

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking Re Electric Distribution	:	
Companies' Obligation to Serve retail	:	
Customers at the Conclusion of the	:	Docket No. L-00040169
Transition Period Pursuant to	:	
66 Pa.C.S. § 2807(e)(2)	:	
Default Service and Retail Electric Markets	:	Docket No. M-00072009

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Dated: March 2, 2007

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	REVIEW OF THE REGULATORY APPROACH TO DEFAULT SERVICE	6
A.	The EDC Should Serve As The Default Service Provider In Most Circumstances	6
B.	Default Service Provider’s Obligation to Acquire Supply And Strategy For Such Acquisition.....	8
1.	Introduction.....	8
2.	The Length Of The Default Service Plan Specified In The Proposed Regulations And Proposed Policy Statement May Not Allow For The DSP To Meet The Standard Of Providing The Lowest Reasonable Long-Term Cost Of Supply	10
3.	The Methods Of Procurement Should Not Be Limited To Only Bid Processes Or Spot Market Purchases	11
4.	The Commission’s Proposals Unnecessarily Restrict The Use Of Long Term Contracts and May Unnecessarily Favor Short-Term Load Following Contracts.....	13
a.	Long-Term Contracts Should Be Considered More Broadly to Meet AEPS Requirements or Reliability Needs	13
b.	Load Following Contracts Should Not Be The Only Resources Relied Upon In the Portfolio	15
5.	The Contingency Plan Procedures Should Allow Greater Flexibility To The DSP.....	16
C.	The Cost Recovery Mechanism Proposed By The Commission Calls For Too Frequent Rate Adjustments	17
1.	Quarterly, Or More Frequent, Adjustments Should Not Be Utilized	18
2.	A Reconcilable Cost Recovery Mechanism Is Reasonable In These Circumstances	20
D.	Further Reallocation Of Costs From Distribution Rates To Default Service Rates Should Be Undertaken Cautiously, If At All	21

E.	Rate Design Changes Must Be Gradual And Should Continue To Allow For Various Residential Rate Options	25
F.	Universal Service Obligations Should Remain With The EDC	28
III.	SPECIFIC COMMENTS ON EACH REGULATION	30
A.	Introduction.....	30
B.	Section 54.181. Purpose.....	30
C.	Section 54.182. Definitions.....	31
1.	Competitive Bid Solicitation Process	31
2.	Default Service.....	32
3.	Default Service Implementation Plan	32
D.	Section 54.183. Default service provider.....	33
E.	Section 54.184. Default service provider obligations.....	35
F.	Section 54.185. Default service programs and periods of service	36
1.	Subsection 54.185 (c)—Length of Term	37
2.	Subsection 54.185(d)(1)—Filing Requirements.....	38
3.	Subsections 54.185 (b) and (d)(2)—Technical Corrections	38
G.	Section 54.186. Default service procurement and implementation plans	39
1.	Subsection 54.186(b)(4)--Change to Reflect Competitive Procurement Process.....	41
2.	Subsection 54.186(c)(4) and (c)(1)(vi)—Criteria for Selection of Winning Bid.....	42
3.	Subsection 54.186(c)(5)—Confidentiality of Bid Information	43
4.	Subsection 54.186(d)—Petition for Modification	44
H.	Section 54.187. Default service rate design and the recovery of reasonable costs.....	44

1.	Subsection 54.187(h)—Quarterly Adjustments.....	44
2.	Subsection 54.187(a), (b) and (c)—Rate Design	47
3.	Subsection 54.187(d)—Default Service Costs	49
4.	Subsection 54.187(k)—Spot Market Price	50
I.	Section 54.188. Commission review of default service programs and rates	51
J.	Section 54.189. Default Service Customers	53
IV.	SPECIFIC COMMENTS ON THE POLICY STATEMENT PROVISIONS	55
A.	Introduction.....	55
B.	Section 69.1802. Statement of Purpose	55
C.	Section 69.1803. Definitions.....	56
D.	Section 69.1804. Default service program terms and filing schedules....	56
E.	Section 69.1805. Electric generation supply procurement	58
F.	Section 69.1806. Alternative energy portfolio standard compliance.....	62
G.	Section 69.1807. Competitive bid solicitation processes.....	63
H.	Section 69.1808. Default service cost elements.....	64
I.	Section 69.1809. Interim price adjustments and reconciliation.....	66
J.	Section 69.1810. Retail rate design.....	68
K.	Section 69.1811. Rate change mitigation	69
L.	Section 69.1812. Information and data access.....	69
M.	Section 69. 1813. Rate ready billing.....	70
N.	Section 69.1814. Purchase of Receivables	70
O.	Section 69.1815. Customer referral program.....	72
P.	Section 69.1816. Supplier Tariffs	73

Q.	Section 69.1817. Retail choice ombudsman.....	73
V.	CONCLUSION.....	74
Appendix A: OCA Modifications to Proposed Regulations		
Appendix B: OCA Modifications to Proposed Policy Statement		

I. INTRODUCTION

On February 9, 2007, the Commission entered several orders addressing the obligation of electric distribution companies (EDCs) to serve retail electric customers at the conclusion of the restructuring transition periods in accordance with Section 2807(e) of the Public Utility Code. 66 Pa.C.S. § 2807(e). The first Order is entitled Advance Notice of Final Rulemaking Order (ANOFR Order) and sets forth the specific proposed regulations. The second Order is entitled Proposed Policy Statement (Policy Statement Order) and contains guidelines in the areas of supply procurement, rate design, and cost recovery. A third Order on Policies to Mitigate Potential Electricity Price Increases was entered on February 13, 2007 (Price Mitigation Order) and sets forth various initiatives, including consumer education initiatives, to address the potential for large increases in customer rates at the conclusion of the rate cap periods. Through these three Orders, the Commission seeks to establish a strategy for meeting the default service obligation at the end of the transition period. The Commission noted in its Policy Statement Order:

This policy statement, coupled with the default service regulations, and the order on electricity price mitigation, represents a comprehensive strategy for addressing retail rates in the context of expiring rate caps. We recommend that interested parties review all three documents in formulating their comments.

Policy Statement Order at 2.

The OCA has reviewed and considered the three Orders issued by the Commission and the policies established by these Orders. The OCA submits that the regulations and policies regarding default service are the most critical that the Commission will implement under the Electricity Generation Customer Choice and

Competition Act (Act). As the OCA has stated throughout the Roundtables and Rulemakings, the fundamental goal of the Act was to provide reliable service to consumers at lower prices than they would pay under the prior regulatory model. The underlying premise of the Act was that when competitive market forces are brought to bear on the generation of electricity, those competitive market forces will reduce the *cost* of generating that electricity and therefore the *price* of generation service to retail consumers.

The Commission's proposed regulations capture this fundamental goal of the Act in establishing the standards for the procurement of default service supply. The proposed regulations provide:

The procurement plan should be designed to acquire electric generation supply at prevailing market prices to meet the DSP's anticipated default service obligation at the lowest reasonable long-term costs.

Proposed Section 54.186(b)(1)(emphasis added). To achieve this standard, the Commission has recognized the use of a portfolio approach to managing and acquiring supply. The Commission explained:

In both this rulemaking and the accompanying policy statement, the Commission is encouraging DSPs to acquire a portfolio of generation supply products. Rather than simply procuring all generation at one time for the duration of the program, DSPs should consider a mix of fixed-term and spot market energy purchases, laddered contracts, and the use of both supply and demand resources. The Commission recognizes the risks posed by the practice of procuring all generation supply for the entire duration of a program at a single point in time.

ANOFR Order at 19-20.

The Commission further recognizes the fundamental goal of securing a least cost resource portfolio when it states that it will model certain portions of its default service rules on the form of regulation of natural gas supply costs. ANOFR Order at 4. The most critical aspect of the regulation of natural gas supply costs in Pennsylvania is the obligation of the natural gas distribution company to follow a least cost fuel procurement policy. 66 Pa.C.S. §§ 1307(f), 1317, 1318. Through its least cost fuel procurement strategy, the natural gas distribution company is able to provide natural gas service at just and reasonable rates.

In its proposed regulations and through its proposed Policy Statement, the Commission has called for the use of a portfolio of energy products, procured over time, to meet the default service obligation. Throughout these proceedings, it has been the OCA's position that each EDC should continue to serve as the default service provider in its respective service territory and acquire a portfolio of resources, including a variety of resources, products, contracts and financial instruments with the goal of providing reasonably priced, stable and reliable default service. The Commission's proposed Regulations and Policy Statement encourage the development of a portfolio of resources designed to provide "the lowest reasonable long-term costs." Proposed § 54.186. The OCA submits that the Commission has set the proper standard, and recognized the need for a reasonable portfolio of resources purchased from the wholesale markets to serve default customers.

It is clear to the OCA that for residential customers, default service will remain the primary means by which essential electric service is made available to customers on reasonable terms and conditions. 66 Pa.C.S. § 2802(9). In the vast

majority of cases, residential customers are continuing to be served by their incumbent utility, both in Pennsylvania and throughout the Nation. This does not mean, though, that these Pennsylvania customers will not benefit from the competitive generation markets as contemplated by the Act. Even where customers purchase generation from their Default Service Provider, they will be purchasing generation that has been acquired in the competitive wholesale market. They will no longer be forced to purchase generation from the rate base of a vertically integrated monopoly utility. The Commission's overall approach allows for the benefits of competitive generation markets to be shared in by all customers, even those who do not shop in the retail market.

The OCA supports the basic principles of the Commission's proposed Regulations and Policy Statement, that is, that the DSP should use a portfolio of resources to meet the default service obligation at the lowest reasonable long-term cost. In these Comments, the OCA will address certain provisions and statements in the Advanced Notice of Final Rulemaking and Policy Statement that the OCA believes may unnecessarily narrow the range of options that are available to the EDC in pursuing the optimal procurement strategy to provide the lowest reasonable long-term costs. The OCA will also address certain provisions that may produce unnecessary rate volatility for residential customers. In particular, the OCA is concerned that the Commission's proposal to adjust residential rates on a quarterly or more frequent basis will not provide the rate stability for customers that is needed. These provisions unduly focus on short term changes in market prices. Further, the OCA submits that the Commission's proposal to increase generation rates to include various costs, such as billing, collection, education, regulatory, litigation, tariff filings, working capital, information systems and

the like, may not properly recognize that certain costs are not avoidable, resulting in ratepayers paying twice for some costs, or remaining default service customers paying for costs left behind by shopping customers. Finally, the OCA is concerned that any rate design changes, such as the elimination of declining block and residential electric heating rates, not be done in such a way as to produce drastic unforeseen increases to customers or customer classes.

In these Comments, the OCA will provide an overview of its position on the various aspects of the Regulations and Policy Statement and will then provide a section by section review of the proposed Regulations and the proposed Policy Statement. The OCA has attached as Appendix A, a version of the proposed regulations showing all of the OCA's recommended modifications to the Regulations. Appendix B contains a version of the proposed Policy Statement showing all of the OCA's recommended modifications to the Policy Statement.

II. REVIEW OF THE REGULATORY APPROACH TO DEFAULT SERVICE

A. The EDC Should Serve As The Default Service Provider In Most Circumstances

The default service provider must ensure that all retail customers have access to essential electric service on reasonable terms and conditions. 66 Pa.C.S. §§ 2802(16), 2802(9), and 2807(e). The OCA has supported the position that the Electric Distribution Company (EDC) generally should remain as the default service provider (DSP). As experience in Pennsylvania has shown, the EDC will be required to step in as the “last resort” when other entities fail, particularly since the EDC has the obligation to connect all customers and deliver supply through its facilities. The EDC is the entity properly situated to provide this service.

The Proposed Regulations start from the proposition that the EDC is the default service provider but allows for the replacement of the EDC as the default service provider. In response to comments from IRRC, the Commission has provided more specific criteria regarding the removal of the EDC as the DSP and has removed the requirement that the replacement DSP obtain a certificate of public convenience. ANOFR Order at 8-9. The OCA agrees with the criteria the Commission has established. As the Commission correctly explains:

In regards to Section 54.183(b), the IRRC has requested that the Commission provide more specific criteria to determine the removal of the DSP. The Commission agrees that more specific criteria are appropriate. This version includes proposed changes to address this issue. The Commission draws on Sections 1103, 1301, and 1501 and 2807(e)(3) of the Public Utility Code in developing these criteria. Section 1103(a) requires that the Commission only award a certificate of public convenience when finding that utility service is necessary for the “... accommodation, convenience, or safety of the public.”

Section 1301 requires that all rates charged by a utility be “just and reasonable.” Section 1501 requires that the conditions of public utility service “...be adequate, efficient, safe, and reasonable.” Section 2807(e) finds that a DSP can only recover “reasonable” costs. Thus, if an EDC can no longer provide default service in a safe and efficient manner, and/or in a way that reflects the incurrence of reasonable costs, the Commission may make a finding that other parties should be considered for the role.

ANOFR Order at 9. The OCA recognizes that while the EDC generally should serve as the default service provider, there may be instances in which an EDC may be unable to provide safe and adequate service at just and reasonable rates, and, in such cases, it may be appropriate to replace the EDC with an alternative DSP.

In identifying the provisions regarding replacement of the EDC as the default service provider, however, the OCA submits that the Commission has incorrectly eliminated the requirement that the alternative DSP receive a certificate of public convenience. The DSP is providing an essential, utility service and the Commission should ensure that it has full authority over the DSP. Section 2809 of the Act contemplates a more limited form of regulation of an electric generation supplier (EGS) than of a utility. 66 Pa.C.S. § 2809. It is unlikely, for example, that the Commission would have the authority to require an EGS, which is regulated only through the granting of its license, to remain as the DSP if the EGS elected to walk away, or filed for bankruptcy. The Commission has greater authority over a utility with a certificate of public convenience, and such utility cannot abandon service without Commission approval. To the extent that an EGS is selected to serve as an alternative DSP, it is essential that this Commission exercise greater authority over that EGS than it would exercise over an EGS that did not have the default service obligation.

There should be no potential gaps in the Commission's authority over any entity that serves the default service role. The best way to ensure this outcome is through requiring a certificate of public convenience. As such, the OCA recommends that an entity intended to serve as the default service provider should be required to obtain a certificate of public convenience. The OCA has recommended changes to Proposed § 54.183 in Section III.D. below to address this issue.

B. Default Service Provider's Obligation to Acquire Supply And Strategy For Such Acquisition

1. Introduction

It has been the OCA's view that the default service provider should act as a portfolio manager that acquires a portfolio of resources from the competitive wholesale markets to meet the load obligations of customers through a multi-year default service plan that is designed to provide the lowest reasonable cost for reliable and stable default service over the long term. The portfolio or procurement plan should emphasize a diversity of resources, including supply side and demand side, a variety of contract terms and lengths, and any state-mandated or Commission-mandated public policy requirements. In the OCA's view, the portfolio can use a range of procurement processes that are fair and transparent, including formal Requests for Proposals, wholesale auctions, and arms-length bilateral contracts. It has been the OCA's position that the default service providers should be given the tools, and flexibility, necessary to maximize the benefits of the competitive wholesale generation markets in order to achieve the lowest reasonable cost, reliable supply for default service customers.

Through its ANOFR Order and Policy Statement Order, the Commission has encouraged a portfolio approach to managing the default service obligation and has established the standard for such a portfolio as providing the lowest reasonable long-term cost. Proposed § 54.186(b)(1). The OCA strongly supports the Commission's direction encouraging a portfolio approach and its standard that the goal of such an approach is to provide the lowest, reasonable long term cost for default service to customers. The benefits of this approach cannot be overstated. A portfolio approach allows the DSP to hedge against a number of risks by acquiring its supply through a variety of methodologies, over differing periods of time, and through the use of diverse resources and diverse contract terms and lengths. The use of a portfolio approach enhances security and reliability in a way that cannot be obtained through reliance on a single purchase, a single type of contract, a single fuel, or a single supplier. This approach also allows the DSP to respond to short-term developments in the markets or to changes in load obligations.

The OCA strongly supports the Commission's regulations and policies that encourage a DSP to use a portfolio approach to meet the default service obligation with the goal of providing default service at the lowest, reasonable long-term cost. The OCA submits, however, that some of the Commission's other proposed Regulations and, in particular, some of its Policy guidance contained in the Proposed Policy Statement, may impair the ability of the DSP to provide the lowest reasonable cost over the long term. Of particular concern, the Proposed Policy Statement, and other statements in the Commission's ANOFR Order and Policy Statement Order, may unduly restrict

procurement strategy, unduly restrict the forms of competitive processes that can be used, and unduly restrict the ability of the DSP to respond to contingencies that arise.

2. The Length Of The Default Service Plan Specified In The Proposed Regulations And Proposed Policy Statement May Not Allow For The DSP To Meet The Standard Of Providing The Lowest Reasonable Long-Term Cost Of Supply.

The Commission has proposed that the length of a default service plan should be two to three years, and the Commission, in its Policy Statement Order encourages a two year plan following the initial filing. Policy Statement Order at 2. The OCA submits that limiting a default service plan to a two year term may not recognize the nature of default service planning and may not enable a DSP to provide the lowest reasonable long-term cost of supply. In fact, specifying that a plan has a “term” may be a bit of a misnomer.

