electric service will be available on stable, affordable and reasonable terms and conditions.

The OCA would urge the Commission to continue its collaborative process without trying to reach a definitive conclusion on any specific default service end state model at this time. As a number of presenters noted at the *en banc* hearing, there are still many unresolved, undiscussed and unidentified issues regarding changes to default service that will have a significant impact on the economic well-being of the Commonwealth. Proposals for significant change to default service could fundamentally alter complex and interrelated operations that have been established to provide safe, adequate and reliable service to customers. Without a full understanding of the impacts of the proposals on consumers and on essential electric service, it will be difficult to consider or implement any necessary changes.

In the next section of these Comments, the OCA will address some key issues raised by the models presented in the Staff Discussion Document. The OCA will attempt to identify certain statutory, regulatory and policy decisions raised by the proposed Staff Models. In the final section of these Comments, the OCA will address issues related to a possible statewide consumer education program.

II. COMMENTS ON STAFF PROPOSED DEFAULT SERVICE MODELS

Through its Secretarial Letter and Discussion Document, Staff has proposed three models – Model A, Model B, and Model C – for consideration by the stakeholders and the Commissioners. In all three models, one or more electric generation suppliers (EGSs) would be responsible for the procurement of default service supply and would provide a default service product defined by the model. In Model A, that product is described as “Real-time/Hourly LMP and Adder” product. In Model B, the product is one that reflects “prevailing market price.” And in Model C, the product is described as a “prudent mix.” The resulting prices from the procurements will change periodically, with Model A proposed as a monthly or more frequent price change and Models B and C described as quarterly or semi-annual price changes. The EGS providing these products would not be permitted any reconciliation of costs and collections under Models A and B, but a 12-month reconciliation on a rolling basis would be used in Model C.

The three models also identify a separate provider of last resort whose function is to provide a “backstop” service. This function is to be fulfilled by the electric distribution company (EDC). The models also identify other key service functions that would remain with the EDC. These include metering, the provision of universal service programs, the PJM Settlement process, and the provision of energy efficiency programs. Other key service functions, such as billing, consumer protection, termination of service and compliance with the Alternative Energy Portfolio Standards Act, are left for future discussion.

As the Secretarial Letter notes, Staff envisions that all three models would require varying degrees of statutory, regulatory and system changes. The Secretarial Letter states that

these issues, and other unresolved issues described above, are left to resolution after the selection of a specific model.

After a review of these models, and the presentations at the *en banc* hearing, it is the OCA's view that all three Staff models (Model A, Model B, and Model C) would require some degree of statutory, regulatory and policy changes, as the Staff properly recognized. An initial concern with all three models is that each model creates a distinction between the default service provider and a provider of last resort (or backstop service) that is not supported by Chapter 28. As amended in 2008, Chapter 28 defines the default service provider as follows:

“Default service provider.” An electric distribution company within its certified service territory or an alternative supplier approved by the commission that provides generation service to retail electric customers who:

- (1) contract for electric power, including energy and capacity, and the chosen electric generation supplier does not supply the service; or
- (2) do not choose an alternative electric generation supplier.

66 Pa.C.S. §2803 (definitions). As can be seen, the default service provider is the entity that is to provide service if an electric generation supplier fails to supply that service. There is no indication in the statutory definition that an EGS serving as default service provider could fail to provide service and fall back on the EDC as these models envision. The default service provider is to provide all “backstop” service, not to have another backstop available to it. It should be noted that Section 2807(e)(4), which has been included in Chapter 28 since 1996, states that if a customer switches to an alternative supplier and subsequently desires to return to the local distribution company, the company “shall treat that customer exactly as it would any new applicant for energy service.” 66 Pa.C.S. §2807(e)(4). This provision supports the conclusion that the default service provider to customer returning to that service must be the same as to customers who never left.

All three models also contain a defined default service product. Model A uses a singular product, a real-time hourly LMP with an adder, as the default service product. This product is a purely spot market product that does not conform to the requirements of Section 2807(e)(3.2) for a prudent mix of spot market purchases, short term contracts, and long term contracts. Model B uses a “prevailing market price” standard which is the standard that was repealed by Act 129 of 2008. The OCA respectfully submits that the products contemplated in Models A and B would require significant statutory and policy changes to implement. Just as fundamentally, however, the OCA submits that the products reflected in Models A and B are not appropriate for the provision of default service to residential customers. The sole reliance on spot market or short term purchases as the exclusive means to serve residential customers results in volatile rates and bills that are hard for customers to understand and to manage.¹

As the OCA noted at the *en banc* hearing and herein, the **product** defined in Model C, a prudent mix of contracts designed to produce the least cost over time, is consistent with existing law and best meets the goals set out by the General Assembly of providing stable, reasonable, competitively-priced generation for residential default service customers. In the OCA’s view, the product defined in Model C lends itself to a plain vanilla default service price for residential customers that changes on a quarterly or less frequent basis. This type of default service and default service rate provides advantages for customers in comparing offers provided by EGSs as well as in managing their energy bills. These dual purposes, both supported by Pennsylvania’s restructuring law, can best be accomplished by a procurement strategy and product as set forth in Model C.

