

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**INVESTIGATION OF** :  
**PENNSYLVANIA’S RETAIL** : **DOCKET NO. I-2011-2237952**  
**ELECTRICITY MARKET** :

**COMMENTS OF EXELON  
ON THE END STATE OF DEFAULT SERVICE**

**I. INTRODUCTION**

PECO Energy Company (“PECO”), Exelon Generation Company, Exelon Energy Company, and Constellation NewEnergy, Inc. (collectively “Exelon”)<sup>1</sup> hereby submit these comments following the Pennsylvania Public Utility Commission’s (“Commission”) March 21, 2012 *en banc* hearing in the Commission’s Investigation of Pennsylvania’s Retail Electricity Market (“Investigation”). These comments are a follow up to the testimony presented at the *en banc* hearing on the end state of default service in Pennsylvania. The exploration of the ultimate default service structure presents a number of complex issues for the market and all stakeholders, including electric distribution companies (“EDC”), electric generation suppliers (“EGS” or “supplier”), wholesale default service suppliers (“wholesale supplier”), advocates and the Commission. Exelon appreciates the opportunity to comment on these important issues.

Since the Commission initiated the Investigation on April 29, 2011,<sup>2</sup> Exelon has actively participated in Commission proceedings and in the extensive stakeholder work led by the Commission’s Office of Competitive Market Oversight (“OCMO”). Exelon has submitted

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<sup>1</sup> On March 12, 2012, Exelon Corporation merged with Constellation Energy.

<sup>2</sup> *Investigation of Pennsylvania’s Retail Electricity Market*, Docket No. I-2011-2237952 (Order entered April 29, 2011) (the “Phase I Order”).

detailed comments on many issues throughout the Investigation, and Exelon or PECO has provided testimony at all three of the Commission's *en banc* hearings.

In its March 2, 2012 discussion document, Commission staff presented three potential end state models with different default service products and invited stakeholders to provide comments at the *en banc* hearing and in these follow-up comments. In Model A, staff proposed that the default service product should be a real-time price based on an hourly locational marginal price ("LMP") with an administrative adder. The Model B default service product would be the "prevailing market price" established through an index, auction or comparable method. Model C retains the default service product as it is today. In each of these models, one or more EGSs would serve as the default service provider; however, EDCs would retain the responsibility for various complex functions and programs such as a proposed Provider of Last Resort ("POLR") emergency backstop service, PJM settlement and universal service programs.

At the *en banc* hearing, Chairman Powelson noted eight specific issues that must be addressed in developing an end state model. To paraphrase, the issues are (1) funding a statewide consumer education program; (2) ensuring universal service programs and customer protections under Chapter 14 of the Public Utility Code are maintained for low income customers; (3) availability of long-term contracts for Alternative Energy Portfolio Standard ("AEPS") resources; (4) maintaining net metering benefits; (5) structuring customer billing and providing protections for related credit and collection risk; (6) determining need and/or structure of an emergency backstop service distinct from default service; (7) determining the appropriate timeline to transition to the end state; and (8) mitigating overlapping or duplicative costs for customers as a result of the transition to the end state.

Exelon's comments are divided into three sections. In section A, the comments recommend an end-state structure Exelon believes would be effective and cost efficient and also address each of the staff's proposed models. In section B, the comments address each of the issues noted by the Chairman at the end of the *en banc* hearing and, in section C, the comments describe additional issues that must be resolved before implementation of a new end state.

## II. COMMENTS

### A. **The End State Default Service Product Should be Reflective of Shorter-Term Market Prices While Avoiding Market Volatility for Residential and Small Commercial Customers.**

Exelon believes the discussion about the proper end-state should be focused on the default service *product*, because if properly structured, it can enhance retail competition regardless of who supplies it. Exelon believes a properly structured default service product should be reflective of shorter-term market prices, while also protecting residential and small commercial customers ("mass market") from market volatility. This can be accomplished by providing a one-year default service product for the mass market, procured through laddered full requirements contracts or based on a transparent forward market index, to hedge against buying all of the supply at the top of the market. A default service product with a minimum one-year term would protect mass market customers from the volatility that likely would occur with a shorter term product. Additionally, setting the price as closely as possible to the actual time of delivery would help ensure that the default service price is more reflective of current market prices and help reduce the "boom or bust" cycle created by procuring default supply through longer term contracts or too far from delivery.

On the other hand, Exelon believes that because medium and large commercial customers are in a better position to manage volatility, they could benefit from having a product that reflects real-time wholesale market prices. Accordingly, Exelon envisions that most non-

residential customers, perhaps down to 25kW, could be systematically transitioned to an hourly- or monthly-priced default service product. This transition should be linked to predetermined shopping thresholds to reduce the number of customers that must be switched without their consent. For hourly pricing in particular, the transition would need to be coordinated with the installation of smart meters and the billing process changes necessary to accomplish hourly billing.