A DSP will need to plan for its portfolio on a long-term basis, and on an on-going basis, to meet the standard of providing long-term reasonable cost of supply. The portfolio will be dynamic, and as the Commission explicitly recognizes, may include contracts with durations that are longer than the plan period. Proposed § 54.186(b)(3). The shorter term focus of the plan suggested in the Policy Statement Order may steer the DSP to very short term contracts of a limited type. The short term focus also does not seem designed to ensure reliable supply, and the development of new resources.

It is important to distinguish between the length of the DSP plan and the length of time that a particular rate or contract is in effect. The rate that is charged to the default service customer does not necessarily have to be fixed for the length of the plan. The OCA anticipates that the rate charged to the default service customers will change

periodically as the elements of the plan are implemented over time.¹ The DSP Plan, however, should be a multi-year plan that can ensure the delivery of reliable supply over the long term.

The OCA recommends that the Commission permit DSPs to develop longer default service program plans – three to five years, for example – to ensure the provision of reliable supply at reasonable cost. In addition, the EDC should be able to enter into longer term contracts, with Commission approval, that extend beyond the period covered by the plan. As discussed, the default service rates could change during the course of the plan, but the plan itself should be designed over a longer time horizon necessary to ensure reliable supply at the lowest reasonable cost over the long term.

3. The Methods Of Procurement Should Not Be Limited To Only Bid Processes Or Spot Market Purchases.

In defining the forms of competitive procurement processes, and in Proposed § 54.186(b)(4) specifying the standards for procurement, the Commission has narrowed the procurement methods to bid solicitation processes, such as auctions and RFPs, and has eliminated the opportunity for a DSP to enter into a bilateral contract at market price, even with a non-affiliated generation entity. Both the OCA and IRRC had raised this issue regarding the Commission’s initial draft regulations. IRRC observed that Section 2807(e) does not expressly mandate that competitive bidding be used to procure supply and that the Commission should be indifferent to the method of acquisition so long as the supply was procured at prevailing market prices. ANOFR Order at 13. The OCA has previously noted that a variety of procurement methodologies,

¹ As discussed in Sections II.C.1 and III.H.1, the OCA does not support quarterly or more frequent adjustments to the default service rate as proposed by the Commission. The OCA would support annual rate adjustments, however, even if the default service plan was of a longer duration.

including arms-length negotiations with non-affiliated generation entities, may be appropriate and may indeed be necessary to encourage the development of alternative resources or resources needed for reliability. See, OCA Comments of April 27, 2005 at Dkt. No. L-00040169, pp. 16, 27; OCA Comments of May 26, 2004 at Dkt. No. M-00041792, p. 10-11.

The OCA submits that the Commission should allow a DSP to enter into bilateral contracts with *non-affiliated* generation entities without having to engage in an RFP or auction process in every instance.² This form of acquisition may be particularly necessary for an alternative energy resource, reliability resources, or for small EDCs with limited load obligations. Bilateral contracts are an integral part of the competitive wholesale markets and are not inherently anti-competition.

The OCA fully agrees with the Commission that the procurement processes should be fair and transparent, but it is not necessary to eliminate all bilateral contracts with non-affiliated generation entities since these contracts do not present the concerns regarding self-dealing and fairness that a contract with an affiliated generation entity might present. The OCA submits that allowing for bilateral contracts with non-affiliated generation entities will provide needed flexibility to the DSP to provide the lowest reasonable long-term cost for its supply.³ Bilateral contracts with affiliated

² In discussing this issue at page 14, fn. 4 of its ANOFR Order, the Commission expresses its concern about EDCs having affiliated generation suppliers and the risks inherent in negotiating a bilateral contract with an affiliate. The OCA agrees with this concern and supports the use of an RFP process or auction process when the contract is with an affiliated generation owner. The same risk, however, is not present when the EDC is negotiating a contract in an arms-length manner with a non-affiliate.

³ The Commission does recognize that there may be some need for short term bilateral agreements as part of the contingency plan if a supplier defaults, but states that these should be for 1 to 3 months and will require a waiver of the regulations. The OCA submits that this procedure would be unwieldy and will be discussed in more detail in Section II.B.5. Customers would be better served by allowing for some bilateral contracts with non-affiliated generation under other the circumstances as well.

generation owners should be subject to an RFP or auction process as called for in the regulations.

4. The Commission's Proposals Unnecessarily Restrict The Use Of Long Term Contracts and May Unnecessarily Favor Short-Term Load Following Contracts.

In its Proposed Policy Statement, the Commission limits the use of long term contracts to only those necessary and required for compliance with the alternative energy requirements of the Alternative Energy Portfolio Standards Act (AEPS Act). Proposed § 69.1805. The Commission also indicates that these contracts should be restricted to covering a relatively small portion of the load. Id. The Commission also seems to favor the use of short-term load following contracts for residential customers. Proposed § 69.1805(1). The OCA submits that these policies unduly restrict the resources available to the DSP in meeting its obligation.

a. Long-Term Contracts Should Be Considered More Broadly to Meet AEPS Requirements or Reliability Needs.

The Commission's Proposed Policy Statement limits long-term contracts to only AEPS requirements. The Commission seems concerned that such contracts would "mute demand" and could create the potential for above market costs in the future, or limit operational flexibility. Id. While the OCA agrees that these are important concerns, and that long term contracts should not be over-relied upon by the DSP, the Commission's proposal is unduly restrictive and may be based on concerns that are not applicable to the current situation.

The Commission has limited the use of long term contracts to only those contracts with alternative energy resources needed to comply with the AEPS Act. The OCA submits, however, that another important use of long term contracts may be to encourage the development of resources needed for reliability, or even security provided through fuel diversity. These options should remain available to the DSP as it compiles its portfolio.

The Commission has also suggested that while not readily subject to definition, long-term contracts should not be too long. Policy Statement Order at 5. The Commission expresses a concern with contracts of twenty years or longer duration noting its experience with such long term contracts under the Public Utility Regulatory Policies Act of 1978 (PURPA). Id. Proposed Policy Statement Order at 5. While the OCA fully agrees that the Commission does not want to repeat the experiences with the extraordinary costs of QF contracts under PURPA that have been borne by ratepayers, the Commission should not confuse the historical experience with PURPA with today's competitive wholesale procurement processes for longer term contracts. PURPA contracts were based on an administrative determination of the utility's "avoided cost" and were not acquired through the competitive methods that would be reasonable to consider today. These competitive methods will provide a better measure of prices over the term of the contract and will provide greater flexibility in the design of contract terms that allow the contract to meet the needs of the DSP over time. The OCA also notes that long-term contracts, while playing an important role in an optimal portfolio, will only be one piece of the plan.

The OCA would urge the Commission to allow greater flexibility for the use of long-term contracts in a default service plan. The important goals of the AEPS Act, as well as the need for reliable service or diversity of supply, would be better served by greater flexibility in the use of long-term contracts.

b. Load Following Contracts Should Not Be The Only Resources Relied Upon In the Portfolio.

The Commission's proposed Policy Statement also seems to favor the use of short-term load following contracts to meet the needs of residential customers. The OCA submits, however, that load following contracts are only one resource that should be considered. A DSP may elect to acquire blocks of power, such as 50 MW blocks or 100 MW blocks rather than load following supply. The DSP would then use short term and spot market purchases to manage the risk of load following from such things as weather, economic downturn, or customer migration, through its portfolio.

The OCA submits that load following contracts from wholesale suppliers may come with a large risk premium and may help to explain the extremely high prices that continue to be seen in wholesale auctions in states like New Jersey and Maryland. It is unlikely that wholesale marketers would be as well-positioned as the EDC/DSP to understand the potential level of load fluctuation or to respond to load changes from such things as conservation or extraordinary weather. These risks will be priced into the supply by a load following wholesale marketer that is not positioned to respond in a variety of ways to the risk. In contrast, a DSP with a reconcilable recovery clause, could use spot markets or other measures for balancing purposes, and pass on the increases or decreases to customers on a dollar-for-dollar basis. The OCA submits that a portfolio of 100% load following contracts might not be the optimal means to provide service at the

lowest reasonable long-term cost. Rather, the OCA submits that a reasonable portfolio might also include the purchase of blocks of power and the use of short term or spot markets by the DSP for load balancing.

As such, the OCA submits that the Commission's policy guidance should allow greater flexibility in the type of contract that is procured. In Section IV.E, the OCA has presented some suggested changes to the Policy Statement to address this issue.

5. The Contingency Plan Procedures Should Allow Greater Flexibility To The DSP.

As the Commission properly recognizes, contingency planning will be a critical component of the default service plan. The Commission properly recognizes in its ANOFR Order that it does not want to limit a DSP to acquiring electricity in only the spot market and suggests that bilateral contracts of one to three month duration may be appropriate in this situation. The Commission indicates, though, that the DSP may need to file for a waiver of the procurement standards to use these bilateral contracts. ANOFR Order at 15.

The OCA submits that the contingency plan should be an approved component of the default service implementation plan. It is the OCA's position that the contingency plan should provide the DSP with the needed flexibility and approaches to address short-term emergency situations efficiently and cost-effectively. The Commission's proposal to require a DSP to seek a waiver of the regulations so that it can enter into short term bilateral contracts does not recognize the need of the DSP to meet its supply obligations immediately upon default, and in each and every second thereafter.

The OCA submits that the contingency plan should be capable of implementation upon default and without any further Commission action. As discussed above, the OCA encourages the Commission to allow greater use of bilateral contracts with non-affiliated generation entities in the procurement plan. The use of bilateral contracts in the contingency situation is another key example of where greater flexibility is needed for the DSP to meet its obligations. Depending on the supplier that has defaulted, the length of the contract, and market conditions, a permanent solution to a default may not be achievable in the one to three month time frame identified by the Commission. The DSP should have the needed flexibility to address these circumstances.

Rather than focus on spot purchases or short term contracts to fill the gap, each EDC should have a comprehensive contingency plan that is approved as part of its default service plan. That plan should be able to be implemented without further Commission review if the circumstances arise where it is needed. The contingency plan must also have as its goal the need to provide the reliable supply at the most reasonable cost under the circumstances presented.

C. The Cost Recovery Mechanism Proposed By The Commission Calls For Too Frequent Rate Adjustments.

In its ANOFR Order, the Commission indicates that it intends to model certain of its proposals on the form of regulation of natural gas supply costs. ANOFR Order at 4. In particular, the Commission proposes to make quarterly adjustments to the rates that default service customers pay to ensure that the rates “track” prevailing wholesale energy prices and so that customers do not experience large changes in rates as the program term expires. ANOFR Order at 4. The Commission has also determined to

allow a reconcilable mechanism for the recovery of all costs.⁴ While the OCA agrees with the intent of the Commission's cost recovery mechanism, *i.e.*, to provide full recovery of all reasonable costs, the OCA submits that in some details and in some respects, the Commission's proposals are unnecessarily complicated and unlikely to lead to the results that the Commission anticipates.

1. Quarterly, Or More Frequent, Adjustments Should Not Be Utilized.

The Commission has proposed that the default service price charged to customers adjust on at least a quarterly basis. ANOFR Order at 19. The Commission proposes this methodology, similar to that used by natural gas distribution companies for purchased gas costs, to better "track" prevailing wholesale market prices. ANOFR Order at 4. The OCA submits, however, that the Commission's focus on quarterly adjustments continues to rely on the mistaken assumption that "prevailing market prices" are short term prices. The Commission also seems to make the assumption that such frequent changes will encourage customers to switch to alternative suppliers. ANOFR Order at 21-22.

Initially, the OCA agrees that there will be more frequent changes in the default service rates in the post-transition period than in the rate cap period which we will soon be exiting. It is very likely that the default service prices will change annually, although some rates may be sustainable under a default service plan for a two to three year period. The key is that the DSP will be operating under a default service plan that is designed to provide a reasonable level of stable prices for default service over the long

⁴ The Commission has made proposals on the allocation of cost elements and rate design that the OCA will discuss in Sections II.D. and II.E. below.

term. As portions of the plan are implemented, there may be a need for annual updates to the price to reflect the new components of the plan. But these changes will be incremental. That is, as certain elements of the default service plan change or expire, other portions of the plan will remain in place, providing for more stability in the rate and less dramatic rate changes. The Commission accepts this premise in its reference to a “laddered” portfolio approach, where different contracts expire at different points in time. ANOFR Order at 19-20.

The Commission has also stated that it is proposing to use quarterly adjustments, as in natural gas regulation, to further competition. ANOFR Order at 21-22. The OCA submits that there is no obvious benefit from the use of quarterly price changes in the stimulation of retail competition. The natural gas experience actually demonstrates that the quarterly changes do not stimulate competition, but may actually make shopping more difficult because the “price to compare” varies so often. Quarterly changes may act as a barrier to customer choice as customers are unable to determine how to compare the utility price to the competitive supplier’s offer. The customer, particularly the residential customer, has no means of assessing what the next quarterly change will bring and whether they will be better off or worse off under the competitive offering. Additionally, with the multi-week time frames needed for switching service, the price comparison may be obsolete before the service is even changed.

As the OCA has stated throughout the Roundtable discussions and in its Comments, the default service rate should be a stable price that adjusts no more than on an annual basis. Prices that change more frequently can introduce significant problems of affordability and bill management for customers. With unknown and unpredictable

changes during a 12-month period, the affordability of basic electric service can be jeopardized (particularly for low to moderate income households), payment plans can be negatively impacted, and budget billing becomes extremely difficult to implement and maintain. The proper pricing model for this essential service is one that provides a stable price and changes no more than on an annual basis.

If, however, the Commission chooses to use quarterly adjustments, it is essential to establish that the adjustments be incremental only. That is, the DSP portfolio should change gradually over time and should not be “flipped” or “rolled over” every quarter in order to promote price volatility. The components of the DSP portfolio that might change every quarter, and the portion that should be tied to spot market prices, should be relatively modest, making the incremental change modest as well. The point of quarterly adjustments, if allowed at all, should not be to track changes in current market prices, but to reflect incremental changes in the portfolio.

It is the OCA’s view that the changes to the portfolio during the course of the year should not be so significant as to justify quarterly adjustments. Given the nature of electric service, the need for reliable supply, and the need to meet RTO planning period criteria, it is unlikely that major changes in the portfolio will occur other than at pre-planned time frames that can be coordinated with annual adjustment periods.

2. A Reconcilable Cost Recovery Mechanism Is Reasonable In These Circumstances.

The Commission has determined that it will allow a DSP to recover all reasonable costs through a reconcilable cost recovery mechanism. The OCA has taken the position that either a reconcilable or a non-reconcilable mechanism would be

permissible under the Act. See, OCA Comments of May 26, 2004, Docket No. M-00041792 at 12-16. Each method has its own advantages and disadvantages. In light of the passage of the AEPS Act which allows for the recovery of the cost of compliance with the AEPS Act through a reconcilable surcharge, a reconcilable charge may be necessary. What should not be permitted is for the utility to use one recovery mechanism for some default service costs and another recovery mechanism for other default service costs. Such an approach could result in the DSP favoring one supply resource over another due to the cost recovery mechanism provided for the resource, even if it does not result in the lowest reasonable overall cost to customers. Utilizing different cost recovery mechanisms for AEPS and non-AEPS resources might also reduce the benefit of utilizing AEPS resources as part of the lowest cost overall portfolio.

The OCA would also note that in the Policy Statement Order discussing cost reconciliation, the Commission proposes that the DSP reconcile its rates at each quarterly adjustment and that such reconciliation be eliminated by the next quarterly adjustment. Policy Statement Order at 7. As noted above, the OCA opposes the use of quarterly adjustments. If used, however, the reconciliation should not be eliminated in one quarter. Reconciliations should be on a rolling 12-month basis with any over- or under-recoveries eliminated in the subsequent 12-month period.

D. Further Reallocation Of Costs From Distribution Rates To Default Service Rates Should Be Undertaken Cautiously, If At All.

The Commission regulations state that the default service rate, or price to compare (PTC), should include all default service costs. The regulation does not specify which default service cost elements are to be included in the PTC, but the Proposed Policy Statement includes a list of costs that the Commission proposes to remove from

distribution rates and include in the PTC. Proposed § 69.1801. The Commission also proposes to further review distribution rates in the DSP's next distribution base rate case, or another proceeding it may order, so as to remove default service related costs from distribution rates. The OCA submits that the Commission's proposal is too broad and could result in customers paying twice for some costs, or in non-shopping customers bearing the burden of distribution costs left behind by shopping customers. If considered at all, the Commission's proposal must be narrowed and should only include incremental or avoidable costs of default service.

