

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

**Rulemaking Re Electric Distribution
Companies' Obligation to Serve Retail
Customers at the Conclusion of the Transition
Period Pursuant To 66 Pa.C.S. § 2807(e)(2)**

Docket No. L-00040169

Default Service and Retail Electric Markets

Docket No. M-00072009

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REPLY COMMENTS OF RELIANT ENERGY, INC. ON
ADVANCE NOTICE OF FINAL RULEMAKING ORDER AND
PROPOSED POLICY STATEMENT**

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INTRODUCTION

Reliant Energy, Inc., (“Reliant”) is pleased to offer reply comments in the Pennsylvania Public Utility Commission’s (“Commission”) Advance Notice of Final Rulemaking Order (“ANOFR”) and Proposed Policy Statement (“PPS”) regarding default service in the Commonwealth. Reliant would like to begin by stating that it believes this Commission has thoughtfully developed a framework that may allow a competitive retail electric marketplace to develop. Reliant supports, among other things, the recommendations of certain parties regarding timely release of bidder information (ConEd Solutions) and designing a default service price that responds to changes in the wholesale market (NEM, CEM, Hess, ConEd Solutions, etc.). Reliant generally agrees with Parties that address issues related to the timing of POLR filings for the post-rate cap period and proposes a scheduling solution for the Commission’s consideration. Furthermore, Reliant explains its support of the Office of Consumer Advocate (“OCA”),

Industrial Energy Consumers of PA (“IECPA”) and Duquesne Light’s (“Duquesne”) comments regarding allowing bi-lateral contracts. Finally, Reliant seeks clarification regarding the Price to Compare (“PTC”) and provides a recommendation to allow the PTC to become the valuable price comparison tool the Commission intends it to be. Reliant will also be responding to various parties regarding the following issues:

- 1) long-term contracting for default service;
- 2) long-term contracting for alternative energy resources;
- 3) default pricing offers; and,
- 4) switching restrictions and assignment of default contracts

REPLY COMMENTS

With respect to timing of POLR filings post-implementation of the statewide POLR rules, PPL Electric and First Energy express concern about the 15 month advance timeline as discussed in the ANOFR. Reliant agrees that these timelines should be evaluated. Due to the number of utilities that may be filing at the same time, as well as the potential size of these multiple POLR filings, the POLR filing process could become burdensome. To avoid the possibility of all eleven of Pennsylvania’s utilities filing their respective POLR plans concurrently, Reliant recommends the Commission create a predetermined schedule for utilities’ POLR filings. A schedule, set by the Commission, which staggers utility POLR plan filings would help alleviate the burden placed on all stakeholders, including

the Commission and its Staff, that may ensue if numerous POLR filings are filed at the same time and need to be coordinated in tandem.¹

While Reliant agrees with OCA and the IECPA that the Commission should retain the ability to allow default service providers to enter into bi-lateral procurement contracts with affiliated and non-affiliated entities, two clarifications are warranted. First, Reliant does not support the use of long-term contracts to set default prices and does not believe these contracts should be used in any contractual procurement arrangement used in setting default prices. Reliant continues to support the default service provider being an affiliate of the utility rather than the utility and being able to procure supply in any manner it chooses. However, if the utility is the default provider, and if utility affiliated generation is allowed to supply POLR load, there is a significant need for these long term bi-lateral contracts to be awarded via a process that is administered by an independent third party. An independent review provides parties with the assurance that preferential treatment is not given to any particular entity.

In the ANOFR, the Commission has referred to the PTC as a “rate.”² IECPA has questioned the combining of transmission and generation charges into a single “rate.” Unlike IECPA, Reliant does not believe it was the intent of the Commission to bundle transmission and generation charges into a single “rate” but rather to combine the generation and transmission charges into a comparison price that would be more meaningful to customers. Reliant believes that making

¹ Similarly, the Commission previously developed a staggered timeline for utility restructuring cases.

