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June 1, 2010

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Proposed Policy Statement Regarding Default Service and Retail Electric Markets
Docket No. M-2009-2140580

Dear Secretary Chiavetta:

Enclosed for filing are the Comments of the Office of Consumer Advocate, in the above-referenced proceeding.

Should you have any questions, please contact our office at the number above.

Respectfully Submitted,

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Assistant Consumer Advocate
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Enclosure
cc: Elizabeth Barnes, Assistant Counsel (via e-mail only)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

| | | |
|---|---|---|
| Default Service and Retail Electric Markets Policy Statement | : : | Docket No. M-2009-2140580 |

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# COMMENTS OF THE OFFICE OF CONSUMER ADVOCATE ON THE DEFAULT SERVICE AND RETAIL ELECTRIC MARKETS POLICY STATEMENT

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Dated: June 1, 2010

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## I. INTRODUCTION

The Office of Consumer Advocate (OCA) welcomes the opportunity to submit Comments on the Proposed Policy Statement Revisions published in the Pennsylvania Bulletin on May 1, 2010. 40 Pa.B. 2289. The OCA is also submitting Comments today on the Default Service Regulations published in the Pennsylvania Bulletin on May 1, 2010. 40 Pa.B. 2267. The OCA requests that the Commission read these Comments in conjunction with the Default Service Regulations Comments as the two subjects overlap substantially.

The Policy Statement, as a whole, sets forth key guidance to Default Service Providers in complying with the Commission regulations while developing their default service plans. While the Commission's proposed modifications to the Policy Statement include changes to only three of the provisions of 52 Pa.Code Section 69.1801 *et seq.*, the Commission invited comments on the remainder of the sections, as well. 40 Pa.B. 2289 at 4. In this document, the OCA will highlight some of the key elements of the Policy Statement that the OCA believes need to be addressed in light of the changes to default service requirements made by Act 129 of 2008. Where the OCA has not recommended changes on a provision of the Policy Statement, the OCA will provide no comment on the provision.[1]

## II. SPECIFIC COMMENTS ON THE POLICY STATEMENT PROVISIONS

### A. Section 69.1803. Purpose.

In the existing Policy Statement, the Commission defined the goal of the default service regulations. In doing so, the Commission understandably addressed the language of the Electric Generation Customer Choice and Competition Act of 1996. The Commission has not

[1] For ease of reference, in its edits to the Policy Statement the OCA has accepted all proposed Commission modifications. The OCA then underlined its additions and utilized strikethrough for its deletions to the Commission's modifications.

proposed to changed this Section. The OCA submits, however, that the Commission's analysis must change in light of the passage of Act 129 of 2008 (Act 129).

Specifically, the Commission should seek to ensure that the default service provider provides adequate and reliable service at the least cost to customers over time. Act 129, 66 Pa.C.S. § 2806.1 *et seq*, pmbl. The Policy Statement should be modified to recognize this goal. 66 Pa.C.S. § 2807(e)(3.4). While the use of competitive wholesale and retail markets is a means to achieve that goal, it is not an end in itself. Accordingly, the OCA proposes the following modifications to Section 69.1802:

> (a) The Commission has adopted regulations governing the default service obligation in § § 54.181—54.189 (relating to default service), as required by 66 Pa.C.S. § 2807(e) (relating to the duties of electric distribution companies). The regulations address the elements of a default service regulatory framework. The goal of the default service regulations is to ensure that each DSP provides default service customers with adequate and reliable service at the least cost to customers over time. ~~The goal of the default service regulations is to bring competitive market discipline to historically regulated markets~~. This goal can be accomplished by structuring default service in a way that brings competitive market discipline to historically regulated markets and by encouraging ~~encourages~~ the entry of new retail and wholesale suppliers. Greater diversity of suppliers will benefit ratepayers and the Commonwealth. However, those rules are not designed to resolve every possible issue relating to the acquisition of electric generation supply, the recovery of reasonable costs, the conditions of service and the relationship with the competitive retail market.
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> ...

52 Pa.Code § 69.1802(a). The OCA submits that these proposed modifications capture the intent of Act 129 and should be adopted.

B. Section 69.1803. Definitions.

The OCA has no comment on the Commission's proposal to add definitions for "bilateral contract" and "default service provider" consistent with 66 Pa.C.S. Section 2803. The

OCA does, however, recommend removal of the definition of "prevailing market prices" from Section 69.1803 as this term is no longer the standard for procurement and is inapplicable under Act 129. The new standard is a prudent mix of contracts designed to ensure adequate and reliable service at the least cost to customers over time. 66 Pa.C.S. § 2807(e)(3.4).

The OCA submits that removal of the definition of "prevailing market prices" as well as other references in the Policy Statement to prevailing market prices is appropriate under Act 129.

C. Section 69.1805. Electric generation supply procurement.

The OCA submits that there are portions of Section 69.1805 that must be updated in order for the Policy Statement to be consistent with the provisions of Act 129. Specifically, the portions of this Section that address long-term contracts must be modified. Section 69.1805, as written, severely restricts the use of long term contracts and expresses a preference for short term procurements, neither of which accurately represent the language of Act 129. Act 129 specifically references the use of long-term contracts (of more than four and no more than 20 years) as part of the "prudent mix" of power that should be procured for default service. 66 Pa.C.S. § 2807(e)(3.2). Further, Act 129 does not favor one type of contract over another; instead, the goal of the Act is to achieve the least cost to customers over time through a prudent mix of long-term, short-term and spot market purchases. 66 Pa.C.S. § 2807(e)(3.4). Also, the Commission's proposed modification regarding the length of contracts is inconsistent with the language of Section 2807(e)(3.2)(iii) that defines "long term contracts" as "more than four and not more than 20 years." 66 Pa.C.S. § 2807(e)(3.2)(iii). It is for these reasons that the OCA proposes the following modifications to Section 69.1805:

A proposed procurement plan should balance the goals of allowing the development of a competitive retail supply market and also including a prudent mix of arrangements to minimize the risk of over-reliance on any energy products at a particular point in time. In developing a proposed procurement plan, a DSP should consider including a prudent mix of supply-side and demand-side resources such as long-term, short-term, staggered-term and spot market purchases to minimize the risk of contracting for supply at times of peak prices. Short term contracts are contracts up to and including ~~3~~ 4 years in length. Long-term contracts are contracts that are more ~~neither less~~ than 4 years ~~nor~~ and not more ~~greater~~ than 20 years ~~in length~~. ~~Long-term contracts should only be used when necessary and required for DSP compliance with alternative energy requirements, and should be restricted to covering a relatively small portion of the default service load. An over-reliance on long-term contracts would mute demand response, create the potential for future default service customers to bear future above-market costs and limit operational flexibility for DSPs to manage their default service supply.~~ Long term contracts of more than four and not more than 20 years should not constitute more than 25% of the default service provider's projected load unless the Commission determines that a greater portion of load is necessary to achieve least cost procurement. The plan should be tailored to the following customer groupings, but DSPs may propose alternative divisions of customers by registered peak load to preserve existing customer classes.

(1) *Residential customers and nonresidential customers with less than 25 kW in maximum registered peak load.* Initially, the DSP should acquire electric generation supply for these customers using a prudent mix of resources as described in the introductory paragraph to this section. ~~Consideration should be given to procuring most fixed-term supply through full requirements or block contracts of 1 to 3 years in duration~~. Contracts should be laddered to minimize risk, in which a portion of the portfolio changes at least annually, with a minimum of two competitive bid solicitations a year to further reduce the risk of acquisition at a time of peak prices. In subsequent programs, the mix ~~percentage~~ of supply acquired through long term, short term, ~~shorter duration full requirements contracts~~ and spot market purchases should be adjusted ~~gradually increased~~, depending on developments in retail and wholesale energy markets, to ensure least cost to customers.

...

52 Pa.Code § 69.1805. The OCA submits that the foregoing modifications will ensure that Section 69.1805 accurately reflects the language of Act 129.

D. Section 69.1807. Competitive bid solicitation processes.

The competitive bid solicitation process portion of the Policy Statement is largely consistent with the language of Act 129. The OCA recommends, however, the addition of a specific provision addressing the release of winning bid information. The process for releasing the results of a competitive procurement varies widely among utilities in the Commonwealth. The OCA submits that all utilities should be required to provide, at a minimum, the winning price results (the price for each product and/or the clearing prices for winning bids) and the quantity of power to be supplied.

This information would be of value to consumers, the OCA and others in understanding market trends and the success of the Company's procurement efforts. Importantly, it would provide key information for consumers as they plan their shopping decisions for current and future service. It is for these reasons that the OCA recommends the addition of the following language to paragraph (7):

> (7) The public interest would be served by the adoption of uniform rules for the confidentiality of competitive solicitation information. Supplier participation, bid prices and retail rates may be impacted by protecting certain information, including, the identity of winning and losing bidders, the number of bids submitted, bid prices, the allocation of load among winning bidders, and the like. At the same time, the Commission recognizes that there is a legitimate public interest in knowing some of this information when there is no possibility of any prejudice to ratepayer interests. Keeping these interests in mind, Default Service Providers should release the following information within seven days of Commission approval of each procurement: the winning price results (the price for each product and/or the clearing prices for winning bids) and the quantity of power to be supplied.

66 Pa.Code § 69.1807(7). The OCA submits that the foregoing modifications will benefit consumers by providing them with valuable information to base their energy choices, and should be adopted.

E. Section 69.1809. Interim price adjustments and cost reconciliation.

The OCA submits that modifications must be made to this Section to reflect the language of Act 129. Specifically, Act 129 states that the rates offered to residential and small business customers may change "no more frequently than on a quarterly basis." 66 Pa.C.S. § 2807(e)(7). For this reason, the OCA suggests the following modifications to Section 69.1809(a):

> (a) Consistent with the default service regulations, default service rates, and correspondingly the PTC, ~~will~~ may be adjusted ~~on a regular basis~~ no more frequently than on a quarterly basis to ~~reflect changes in and~~ ensure the recovery of reasonable costs resulting from changes in wholesale energy prices or other costs from the introduction of new, differently priced energy supply products to the DSP's portfolio, and to correct the under and over collection of costs. ~~For example, the PTC will be adjusted at least every quarter for residential customers and at least every month for large business customers.~~ This PTC adjustment may be driven by changes in spot market prices, the use of laddered contracts, the use of seasonal rate design, and the like.
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> ...

66 Pa.Code § 69.1809. The OCA submits that the foregoing modifications will ensure that Section 69.1809 accurately reflects the language of Act 129.

## III. CONCLUSION

The OCA appreciates this opportunity to comment on the Commission's Proposed Policy Statement. The Commission's regulations on default service, and the policy for the acquisition of supply in the competitive wholesale markets by the default service provider, are of the utmost importance to all residential customers and to the economic well-being of the entire Commonwealth. The OCA looks forward to continuing to work with the Commission and all stakeholders to ensure that electric service, essential to the health and well-being of residents, to public safety, and to orderly economic development in the Commonwealth, is available on reasonable terms and conditions to all customers. 66 Pa.C.S. § 2802(9).

Respectfully Submitted,

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