The Commission's Proposed Policy Statement at § 69.1808 provides a long list of cost elements that should be removed from distribution rates and included in the price to compare. The Proposed Policy Statement identifies administrative costs, including billing, collection, education, regulatory, litigation, tariff filings, working capital, information systems and associated administrative and general expenses related to default service. Proposed § 69.1808(a)(3). The Proposed Policy Statement also identifies supply management costs, including supply bidding, contracting, hedging, risk management costs, any scheduling and forecasting services provided exclusively for default service by the EDC, and applicable administrative and general expenses related to these activities. Proposed § 69.1808(a)(2). Nowhere in the proposed Regulations or the proposed Policy Statement is there a requirement that these costs be avoidable or incremental. Without such a requirement, even if it is appropriate to move certain cost elements to the PTC, customers could end up paying twice for the same costs, or non-shopping customers will end up paying costs left behind by shopping customers.

For example, what is an EDC's cost of billing for generation costs for a customer who it is already billing for distribution costs? Clearly, the incremental cost of adding a line on a monthly bill is far less than the cost of preparing and mailing a bill for generation service. Meter reading provides another example. There will not be two meter readings, one to read distribution usage and one to read generation usage. The readings are the same and are as necessary for distribution operations as for generation service. The meter reading costs and billing costs cannot be avoided to any substantial degree, if at all.

The inclusion of a wide range of costs in the PTC to "cover" the costs of an EGS does not foster genuine competition, nor does it recognize that the costs and risks faced by an EGS and a DSP are different. For example, default service and EGS service are not provided on the same terms and conditions. An EGS has flexibility in pricing, terms, and even as to whether it will offer service at all. An EGS can exit the market when it so desires. In addition, an EGS does not make tariff filings or incur regulatory review costs (except at its own choosing) to provide supply. The OCA would also note that no EGS in Pennsylvania for residential customers currently offers separate billing service. Additionally, the risk of collection has been mitigated through a number of programs in operation in Pennsylvania under the Restructuring Settlements of PECO Energy Company, Metropolitan Edison Company, Pennsylvania Electric Company, PPL Electric Utilities, Inc., and West Penn Power Company that call for the EDC to pay the supplier charges for 90 days whether the EDC receives payment from the customer or not. See, e.g., PECO Tariff Electric Pa. P.U.C. No. 1S, Original Pages 92-93 (Billing Service Options, ¶¶ 9, 10, 11).

While it may be appropriate to assign some costs of providing default service to the PTC, it is clear that it is only avoidable or incremental costs that should be assigned to the PTC. When a customer shops, the DSP still retains the obligation to stand ready to serve that customer, as well as the remaining customers, at any and all times. The costs of metering and billing the customer are not avoided, or even reduced, when a customer shops since these systems must be in place to bill for distribution service, default service, and to render bills for suppliers. Administrative and general expenses are also not necessarily reduced as a customer shops. See, OCA Comments of April 27, 2005 at pages 42-43. Each cost element must be analyzed to determine exactly what is avoided when a customer leaves the system before any shifting of costs from distribution to generation can occur.

If the EDC cannot reduce, or avoid a cost when a customer shops, and that cost is included in the PTC, the end result is that the remaining customers will have to pay for that cost. With the reconciliation mechanism, it is likely that this would happen automatically, thus ever increasing the costs of default service to remaining customers. Since many default service customers will be low-income and moderate-income customers that are less attractive for an EGS to market to, these costs can become particularly burdensome. It would be ironic if the result of the Act as implemented through these proposals is to impose additional costs on those least able to pay and least able to choose.

While the OCA does not object to limited, identifiable, and avoidable costs being included in the PTC, the Commission's proposed regulations and policy statement may not achieve this end. The OCA urges the Commission to limit its

consideration of costs that should be moved to the PTC, particularly given the differences in service provided by the DSP and EGS and the services that the EDC already provides to the EGS. The Commission must ensure that only avoidable or incremental costs are included in the PTC, that distribution rates are reduced by a matching amount, and that default service customers are not required to pay twice for the costs or bear the burden of costs left behind by shopping customers. The OCA has provided some recommended modifications to Proposed Regulation § 54.187(d) and Proposed Policy Statement § 69.1801 to reflect these comments.

E. Rate Design Changes Must Be Gradual And Should Continue To Allow For Various Residential Rate Options.

The Commission has proposed that for residential customers, the PTC be a flat, per kilowatthour rate for all customers. Proposed § 54.187(a). The Commission proposes to eliminate the use of declining block rate structures in their entirety and seems to suggest that all residential heating rates and time-of-use rates would be eliminated.⁵ Proposed § 69.1810. While the OCA does not disagree that the use of declining block rate structures generally should be phased out over time and that some of these rates may no longer be appropriate, these changes can have a drastic impact on customer bills that must be considered in this process. Additionally, the OCA does not agree that it has been demonstrated that all residential heating rates or time-of use options for the residential rate schedules should be eliminated in their entirety.

Declining block rate structures have been utilized by utilities for decades for a variety of reasons. While those reasons may no longer be as relevant or applicable in a competitive generation market, the elimination of the declining block can have a

⁵ The Commission does not say whether it would also eliminate inverted block rates, such as PECO's residential rate which increases for usage above 500 kilowatthours in the summer months.

significant, and disproportionate, rate impact on some customers. For example, in the recent Penn Power case concerning its provider of last resort service, the proposed elimination of the blocked rate structure would have resulted in some residential heating customers seeing an increase of almost 200% in generation rates as compared to the residential average increase in generation rates of 66%. While not all rate structures have such dramatic differentials, the fact remains that customers have constructed or purchased homes, installed expensive equipment, and made other choices that were influenced by these rate designs. Any change in the rate designs should be done gradually, and with appropriate education of customers, to provide customers the opportunity to consider and take appropriate measures to respond to the new rate structures.

This issue is currently being played out in Downstate Illinois, where the end of the rate caps produced an average residential increase for Ameren customers of 40% to 55%, but electric heating customers are reportedly seeing increases of 100%, 200%, or more, because Ameren eliminated its long-standing electric heating rate discount at the same time that the rate cap ended. *See, Electric Bills Jolt Many In Illinois*, Chicago Tribune of February 27, 2007.⁶ (“Ameren customers are now complaining that they’ve been duped. . . The complaints are particularly loud from clients who had been enticed into switching to electricity to heat their homes.”)(“Norman D. Kirk, 68, in Downstate Logan, was used to paying about \$130 every month to Ameren. This month it will be \$397. . . . Kirk said that in 1997 he took advantage of incentives Ameren offered to convert his home to all-electric heat, and now has been hit with the staggering increase.”)

⁶ www.chicagotribune.com/news/local/chi-0702270240feb27.1.282542.story

The OCA submits that the theoretical value of eliminating declining block rates, heating rates, or other rate options must be weighed against the real-life harms that a flash-cut elimination of long-standing rate designs can have on customers. Decades of embedded cost based rate designs cannot simply be cast aside with the stroke of a pen. Typically, in the past, when specific rate designs have gone out of fashion, utilities have “grandfathered” existing customers and/or modified the rates on a gradual basis. The last thing the Commonwealth needs is to exacerbate what could be a difficult situation when the rate caps expire and turn it into a catastrophe for a large group of customers by radical rate design changes on a flash cut basis.

The OCA also submits that it is not at all clear that a single, levelized rate is appropriate for residential customers that do not have the same average usage characteristics as regular service. EDCs today offer a variety of optional residential rate designs, including rates designed specifically for heating customers, rates for customers using particular heating equipment, and time-of-day rate programs. These optional residential rate designs reflect the characteristics of the customer’s actual usage. For example, residential heating is often characterized by off-peak usage and usage in the lower cost periods of the year. The load factor of heating customers may also differ from the overall load factor of the residential class. The OCA submits that it may be appropriate for some rate differentials to be continued in order to reflect the usage characteristics of the class. For example, even if the DSP charges a residential heating rate schedule a flat per kilowatthour usage charge, it is possible that the charge may not be the same as for the regular residential rate.

In addition, the OCA submits that the DSP should be permitted to offer properly designed optional time-of-use rate schedules for residential customers. Time of use rate schedules can be used to encourage demand response by residential customers. Customers who are able to shift load to lower cost periods from the peak periods through the use of smart thermostats, timers on key appliances, and other such measures, can provide the type of demand response that the Commission is encouraging. The DSP should have the flexibility to offer these types of rate schedules.

The OCA recommends that the Commission provide some additional flexibility in the residential rate design for default service and allow for a gradual phase-out of those rate designs that are no longer consistent with the Commission's proposed policies.

F. Universal Service Obligations Should Remain With The EDC.

The Commission has asked for comments on how to address the universal service obligation if the EDC is replaced by an alternative DSP. The primary obligation that would be at issue is that of offering a Customer Assistance Program (CAP) or Low Income Usage Reduction Program (LIURP). The OCA submits that the universal service obligation must remain with the EDC. The EDC will continue to provide distribution service to all customers and will continue to provide billing services, meter reading, collection activity, and the full range of customer service. The only service being transferred to an alternative DSP is the provision of generation service. The issue for the alternative DSP would be proper reimbursement for any discount in the bill provided to the default service customer that is a CAP customer. That is, to the extent that the DSP

must charge the CAP customer a lower bill than the approved rate would allow, there will be a need to transfer any collected CAP costs to the DSP to cover this “CAP credit.”

The obligation to provide universal service programs must remain with the EDC as a non-bypassable function and cost. Universal service programs have been developed and provided for more than a decade by the staff of EDCs who are highly trained in these areas. The obligation should not be transferred to an alternative provider who is only providing generation service, and may only provide that service for the limited term of an existing default service plan. These programs are unique and there should be no disruption in the programs.

As noted, though, the EDC will collect the costs incurred to operate the program through non-bypassable distribution charges. A portion of those costs will be related to the cost of the default generation service. It will be necessary to determine how the costs collected in distribution rates are then provided to the alternative default service provider to cover the cost of the DSP in providing service to the customer at a reduced price. This issue need not be taken up in the regulations, though. If an alternative DSP is approved, these mechanics could be worked out as part of the approval process.

III. SPECIFIC COMMENTS ON EACH REGULATION

A. Introduction

In this Section, the OCA will address each specific regulation and the Commission's discussion of the regulation. Where necessary, the OCA has included key modifications to the proposed regulations.

B. Section 54.181. Purpose

The Commission has set forth the statutory purpose of default service. As the Commission notes, the Policy Statement further expands upon the purpose of this regulatory framework. The OCA will discuss the language contained in the Policy Statement in Section IV of these Comments. The OCA submits that the purpose, as stated in this provision of the regulations, is generally consistent with the Act. To bring the language fully into line with the Section 2807(e)(3), the OCA would suggest the following modification:

This subchapter implements § 2807(e) of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812, pertaining to an EDC's obligation to serve retail customers at the conclusion of the restructuring transition period. These regulations ensure that all retail customers who do not choose an alternative EGS, or who contract for electric energy that is not delivered, have access to generation supply acquired at prevailing market prices. The EDC or other approved entity shall fully recover all reasonable costs for acting as a default service provider of electric generation supply to all retail customers in its certificated distribution territory.

This modification will more accurately reflect the requirements of Section 2807(e)(3) that generation supply be acquired by the DSP at prevailing market prices.

C. Section 54.182. Definitions

The OCA has identified a number of definitions that should be modified.

The definitions, and suggested changes, are as follows:

1. Competitive Bid Solicitation Process

The Commission has removed the definition of “competitive procurement process” from its first set of draft regulations and replaced it with a definition of “competitive bid solicitation process.” The OCA submits that the reference to a “bid solicitation” process and the limitation of this definition to “suppliers who submit bids” unduly narrows the acquisition methods available to the DSP. This could be particularly limiting regarding the procurement of alternative energy supplies to meet the AEPS Act or supplies to meet reliability. The OCA submits that the DSP should be permitted to use a broad variety of competitive processes to procure supply from non-affiliated generation entities in the wholesale markets.

The OCA recommends that the Commission add a definition of “competitive procurement process” and utilize that broader term in the regulations so as to allow appropriate flexibility to the DSP in acquiring a portfolio that meets the standard set forth in the regulations that supply be acquired at the lowest reasonable long-term cost.⁷ The OCA recommends the following definition:

Competitive procurement process – A fair, transparent, and non-discriminatory process by which a default service provider acquires electric generation supply to serve its default customers.

The phrase “competitive procurement process” should then replace the use of “competitive bid solicitation process” at the appropriate places throughout the

⁷ As discussed more fully in Section II.B, the OCA would include arms-length bilateral contracts with non-affiliated generation entities within the definition of a “competitive procurement process.”

regulations. The OCA will note where these changes should be made as it discusses each proposed regulation. The Commission should leave the definition of “competitive bid solicitation process” in the regulations but use that term only when setting forth the bidding requirements.

2. Default Service

The definition of default service does not clearly capture the circumstance where an EGS fails to deliver supply for its customer. So that there is no misunderstanding as to the scope of default service, subsection (i) of the definition should be expanded as follows:

- (i) Electric generation supply service provided by a default service provider to a retail electric customer who is not receiving generation from an EGS or whose alternative EGS has failed to deliver electric energy.

With this addition, it is clarified that default service is provided when the EGS defaults.

3. Default Service Implementation Plan

The definition of default service implementation plan should be modified to reflect the OCA’s recommended change in the definitions to add the phrase “competitive procurement process” and limit the use of the term “competitive bid solicitation process.” The OCA recommends the following modification:

Default service implementation plan – The schedule of competitive ~~bid solicitations~~ procurement processes and spot market energy purchases, all technical requirements, and all related forms and agreements.

This definition will more appropriately reflect the variety of acquisitions that could be made in order to meet the default service obligation.

D. Section 54.183. Default service provider.

Section 54.183(a) establishes the incumbent EDC as the default service provider. The OCA supports this determination. As a practical matter, the EDC will always be required to step in when other entities fail, particularly when the EDC will continue to have the obligation to connect all customers and deliver supply through its facilities. The EDC also remains in the best position to offer customer care service to residential customers. Additionally, as the Commission notes, as the holder of a certificate of public convenience, the EDC cannot refuse to serve retail electric customers within its designated service territory. ANOFR Order at 8.

In Sections 54.183(b), (c) and (d), the Commission allows for the EDC to be replaced as the DSP. In response to comments by IRRC, the Commission has added some criteria and procedures for this process. As discussed in Section II.A, the OCA agrees with the Commission's criteria. While the EDC should generally serve as the default service provider, if the EDC is not able to provide safe and adequate service at just and reasonable rates and conditions, the Commission may need to consider the reassignment of the default service obligation.

Of importance, while adding criteria and procedures for consideration of this significant step, the Commission has eliminated a critical protection that was contained in its prior proposals – that the alternative DSP seek and obtain a certificate of public convenience pursuant to 66 Pa.C.S. §§ 1102 and 1103. As discussed in Section II.A of these Comments, default service will be the most important service for residential customers in ensuring the availability of essential electricity service on reasonable terms and conditions. Default service is a regulated service that uses the competitive markets to

provide the lowest reasonable long term rates to customers. As a regulated service that remains under the Commission's full authority, the Commission must ensure that there are no regulatory gaps in its oversight and regulation of the provider of this essential service. The only way to ensure the Commission's full authority is to require that the alternative DSP seek, qualify for, and receive a certificate of public convenience.

The OCA recommends that that Commission reinsert into Proposed § 54.183 the requirement that an alternative DSP receive a certificate of public convenience. In the existing structure, the OCA submits that this requirement could be included in Proposed § 54.183(d)(2) and (d)(5). The additions would be as follows:

(d)(2) Petitioners shall demonstrate their operational and financial fitness to serve, their ability to meet the requirements for a certificate of public convenience, and their ability to comply with all Commission regulations, orders and applicable laws.

(d)(5) Any petitioner that is approved to act as an alternative DSP shall apply for a certificate of public convenience, comply with all applicable provisions of the Public Utility Code, regulations, and any conditions imposed in approving the petition to act as an alternative DSP. The alternative DSP may only serve upon the granting of the certificate of public convenience.

To ensure that the alternative DSP is subject to assessment, as the Commission notes in its ANOFR Order, the Commission may also wish to reinsert its prior proposed regulation that clarifies that the alternative DSP that receives a certificate of public convenience is a public utility. Without this determination, the Commission may not be able to assess alternative DSPs even though it has stated its intention to do so. The following provision should be included as § 54.183(d)(6):

(d)(6) An EGS that is granted a certificate of public convenience to act as an alternative default service provider

shall be considered a public utility within the meaning of 66 Pa.C.S. § 102.

This addition will better ensure that the Commission can assess alternative DSPs and has full authority over the alternative DSP.

E. Section 54.184. Default service provider obligations.

Section 54.184 sets forth the obligations of the default service provider. The regulation in subsection (a) seems to capture the obligation to provide generation service, but may require a minor modification to ensure that it is fully inclusive of the circumstances where a default service provider must serve. The obligation is not only to those customers who are not receiving generation service from an alternative EGS but to those who are receiving service from an EGS but the EGS fails to deliver supply. The Commission's proposed language may include supply for those customers whose EGS defaults, but a minor modification would make this clear. The OCA recommends that subsection (a) be reworded as follows:

(a) A DSP shall be responsible for the reliable provision of default service to all retail customers who are not receiving generation services from an EGS within the certificated service territory of the EDC that it serves or whose alternative EGS has failed to deliver electric energy.

