

Filed Electronically

June 1, 2010

Pennsylvania Public Utility Commission
Attention: Secretary Rosemary Chiavetta
P. O. Box 3265
Harrisburg, PA 17105-3265

Re: Proposed Rulemaking: Default Service Regulations – Implementation of Act 129 of 2008;
Docket Number: L-2009-2095604

Proposed Policy Statement: Default Service and Retail Electric Service;
Docket Number M-2009-2140580

Secretary Chiavetta:

Please find enclosed the comments of the PJM Power Providers Group (P3) in the above captioned proceeding.

Respectfully submitted,



Glen Thomas
President

Commonwealth of Pennsylvania
Before the Pennsylvania Public Utility Commission

Proposed Rulemaking: : **Docket Number: L-2009-2095604**

Default Service Regulations-- :

Implementation of Act 129 of 2008 :

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Default Service and Retail Electric :

Markets :

Comments of the PJM Power Providers Group

The PJM Power Providers Group (P3) is pleased to offer these comments on the Commission's proposed regulations and policy statement to incorporate the legislative changes of Act 129 into the Default Service Regulations. Provider of Last Resort (POLR) procurements represent the foundation of Pennsylvania's competitive electricity market, and it is critically important that Pennsylvania's POLR policy maximizes the benefits of wholesale and retail competition for the benefit of the Commonwealth's consumers.

P3 is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly designed and well-functioning electricity markets in the PJM Interconnection, L.L.C. ("PJM") region. P3 membership is comprised of energy providers that are members of PJM, conduct business in the PJM balancing authority area, and are signatories to various PJM agreements. Combined, P3 members own over 75,000 megawatts of power and over 51,000 miles of transmission lines in the PJM region, serve nearly 12.2 million customers

and employ over 55,000 people in the PJM region, representing 13 states and the District of Columbia. P3 member companies are active in Pennsylvania's electricity market and participate in POLR auctions, serve consumers as competitive suppliers, and own generation and transmission assets in the Commonwealth.¹

In general, Pennsylvania's POLR policies and procurements have been functioning well. Although Act 129 provides the Commission with discretion to make material modifications to Pennsylvania's POLR policy, P3 would urge the Commission to not use this authority to make sweeping changes to POLR policy. The auctions to date have successfully attracted numerous bidders and the competition for default supply has been robust. While each utility has certain unique aspects in its approach to POLR procurement, with the troubling exception of the Duquesne Light service territory, all Pennsylvania EDC's use competitive processes to procure default power for residential consumers.

The Commission has been well served by the default procurement policies that are grounded in competition and competitive processes. The Commission should retain this competitive foundation in these POLR regulations and subsequent POLR plan approvals. Should EDC's decide to use RFP's to acquire default power, these RFP's should be broadly constructed to encourage competition. The Commission should not specify technologies or favor new generation over existing generation. Similarly, if descending clock auctions are the preferred method of procurement, these auctions should be structured to invite multiple bidders and promote competition.

¹ The comments contained in this filing represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue. For more information on P3, visit www.p3powergroup.com.

While largely supporting the current POLR regulations in Pennsylvania, P3 offers these general comments to the proposed regulation and the questions posed by the Commission.

POLR Regulations Should Maintain Flexibility to Respond to Changing Market Conditions

A competitive electricity market is, by its nature, dynamic while regulations, by their nature, tend to be static. The Commission should strike an effective balance between providing sufficient direction to the regulated community while retaining the flexibility to respond to a changing market. P3 urges the Commission to err on the side of flexibility. In the nearly fifteen years since the passage of the Electric Generation Customer Choice and Competition Act, the Commission has seen firsthand how quickly the market can change. Hurricanes, recessions, terrorist attacks and other global conditions have dramatically impacted Pennsylvania's power markets. The Commission should retain the ability to respond quickly if necessary to any unforeseen circumstance.

Accordingly, the Commission should not dictate a specific percentage of default load that should be procured from spot purchases, long term contracts, etc. The Commission should allow EDC's flexibility to propose what they believe to be a prudent portfolio of competitive procurements, invite comments and then exercise informed discretion to determine the most appropriate procurement mix based on the established record. A flexible regulatory platform combined with a Commission commitment to competition will likely yield the optimal POLR policies for the Commonwealth.

Existing Wholesale Market Mechanisms Are Equipped to Maintain an Adequate Supply of Power in Pennsylvania

There are numerous existing mechanisms in place in PJM that are designed to insure that there is an adequate supply of power to meet the needs of Pennsylvania's consumers. PJM's capacity markets are the reliability mechanism in the region and have consistently delivered sufficient power to meet the needs of the grid.² Should the PJM capacity markets fail to deliver sufficient supplies, PJM has numerous tools at their disposal to insure reliability:

- Reliability Backstop Auctions. If the base residual and incremental capacity auctions do not procure sufficient resources, PJM may conduct a reliability backstop auction to competitively procure additional resources as needed for reliability for up to fifteen years.
- Transmission. PJM also has authority to order new transmission facilities as necessary to maintain reliability that could alleviate the need for new generation.