¹ The volatility of the resulting price from Model A is also reflected in its monthly, or more frequent, price change feature. This feature is inconsistent with Section 2807(e)(7) that requires that the generation price for residential and small business customers change no more than quarterly. 66 Pa. C.S. §2807(e)(7).

As noted above, with respect to each of the Models, the Staff proposes that an EGS rather than the EDC procure the default service product. Under both the original 1996 restructuring law and Act 129 of 2008, the Commission is authorized to designate an alternative electric supplier to fulfill the default service functions. See 66 Pa.C.S. §§ 2802(16), 2803 (Definitions), and 2807(e)(3.1). As discussed above, the Commission has issued regulations regarding the standards that it will apply in determining whether and when to reassign the default service function to an alternative supplier. 52 Pa. Code §54.183. The Commission has stated that it will evaluate “the incumbent EDC’s operational and financial fitness to serve retail customers, and its ability to provide default service under reasonable rates and conditions.” 52 Pa. Code §54.183(c). If the Commission determines that an EDC should be relieved of its default service obligation, the Commission will conduct a “competitive process for the replacement of the default service provider” and will approve the alternative default service provider that is “best able to fulfill the obligation in a safe, cost-effective and efficient manner” consistent with the Public Utility Code. 52 Pa. Code §54.183(d).

The regulations address a critical concern when considering the entity that will provide the default service product – which entity can provide default service in the most reliable, efficient and economical manner. It is important to note that under all three Staff models, the EDC does not fully depart from its current default service obligations or from the obligations related to the provision of default service. As mentioned above, under the Staff models, the EDC remains the “backstop” provider of last resort in the event the alternative default service provider fails. The EDC also remains obligated to provide universal service programs which entails providing generation supply for universal service customers. The EDC also serves the net metering customers which requires the procurement of default service supply,

and the EDC serves in the default service role for the PJM Settlement process. Each of these activities will require the EDC to engage in the wholesale markets and incur costs essential to the provision of default service for all customers.

Under the current default service model, the EDCs provide *all* of the functions identified in the Staff proposals. By introducing an alternative entity to procure the basic default service product, the potential for duplicative costs that would raise the overall cost to consumers of generation service clearly arises. An alternative entity providing default service would seek to recover its own administrative costs, some of which will also be incurred by the EDC. An alternative entity would also seek to recover its own risk premiums and profit margins, costs that the EDC does not recover from customers under the current reconcilable default service model. It is also important to note that the EDC under the Staff models serves as the backstop supplier. In other words, the EDC must always stand ready to serve customers. Given this obligation, as well as the EDC's obligation to ensure that energy is delivered to its system in a manner that preserves the reliability and integrity of the system (Section 2806 (a) to (d)), it is not clear what economic benefit would be achieved by removing the basic default service procurement function from the EDC.

As noted, the proposed Staff Discussion Models contain other features related to billing, consumer protection, and termination of service that are to be the subject of further discussion. Without consideration of the details of these functions, it is not possible to address the propriety of any proposal or the public policy implications of the proposals. The OCA would note, though, that in enacting the Pennsylvania restructuring law in 1996, the General Assembly took great care in ensuring that the fundamental protections provided to consumers of essential utility service were maintained in the restructured environment. Sections 2807(c) and (d)

address some of these essential customer service functions. 66 Pa.C.S. §2807(c) and (d). Section 2807(d) establishes the obligation of the EDC for consumer protection and customer service. Section 2807(d) states:

The electric distribution company shall continue to provide customer service functions consistent with the regulations of the commission, including meter reading, complaint resolution and collections. Customer service shall, at a minimum, be maintained at the same level of quality under retail competition.

66 Pa.C.S. §2807(d). Section 2807(c) addresses customer billing, placing the choice of billing in the hands of the consumer, but requiring the EDC to perform the essential billing function if the customer does not choose to receive a separate bill.²

As can be seen, the proposed Staff Discussion Models implicate numerous provisions of Chapter 28, some enacted as recently as 2008. Through Chapter 28, the General Assembly established many goals and many standards that must be considered and balanced in its implementation. The General Assembly, however, clearly sought to ensure that reliable service at reasonable, stable, affordable prices would be available to all customers. The General Assembly also sought to ensure that the essential consumer protections for electric service are available to customers.