This modification may more fully capture the obligation.

In subsection (c), the Commission addresses the universal service obligation. As discussed in more detail in Section II.F of these Comments, the universal service obligation should remain with the EDC and the costs of the program should be recovered in the non-bypassable distribution charges. Pennsylvania's universal service programs have been developed and delivered by Pennsylvania EDCs for over a decade. EDC staff is highly trained in these areas and should continue to perform these functions.

The only issue that would have to be addressed upon approval of an alternative DSP would be compensating the DSP for any generation-related discount that is offered as part of the program. If Proposed § 54.184(c) is retained, the following modifications are needed:

(c) ~~If an alternative DSP is appointed, the EDC A DSP shall continue the universal service and energy conservation programs in effect in the EDC's certificated territory. or implement, subject to Commission approval, similar programs consistent with the provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812. The Commission will determine the method of reimbursing the DSP for any discount offered on the generation portion of a customer's bill as part of the EDC program allocation of responsibilities between an EDC and an alternative DSP when an EDC is relieved of its DSP obligation.~~

If this section remains as part of the regulations, the OCA submits that these modifications will reflect more appropriate public policy regarding universal service programs.

F. Section 54.185. Default service programs and periods of service.

Proposed § 54.185 sets forth the requirement that each DSP file a default service program that includes specific elements identified in the proposed regulation. The standards for that plan are set forth in Proposed §54.186 and in the Commission's Policy Statement. The OCA will discuss these provisions in Sections III.G, IV.D and IV.E of these Comments. The OCA supports the Commission's approach of requiring each default service provider to develop a default service program that is best suited to its service territory within the standards established in Proposed § 54.186. As the Commission is aware, not all service territories in Pennsylvania are in PJM and the service territories vary widely in terms of size and characteristics. The filing of

individual default service programs will allow each DSP to assemble the portfolio of resources that can best meet its obligations.

The Proposed § 54.185 appears to allow for the development of default service programs that will meet the standard of providing the lowest reasonable long-term cost for default service. The OCA has identified some provisions that may need modification in light of the OCA's prior comments or technical correction. The OCA also recommends that some further information be required as part of the filing.

1. Subsection 54.185 (c)—Length of Term

As discussed in Section II.B.2 of these Comments, the OCA is concerned with limiting the term of the default service program. A term of the program that is too short could result in the DSP focusing on short term acquisitions to the detriment of providing the lowest reasonable long-term cost. In subsection (c), the Commission limits the first default service program to a two to three year term. In its ANOFR Order, the Commission notes that this is for the first filing. For the initial program, the OCA agrees that this approach may be reasonable, but the Commission should be clear that this provision does not set a limit on the term of future default service programs. A longer term horizon may be needed to meet the standard of the proposed regulations.⁸ The OCA would suggest that subsection (c) be modified as follows:

(c) The first default service program shall be for a period of two to three years, or for a period necessary to comply with § 54.185(d)(4), unless another period is authorized by the Commission. Subsequent program terms will be determined by the Commission, but shall be for no less than a period of two years.

⁸ It should be noted in this context that the proposed regulations in § 54.186(b)(3) recognize that individual solicitations and contracts may extend beyond the period of the approved procurement plan. As set forth below, the OCA supports this provision.

This modification will ensure at least a minimum term is specified for future filings.

2. Subsection 54.185(d)(1)—Filing Requirements

In addition to the information identified in subsection (d) regarding the default service program, it will be necessary that the program filing contain the information necessary for the Commission and other interested parties to understand the analysis undertaken by the DSP in arriving at its plan. The EDC should be required to provide an explanation of its analysis and an explanation of how the various components of the plan are designed to achieve the relevant standards.

The OCA would suggest the following addition to subsection 54.185(d)(1):

A procurement plan identifying the DSP's electric generation supply acquisition strategy for the period of service and an explanation of how this strategy is designed to achieve the regulatory standard. The procurement plan should also identify the means of satisfying the minimum portfolio requirements of the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.1 *et seq.*, for the period of service.

With this addition, the Commission will have more complete information to evaluate the plan.

3. Subsections 54.185 (b) and (d)(2)—Technical Corrections

The OCA has identified two technical corrections that should be made. In subsection (b) there is a reference to making a filing with the RTO, but other entities are not listed. Plans should be filed with the system operator in whose service territory and market the DSP acquires supply whether the entity is an RTO, ISO or a successor organization. The language in subsection (b) should be modified to include the reference

to “other entity” that is included elsewhere in Proposed § 54.185.⁹ The particular sentence in subsection (b) would be modified to read:

The DSP shall serve copies of its default service program on the Pennsylvania Office of Consumer Advocate, Pennsylvania Office of Small Business Advocate, the Commission’s Office of Trial Staff, EGSs registered on the service territory, and the RTO or other entity in whose control area the default service provider is operating.

In subsection (d)(2), the phrase “competitive bid solicitations” appears.

The OCA has recommended that this phrase be replaced throughout the regulations with the term “competitive procurement processes.” This change should be made in subsection (d)(2). The subsection would then read as follows:

(2) An implementation plan that identifies the schedules and technical requirements of all competitive ~~bid solicitations~~ procurement processes and spot energy purchases consistent with § 54.186.

In the OCA’s view, this modification is necessary to allow the DSP the flexibility to enter into arms-length, bilateral contracts with non-affiliated generation entities.

G. Section 54.186. Default service procurement and implementation plans.

From the OCA’s perspective, Proposed § 54.186, and more specifically subsection (b)(1), is the heart of the Commission’s proposed regulations. The OCA is in full agreement with the Commission that the default service procurement plan should be designed to acquire the needed supply to meet the default service obligation “at the lowest reasonable long-term cost.” The OCA is also in full agreement with the Commission that the procurement plans may include contracts with durations that extend

⁹ As the Commission recognizes in its Order, Pike County Light & Power is not a member of an RTO. PCL&P still must acquire supply through the New York ISO markets, however.

beyond the program period, as set forth in subsection (b)(3), as a means of meeting this standard.

It is important to note that the proposed regulations are clear that the DSP is to meet the default service obligation at the lowest reasonable long-term cost. The default service obligation is to provide reliable service to all customers who do not choose an alternative generation supplier or whose supplier defaults. The OCA submits that the provision of such supply must not be measured based on spot market prices or short term changes in the market. The OCA fully supports the use of a portfolio of diverse resources with varying contract terms to manage the risk of this service and provide reliable service. The OCA submits that the Commission's regulations properly recognize these points through its specification of the default service obligation in Proposed § 54.184 (modified as recommended by the OCA) and Proposed § 54.186.

The OCA has identified three modifications that may be necessary to Proposed § 54.186. First, in light of the OCA's recommendation that the DSP be permitted to enter into arms-length bilateral contracts with non-affiliate generation entities, and the OCA's recommended addition of the term "competitive procurement process" to the regulations, some changes may be needed to Proposed § 54.186. Second, the criteria for selecting a winning bidder may be too narrowly focused on price, precluding consideration of other criteria that may be appropriate in bidding for some resources. Third, in subsection 54.186(c)(5), the Commission has proposed to maintain the confidentiality of bid information submitted in a competitive bid solicitation process. The Commission's proposal regarding maintaining the confidentiality of the winning bid information, which does not appear to contemplate release of this information at any

time, may not properly balance the public's right to know the basis of the rates they are being charged with the need for confidentiality at some points in the bid process.

1. Subsection 54.186(b)(4)--Change to Reflect Competitive Procurement Process.

As the OCA discussed in Section II.B.4 of these Comments, the Commission should not unduly restrict the flexibility of the DSP to enter into bilateral contracts with non-affiliated generation suppliers. An arms-length negotiation that results in a bilateral contract with a non-affiliate generation owner has been, and continues to be, a routine means of acquiring generation supply. This form of acquisition may be particularly necessary for alternative energy resources needed to meet the requirements of the AEPS Act, for reliability reasons, or for small EDCs with limited load obligations. Bilateral contracts are an integral part of the competitive wholesale markets, and as long as entered through arms-length negotiations with non-affiliated generation owners, there is nothing inherently anti-competitive about such contracts.

The OCA submits that the Commission's regulations should recognize this critical point. The primary change that is required to the proposed regulations to capture this point is in subsection (b)(4). Consistent with the OCA's proposed definition of "competitive procurement process," Subsection (b)(4) should be modified as follows:

(b)(4) All electric generation supply should be acquired either through competitive ~~bid-solicitation~~ procurement processes, spot market energy purchases, or a combination of both.

This change will give the DSP the needed flexibility to enter into bilateral contracts if needed to meet its obligations both on an on-going basis and as part of a contingency plan.

Subsections (b)(5) and (c) also set forth bid solicitation requirements. These sections do not need to be changed. Importantly, subsection (b)(5) sets forth the requirements for a bid process when a supplier affiliate is participating. As the OCA has stated, a contract with an affiliate generation entity should only be entered into after a form of bid process is conducted. Subsection (b)(5) sets out the requirements for this process.

2. Subsection 54.186(c)(4) and (c)(1)(vi)—Criteria for Selection of Winning Bid.

Subsection (c) sets forth the requirements for all bid processes. The OCA anticipates that the majority of supply should be, and will be, acquired through these processes. The detail in subsection (c) provides appropriate guidance for the development of these processes. The OCA would note, however, that subsection (c)(4) appears to limit the consideration of the bids to price alone. While the price of the product for which the bid is submitted should be paramount, there may be other aspects of the product or service being solicited that should be given weight. For example, if the bid solicitation provides the bidder with options concerning fixed prices and contract terms, the DSP may wish to give weight to these other factors. If demand response services are acquired, or included in a bid, a more complex list of factors may need to be considered, such as the proposed description for marketing and deployment of the measures. The OCA fully agrees, however, that the evaluation criteria should be fully set forth in the bid documents. The OCA recommends the following modification to capture this point:

(c)(4) The DSP and/or third party evaluator shall review and select winning bids procured through a competitive bid

solicitation process in a non-discriminatory manner based on the ~~price-determinative~~ bid evaluation criteria set forth as part of the bid solicitation process ~~consistent with~~ § 54.186(b)(2)(vi).

The Commission should also consider modifying subsection (c)(1)(vi) that sets forth the elements of the implementation plan. The reference in this subsection is only to the “price determinative bid evaluation criteria.” Since other criteria may be appropriate for consideration, the implementation plan should include all of these criteria. The OCA recommends the following addition to subsection (c)(1)(vi):

(vi) Price-determinative or other applicable bid evaluation criteria

This addition will allow for the specification of other evaluation criteria if needed.

3. Subsection 54.186(c)(5)—Confidentiality of Bid Information

Subsection (c)(5) provides that the bids submitted pursuant to any competitive solicitation process are to be treated as confidential. The OCA understands the need for confidentiality of the bids during the review process and for a reasonable time after the winning bids are selected so that the winning bidder can lock in its supply arrangements. The OCA also recognizes that it may not be appropriate to reveal the individual bid offered by a bidder. The OCA submits, however, that there is a point where the public has a right to know the winning bids that were offered and selected since these bids form the basis of the rate for default service that the customer must pay.

The OCA submits that the Commission should provide for the release of the bid information to the public at the appropriate time. Information that should clearly be released would be the winning bidder(s), the winning bid price(s), and the number of

bidders. It is only through this disclosure that the public can be properly informed as to the basis of the rates.

4. Subsection 54.186(d)—Petition for Modification

Subsection (d) provides for a DSP to petition for modifications to the approved procurement plan in the event of material changes in the wholesale energy markets. The OCA acknowledges that some flexibility is needed in the plan. Clearly, the EDC should have the flexibility to move a scheduled auction or RFP if the date happens to coincide with a catastrophic world event or serious market perturbation. DSPs should also have flexibility in the plan to take advantage of market opportunities. Petitions to modify the plan in substantial part, however, should not be used in great measure and should not be used as a means of tracking short term market prices.

H. Section 54.187. Default service rate design and the recovery of reasonable costs.

The Commission has made several major changes in Proposed § 54.187 regarding cost recovery from its previous proposals. The OCA has discussed the Commission's general approach to cost recovery and rate design in Section II.C of these Comments. The OCA presents some recommended changes to specific regulations in this section to achieve the objectives discussed by the OCA in these Comments.

1. Subsection 54.187(h)—Quarterly Adjustments

While the OCA agrees that after the transition period more frequent changes in the rates for default service customers will occur as portions of the DSP's portfolio are implemented over time, the OCA does not support the need for quarterly (or more frequent) adjustments in the rates of residential customers and does not see that this

methodology will encourage the development of the retail competitive market for residential customers as the Commission anticipates.

The Commission relies heavily on the model of natural gas utilities that make quarterly adjustments in their prices for support of its approach. There are, however, some fundamental differences between acquisition of supply in the natural gas industry that makes this approach non-comparable. Importantly, natural gas usage is heavily seasonal in nature and natural gas can be purchased and stored throughout the year. The Commission also notes that with quarterly adjustments, natural gas prices can increase when market prices rise. But it is only the unhedged portion of the supply that may increase in price. Given the nature of the electric portfolio and RTO requirements for the planning year, it is unlikely that a significant portion of electric supply would be unhedged or left significantly to spot market purchases.

Moreover, the quarterly adjustments for natural gas customers have not resulted in increased levels of shopping. If anything, frequent price changes make it more difficult for customers to know what their price to compare will be so as to compare offers on a prospective basis. Similarly, frequent price changes do not encourage marketers to enter the retail market. Price changes always present the risk to the EGS that prices will go down and customers will return to the DSP. There is no certainty that an EGS will invest the time and money in establishing a presence in Pennsylvania when the EGS is at risk of losing customers every 3 months when the price changes. The only way that frequent price changes work to the advantage of EGS is if customers become so frustrated that they wish to flee default service -- a poor public policy.

Indeed, the greatest level of shopping in Pennsylvania has resulted in Duquesne Light Company's service territory. Duquesne Light has offered residential customers multi-year fixed rates as part of its default service. With known rates over a period of time, customers are able to make an informed choice. Duquesne's program demonstrates the value of a stable fixed price for the customer in making an informed choice.

The Commission also references Pike County Light & Power Company, and its parent, Orange & Rockland, to support its proposal. ANOFR Order at 20. The Commission opines that PCL&P customers were unable to benefit from declines in market prices that occurred following the PCL&P auction, but customers of Pike's parent, O&R, saw their rate decline since they followed a monthly pricing plan. ANOFR Order at 20-21. The OCA agrees that PCL&P customers have been harmed by being locked into a single price auction that was conducted at the height of the post-Katrina energy price spike. But, what the Commission does not address is the wide swings in the prices to residential customers under the O&R plan. Prices paid by residential customers for electric supply can swing significantly from month to month. For example, a review of the monthly "price to compare" for Orange & Rockland residential customers shows that the price in June 2006 was 6.2¢/kwh, but increased to 10.7¢/kwh the very next month in July 2006. In February 2007, the price was 7.0¢/kwh and has now increased for March 2007 to 11.12¢/kwh.¹⁰ The experience in PJM may be similar. As ALJ Chestnut recently noted in a Recommended Decision:

As shown by PPL witness Mr. Krall who examined PJM locational marginal prices (LMP) average prices for the years 2002-2005, on a percentage basis, the monthly prices

¹⁰ www.oru.com/energyandsafety/energychoice/newyork/orupricetocompare.html

can increase by as much as 52% and the decreases can be as much as 32%; the differences within a calendar year can vary as much as 200%.

Petition of PPL Resources For Approval of a Competitive Bridge Plan, Dkt. No. P-00062227 (Recommended Decision issued February 23, 2007). The OCA submits that residential customers should not be subjected to these types of substantial price swings on a quarterly or more frequent basis.¹¹

The OCA submits that the Commission should remove the requirements for quarterly or more frequent price changes from the regulations. Rates for default service should change no more than annually. The OCA submits that the following modification is needed to subsection (h):

(h) Default service rates shall be adjusted no more than annually ~~on a quarterly basis, or more frequently~~, for all customer classes with a maximum registered peak load up to 25 kW, in order to ensure the recovery of costs reasonable incurred in acquiring electricity at prevailing market prices ~~and to reflect the seasonal cost of electricity~~. DSPs may propose alternative divisions of customers by maximum registered peak load to preserve existing customer classes.

These changes will ensure some stability of the default service rate but allow for annual changes as the default service program components are implemented.

2. Subsection 54.187(a), (b) and (c)—Rate Design

The Commission's proposed regulation at subsection (a) sets forth the basic rate design requirement that the default service rate schedule be based on the average cost to acquire supply for each customer class. Subsection (b) calls for a single rate option, and subsection (c) calls for the elimination of declining block rate structures

¹¹ As noted in Section II.C.1 above, to the extent the Commission chooses to order more frequent rate adjustments, these adjustments should reflect only the incremental change in the portfolio rather than seeking to change the portfolio every quarter in an attempt to reflect current market prices.

for all default service customers. As the OCA discussed in Section II.E of these Comments, the theoretical value of eliminating the declining block rate structures must be weighed against the real-life harms that a flash-cut elimination of these long-standing rate designs can have on customers. If declining block rate designs are to be eliminated, consideration should be given to gradually phasing out the rate design to avoid catastrophic rate increases that have been seen in other states when the rate cap expires and the rate design is changed simultaneously.