With respect to the three models proposed in the staff discussion document, Exelon believes the Model B default service product, with certain modifications, is the most attractive for mass market customers. Although Exelon recognizes that “prevailing market prices” is no longer the legal standard,<sup>3</sup> Exelon supports Model’s B’s establishment of a default service price through an index or competitive procurements and believes that Exelon’s proposed default service product described above fits within this model.

With respect to the product described in Model A, Exelon supports the use of hourly- and monthly-priced products for commercial and industrial customers, provided that an appropriate transition plan is put in place. However, that default service pricing structure has the potential for volatility that could present significant challenges to many residential and small commercial customers who could have difficulty absorbing a sudden shift to a high-priced hourly product in a high usage month, such as July or August. This likely would create credit and collection issues and call center impacts for any billing agent with Purchase of Receivables (“POR”) responsibilities. If that credit and collection risk remains with the EDCs, the Commission should consider mechanisms to mitigate that exposure, such as a bad debt tracker or rider. If it is shifted to an EGS serving as the default service provider, termination rights should be provided to the

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<sup>3</sup> “Prevailing Market Prices” was the standard under the Competition Act, but was removed when the Competition Act was amended by Act 129. Act 129 of 2008, P.L. 1592, No. 129.

EGS to mitigate that risk. As described further in section II(B)(2) below, Model A would also present challenges for universal service programs.

Finally, Exelon does not support Model C because it fails to change the default service product. Exelon agrees with the comments of several stakeholders that changes to the default service product are needed to foster sustainable shopping.

**B. Issues Raised at the March 21, 2012 *En Banc* Hearing**

**1. A variety of mechanisms could be used to fund a statewide consumer education program.**

Exelon representatives have been active participants in the Consumer Education Subgroup, which has been tasked with developing a statewide consumer education program to improve the Commonwealth's competitive electricity market. Exelon believes that any state-wide consumer education plan must be evaluated to ensure that the costs of such a plan are commensurate with its benefits. The Consumer Education Subgroup has been considering possible approaches to provide funding for statewide consumer education programs, a number of which Exelon believes could be workable. Exelon is not wedded to any particular mechanism but believes that the Commission should ensure that whatever mechanism is selected is supported by balanced funding from EGSs. Moreover, to the extent EDCs provide any portion of the funding for a state-wide consumer education program, they should receive full and current cost recovery.

**2. Protections of low-income customers must be maintained under any default service model.**

Exelon agrees with the comments made by consumer and low-income advocates at the *en banc* hearing that the law requires programs and protections for low-income customers

(generally known as universal service programs)<sup>4</sup> must be maintained under any new default service model. These include customer assistance programs (“CAP”), energy conservation programs and the customer protections under Chapter 14 of the Public Utility Code and Chapter 56 of the Pa Code.<sup>5</sup> When the General Assembly passed the Electricity Generation Customer Choice and Competition Act (the Competition Act),<sup>6</sup> it directed the Commission to “ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution territory.”<sup>7</sup> Today, the Commission regulates, and each of the EDCs administers and maintains, various programs to benefit low-income customers.

Under any new end-state model, stakeholders must consider what entity will administer universal service programs, how such programs will be adequately funded and how to ensure proper Commission oversight of the programs. If an hourly or monthly default service product were adopted, for example, PECO’s CAP programs would have to be redesigned because there would be no baseline price against which to calculate discounts for low-income customers. In addition, CAP discounts are funded by residential customers, and those customers should not have to pay more under a new default service model than they do today. Thus, the CAP discount provided to a CAP customer who is shopping or on default service provided by an EGS should not be greater than it would have been had the customer remained on default service provided by an EDC.

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<sup>4</sup> *Universal service and energy conservation*--Policies, protections and services that help low-income customers to maintain electric service. The term includes customer assistance programs, termination of service protection and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs, application of renewable resources and consumer education. 66 Pa.C.S. § 2803.

<sup>5</sup> 66 Pa.C.S. §§ 1401– 1418; 52 Pa Code 56.1- 56.231.

<sup>6</sup> 66 Pa.C.S. §§ 2801-2812.

<sup>7</sup> 66 Pa C.S. § 2804(9); *see also*, 66 Pa.C.S. §2802(10).