² ANOFR, Page 4, 7.

the PTC useful to customers is appropriate, and suggests that a good comparison is to include both generation and transmission in the PTC. Consumers are generally more concerned about their total electric bill, not the individual components that go into calculating their total bill. Competitive retailers include all costs in their price offerings and any comparison a customer makes to a PTC that does not include all cost elements will be meaningless and will undoubtedly mislead customers about the attractiveness of competitive offerings as compared to default service. Reliant would also like to clarify that, to the extent the retailer is allowed to offer consolidated billing for all services the PTC should include all costs (e.g. generation, transmission and distribution). Reliant asks that the Commission clarify the intent of the PTC to be an informational line item on customer bills and to include generation and transmission charges.

1) Long-Term Contracting for Default Service

The Commission must take great care in setting the default price as it will either enable or hinder competition. If the default price is established in a manner that hinders and restricts competition, as OCA, the Office of Small Business Advocate (“OSBA”), IECPA, and certain utilities would have the Commission do by implementing long term contracts, then competition will surely fail, leaving default prices as the only resort, maintaining monopoly electric service based on economic regulation, not competition as required in the Electric Generation Customer Choice and Competition Act (“Choice Act”). Hindering competition will harm all market participants, but especially end-use customers who, having

paid for stranded costs, would be denied the benefits for which they paid. Reliant, as both an Electric Generation Supplier (“EGS”) and a wholesale generator in Pennsylvania, believes that establishing default service prices through long-term contracts allows the default prices to become out-of-market for sustained periods, creating barriers to entry for competitive providers and forcing customers to bear above-market costs as a result.³

When the default service price is based on long-term fixed prices the price paid by retail customers can and will become disconnected from wholesale market prices over time. As a result, when the price paid by retail customers is updated, wide disparities between the previous default price and the new default price can exist. These results are akin to the consequences experienced by long-term generation rate caps, situations already experienced in Pennsylvania (and surrounding states). In addition to consumers being exposed to significant price increases due to long-term contracting, this type of market design impedes the development of retail competition, leaving consumers with little or no choice. As was shown in Pike County and Maryland’s BG&E, the consequences are dire for consumers. Furthermore, the combination of long-term contracts and stifled competition inhibit the ability of consumers to respond to price signals. In the ANOFR and PPS, the Commission properly details a variety of negative issues associated with long-term default service contracting. Therefore, proposals related to the use of long-term default service contracts should be rejected.

³ See also the Comments of Constellation Energy, Direct Energy Services, Dominion Retail, Hess Energy and Strategic Energy.

2) Long-Term Contracting for Alternative Energy Resources Default Service

PV Now and PPM Energy, among others support long-term contracting for renewable resources. Reliant does not support the use of regulatory-mandated long-term contracting for alternative energy resources. Mandatory long-term contracting is not necessary for the development of alternative energy resources. Other than the rules to comply with the statutory requirement defined in the AEPS Act and the means to account for compliance, regulating the terms and conditions of contractual arrangements in the competitive marketplace is unnecessary. As Reliant noted in its previous comments in this case, there are approximately 3,000 MW of renewable generation in-service in Texas, a state that has allowed the competitive market to meet the state's renewable requirements.⁴ With rules that clearly state the annual AEPS requirements for both EDCs and EGSs, these companies will procure in the manner that best fits their own procurement strategy. If the default service provider wants to pursue long-term contracts with alternative energy resources to meet their AEPS Act obligations, it should do so with the risk being borne by its shareholders, not ratepayers. The Commission should permit the competitive market to work and fulfill the goals of the AEPS Act and thus not approve any plan that mandates use of long term contracts for meeting Pennsylvania's alternative energy needs.

3) Default Price Offers

Default service should not be designed to circumvent competitive offers as UGI Utilities ("UGI"), IECPA, and US Steel, among others that advocate having

⁴ Reliant Comments filed March 2, 2007 page 10.

a fixed-price default service would have it do. Furthermore, allowing the utility default provider to offer multiple default service products would distort the market and likely result in the failure of retail competition in the Commonwealth.