Additionally, the OCA submits that even within a customer class, there may be differences in the cost to supply customers with different usage patterns. The most obvious examples for residential customers are customers on residential heating rates or residential time-of-use rates. These customers, through equipment that they have invested in, are able to use energy in lower cost, or off-peak periods, or have better load factors than regular residential customers. These usage patterns can be lower cost to serve. The OCA continues to support the recognition of these factors in the rate design, and continues to support the development of voluntary rate designs for residential customers that can provide the incentive to the customer to shift discretionary usage to lower cost periods.

As written, subsection (a) may allow for some innovations and differentials for the rate schedules within a customer class, but, when read with subsections (b) and (c), the language is limiting and would not allow for any gradual changes to rate design. The OCA recommends the following changes:

- (a) The costs incurred for providing default service shall be recovered through a default service rate schedule. This rate schedule shall be designed to recover fully all reasonable costs incurred by the DSP during the

period default service is provided to customers, based on the average cost to acquire supply for each customer class.

(b) Except for rates available consistent with 54.187(f), each default service customer shall be offered a single rate option approved by the Commission, which shall be identified as the default service PTC. A DSP may also offer other voluntary rate options that reflect time of use design or other appropriate designs if approved by the Commission.

(c) The PTC charged to default service customers generally shall not decline with the increase in kWh of electricity used by a default service customer in a billing period, unless cost justified. A DSP shall gradually phase out any pre-existing declining block rate design that is not cost justified or otherwise permitted by the Commission.

These changes will allow for greater flexibility to design appropriate rates and to phase out rates that may no longer serve a public purpose.

3. Subsection 54.187(d)—Default Service Costs

Subsection 54.187(d) indicates the Commission's intent to include default service costs broader than the cost of supply in the default service rate. The Policy Statement at Proposed Section 69.1808 provides greater detail on this proposal, listing a large number of costs that the Commission proposes to remove from distribution rates and include in the default service rate. As the OCA discussed in Section II.D of these Comments, the Commission's proposal is overbroad and fails to recognize that it is only avoidable, or incremental, costs that could be included in the default service rate. If costs are not avoidable when a customer shops, but are included in the default service rate, those costs will be borne by non-shopping customers or will have to be recovered again in distribution rates.

The OCA recommends that if the Commission continues down this path, the Commission must insert the concept that it is avoidable, or incremental, costs that are to be included in the default service rate. The OCA would recommend that following modification be made to subsection (d):

(d) The PTC shall be designed to recover all default service costs including all generation, transmission, and other incremental default service cost elements that are avoidable when a customer is served by an EGS, incurred in serving the average member of a customer class. An EDC's avoidable default service costs shall not be recovered through the distribution rates. Costs currently recovered through the distribution rate, which are reallocated to the default service rate, shall not be recovered through the distribution rate.

The insertion of the concept that it is avoidable or incremental costs that should be assigned to the default service rate should help to minimize the need for non-shopping customers to pay for costs left behind by shopping customers.

4. Subsection 54.187(k)—Spot Market Price

In subsection (k), the Commission addresses the acquisition of replacement supply pursuant to the Commission approved contingency plan. The Commission specifies that the prevailing market price of any supply acquired before the implementation of the contingency plan will be the spot market energy price in a FERC approved energy market. While this may be what the price turns out to be in some circumstances, a spot market energy purchase may not be the only option available to a DSP while it is in the process of implementing its contingency plan. The DSP may be able to secure more supply from another supplier on its system, it may be able to enter a short term bilateral contract as a bridge, or it may not have an additional cost if the portion of the supply it is losing was not needed in the short term. Additionally, the OCA

would note that this subsection assumes that a supplier defaults without notice sufficient for the DSP to timely implement its contingency plan. This may not be the most likely scenario.

This provision also seems to assume that the DSP has no recourse but to recover all costs of supplier failure from its default service customers. The contracts that a DSP has with suppliers should have strong security requirements, bonding requirements and liquidated damages clauses so that the entire risk of default is not transferred to customers. These contract protections should be the first source of recovery.

The OCA recommends the following modifications to this section to address these issues:

(k) When a supplier fails to deliver electric generation supply to a DSP, the DSP shall be responsible for acquiring replacement electric generation supply consistent with its Commission approved contingency plan. When necessary to procure electric generation supply before the implementation of a contingency plan, a DSP shall acquire supply at prevailing market prices and shall fully recover all reasonable costs associated with this activity that are not otherwise recovered through its contract terms with the defaulting supplier. ~~In this circumstance, the prevailing market price will be the price of spot market energy purchases in FERC approved energy markets.~~ The DSP shall follow acquisition strategies that reflect the incurrence of reasonable costs, consistent with 66 Pa.C.S. § 2807(e)(3), when selecting from the various options available in these energy markets.

These changes will better reflect the options available to a DSP in a default situation.

I. Section 54.188. Commission review of default service programs and rates.

In Section 54.188, the Commission establishes procedures for the review of default service programs and the rates that result from the implementation of the approved program. The Commission proposes that it will issue an order within six

months of the program's filing. The OCA remains concerned that at least for the initial program filings, a six month time frame may not be sufficient. A nine month time frame would be a more reasonable review time for the initial filings, with a shorter review time of six months utilized after some experience has been gained with the programs.

The Commission has also included notice requirements for customers of the rates resulting from the plan, but does not specify how this notice will be provided to customers. Also, the proposed regulation does not seem to require notice to customers that a default service plan has been filed and will be subject to a hearing. The Commission may need to make additions to the notice requirements.

Given the significance of these plans, the Commission should include a requirement of notice when the plan is filed with the Commission, similar to the notice when each annual Purchased Gas Cost Rate filing is made. See, 52 Pa. Code § 53.68. Then, given the likelihood that the initial rate changes resulting from the implementation of the plan will be significant, the Commission should provide more details as to the notice that is required for customers after the plan is implemented and the rates are known. The proposed regulations should reference these notice requirements. The OCA would propose the following modifications to subsection 54.188(e):

(e) The DSP shall adhere to the following procedures in obtaining approval of default service rates and providing notice to default service customers:

(1) The DSP shall provide all customers notice of the filing of the default service plan in a similar manner as found in 52 Pa. Code § 53.68.

~~(2)~~ The DSP shall provide all customers notice . . .

These changes will ensure that notice of the filing of the plan is provided to the customer as well as notice of the final rates.

J. Section 54.189. Default Service Customers.

In this section, the proposed regulations provide that the DSP shall accept all applications for default service from new retail customers and retail customers who switch from an EGS. The OCA submits, however, that customers returning to default service from an EGS do not have to “apply” for service. The default service provider must serve these returning customers. The default service provider is already, and always, that customer’s default service provider even when the customer is served by an EGS. Where the DSP is also the EDC, the customer is clearly the customer of the EDC in both of its roles.

With the enactment of Chapter 14 and the requirements that attach to “applicants” for service under that Chapter, the Commission’s proposed language in this provision could erect a significant barrier to default service. As written, customers that return to default service from an EGS could be required to pay onerous deposits, and may be without service if they cannot pay the deposit even though they are current on their EDC bill. This is not what default service is supposed to be. Indeed, if this barrier to default service can be erected, it would not seem to be in any customer’s interest to leave the DSP at any time.

To properly reflect the statutory nature of default service, subsections 54.189(a) and (b) must be modified. The following modifications must be made to subsection 54.189 (a) and (b):

- (a) ~~At the conclusion of an EDC’s Commission approved generation rate cap, a~~All retail customers ~~who are not~~

~~receiving generation service from an EGS shall be assigned to~~ in the certificated service territory of the EDC are entitled to receive the Commission approved default service program in that service territory.

(b) A DSP shall accept all applications for default service from new retail customers ~~and retail customers who switch from an EGS~~; if the customers comply with all Commission regulations pertaining to applications for service, including those at 52 Pa. Code § 56.1 et seq. (pertaining to standards and billing practices for residential customers) and shall accept all retail customers assigned to its default service who switch from an EGS.

Subsection (c) must also be modified. As written, subsection (c) creates the impression that a customer who leaves an EGS must apply for default service. This is not what the statutory language requires. The statutory language was designed to ensure that returning customers were provided the same options for service and rate schedules as new customers so that there was no disincentive for the customer to leave default service and then return at a later time if needed. The OCA recommends the following modification to subsection (c):

(c) A DSP shall treat a customer who leaves an EGS ~~and applies for default service~~ as it would a new applicant for default service.

These changes will ensure that returning to default service is not met with unintended barriers.

IV. SPECIFIC COMMENTS ON THE POLICY STATEMENT PROVISIONS

A. Introduction

The Policy Statement sets forth key guidance to the DSP in complying with the Commission regulations. In this Section, the OCA will address some of the key elements of the Policy Statement. Where the OCA has not recommended changes on a provision of the Policy Statement, the OCA will provide no comment on the provision.

B. Section 69.1802. Statement of Purpose.

In the opening paragraph of the proposed statement of purpose, the Commission states that the goal of default service is “to bring competitive market discipline to historically regulated markets.” The policy statement continues and states to accomplish this, default service should be structured in a way that “encourages the entry of new retail and wholesale suppliers.” The Commission opines that a greater diversity of suppliers will benefit ratepayers and the Commonwealth. While the OCA agrees that these are important considerations under the Act, the OCA submits that the fundamental goal of default service is to ensure that essential electric service is available to all customers on reasonable terms and conditions. See, 66 Pa.C.S. §§ 2802(16), 2802(9), 2807(e). The General Assembly could have left the provision of generation service completely to the unregulated markets, but it clearly chose not to do so. Rather, the General Assembly retained the obligation of the EDC (or alternative Commission-approved supplier) to acquire resources to serve default customers. Nevertheless, customers still get the benefits of wholesale competitive markets even if they do not shop at retail.

The OCA offers the following change to the first paragraph of the statement of purpose:

The Commission has adopted regulations governing the default service obligation at 52 Pa. Code §§ 54.181-189, as required by Section 2807(e) of the Public Utility Code. These regulations address the elements of a default service regulatory framework. ~~The goal of default service regulations is to bring competitive market discipline to historically regulated markets. This can be accomplished by structuring default service in a way that encourages the entry of new retail and wholesale suppliers. Greater diversity of suppliers will benefit ratepayers and the Commonwealth.~~ The goal of the default service regulations is to provide reliable default service at the lowest reasonable long-term cost through the acquisition of resources in competitive wholesale markets. However, these 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.

These modifications will better ensure that the Policy Statement is consistent with the statute.

C. Section 69.1803. Definitions.

The OCA recommends that the modifications to the definitions that the OCA recommends in Section II.C be incorporated into the Proposed Policy Statement. This would include adding a definition of “competitive procurement process” and modifying the definitions of “default service” and “default service implementation plan.”

D. Section 69.1804. Default service program terms and filing schedules.

In this section of the Proposed Policy Statement, the Commission establishes its policy that the default service program should be for a period of two years. As discussed in Section II.B.2 of these Comments, the OCA submits that a two year term for a default service program may be too short for the DSP to be able to provide default

service at the lowest reasonable long-term cost. The identification of a “term” for default service plan may also be a bit of a misnomer. The default service planning will be an on-going, dynamic process and may include resource acquisitions that are both longer and shorter than the plan period. As the Commission recognizes in Proposed § 54.186(b)(3) of the regulations, the default service provider can procure contracts for longer than the term of the plan under the regulations. The plan itself should be reviewed by the DSP on an on-going basis with incremental changes at the end of each “term” to reflect the experience from the prior planning period.

The program should be a multi-year program that is then reviewed by the Commission on a periodic, or term, basis. A short term plan may result in the DSP focusing on short term contracts of a limited type. Such a short term plan might not be designed to ensure reliable supply or support the development of new resources. That is why a multi-year plan, that includes resources extending beyond the term of the plan, should be encouraged by the Commission.

The OCA also recommends that the Proposed Policy Statement reference not just an RTO, but other entities since not all Pennsylvania EDCs are within an RTO. The OCA’s recommended modifications to address these two issues are as follows:

The default service regulations provide for a standard initial program of two to three years. Initial programs may vary from this standard to comply with the applicable regional transmission organization or other entity planning year. Subsequent programs should be for at least 2 years, ~~unless otherwise directed by the Commission~~. The Commission will monitor developments in wholesale or retail markets and revisit this issue as appropriate. The Commission may revise the duration of the standard program term and program filing schedules based on market developments.

These changes better reflect the need to plan over time and for appropriate periods of time.

E. Section 69.1805. Electric generation supply procurement.

Proposed Section 69.1805, and the Commission's Policy Statement Order discussing this proposed section will be critical to the development of reasonably priced, stable default service for residential customers. The OCA strongly supports the Commission's policy that a DSP utilize a portfolio approach in managing its default service obligation that would include a 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 time of peak prices." The portfolio approach not only minimizes the risk of contracting for supply at the time of peak prices, but it provides for a more reliable supply and stable prices over the long term.

As the OCA noted in its Comments of April 27, 2005, several states have moved toward such a portfolio approach for procuring supply and the National Association of Regulatory Utility Commissioners (NARUC) has supported a portfolio management approach through its Resolution on Portfolio Management adopted November 18, 2003. NARUC found that a portfolio management approach is wholly consistent with efforts to create competitive wholesale markets and can help to ensure that electric service is provided in a manner that manages risk, enhances reliability, and improves the performance of wholesale and retail markets. NARUC Resolution of November 18, 2003.

The OCA would also note that several states have adopted a portfolio approach through legislation following the recent extraordinary rate increases that resulted from the short term auction approach that was employed. Delaware, Maine, Rhode Island, and Maryland have responded to high prices at the end of the rate cap periods by enacting legislation that requires least cost procurement strategies and portfolios of diverse resources. See, 75 Del. Laws 242 (2005)(The Electric Utility Retail Customer Supply Act of 2006); Maine Acts of 2005 Chapter 677 (An Act to Enhance Maine’s Energy Independence and Security); 2006 Rhode Island General Assembly, S. 2903 (The Comprehensive Energy Conservation, Efficiency and Affordability Act of 2006); and Maryland Chapter 5, Special Session of 2006 (Senate Bill 1).

While supporting a portfolio approach, the Proposed Policy Statement may unnecessarily restrict the flexibility of the DSP. The Proposed Policy Statement starts in Proposed Section 69.1805 by establishing a standard for the default service program that seems to differ from the standard established in the regulations. Rather than state the goal of obtaining the lowest reasonable long-term cost as proposed regulation Section 54.186(b)(1) does, the Proposed Policy Statement establishes the standard as “balancing 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 particular source.” Proposed § 69.1805. The Policy Statement should reflect the standard set forth in the regulations -- to provide the lowest reasonable long-term cost.

Proposed § 69.1805 also seems to direct the DSP to rely on limited resources. The Policy Statement seems to limit and discourage the use of long-term contracts and seems to encourage reliance on full requirements contracts of one to three

years duration for residential customers. After the initial program, the Proposed Policy Statement further encourages reliance on these short term, full requirements contracts when it states “In subsequent programs, the percentage of supply acquired through shorter duration full requirements contracts and spot market purchases should be gradually increased, depending on developments in retail and wholesale energy markets.” Proposed § 69.1805(1). The OCA submits that this move toward shorter term contracts is not consistent with the portfolio approach, nor is it designed to provide long-term stable and reasonable prices for ratepayers.

The OCA submits that short-term, load following contracts are but one resource that should be considered in the development of a portfolio of resources. A DSP may, for example, determine to procure blocks of power, such as a 50 MW block or a 100 MW block, and then address the need to load follow through other means. The utility may determine that it is better situated to manage the risks of load following due to weather, economic downturn, or other causes and can do that more efficiently than a generator. Given the risk of load following, a load following contract with a large risk premium may not provide the most reasonable cost on a long-term basis. Other options, including long-term contracts with new generation sources as well as demand side resources, should also be available to the DSP and should be considered as well.

For the Proposed Policy Statement to be consistent with the standards of the regulations and the goals of the Act, the Policy Statement should encourage the use of a variety of resources, a variety of contract terms and lengths, and a variety of purchasing strategies. The Proposed Policy Statement appears to favor short term load following

procurements rather than providing the DSP with the necessary flexibility to assemble the portfolio that best meets the regulatory and statutory standards.

Proposed Section 69.1805 also includes residential and small non-residential customers together under subsection (1). While the OCA takes no position on what is appropriate policy for the plan for small commercial customers, the Commission has previously indicated its intent to procure supply separately for each class. In light of that determination, the Commission should have a separate subsection for small commercial customers, even if it states the same policy as for residential customers, so that there is no confusion about the Commission's intent.