Currently, CAP programs are structured differently in EDC service territories across the state. To facilitate user-friendly statewide shopping among CAP customers, the various EDC CAP programs could be structured to be more consistent and the CAP discount could be portable. This could be accomplished by implementing a funding mechanism such as a state-wide societal benefits charge, which would provide a source of funding that is equitable, transparent, and easy to administer, regardless of the ultimate default service model.

### **3. Availability of long-term contracts for AEPS resources.**

The Alternative Energy Portfolio Standards Act (“AEPS Act” or “Act”), 73 P.S. §§ 1648.1 – 1648.8, does not mandate the purchase of long term contracts. Commission regulations require default service providers to identify a competitive procurement process for acquiring alternative energy credits in default service plans filed with the Commission, but they are not mandated to propose long term contracts as part of that plan.<sup>8</sup> To the extent that an EGS assumes the role of default service provider, it will be obligated to meet the same competitive procurement process requirements that EDCs currently must meet. Depending upon market conditions, an EGS serving as default service provider may determine to include long term contracts in its procurement plan.<sup>9</sup> The Commission has indicated that default service providers should have flexibility to acquire alternative energy credits (“AEC”) through a variety of methods, and that undue reliance on any particular product is not advisable given the relatively recent development of the AEC market for certain renewables and the fact that pricing may not reflect the market price of power.<sup>10</sup> This principle holds true regardless of whether the default service provider is an EDC or an EGS. Accordingly, Exelon believes that the Commission

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<sup>8</sup> See 52 Pa Code § 75.67(b).

<sup>9</sup> Several EDCs, including PECO, have voluntarily procured long term contracts for solar or Tier I alternative energy sources as part of their Commission-approved default service procurement plans.

<sup>10</sup> *Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets*, Final Rulemaking Order, Docket No. L-2009-2095604, October 4, 2011 (Rejected by the IRC March 15, 2012).

should maintain its policy of flexibility in the procurement of alternative energy credits for default service and should not mandate the purchase of long term contracts.

**4. Net metering for customers who switch.**

Exelon is still evaluating the net metering issue raised at the *en banc* hearing and may provide additional comments on this subject at a later time.

**5. Billing.**

Under each of the three proposed models, Commission staff expressly suggested the use of supplier consolidated billing or third party billing, but later clarified that utility consolidated billing would continue to be an option under all models as well. Exelon believes that while those billing structures, as well as dual billing, should all be available options for customers in a competitive marketplace, there should be one standard billing structure for all default service customers in the end-state. There are advantages and disadvantages to individual stakeholders under each of the billing structures that the Commission should consider when making its recommendation. Under all structures, however, credit and collection risk should be the responsibility of the billing party, as should an appropriate purchase of receivables program. The credit and collection risk is increased with a default service product that has the potential to be volatile, because non-payment would likely increase during times when prices spike.

Depending on the billing structure, there are specific measures the Commission could take to mitigate the credit and collection risk to the billing party. For example, if the EDC were to remain the billing agent with collection and POR responsibility, the Commission could provide a bad debt tracker to allow the utility to better manage that risk and collect its costs. If the EGS were the billing agent, the Commission could provide them the ability to initiate termination of service as a result of non-payment. While keeping the billing responsibility with the EDC may seem on its face to be more efficient and cost effective, allowing suppliers to

increase brand recognition and consolidate value added services through supplier consolidated billing is a benefit to customers and retail competition as a whole.

In addition, for any consolidated billing structure, adequate protections need to be put in place to ensure that the funds owed to the party whose receivables are purchased are paid in a predictable and timely manner. The creditworthiness requirements of any consolidated biller should reflect this additional responsibility.

**6. The Competition Act does not authorize a separate POLR product.**

Exelon agrees with the Consumer Advocate that current law does not provide for a POLR product as distinct from the default service product. In relevant part, Act 129 provides

Following the expiration of an electric distribution company's obligation to provide electric generation supply to retail customers at capped rates, if a customer contracts for electric generation supply service and the chosen electric supplier does not provide the service or if a customer does not choose an alternative electric generation supplier, the default service provider shall provide electric generation supply service to the customer pursuant to a commission-approved competitive procurement plan.<sup>11</sup>

The Legislature clearly intended the default service product to include the emergency backstop service, and it provided no authority to create a separate POLR function. Moreover, creating a POLR in addition to the default service provider would entail duplicative costs and systems. For example, a POLR provider would need to put billing systems in place to serve some of the same functions as the default service provider. In a model in which multiple EGSs provide default service, the "backstop" if one or more of those EGSs is unable to provide the service, should be a redistribution of those customers to other EGSs providing default service. A protocol for redistributing customers would have to be developed in order to accomplish this.

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<sup>11</sup> 66 Pa.C.S. § 2807(e) (3.1).