As Allegheny Power (“AP”) correctly notes:

[D]efault service is intended to be a backstop to retail choice for customers, not a replacement for access to the benefits of retail competition. Accordingly, default service should be a simple, “plain vanilla” product because it is more efficient to provide differentiated, specialized products and services to those customers who want them through the competitive market.⁵

US Steel’s request to amend the proposed rule “to permit the default service providers to enter into long-term negotiated rate contracts with large commercial or industrial customers” is inconsistent with the Choice Act.⁶ The Choice Act states that default service is supposed to be a provider of last resort service (not a provider of tailored, customer-specific service) and that competitive market forces are more efficient than economic regulation in controlling the cost of generating electricity.⁷ Customer-tailored products are to come from the competitive marketplace. Allowing the EDC to offer more than a basic default service and instead an array of unique or customized side deals will create market distortions and significant barriers to new entry. US Steel currently has the ability to negotiate long term contracts with a variety of EGSs and it can exercise its opportunity and right to choose from a wide array of products and services that competitive retailers offer or, it can choose to take market priced default service at the prevailing hourly price. It is important to note that the competitive affiliates

⁵ Comments of Allegheny Power filed March 2, 2007, page 4.

⁶ Comments of United States Steel Corporation filed March 2, 2007, page 5

⁷ 66 Pa.C.S. § 2802(5), (16).

of the EDCs can and do compete for the same customers that EGSs compete for. Adding the EDC to the list only serves to burden the regulatory framework with potential cross-subsidies and inappropriate anti-competitive behavior.

4) Switching Restrictions and Assignment of Default Contracts

Reliant opposes any proposal that denies customers choice or otherwise harms the competitive market. Specifically, the proposals of the Energy Association of PA (“EAPA”), PECO Energy (“PECO”) and OSBA that directly impair or change a customer’s choice in the electric market are inappropriate and should be rejected. First, the Commission should not dictate how, when, or under what terms a competitive EGS enters into contracts with its customers. Market rules must be crafted to hone customer choice and prohibit slamming. Customers hold the ultimate advantage of choice so long as they have the ability to freely switch providers in a competitive market. Second, by forcing customers back to the utility once they have actively chosen to be with their current supplier unless they act otherwise, as OSBA proposes is simply state sponsored slamming. The Commission has long had a well-established policy of zero tolerance for the slamming of electric customers.⁸ OSBA’s proposal to permit such an activity in PECO’s area is inappropriate and should be rejected. Finally, the Commission should not accept UGI’s request to allow default providers to directly assign their supply contracts to suppliers if load switches away to avoid some mythical “death

⁸ See, e.g., *Pennsylvania Electric Association Petition for Reconsideration of Rulemaking Order Establishing Standards for Changing Electric Suppliers*, Docket No. L-00970121, Statement of Commissioners issued May 21, 1998, Order entered July 7, 1998; see also 52 Pa. Code § 57.177.

spiral.”⁹ Stranded costs have already been dealt with and new ones should not be created. If UGI enters into must-take contracts, its shareholders should bear that risk, not EGSs, and ultimately consumers. Such anti-consumer provisions have no place in a restructured market where supply risk should be properly allocated to shareholders, not consumers. Instead, this is an example of how allowing the POLR provider to procure supply in any manner it chooses provides the opportunity to mitigate the risk associated with switching. Furthermore, assignment of supply contracts to EGSs would destroy the competitive market and thus violate the Electric Choice Act.

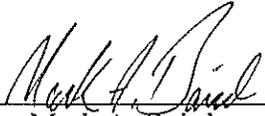
SUMMARY

Reliant appreciates the opportunity to offer reply comments on the ANOFR and PPS regarding default service in the Commonwealth. The default service provisions put forth as a result of this ANOFR and PPS will ultimately determine whether customers receive the benefits envisioned for them by the Choice Act or are denied those benefits. The Commission should avoid implementing provisions such as long-term contracts and switching restrictions in the ANOFR or PPS that will thwart the development of a robust, sustainable competitive retail market. Reliant looks forward to continuing to work in Pennsylvania to make a competitive market a reality for all customers.

⁹ Comments of UGI filed March 2, 2007, page 10.

Respectfully submitted,

RELIANT ENERGY, INC.

By: _____

Mark A. Baird

Director

Midwest Regulatory Affairs

7642 W. 450 N

Sharpsville, IN 46068

(281) 451-7526

mbaird@reliant.com

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