The OCA submits that the Proposed Policy Statement must be modified in the following ways to address these issues. The OCA recommends the following for residential customers:

A proposed procurement plan should be designed to produce the lowest reasonable long-term cost for default service recognizing the nature of the obligation that must be met and 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 particular source. 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. Long-term contracts should only be considered to assist in used where necessary and required for DSP compliance with alternative energy requirements, to assist in reliability, and in other appropriate circumstances. 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 defaults service customers to bear future above market costs, and limit operational flexibility for DSPs to manage their default service supply. 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 non-residential customers with less than 25 kW in maximum registered peak load. Initially, the DSP should acquire electric generation supply for these customers using a 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 contracts of one to three years in duration. Contracts should be laddered to minimize risk, 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 percentage of supply acquired through shorter duration full requirements contracts and spot market purchases should be gradually increased, depending on developments in retail and wholesale energy markets.~~

(2) Non-residential customers with less than 25 kW in maximum registered peak load. . . .

As seen in these modifications, the OCA has set up a separate section for small commercial customers to carry forward the Commission's approach of having separate procurements by customer class. The OCA has no position on what policy this separate section should reflect.

F. Section 69.1806. Alternative energy portfolio standard compliance.

As drafted, Proposed § 69.1806 provides the DSP with the flexibility to enter into contracts of the necessary term to meet the requirements of the AEPS Act. In its discussion, however, the Commission expresses concern with the use of long-term contracts and points to its experience with long term contracts under PURPA as an example of where the rates can diverge from market prices over time. Policy Statement Order at 5. As noted above, the experience with PURPA contracts is not directly on point.

PURPA contracts were based on an administrative determination of the utility's "avoided cost." There was no competitive method, or market method, used to establish the market price of the PURPA power. Today, there are a variety of market methods and more transparent information about market prices over time to use as the basis of these contracts. These methods will provide a better measure of prices over the term of the contract and will provide greater flexibility in the design of contract terms that allow the contract to meet the needs of the DSP over time. While the OCA agrees that long term contracts should not be the primary resource in any portfolio, these contracts will be a valuable tool in compiling an appropriate portfolio.

G. Section 69.1807. Competitive bid solicitation processes.

In Proposed §69.1807, the Commission sets forth guidelines to apply to competitive bid processes that a DSP may utilize to acquire supply. As guidelines for the bid process, the guidelines are useful in assisting the DSP in the design of any bid process. The OCA has identified two concerns with the guidelines. First, in §69.1807(3), and in its Policy Statement Order, the Commission states that slice of system bid designs should not be utilized. The OCA generally agrees that bids by customer class are preferred, but for some of the smaller EDCs, such as Citizens' Electric and Wellsboro Electric, segmenting these small loads into even smaller bid pools by customer class may not be appropriate. At least the smaller EDCs should retain the flexibility to bid the entire system or slices of the system.

In §69.1807(7), the Commission provides guidelines on the confidentiality of competitive solicitation information. As the OCA discussed in Section III.G.3 of these Comments regarding Proposed Regulation § 54.186(c)(5), some confidentiality is needed

for an appropriate period of time, but the wide ranging withholding of information about the bid prices, number of bidders, winning bidders, is not consistent with the public's right to know and understand the basis of the rates they are being charged. The OCA recommends that after an appropriate period of time, at least the following information be released: the winning bidder(s), the winning bid price(s), and the number of bidders.

H. Section 69.1808. Default service cost elements.

Through Proposed § 69.1808, the Commission seeks to engage in a further unbundling of rates so as to remove costs from distribution rates and add costs to the price-to-compare. The Commission provides several categories of costs that it seeks to include in the price-to-compare. The OCA has discussed this proposal in Sections II.D and III.H.3 of these Comments. As discussed in these comments, of greatest concern is the fact that the Commission has not stated that if any costs are to be removed from distribution rates and included in the PTC, it is only incremental or avoidable costs that should be included in the PTC. Just because a customer shops does not mean that the DSP will not incur billing costs, education costs, regulatory costs, supply management costs, or many other such costs. Assigning costs to the PTC that are not avoidable when the customer shops will result in customers that are left behind having to pick up these costs, or a further increase in distribution rates to cover the costs not paid by PTC revenue.

The OCA does not support a reassignment of non-avoidable costs to the PTC, particularly costs of billing, collection, education, regulatory, litigation, tariff filings, working capital, information systems and administrative and general expenses. Even many expenses associated with supply management, contracting, forecasting and

scheduling may not properly belong in the PTC. The DSP is offering a very different type of service than an EGS. The DSP will incur costs that an EGS does not incur, or does not have to incur, and must assume greater risk since it must stand ready to serve all customers under all conditions.

The OCA submits that Proposed Section 69.1808 should be modified to ensure that only appropriate, incremental costs of default service are included in the PTC.

The OCA recommends the following changes:

(a) The PTC should be designed to recover all generation, transmission related and other incremental ~~related~~ costs of default service. These cost elements include, but are not limited to:

(1) Wholesale energy, capacity, ancillary, congestion, applicable RTO or ISO administrative, and transmission costs.

(2) Supply management costs, including supply bidding, contracting, hedging, risk management costs, any scheduling and forecasting services provided exclusively for default service by the EDC, and applicable administrative and general expenses related to these activities that are avoided when the customer is served by an EGS.

(3) Administrative costs, including billing, collection, education, regulatory, litigation, tariff filings, working capital, information system and associated administrative and general expenses related to default service that are avoided when a customer is served by an EGS.

(4) Applicable taxes, excluding sales tax.

(5) All costs for alternative energy portfolio standard compliance.

These changes will better reflect the type of costs that might be appropriate to include in the price to compare.

I. Section 69.1809. Interim price adjustments and reconciliation.

As discussed in Sections II.C and III.H.1 of these Comments, the Commission's proposals for frequent adjustments of the rates of residential customers should be eliminated. Following the transition period, prices will change more regularly for service than they do today as the DSP implements its portfolio of purchases over the course of its plan. These changes, however, should be no more than annual changes to the Price to Compare.

One purpose of a portfolio approach is to mitigate volatility in pricing. The portfolio may be implemented over a period of time, and during the course of a year, but the price changes that would result should not be significant and will need not change on more than an annual basis.

The focus on short term price changes will not provide benefit to residential customers. Such short term price volatility has not been shown to aid in the development of retail markets, and in fact, makes the comparison of offers more difficult for residential customers since they are unable to determine the price to compare over the term of any offer made to them. Indeed, the highest shopping levels in Pennsylvania are in the service territory of Duquesne Light Company which has offered multi-year, fixed rates to customers in all of its provider of last resort plans.

The OCA would also note that the Proposed Policy Statement regarding reconciliation seems to suggest that over- or under-collections will be addressed in full in the next quarter, *i.e.*, over the next three months. If quarterly adjustments are used, reconciliations should be conducted over a rolling 12-month period.

The following changes are needed to the Proposed Policy Statement:

(a) Consistent with the default service regulations, the PTC will be adjusted on a regular basis to reflect changes in and ensure the recovery of reasonable costs resulting from changes in wholesale energy prices or other costs. ~~For example, the PTC will be adjusted no more than annually at least every quarter for residential customers and as frequently as 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.~~

(b) The public interest may be served if default service costs and the revenues received through default service rates are reconciled as part of the PTC adjustment process. Reconciliation would ensure that DSPs fully recover their actual, incurred costs without requiring customers to pay more than is required. The PTC adjustment will therefore also reflect changes required due to the reconciliation of costs and revenues. Reconciliation proposals should result in a PTC adjustment that will resolve cumulative under or over collections over a 12-month period, by the time of the next PTC adjustment interval.

(c) It may be in the public interest to reconcile default service costs more frequently than annually if a ~~at each PTC adjustment interval. The DSP should propose interim reconciliation prior to the next subsequent PTC adjustment interval when current monthly revenues have diverged from current monthly costs, plus any cumulative over/under recoveries, by greater than 5% 10% change since the last rate adjustment is projected. The DSP may file an interim reconciliation proposal prior to the next PTC adjustment in that circumstance. When the divergence is less than 5%, the DSP has the discretion to propose interim reconciliation prior to the next PTC adjustment interval. Interim reconciliation proposals should result in a PTC adjustment that will resolve cumulative under or over collections by the time of the next PTC adjustment interval.~~

These changes are more consistent with the intent of using a portfolio of purchases designed to provide long-term reasonable prices.

J. Section 69.1810. Retail rate design.

In providing guidance on the retail rate design, the Commission proposes that the rates be designed to reflect the actual, incurred cost of energy and encourage conservation. The Commission seeks to eliminate declining block rate structures, demand charges, and similar rate elements. In the Proposed Policy Statement, the Commission does allow for the potential introduction of time of use rate designs. The OCA has discussed rate design issues in Sections II.E and III.H.2 of these Comments in more detail. The OCA does not object to gradually phasing out some declining block rate designs for residential customers on a gradual basis, or eliminating demand charges for residential customers in the few instances where applicable, but the OCA is concerned about any flash-cut major rate design changes that could have drastic, unexpected impacts on customers. The OCA also continues to urge the Commission to recognize voluntary rate designs and rate schedules that reflect benefits to the utility and the system through the use of energy in lower priced periods, improved load factors, or incentives for conservation. The OCA is supportive of the wider spread introduction of voluntary, and reasonably designed, time of use rates that can make use of available technology such as smart thermostats, timers, or direct load control measures. The Policy Statement seems to allow for this development.

The OCA recommends the following changes to the Proposed Policy Statement to reflect these concerns:

Retail rates should be designed to reflect the actual, incurred cost of energy and therefore encourage energy conservation. The DSP should consider gradually moving away from pre-existing declining block rate designs, demand charges and similar elements so that over a reasonable period of time, tThe PTC ~~should~~ does not

incorporate declining blocks, demand charges, or similar elements that are not justified by the cost of default service. A DSP may offer voluntary rate options with a PTC ~~The PTC~~ for a particular customer class ~~may be converted to that~~ reflects a time of use design or other appropriate design if the Commission finds it to be in the public interest.

These modifications will better reflect the potential need to gradually phase out certain rate designs and to introduce voluntary options that can encourage demand response or otherwise provide a benefit to the system.

K. Section 69.1811. Rate change mitigation.

In Proposed § 69.1811, the Commission encourages a DSP to offer customers a rate change mitigation plan if total retail rates rise by more than 25% following the expiration of the generation rate cap. The Commission requests that these plans be submitted with the default service plan for review and that customers be enrolled in such programs only with their affirmative consent. The Commission also allows for the utility to recover reasonable carrying costs associated with any deferral program.

The OCA has no objection to this proposal as long as the programs are voluntary on the part of the customer. While the Commission should allow the utility the option to provide a reasonable rate mitigation strategy any further detail in the proposed Policy Statement regarding the program should provide substantial flexibility and should not be limiting.

L. Section 69.1812. Information and data access.

Through Proposed § 69.1812, the Commission concludes that the public interest would be served by common procedures for access to customer information and data by EGSs. The Commission notes that this access must give due consideration to customer privacy. The Policy Statement should also reflect that the customer has the

right to keep this information confidential and the customer information must be properly secured. When customer lists were used at the beginning of restructuring, the Commission ensured that all customers had the opportunity to restrict their own information from disclosure and that access to the lists was secure. The Commission should be clear that these customer protections are part of the reasonable terms and conditions. The OCA would suggest the following addition to the last sentence:

Retail choice, demand side response, and energy conservation initiatives can be facilitated if EGSs, curtailment service providers, and other appropriate parties can obtain this information and data under reasonable terms and conditions common to all service territories, that give with due consideration given to customer privacy, provide security of the information, and provide the customer an opportunity to restrict access to customer information.

Procedures for protecting information and for the security of any posted information will need to be in place.

M. Section 69.1813. Rate ready billing.

The OCA agrees that rate ready billing should be available as long as there is not an unreasonable expense involved in making this possible.

N. Section 69.1814. Purchase of Receivables

In Proposed § 69.1814, the Commission finds that the public interest would be served by consideration of a purchase of receivables program in each EDC territory. A purchase of receivables program is a program where the utility collects the bill for unregulated supplier charges, and can use its regulated power to terminate essential utility service to collect these unregulated charges. A purchase of receivables program can have significant consequences for customers that must be considered.

It is important to note that during the restructuring process, the issue that a purchase of receivables program seeks to address was resolved as part of the Restructuring Settlements for PECO, PPL, West Penn, Met-Ed and Penelec. Under their Supplier Tariff procedures, if the utility is doing the billing for the EGS, the EDC will pay the EGS for the charges that it has submitted even if the customer does not pay the EDC bill, for a period of 90 days. At the end of the 90 day period, the EDC can change the customer to EGS billing if the EGS so desires, or return the customer to default service if the EGS does not wish to continue to serve the customer. See, e.g., PECO Tariff Electric Pa. P.U.C. No. 1S, Original Pages 92-93 (Billing Service Options, ¶¶ 9, 10, 11). To layer a purchase of receivables program on top of the established protocol would be unnecessary.

The OCA also has recently agreed not to oppose a purchase of receivables pilot program for Duquesne Light Company which did not have a prior settlement protocol in place. Importantly, the Duquesne program came with significant consumer protections, including that the customer could not be terminated for failure to pay any amount above the default service rate, and that the EGS could not refuse service to any customer on credit-related grounds. This means that customers with poor credit scores, such as low-income customers, will have access to competitive suppliers. This program was also instituted in lieu of further consideration of transferring costs from distribution rates to generation rates. This program will also require a waiver of the Commission's Final Order in *Guidelines for Maintaining Customer Services at the Same Level of Quality Pursuant to 66 Pa.C.S. § 2807(d), and Assuring Conformance with 52 Pa.Code Chapter 56 Pursuant to 66 Pa.C.S. § 2809(e) and (f)*, Dkt No. M-000960890F.0011, slip

op. at 39 (Order entered July 11, 1997) which stated that where an EDC purchases the accounts receivable of an EGS, the EDC cannot use the Chapter 56 termination process for nonpayment of EGS supply charges.

The OCA submits that any purchase of receivables program must be narrowly tailored to meet the identified problem and must have significant consumer protections, including the requirement that EGS cannot reject any customers and that a customer cannot be terminated for failure to pay amounts that exceed the DSP default rate.

O. Section 69.1815. Customer referral program.

Proposed § 69.1815 also states that the public interest would be served by consideration of customer referral programs when customers are referred to EGSs. This statement is overbroad. While well designed customer referral programs could be beneficial, there are a number of customer referral programs that could be harmful to customers. For example, the customer referral program operated by Orange & Rockland utilities in New York called PowerSwitch is little more than a gimmick where customers receive a 7% “introductory” discount for two months and then pay the price set by the marketer, which could be higher than the default rate.

Customer referral programs that offer an initial, short term discount to the default service rate, with an unknown and unspecified rate thereafter, are of little value to customers. The Commission, if it includes this section in its regulations, should specify that this is not the type of customer referral program that it is referencing. Customer referral programs that are designed to provide customers with credible long term offers and appropriate information for comparison could be beneficial.

P. Section 69.1816. Supplier Tariffs.

The OCA agrees that uniformity of many supplier tariff procedures across Pennsylvania would reduce the potential for mistakes and misunderstandings. The Supplier Tariffs, however, will still need to reflect the differences in RTO and ISO operation and unique system characteristics.

Q. Section 69.1817. Retail choice ombudsman.

The OCA agrees that it will be important for each EDC and the Commission to have staff that work on retail choice programs to make sure that these programs are working efficiently and effectively. Rather than create a position of “ombudsman,” however, a better approach might be to re-establish a group, similar to the PIC (Phase-In Implementation Committee) that was successfully utilized in the initial stages of Pennsylvania electric restructuring so that there is a central clearinghouse to resolve any problems that might arise.

V. CONCLUSION

The OCA appreciates this opportunity to comment on the Commission's Proposed Regulations and 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,

Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Dated: March 2, 2007

00092713.DOC

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking Re Electric Distribution :
Companies' Obligation to Serve retail :
Customers at the Conclusion of the : Docket No. L-00040169
Transition Period Pursuant to :
66 Pa.C.S. § 2807(e)(2) :

Default Service and Retail Electric Markets : Docket No. M-00072009

APPENDIX A TO THE
COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

OCA PROPOSED MODIFICATIONS TO REGULATIONS

OCA PROPOSED MODIFICATIONS

Subchapter G. DEFAULT SERVICE

§ 54.181. Purpose.

This subchapter implements § 2807(e) of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812, pertaining to an EDC's obligation to serve retail customers at the conclusion of the restructuring transition period. These regulations ensure that all retail customers who do not choose an alternative EGS, or who contract for electric energy that is not delivered, have access to generation supply acquired at prevailing market prices. The EDC or other approved entity shall fully recover all reasonable costs for acting as a default service provider of electric generation supply to all retail customers in its certificated distribution territory.

§ 54.182. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Alternative energy portfolio standards – A requirement that a certain percentage of electric energy sold to retail customers in the Commonwealth of Pennsylvania by EDCs and EGSs be derived from alternative energy sources, as defined in the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.1, *et seq.*

Commission – The Pennsylvania Public Utility Commission.

