

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation of Pennsylvania's : I-2011-2237952
Retail Electricity Market :

**COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA
Regarding the *En Banc* Hearing on November 10, 2011**

I. INTRODUCTION

On November 10, 2011, the Commission conducted an *en banc* hearing in this proceeding to gather information on issues that will be addressed in the intermediate work plan to promote competition. The Energy Association of Pennsylvania (EAP) participated in the hearing on the panel addressing "Default Service Plans Beyond June 2013". EAP hereby submits written comments on this set of issues pursuant to the Commission's Secretarial Letter dated October 7, 2011.

II. COMMENTS

It is clear from the Tentative Order entered on October 14, 2011 that the Commission views the upcoming round of default service filings as transitional in nature, and is forming its policies to accommodate the possibility of long-term changes to the default service model. Consistent with this approach, the Tentative Order recommends that EDCs file plans that will run for two years, and that EDCs limit or eliminate energy contracts that extend beyond the end of the plans. The Commission further recommends that EDCs limit the proportion of long term contracts in their portfolios.

EAP believes that the Commission has discretion to consider the above policies. The Commission stated in its recent Final Rulemaking Order updating its default service regulations

to comply with Act 129 of 2008 that the language of the Act was broad enough “to allow the Commission to exercise its discretion to balance a number of policy goals for default service.”¹ The prevailing sentiment among electric generation suppliers (EGSs) appears to be that making default service prices more reflective of current market conditions will enhance retail competition, and shortening the length of default service plans and wholesale contracts entered into under these plans are steps in this direction. The Commission may balance the benefits to the retail market against the impact of these strategies on the stability of default service prices.

Designating the next round of default service plan filings as “transitional” leads to additional questions. What new policy or default service model are we transitioning to? Will adoption of the new policy or model require changes to the regulations or to the Competition Act? What is the likelihood and possible timing of these changes? These questions cannot be answered with certainty at this point, but it is important to consider them because they may influence the Commission’s decisions on issues concerning the transition.

Before considering these questions regarding where we are going, it is necessary to understand where we are now. Under the Competition Act as amended by Act 129 of 2008, there are at least two goals that are important to the issues in this proceeding. The first goal is to have a competitive retail electricity market. This is the goal the Commission is pursuing in this Investigation. The second goal under the law is to provide a default service price to customers that is, to borrow language the Commission used in the above-referenced Final Rulemaking Order, “both relatively stable and also economical relative to other options.”² There is tension between these two goals, because as long as EDCs provide a regulated default service price that is designed to be an acceptable long-term alternative to buying from an EGS, it is likely that some portion of customers will remain on default service.

¹ *Implementation of Act 129; Default Service and Retail Electric Markets*; Docket No. L-2009-2095604 (Final Rulemaking Order entered October 4, 2011), p. 31.

² Order, p. 40.

This last point was recognized in an expert report to Congress prepared under the Federal Energy Policy Act of 2005.³ With respect to retail competition, the Report notes that there are two visions of default service. The first is a regulated service that is designed to provide a long-term alternative for customers. Under this first vision, default service “will likely retain a substantial portion of sales, particularly to residential customers.”⁴ The second vision establishes default service as “a barebones, temporary service consisting of retail access to wholesale supply, primarily for customers that are between suppliers.”⁵ Under the second vision, competitive suppliers are likely to serve the bulk of retail customers.

In the Act 129 amendments to the Competition Act, the General Assembly repealed the original language in the Competition Act requiring that power for default service be purchased at “prevailing market prices.” In its place, Act 129 provided detailed substantive and procedural requirements. Chief among these are the requirements that EDCs or alternative default service providers use competitive processes to purchase a “prudent mix” of long term, short term, and spot market products designed to produce a default service price that is the “least cost over time.”

When the General Assembly enacted Act 129 in 2008, it adopted the first vision of default service alluded to in the federal Report cited above – a regulated service that provides a long term alternative for customers. As a result, the authors of the federal Report would not be surprised that a substantial number of residential customers in Pennsylvania remain on default service.⁶ In order for Pennsylvania to change course and adopt the second vision of default

³ *Report to Congress on Competition in Wholesale and Retail Markets for Electric Energy*, April 2007. This report was prepared by the Electric Energy Market Competition Task Force, which was comprised of five members from the U.S. Department of Justice, the Federal Trade Commission, the Department of Energy, the Federal Energy Regulatory Commission, and the Department of Agriculture.

⁴ *Report*, p. 99.

⁵ *Report*, p. 100.

⁶ It is also true, however, that there have been significant increases in shopping levels over the past two years as rate caps have expired.

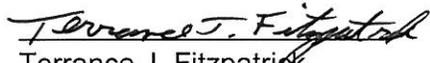
service – a barebones, temporary, stopgap service – the General Assembly will have to again amend the Competition Act and change the requirements put in place by Act 129.

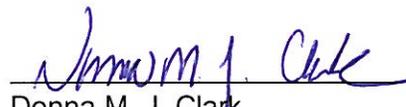
The Commission has stated that it will consider recommending legislative changes at the conclusion of this Investigation. Accordingly, the answer to what lies at the end of the transition may depend on legislative action, and that answer is uncertain. This uncertainty calls for some degree of restraint in considering proposals by some parties that would go further than the steps set out by the Commission in its recent Tentative Order in this proceeding.

III. CONCLUSION

The Energy Association of Pennsylvania respectfully requests that the Commission consider these comments in adopting an intermediate work plan in this Investigation.

Respectfully submitted,


Terrance J. Fitzpatrick
President & CEO
tfitzpatrick@energypa.org


Donna M. J. Clark
Vice President & General Counsel
dclark@energypa.org

Energy Association of Pennsylvania
800 North Third Street, Suite 205
Harrisburg, PA 17102

Date: November 23, 2011