P3 believes that resource adequacy should be addressed through PJM's existing market (which allows, generation, energy efficiency, demand response and transmission suppliers full participation) and transmission planning mechanisms. New state-mandated generation is likely to cost more than existing generation and impose substantial and long-term financial risks on consumers. The risk of construction cost overruns and delays, fuel risks, environmental compliance costs, outage risk, and other risks are all borne by consumers. The approval of new rate-based generation also imposes these risks for the life of the asset, which may extend to 30 years or more. While numerous and sufficient tools exist at the wholesale level to maintain reliability, if the Commission decides to order new resources, they should be:

- narrowly characterized as "necessary to ensure reliability,"

² PJM recently completed its seventh round of capacity procurements where it procured sufficient resources to meet projected demand through May 2014.

- competitively procured,
- for the minimal term necessary,
- paid for directly by the load that benefits; and,
- not undermine wholesale market rules, appropriate principles of cost allocation, capacity or energy pricing, or existing contracts.

A Full Requirements Contracts Approach Is the Superior Means to Acquire Default Supply

One of the driving principles of restructuring in Pennsylvania was to shift risk from the electric consumers of Pennsylvania to the market participants seeking to serve Pennsylvania consumers. Prior to 1996, under a vertically-integrated market structure, Pennsylvania consumers shouldered the risks of construction cost overruns, commodity volatility, weather and other variations of the generation business. This risk shift from consumers to the market was in the best long term interests of Pennsylvania and should be supported, not eroded, by POLR regulations.

Load following full requirements default supply contracts appropriately keep the majority of the risks associated with default supply on the backs of POLR suppliers and off the utilities and consumers. Simply stated, utilities creeping back in the generation business through active portfolio management of default supply myopically brings these risks back to both the utilities and the consumers. EDC's should be outcome-neutral purchasers of power for their consumers who do not choose a competitive supplier. The financial health of EDC's should be exclusively tied to their ability to manage distribution assets at just and reasonable rates – not to their ability

to play in the generation markets.³ The recently approved Duquesne POLR Plan stands as an anathema to this proposition and the concerns expressed by Chairman Cawley and Commissioner Gardner in their statements in the proceeding are very well founded. P3 hopes that the Duquesne decision represents the exception rather than the rule regarding PA POLR policy.⁴

Moreover, P3 urges the Commission to review a recent decision from the Rhode Island Public Utilities Commission (Docket Number 4041) that relied on an extensive analysis of various procurement methodologies prepared by the NorthBridge Group. The study, using a “Monte Carlo” approach incorporating 2,000 different market scenarios through computer simulations, compared the fixed requirements procurement to a managed portfolio approach and found that a procurement structure relying primarily on full requirement products (1) results in lower risks allocated to customers, lower supply cost surprises and minimal deferral account balances; (2) reduces the potential effects of additional costs and risks; and (3) requires lower EDC resources to implement. The 2010 Procurement Structure Analysis found that the full requirement approach provided all of these benefits, while resulting in only a minimally higher expected rate level for consumers.

³The Commission should be troubled by the notion that a utility may begin to look at generation procurement as a new profit center opening the door for potential trading strategies that could harm the financial health of the utility if they do not produce the intended result. This result was never the intent of the Electric Competition and Consumer Choice Act and represents a very risky proposition for Pennsylvania’s electricity consumers and utilities.

⁴It is telling that the Commission approved “utility managed portfolio rates” for Duquesne in 2011-13 at \$78.60 per MWH three days before Allegheny Energy (which is contiguous to Duquesne) announced they were able to acquire power through a “full requirements” process for roughly the same period of time at \$59.39 per MWH. While there are some material differences between the two procurements, the 30% gap between the full requirement rates and managed portfolio rates in the case of this two neighboring utilities securing power for roughly the same period of time should be noted by the Commission.

Reasonable Measures to Make POLR Procurements More Transparent Should be Explored

Unlike some other states, Pennsylvania does not have a uniform means of reporting the results of POLR procurements to the public. While some companies issue press releases, others do nothing making it very difficult to obtain timely information on POLR procurements in Pennsylvania. Moreover, information provided by the Commission can be somewhat episodic and non-comprehensive. P3 believes that this process can be improved without jeopardizing the competitiveness of future procurements.

P3 urges the Commission to review how Maryland, New Jersey and Illinois make information about default auctions available. In those states, it is easier to obtain information and subsequently explain how these default auctions are competitive and producing competitive rates for consumers who do not shop for competitive power.

The Commission should consider a stakeholder process to address this issue. Consumers, suppliers and policymakers could all benefit from more transparency from the Pennsylvania process. Commission staff and interested stakeholders could be tasked to discuss the issue and develop recommendations for the Commission's consideration. If done appropriately, the recommendations could enjoy wide support and ultimately provide additional confidence in Pennsylvania's POLR prices.