Competitive bid solicitation process – A fair, transparent, and non-discriminatory process by which a DSP awards contracts for electric generation supply to qualified suppliers who submit bids.

Competitive procurement process – A fair, transparent, and non-discriminatory process by which a default service provider acquires electric generation supply service to serve its default customers.

Default service –

(i) Electric generation supply service provided by a default service provider to a retail electric customer who is not receiving generation service from an EGS or whose alternative EGS has failed to deliver electric energy.

(ii) Electric generation supply service provided pursuant to a Commission approved default service plan.

Default service implementation plan – The schedule of competitive ~~bid~~ solicitations procurement processes and spot market energy purchases, all technical requirements, and all related forms and agreements.

Default service procurement plan – The electric generation supply acquisition strategy the DSP will utilize in satisfying its default service obligations, including the manner of compliance with the alternative energy portfolio standards requirement.

Default service program – A filing submitted to the Commission by the DSP that identifies a procurement plan, an implementation plan, a rate design to recover all reasonable costs, and all other elements identified at § 54.185.

DSP – Default service provider – The incumbent EDC within a certificated service territory or a Commission approved alternative supplier of electric generation service.

Default service rates – The rates billed to default service customers resulting from compliance with a Commission approved default service program.

EDC – Electric Distribution Company – This term shall have the same meaning as defined in 66 Pa.C.S. § 2803.

EGS – Electric Generation Supplier – This term shall have the same meaning as defined in 66 Pa.C.S. § 2803.

FERC – The Federal Energy Regulatory Commission.

Maximum registered peak load - The highest level of demand for a particular customer, based on the PJM Interconnection, LLC, peak load contribution standard, or its equivalent, and as may be further defined by the EDC tariff in a particular service territory.

Prevailing market prices – Prices that are available in the wholesale market at particular points in time for electric generation supply.

PTC – Price-to-compare – The rate charged to a retail electric customer by the DSP for default service.

Retail customer or retail electric customer – These terms shall have the same meaning as defined in 66 Pa.C.S. § 2803.

RTO – Regional transmission organization – A FERC approved regional transmission organization.

Spot market energy purchase – The purchase of an electric generation supply product in a FERC-approved real time or day ahead energy market.

§ 54.183. Default service provider.

(a) The DSP shall be the incumbent EDC in each certificated service territory, except as provided for pursuant to § 54.183(b).

(b) The DSP may be changed by one of the following processes:

(1) An EDC may petition the Commission to be relieved of the default service obligation.

(2) An EGS may petition the Commission to be assigned the default service role for a particular EDC service territory.

(3) The Commission may propose through its own motion that an EDC be relieved of the default service obligation.

(c) The Commission may reassign the default service obligation to an alternative DSP if it finds it to be necessary for the accommodation, safety and convenience of the public. Such a finding would include an evaluation of the incumbent EDC's operational and financial fitness to serve retail customers, and its ability to provide default service under reasonable rates and conditions. In such circumstances, the Commission will announce through an order a competitive process to determine the alternative DSP.

(d) When the Commission finds that an EDC should be relieved of the default service obligation, the competitive process for the replacement of the default service provider shall be as follows:

(1) Any entity that wishes to be considered for the role of the alternative DSP shall file a petition pursuant to 66 Pa.C.S. § 2807(e)(3).

(2) Petitioners shall demonstrate their operational and financial fitness to serve, their ability to meet the requirements for a certificate of public convenience, and their ability to comply with all Commission regulations, orders and applicable laws.

(3) If no petitioner can meet this standard, the incumbent EDC shall be required to continue the provision of default service.

(4) If more than one petitioner meets the standard provided in § 54.183(d)(2), the Commission shall approve the DSP best able to fulfill the obligation in a safe, cost-effective, and efficient manner, consistent with 66 Pa.C.S. §§ 1103, 1501, and 2807(e).

(5) Any petitioner that is approved to act as an alternative DSP shall apply for a certificate of public convenience, comply with all applicable provisions of the Public Utility Code, regulations, and any conditions imposed in approving the petition to act as an alternative DSP. The alternative DSP may only serve upon the granting of a certificate of public convenience.

(6) An EGS that is granted a certificate of public convenience to act as a default service provider shall be a public utility within the meaning of 66 Pa.C.S. § 102.

§ 54.184. Default service provider obligations.

(a) A DSP shall be responsible for the reliable provision of default service to all retail customers who are not receiving generation services from an EGS within the

certificated territory of the EDC that it serves or whose alternative EGS has failed to deliver electric energy.

(b) A DSP shall comply with the Public Utility Code, 66 Pa.C.S. 101, *et seq.*, and 52 Pa. Code § 1.1, *et seq.* to the extent that such obligations are not modified by this subchapter or waived pursuant to 52 Pa. Code § 5.43 (pertaining to waiver of Commission regulations).

(c) If an alternative DSP is appointed, the EDC ~~A DSP~~ shall continue the universal service and energy conservation programs in effect in the EDC's certificated service territory ~~or implement, subject to Commission approval, similar programs consistent with the provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812.~~ The Commission will determine the method of reimbursing the DSP for any discount offered on the generation portion of a customer's bill as part of the EDC program ~~allocation of these responsibilities between an EDC and an alternative DSP~~ when an EDC is relieved of its DSP obligation.

§ 54.185. Default service programs and periods of service.

(a) A DSP shall file a default service program with the Secretary's Bureau no later than fifteen months prior to the conclusion of the currently effective default service plan or Commission approved generation rate cap for that particular EDC service territory, unless the Commission authorizes another filing date. Thereafter, the DSP shall file its programs consistent with schedules identified by the Commission.

(b) Default service programs shall comply with all Commission regulations pertaining to documentary filings at 52 Pa. Code § 1.1, *et seq.* (pertaining to rules of administrative practice and procedure), except when modified by this subchapter. The DSP shall serve copies of its default service program on the Pennsylvania Office of Consumer Advocate, Pennsylvania Office of Small Business Advocate, the Commission's Office of Trial Staff, EGSs registered in the service territory, and the RTO

or other entity in whose control area the default service provider is operating. Copies shall be provided upon request to other EGSs.

(c) The first default service program shall be for a period of two to three years, or for a period necessary to comply with § 54.185(d)(4), unless another period is authorized by the Commission. Subsequent program terms will be determined by the Commission, but shall be for no less than a period of two years.

(d) A default service program shall include the following elements:

(1) A procurement plan identifying the DSP's electric generation supply acquisition strategy for the period of service and an explanation of how this strategy is designed to achieve the regulatory standard. The procurement plan should also identify the means of satisfying the minimum portfolio requirements of the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.1, *et seq.*, for the period of service.

(2) An implementation plan that identifies the schedules and technical requirements of all competitive ~~bid solicitations~~ procurement process and spot market energy purchases, consistent with § 54.186.

(3) A rate design plan that will recover all reasonable costs of default service, including a schedule of rates, rules and conditions of default service in the form of proposed revisions to its tariff.

(4) Documentation that the program is consistent with the legal and technical requirements pertaining to the generation, sale and transmission of electricity of the RTO or other entity in whose control area it is providing service. The default service procurement plan's period of service shall align with the planning period of that RTO or other entity.

(5) Contingency plans to ensure the reliable provision of default service in the event a wholesale generation supplier fails to meet its contractual obligations.

(6) Copies of any agreements or forms to be used in the procurement of electric generation supply for default service customers. This shall include all

documents utilized as part of the implementation plan, including supplier master agreements, request for proposal documents, credit documents, and confidentiality agreements. Where applicable, the default service provider shall use standardized forms and agreements that have been approved by the Commission.

(7) A schedule identifying all generation contracts of greater than 2 years in effect between a DSP, where it is the incumbent EDC, and retail customers in that service territory. The schedule should identify the load size and end date of the contracts.

(e) The Commission may, following notice and opportunity to be heard, direct that some or all DSPs file joint default service programs to acquire electric generation supply for all of their default service customers. In the absence of such a directive, some or all DSPs may jointly file default service programs or coordinate the scheduling of competitive bid solicitations to acquire electric generation supply for all of their default service customers. A multi-service territory procurement and implementation plan shall comply with § 54.186.

§ 54.186. Default service procurement and implementation plans.

(a) A DSP shall acquire electric generation supply at prevailing market prices for default service customers in a manner consistent with procurement and implementation plans approved by the Commission.

(b) A DSP's procurement plan shall adhere to the following standards:

(1) The procurement plan should be designed to acquire electric generation supply at prevailing market prices to meet the DSP's anticipated default service obligation at the lowest reasonable long-term costs.

(2) DSPs with loads of 50 MW or less shall evaluate the cost and benefits of joining with other DSPs or affiliates in contracting for electric supply.

(3) Procurement plans may include solicitations and contracts whose duration extends beyond the program period.

(4) All electric generation supply should be acquired either through competitive ~~bid solicitation~~ procurement processes, spot market energy purchases, or a combination of both.

(5) The DSP's supplier affiliate may participate in any competitive bid solicitation process utilized as part of the procurement plan subject to the following conditions:

(i) The DSP shall propose and implement protocols to ensure that its supplier affiliate does not receive an advantage in either the solicitation and evaluation of competitive bids, or any other aspect of the implementation plan.

(ii) The process shall comply with the codes of conduct promulgated by the Commission at § 54.122 (relating to code of conduct).

(c) A DSP's implementation plan shall adhere to the following standards:

(1) Any competitive bid solicitation process utilized as part of the default service implementation plan shall include:

(i) A bidding schedule.

(ii) A definition and description of the power supply products on which potential suppliers shall bid.

(iii) Bid price formats.

(iv) The time period during which the power will need to be supplied for each power supply product.

(v) Bid submission instructions and format.

(vi) Price-determinative or other applicable bid evaluation criteria.

(vii) Relevant load data, including the following:

(A) Aggregated customer hourly usage data for all retail customers.

(B) Number of retail customers.

- (C) Capacity peak load contribution figures by rate schedule.
- (D) Historical monthly retention figures by rate schedule.
- (E) Estimated loss factors by rate schedule.
- (F) Customer size distribution by rate schedule.

(2) The default service implementation plan shall include fair and non-discriminatory bidder qualification requirements, including financial and operational qualifications, or other reasonable assurances of any supplier of electric generation services' ability to perform.

(3) Any competitive bid solicitation process utilized as part of the implementation plan shall be subject to monitoring by the Commission or an independent third party evaluator selected by the DSP in consultation with the Commission. Any third party evaluator shall operate at the direction of the Commission. Commission staff and any third party evaluator involved in monitoring the procurement process shall have full access to all information pertaining to the competitive procurement process, either remotely or where the process is administered. Any third party evaluator retained for purposes of monitoring the competitive procurement process shall be subject to confidentiality agreements identified in § 54.185(d)(6).

(4) The DSP and/or third party evaluator shall review and select winning bids procured through a competitive bid solicitation process in a non-discriminatory manner based on the ~~price determinative~~ bid evaluation criteria set forth ~~consistent with § 54.186(b)(2)(vi)~~ as part of the bid solicitation process.

(5) The bids submitted by a supplier in response to any competitive bid solicitation process shall be treated as confidential pursuant to the confidentiality agreement approved by the Commission pursuant to § 54.185(d)(6). The DSP, the Commission, and any third party involved in the administration, review or monitoring of the bid solicitation process shall be subject to this confidentiality provision.

(d) The DSP may petition for modifications to the approved procurement and implementation plans in the event of material changes in wholesale energy markets to ensure the acquisition of sufficient supply at prevailing market prices. The DSP shall monitor changes in wholesale energy markets to ensure that its procurement plan continues to reflect the incurrence of reasonable costs, consistent with 66 Pa.C.S. § 2807(e)(3).

§ 54.187. Default service rate design and the recovery of reasonable costs.

(a) The costs incurred for providing default service shall be recovered through a default service rate schedule. This rate schedule shall be designed to recover fully all reasonable costs incurred by the DSP during the period default service is provided to customers, based on the average cost to acquire supply for each customer class.

(b) Except for rates available consistent with 54.187(f), each default service customer shall be offered a single rate option approved by the Commission, which shall be identified as the default service PTC. A DSP may also offer other voluntary rate options that reflect time of use design or other appropriate designs if approved by the Commission.

(c) The PTC charged to default service customers generally shall not decline with the increase in kWh of electricity used by a default service customer in a billing period, unless cost justified. A DSP shall gradually phase out any pre-existing declining block rate design that is not cost justified or otherwise permitted by the Commission.

(d) The PTC shall be designed to recover all default service costs, including all generation, transmission, and other incremental default service cost elements that are avoidable when a customer is served by an EGS, incurred in serving the average member of a customer class. An EDC's avoidable default service costs shall not be recovered through the distribution rate. Costs currently recovered through the distribution rate,

which are reallocated to the default service rate, shall not be recovered through the distribution rate.

(e) A DSP shall use an automatic energy adjustment clause, consistent with 66 Pa.C.S. § 1307 and 52 Pa. Code § 75.1, *et seq.* (pertaining to alternative energy portfolio standards), to recover all reasonable costs incurred through compliance with the Alternative Energy Portfolio Standards Act, 73 P.S. §1648.1, *et seq.*

(f) A DSP may use an automatic energy adjustment clause, consistent with 66 Pa.C.S. § 1307, to recover prudently incurred non-alternative energy default service costs.

(g) The default service rate schedule shall include rates that correspond to demand side response and demand side management programs, as defined at 73 P.S. § 1648.2, if the Commission mandates such rates pursuant to its authority under 66 Pa.C.S. § 101, *et seq.*

(h) Default service rates shall be adjusted no more than annually ~~on a quarterly basis, or more frequently,~~ for all customer classes with a maximum registered peak load up to 25 kW, in order to ensure the recovery of costs reasonably incurred in acquiring electricity at prevailing market prices ~~and to reflect the seasonal cost of electricity.~~ DSPs may propose alternative divisions of customers by maximum registered peak load to preserve existing customer classes.

(i) Default service rates shall be adjusted on a quarterly basis, or more frequently, for all customer classes with a maximum registered peak load of 25 kW to 500 kW, in order to ensure the recovery of costs reasonably incurred in acquiring electricity at prevailing market prices and to reflect the seasonal cost of electricity. DSPs may propose alternative divisions of customers by maximum registered peak load to preserve existing customer classes.

(j) Default service rates shall be adjusted on a monthly basis, or more frequently, for all customer classes with a registered peak load of equal to or greater than 500 kW in order to ensure the recovery of costs reasonably incurred in acquiring electricity at prevailing market prices and to reflect the seasonal cost of electricity. DSPs

may propose alternative divisions of customers by registered peak load to preserve existing customer classes.

(k) When a supplier fails to deliver electric generation supply to a DSP, the DSP shall be responsible for acquiring replacement electric generation supply consistent with its Commission approved contingency plan. When necessary to procure electric generation supply before the implementation of a contingency plan, a DSP shall acquire supply at prevailing market prices and shall fully recover all reasonable costs associated with this activity that are not otherwise recovered through its contract terms with the defaulting supplier. ~~In this circumstance, the prevailing market price will be the price of spot market energy purchases in FERC approved energy markets.~~ The DSP shall follow acquisition strategies that reflect the incurrence of reasonable costs, consistent with 66 Pa.C.S. § 2807(e)(3), when selecting from the various options available in these energy markets.

§ 54.188. Commission review of default service programs and rates.

(a) A default service program will initially be referred to the Office of Administrative Law Judge for further proceedings as may be required.

(b) The Commission will issue an order within six months of a program's filing with the Commission on whether the default service program demonstrates compliance with this subchapter and the provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812.

(c) Upon entry of the Commission's final order, the DSP shall acquire generation supply for the period of service in a manner consistent with the terms of the approved procurement and implementation plans consistent with the standards identified at § 54.186.

(d) Upon receiving written notice, the Commission will have one business day, to approve or disapprove the results of each competitive bid solicitation process utilized by the DSP as part of its procurement plan. If the Commission does not act within one

business day, the results of the process will be deemed approved. The Commission will not certify or otherwise approve or disapprove a DSP's spot market energy purchases made as part of its procurement plan. The Commission will monitor the DSP's adherence to the terms of the approved default service program and all provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812. The Commission may, in its discretion, initiate an investigation regarding the DSP's implementation of its default service program and, at the conclusion of such investigation, order such remedies as may be lawful and appropriate.

(e) The DSP shall adhere to the following procedures in obtaining approval of default service rates and providing notice to default service customers:

(1) The DSP shall provide all customers notice of the filing of the default service plan in a similar manner as found in 52 Pa. Code § 53.68.

~~(12)~~ The DSP shall provide all customers notice of the initial default service rates and terms and conditions of service either 60 days before their effective date, or 30 days after bidding has concluded, whichever is sooner, unless another time period is approved by the Commission. The DSP shall also provide written notice to the named parties identified in § 54.185(b) containing an explanation of the methodology used to calculate the price for electric service.

~~(23)~~ After the initial steps of a default service procurement and implementation plan are completed, the DSP shall file with the Commission tariff supplements designed to reflect, for each customer class, the rates to be charged for default service. The tariff supplements shall be accompanied by supporting documentation adequate to demonstrate adherence to the procurement plan approved by the Commission, the procurement plan results and the translation of those results into customer rates.