**7. Customers should be transitioned to the end state in a phased approach.**

As discussed above, Exelon supports a phased transition to the default service end state that is linked to predetermined shopping thresholds and transfers the commercial and industrial customers first. We believe more time beyond 2015 is needed to properly transition mass market customers to a substantially different default service model, particularly if it involves removing the EDC from that role. Implementing a program as a glide path that gradually transitions customers to a new default service model will be most efficient and effective and least disruptive to consumers. Specifically, Exelon recommends the Commission set shopping and minimum supplier thresholds that must be met in each customer segment before those customers are moved to the new end state model. Once the thresholds are met, customers could be notified that they will be transferred to the new default service product within a set amount of time if they do not voluntarily choose an EGS beforehand. Customers always remain free to competitively shop with an EGS. Creating this glide path allows time for the RMI's interim competitive enhancements and increased consumer education to take hold and increase shopping levels organically. Removing the EDC from the default service role will necessarily involve forcibly switching customers to the new EGS default service provider(s), which customers are likely to view negatively. With a phased approach as suggested by Exelon, the Commission can minimize the disruption and customer dissatisfaction that involuntary switching can cause.

**8. The end state should not result in duplicative costs.**

Exelon agrees with the Consumer Advocate's comment that whatever end state is adopted, it should be carefully designed so that it does not result in EDCs and EGSs performing duplicative functions or incurring overlapping costs. For example, as noted in section II(B)(6)

above, providing a POLR emergency backstop product *in addition to* a default service provider would result in duplicative costs and systems, which would be borne by customers.

**C. Additional Issues Must be Resolved in Order to Implement any New End State.**

In addition to the issues discussed above, a number of other operational and regulatory questions must be addressed if the proposed end state involves one or more EGSs providing default service. Below, Exelon identifies just some of the outstanding questions that need to be answered before customers could be properly transitioned to a significantly modified default service structure.

- What level of oversight will the Commission have over the default service provider, product and processes? How will costs of providing this oversight function be recovered?
- Will default service providers be selected on a voluntary or mandatory basis? If the former, what happens if there are no, or not enough, volunteers?
- Will default service providers will be subject to a load cap? If so, what will the amount of any load cap be and how will that be determined?
- What will the credit, collection and margining requirements be for EGS default service providers?
- Will default service prices be reconcilable? If default service prices are non-reconcilable, how will under or over collections be treated when one default service providers' term expires and another's term begins.<sup>12</sup>
- If EGSs are to serve as default service providers for a specific limited term, how will the transfer from one default service provider to the next will be accomplished, and who will oversee that process? If default service providers are to serve two-year terms, for example, will forcible switching of customers occur every two years? In addition, what mechanism should be used to apportion customers where there are three default service providers in one period and four in the next period?

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<sup>12</sup> Non-reconcilable prices include a risk premium but have the advantage of having no reconciliation component to carry forward to affect future prices.

- How will PJM rules governing residual zone load responsibility be altered to manage transitions from EDCs to EGSs and transitions between EGSs serving as default service providers? Any changes to PJM’s existing process likely must go through the PJM stakeholder process, so PJM’s engagement in the development of this issue is critical.
- In a default service structure in which multiple EGSs share the POLR responsibility, how should EGS defaults be addressed? In an EGS disorderly default (*i.e.*, one in which an EGS drops customers to default service “overnight”), how is the load shifted to the EGS default service providers when customers cannot be switched until their next meter read dates? Where an EGS drops customers in a planned fashion, to which default service provider are the dropped customers assigned?
- With respect to billing,<sup>13</sup> in the event that supplier consolidated or third party billing is implemented, what changes to EDI processes and transactions and EDEWG standards would be required to enable the new billing entity to take over EDI functions currently performed by the EDCs? Additionally, how will terminations be handled if EGSs are the billing agents?

Exelon believes these questions, and potentially others, still need to be evaluated and answered collaboratively by the Commission and stakeholders. To date, much of the Commission’s focus in the Retail Market Investigation has been on interim enhancements to the market. The Commission should give similar focus to the end state for Pennsylvania’s retail market in order to craft a successful and sustainable end state.

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<sup>13</sup> The implementation of supplier consolidated or third party billing would not obviate the need for EDC billing systems. EDCs must continue to calculate their distribution and transmission charges. Additionally, PECO must continue to bill its 500,000 natural gas customers.

### III. CONCLUSION

Exelon appreciates the opportunity to comment on the end state of default service and asks that the Commission consider its comments. Exelon looks forward to continuing to work with the Commission and other stakeholders as the Investigation progresses.

Respectfully submitted,



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