The OCA agrees that competitive enhancements and other improvements in the provision of default service can and should be pursued within the framework of the existing law and the policy determinations of the General Assembly and this Commission. The OCA looks forward to continuing to work with the stakeholders to improve default service and retail choice in Pennsylvania.

² The OCA would also note that Section 2804(5) precludes the Commission from ordering a divestiture or corporate reorganization. 66 Pa.C.S. §2804(5). Proposals that would require an EDC to divest its billing function or establish a separate corporate entity to conduct billing would not be consistent with this section. Such proposals could also have an impact on the EDC's work force, particularly the customer service function and billing function workforce within the EDC. The General Assembly noted this as a particular consideration in Section 2802(11).

III. COMMENTS ON CONSUMER EDUCATION

At the *en banc* hearing, the Commission received comments on the issue on-going consumer education and the possibility of a statewide consumer education campaign. The OCA has fully supported the Commission's efforts at consumer education since the inception of Pennsylvania's Restructuring Act in 1996. The materials presented at several of the *en banc* hearings held by the Commission have shown that these efforts have been successful in many respects. Awareness of retail choice is high in Pennsylvania, even though more work remains to be done on dispelling misconceptions that customers may have about the impact of a choice on the reliability of their electric service. The OCA also submits that there is more work to be done on educating customers about the fundamentals of making a choice, including providing customers with the knowledge that they need to shop for value added products. These points were ably made by the presenters at the March 21st *en banc* hearing.

As the Commission considers additional consumer education efforts, the OCA has three points for consideration. First, while on-going consumer education efforts have shown signs of success, the OCA urges the Commission to continue to evaluate the messages and methods of communicating with customers. The effectiveness of the consumer education efforts is a key to the success of retail choice. Education efforts should be directed at ensuring that customers have the type of information that they need to participate in the retail market. In particular, as several commentators pointed out, education efforts should ensure that customers understand the innovative products and services that may be offered in the retail market.

Second, the Commission should take care to ensure that any consumer education materials that are to be mailed to customers are coordinated, in both timing and message, with other outreach efforts to customers. Through the Intermediate Work Plan Order, the EDCs will

be engaging in several new initiatives that will need to be communicated to customers. Competing messages and an overload of messages at a given point in time could thwart the best designed consumer education effort. As education efforts move forward, great care must be taken in terms of the timing of the efforts so that each initiative and message can be properly communicated to, and received by, consumers.

Third, the Commission must consider funding for these education efforts in a manner that best shares the costs among the beneficiaries of these efforts. Throughout this investigation process, the OCA has been of the view that the cost of consumer education efforts should be shared as these efforts benefit EGSs as well as consumers. It has been the OCA's position that a method should be developed so that EGSs pick up a fair share of these costs given the significant benefit that EGSs receive from the Commission efforts. At the *en banc* hearing, several methods for recovering the cost of consumer education were discussed. The OCA would like to highlight here one approach discussed at the *en banc* hearing that was referred to as the "fair share" approach. Tr. 415. In this approach, the costs of consumer education would be allocated between utility customers and competitive suppliers based on the current level of statewide migration. If, for example, statewide migration was 30%, the EGS share would be 30% of the costs, spread among the EGSs. This method would reflect both the benefit that has resulted from the education efforts as well as the work yet to be done.

The OCA also suggests that as Pennsylvania moves forward with education efforts, that the efforts and messaging be informative, provide customers the knowledge that they need to make an informed choice, be coordinated throughout the industry as well as with other programmatic efforts and be sustainable at reasonable cost. To that end, the OCA would also highlight the efforts of the American Coalition of Competitive Energy Suppliers (ACCES)

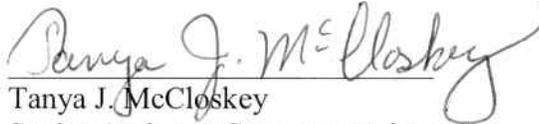
discussed at the *en banc* hearing. Tr. 410. The development of key messages and consistent information that can be used throughout the industry will provide valuable assistance in educating and informing consumers.

The OCA looks forward to continuing to work with the Commission, the Commission Staff, and all stakeholders on the on-going education efforts. Educated and informed consumers are the key to success of retail choice.

IV. CONCLUSION

The OCA thanks the Commission for the opportunity to provide these additional comments on the Staff Discussion Document and Proposed Default Service Models as well as the on-going consumer education efforts in the Commonwealth. The OCA looks forward to continuing to work with the Commission, Staff and the stakeholders on these important issues.

Respectfully Submitted,



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