~~(34)~~ A customer or party identified in § 54.185(b) may file exceptions to the initial default service tariffs within 20 days of the date the tariffs are filed with the Commission. The exceptions shall be limited to whether the DSP properly implemented the procurement plan approved by the Commission and accurately

calculated the rates. The Commission will resolve any filed exceptions by order. Notwithstanding any filed exceptions, the Commission may allow the default rates to become effective pending the resolution of those exceptions.

(f) The DSP shall submit tariff supplements on a quarterly or more frequent basis, consistent with § 54.187 (f) and (g), to revise default service rates to ensure the recovery of costs reasonably incurred in acquiring electricity at prevailing market prices. The DSP shall provide written notice to the named parties identified in § 54.185(b) of the proposed rates at the time of these tariff filings. A customer or the parties identified in § 54.185(b) may file exceptions to the default service tariffs within 20 days of the date the tariffs are filed with the Commission. The exceptions shall be limited to whether the DSP has properly implemented the procurement plan approved by the Commission and accurately calculated the rates. The DSP shall post the revised PTC for each customer class within one business day of its effective date to its public internet domain to enable customers to make an informed decision about electric generation supply options.

§ 54.189. Default service customers.

(a) ~~At the conclusion of an EDC's Commission approved generation rate cap,~~
All retail customers who are not receiving generation service from an EGS shall be assigned to in the certificated service territory of the EDC are entitled to receive the Commission approved default service program in that service territory.

(b) A DSP shall accept all applications for default service from new retail customers ~~and retail customers who switch from an EGS~~, if the customers comply with all Commission regulations pertaining to applications for service, including those at 52 Pa. Code § 56.1, *et seq.* (pertaining to standards and billing practices for residential customers) and shall accept all retail customers assigned to its default service who switch from an EGS.

(c) A DSP shall treat a customer who leaves an EGS and applies for default service as it would a new applicant for default service.

(d) A default service customer may choose to receive its generation service from an EGS at any time, if the customer complies with all Commission regulations pertaining to changing generation service providers at 52 Pa. Code § 57.1., *et seq.* (pertaining to electric service).

(e) A DSP may not charge a fee to a retail customer that changes its generation service provider in a manner consistent with Commission regulations.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking Re Electric Distribution	:	
Companies' Obligation to Serve retail	:	
Customers at the Conclusion of the	:	Docket No. L-00040169
Transition Period Pursuant to	:	
66 Pa.C.S. § 2807(e)(2)	:	
Default Service and Retail Electric Markets	:	Docket No. M-00072009

APPENDIX B TO THE
COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

OCA PROPOSED MODIFCATIONS TO POLICY STATEMENT

OCA PROPOSED MODIFICATIONS

CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

DEFAULT SERVICE AND RETAIL ELECTRIC MARKETS

§ 69.1801. Statement of scope.

This policy statement provides guidelines to default service providers regarding the acquisition of electric generation supply, the recovery of associated costs and the integration of default service with competitive retail electric markets.

§ 69.1802. Statement of purpose.

(a) The Commission has adopted regulations governing the default service obligation at 52 Pa. Code §§ 54.181-189, as required by Section 2807(e) of the Public Utility Code. These regulations address the elements of a default service regulatory framework. ~~The goal of default service regulations is to bring competitive market discipline to historically regulated markets. This can be accomplished by structuring default service in a way that encourages the entry of new retail and wholesale suppliers. Greater diversity of suppliers will benefit ratepayers and the Commonwealth.~~ The goal of the default service regulations is to provide reliable default service at the lowest reasonable long-term cost through the acquisition of resources in competitive wholesale markets. However, these 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.

(b) The Commission is very cognizant of the practical limits of regulating large, complex markets. Changes in federal or state law, improvements in technology, and developments in wholesale energy markets may render obsolete any all-inclusive regulatory approach to Pennsylvania's retail electric market.

(c) The Commission has devised an approach that will allow Pennsylvania to adapt to changes in energy markets and the regulatory environment. The regulations codified at Chapter 54 will serve as a general framework for default service and provide an appropriate measure of regulatory certainty for ratepayers and market participants. This policy statement will provide guidelines on those matters where a degree of flexibility is required to respond effectively to regulatory and market challenges. The Commission anticipates that the initial guidelines will be applied to the first set of default service plans following expiration of the generation rate caps, and that the guidelines will be reevaluated prior to the filing of subsequent default service plans.

§ 69.1803. Definitions.

The following words and terms, when used in this policy statement, have the following meanings, unless the context clearly indicates otherwise:

Alternative energy portfolio standards – A requirement that a certain percentage of electric energy sold to retail customers in the Commonwealth of Pennsylvania by EDCs and EGSs be derived from alternative energy sources, as defined in the Alternative Energy Portfolio Standards Act, 73 P.S. § 1648.1, *et seq.*

Competitive bid solicitation process – A fair, transparent, and non-discriminatory process by which a DSP awards contracts for electric generation supply to qualified suppliers who submit the lowest bids.

Competitive procurement process – A fair, transparent, and non-discriminatory process by which a default service provider acquires electric generation supply service to serve its default customers.

Default service –

(i) Electric generation supply service provided by a DSP to a retail electric customer who is not receiving generation service from an EGS or whose alternative EGS has failed to deliver electric energy.

(ii) Electric generation supply service provided pursuant to a Commission approved default service plan.

Default service implementation plan – The schedule of competitive ~~bid~~ solicitations procurement processes and spot market purchases, all technical requirements, and all related forms and agreements.

Default service procurement plan – The electric generation supply acquisition strategy the DSP will utilize in satisfying its default service obligations, including the manner of compliance with the alternative energy portfolio standards requirement.

Default service program – A filing submitted to the Commission by the DSP that identifies a procurement plan, an implementation plan, a rate design to recover all reasonable costs, and all other elements identified at 52 Pa. Code § 54.185.

DSP – Default service provider – The incumbent EDC within a certificated service territory or a Commission approved alternative default service provider.

EDC – Electric distribution company – This term shall have the same meaning as defined in 66 Pa.C.S. § 2803.

EGS – Electric generation supplier – This term shall have the same meaning as defined in 66 Pa.C.S. § 2803.

Maximum registered peak load – The highest level of demand for a particular customer, based on the PJM Interconnection, LLC, peak load contribution standard, or its equivalent, and as may be further defined by the EDC tariff in a particular service territory.

Prevailing market prices – Prices that are available in the wholesale market at particular points in time for electric generation supply.

PTC – Price-to-compare – The rate charged to a retail electric customer by the DSP for default service.

Retail customer or retail electric customer – These terms shall have the same meaning as defined in 66 Pa.C.S. § 2803.

RTO – Regional transmission organization – A FERC-approved regional transmission organization.

Spot market energy purchase – The purchase of an electric generation supply product in a FERC-approved real time or day ahead energy market.

§ 69.1804. Default service program terms and filing schedules.

The default service regulations provide for a standard initial program term of 2 to 3 years. Initial programs may vary from this standard to comply with the applicable regional transmission organization or other entity planning year. Subsequent programs should be for at least 2 years, ~~unless otherwise directed by the Commission~~. The Commission will monitor developments in wholesale or retail markets and revisit this issue as appropriate. The Commission may revise the duration of the standard program term and program filing schedules based on market developments.

§ 69.1805. Electric generation supply procurement.

A proposed procurement plan should ~~balance the goals of allowing the development of a competitive retail supply market and also~~ be designed to produce the lowest reasonable long-term cost for default service recognizing the nature of the obligation that must be met and should includeing a prudent mix of arrangements to minimize the risk of over-reliance on any particular source. 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. Long-term contracts should ~~only be used where necessary and required for~~ considered to assist in DSP compliance with alternative energy requirements, to assist in reliability, and in other appropriate circumstances. ~~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 DSP's to manage their default service supply.~~ 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 non-residential customers with less than 25 kW in maximum registered peak load.~~ Initially, the DSP should acquire electric generation supply for these customers using a 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 contracts of one to 3 years in duration.~~ Contracts should be laddered to minimize risk, ~~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 percentage of supply acquired through shorter duration full requirements contracts and spot market purchases should be gradually increased, depending on developments in retail and wholesale energy markets.~~

(2) Non-residential customers with less than 25 kW in maximum registered peak load. . . .

(23) Non-residential customers with 25-500 kW in maximum registered peak load.

The DSP should acquire electric generation supply for these customers using a mix of resources as described in the introductory paragraph to this section.

Fixed-term contracts should be 1 year in length and may be laddered to

minimize risk, 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 percentage of supply acquired through shorter duration purchases and spot market purchases should gradually be increased, depending on developments in retail and wholesale energy markets.

(34) *Non-residential customers with greater than 500 kW in maximum registered peak load.* Hourly priced or monthly-priced service should be available to these customers. The DSP may propose a fixed-price option for the Commission's consideration.

§ 69.1806. Alternative energy portfolio standard compliance.

In procuring electric generation supply for default service customers, the DSP must comply with the Alternative Energy Portfolio Standards Act of 2004, 73 P.S. §§ 1648.1, *et seq.* The Commission's default service regulations neither prohibit nor mandate the use of long term contracts to satisfy the alternative energy portfolio standards obligation. In satisfying this obligation, a DSP's procurement strategy should reflect the incurrence of reasonable costs.

§ 69.1807. Competitive bid solicitation processes.

The following guidelines will apply to competitive bid solicitation processes:

- (1) DSPs should use standardized request for proposal documents and supplier master agreements approved by the Commission for use in the default service procurements. The Commission will review these documents and agreements on a regular basis and revise them when appropriate after consultation with stakeholders.

- (2) The public interest would be served by the adoption of uniform criteria and processes for bidder qualification.
- (3) Competitive bid solicitations should be structured along customer classes, consistent with the groupings identified in § 69.1804. Bids should be solicited for tranches of load within each customer class. Slice of system bid designs should not be utilized.
- (4) The Commission finds that a clearly optimal bid solicitation model does not exist at the current stage of wholesale market development. DSPs may utilize various competitive bid solicitation approaches, including request for proposals that result in the submission of sealed bids and real time auctions in which energy suppliers compete with each other for tranches of customer load.
- (5) DSPs are encouraged to coordinate their competitive bidding solicitation schedules to minimize conflicts that might negatively affect the ability of suppliers to participate in multiple procurements. DSPs with loads of greater than 50 megawatts should avoid scheduling pre-bid conferences, auctions, and the like, on the same day as other DSPs with loads greater than 50 megawatts.
- (6) The Commission's objective is to review the results of competitive bidding processes in a manner sensitive to market dynamics but that also allows it to discharge its statutory obligations. The Commission recognizes that bid prices may be negatively affected by the length of time taken for Commission review. In the default service regulations, the Commission has reserved a period of 1 business day to review the results of competitive procurements. As retail and wholesale markets mature, and as other appropriate safeguards become available, the Commission may elect to reduce the amount of time it uses to review bidding results.
- (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.

- (8) The competitive bid solicitation process will be monitored by an independent evaluator. The Commission may direct that this evaluator administer competitive bid solicitations in order to ensure the independence of the process. This independent party will be selected by the DSP in consultation with the Commission. The DSP may not have an ownership interest in the evaluator, and vice versa, and the DSP should disclose any potential conflicts of interest on the part of the evaluator during this consultation process. The Commission will review conflicts of interest and may disqualify an evaluator in order to ensure the independence of the position. The evaluator should have an expertise in the analysis of wholesale energy markets, including methods of energy procurement. The evaluator should monitor compliance with Commission orders relating to a default service program, confidentiality agreements, and other directives. The evaluator should report all information it obtains to the Commission.

§ 69.1808. Default service cost elements.

(a) The PTC should be designed to recover all generation, transmission related and other ~~related~~ incremental costs of default service. These cost elements include:

- (1) Wholesale energy, capacity, ancillary, congestion, applicable RTO or ISO administrative, and transmission costs.

- (2) Supply management costs, including supply bidding, contracting, hedging, risk management costs, any scheduling and forecasting services provided exclusively for default service by the EDC, and applicable administrative and

general expenses related to these activities that are avoided when a customer is served by an EGS.

(3) Administrative costs, including billing, collection, education, regulatory, litigation, tariff filings, working capital, information system and associated administrative and general expenses related to default service that are avoided when a customer is served by an EGS.

(4) Applicable taxes, excluding sales tax.

(5) All costs for alternative energy portfolio standard compliance.

(b) EDC rates should be scrutinized for any generation related costs that remain embedded in distribution rates. This review should occur no later than the next distribution rate case for each EDC filed after the effective date of this policy statement. The Commission may initiate a cost allocation case for an EDC on its own motion if such a case is not initiated by December 31, 2007. Changes to rates resulting from such examination would take effect after the expiration of Commission approved rate caps.

§ 69.1809. Interim price adjustments and cost reconciliation.

(a) Consistent with the default service regulations, the PTC will be adjusted on a regular basis to reflect changes in and ensure the recovery of reasonable costs resulting from changes in wholesale energy prices or other costs. ~~For example, the PTC will be adjusted at least every quarter~~ no more than annually for residential customers and as frequently as 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.~~

(b) The public interest may be served if default service costs and the revenues received through default service rates are reconciled as part of the PTC adjustment

process. Reconciliation would ensure that DSPs fully recover their actual, incurred costs without requiring customers to pay more than is required. The PTC adjustment will therefore also reflect changes required due to the reconciliation of costs and revenues. Reconciliation proposals should result in a PTC adjustment that will resolve cumulative under or over collections over a 12-month period. ~~by the time of the next PTC adjustment interval.~~

(c) It may be in the public interest to reconcile default service costs more frequently than annually if a ~~at each PTC adjustment interval.~~ ~~The DSP should propose interim reconciliation prior to the next subsequent PTC adjustment interval when current monthly revenues have diverged from current monthly costs, plus any cumulative over/under recoveries, by greater than 5% 10% change since the last rate adjustment is projected.~~ The DSP may file an interim reconciliation proposal prior to the next PTC adjustment in that circumstance. ~~When the divergence is less than 5%, the DSP has the discretion to propose interim reconciliation prior to the next PTC adjustment interval. Interim reconciliation proposals should result in a PTC adjustment that will resolve cumulative under or over collections by the time of the next PTC adjustment interval.~~

§ 69.1810. Retail rate design.

Retail rates should be designed to reflect the actual, incurred cost of energy and therefore encourage energy conservation. The DSP should consider gradually moving away from pre-existing declining block rate designs, demand charges and similar elements so that over a reasonable period of time, ~~The PTC should~~ does not incorporate declining blocks, demand charges, or similar elements that are not justified by the cost of default service. A DSP may offer voluntary rate options with a ~~The PTC~~ for a particular customer class ~~may be converted to~~ that reflects a time of use design or other appropriate design if the Commission finds it to be in the public interest.

§ 69.1811. Rate change mitigation.

(a) The following provision should apply when a DSP's total retail rate rises by more than 25% following the expiration of a generation rate cap due to wholesale energy prices. In that event DSPs should offer all residential and small business customers of up to 25 kW in maximum registered peak load the opportunity to prepay or defer some portion of the rate increase for as long as 3 years. These mitigation options should be included in the default service program filed for the period that begins with the expiration of the Commission approved generation rate cap. Customers may not be assigned to a rate increase prepay or deferral program without their affirmative consent. DSPs would be able to fully recover the reasonable carrying costs associated with a rate increase deferral program, including associated administrative costs.

(b) DSPs may propose other reasonable rate mitigation strategies that would reflect the incurrence of reasonable costs.

§ 69.1812. Information and data access.

The public interest would be served by common standards and processes for access to retail electric customer information and data. This includes customer names and addresses, customer rate schedule and profile information, historical billing data, and real time metered data. Retail choice, demand side response, and energy conservation initiatives can be facilitated if EGSs, curtailment service providers, and other appropriate parties can obtain this information and data under reasonable terms and conditions common to all service territories, with that give due consideration given to customer privacy, provide security of the information, and provide the customer an opportunity to restrict access to customer information.

§ 69.1813. Rate ready billing.

The public interest would be served by the consideration of the availability of rate ready billing in each service territory.

§ 69.1814. Purchase of receivables.

The public interest would be served by the consideration of an EGS receivables purchase program in each service territory.

§ 69.1815. Customer referral program.

The public interest would be served by consideration of customer referral programs in which retail customers are referred to EGSs.

§ 69.1816. Supplier tariffs.

The public interest would be served by the adoption of supplier tariffs that are uniform as to both form and content. Uniform supplier tariffs may facilitate the participation of EGSs in Pennsylvania's retail market, and reduce the potential for mistake or misunderstandings between EGSs and EDCs.

§ 69.1817. Retail choice staff ombudsman.

The public interest would be served by the designation of an employee as a retail choice ombudsman at each EDC and the Commission. ~~The ombudsman would be responsible for responding to questions from EGSs, monitoring competitive market complaints and facilitating~~ informal dispute resolution between the DSP and EGSs.