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November 3, 2011

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

Re: Investigation of Pennsylvania's Retail Electricity Market  
Docket No. I-2011-2237952

Dear Secretary Chiavetta:

On behalf of Direct Energy Services LLC ("Direct Energy") enclosed please find the original of its Comments to the Tentative Order of October 14, 2011 along with the electronic filing confirmation page with regard to the above-referenced matter.

Sincerely yours,

Daniel Clearfield, Esq.

DC/lww  
Enclosure

cc: ra-OCMO@state.pa.us w/enc.

**BEFORE THE  
PENNSYLVANIA UTILITY COMMISSION**

Investigation of Pennsylvania's Retail Electricity Market: :  
: Docket No. I-2011-2237952  
: Recommended Directives on :  
: Upcoming Default Service Plans :

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**COMMENTS OF  
DIRECT ENERGY SERVICES, LLC  
TO THE TENTATIVE ORDER  
OF OCTOBER 14, 2011**

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## **I. INTRODUCTION AND SUMMARY OF COMMENTS**

Direct Energy Services, LLC (“Direct Energy”)<sup>1</sup> respectfully submits these comments to the Tentative Order of October 14, 2011 (“Tentative Order”) of the Pennsylvania Public Utility Commission (“Commission” or “PUC”) issued in the above-captioned proceeding.

In its Tentative Order, the Commission made a series of recommendations to electric distribution companies (“EDCs”) to be incorporated into their next default service plans (for delivery beginning June 1, 2013) regarding the length and nature of the procurements to be used in those plans. The Commission also recommended that the EDCs incorporate into their plans a series of competition enhancing programs, including, retail opt-in auctions, referral programs, hourly pricing for commercial and industrial customers with loads of 100 kW or greater and having Time-of-Use (“TOU”) rate plans

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<sup>1</sup> Direct Energy is an electric generation supplier (“EGS”) licensed by the Commission at A-110164 to provide electricity and related services to retail customers throughout Pennsylvania. Direct Energy is one of North America’s largest energy and energy-related service providers with over 6 million Residential and commercial customer relationships. Direct Energy provides customers with choice and support in managing their energy costs through a portfolio of innovative products and services. A subsidiary of Centrica plc, one of the world’s leading integrated energy companies, Direct Energy operates in 46 states and 10 provinces in Canada. Direct Energy is committed to Pennsylvania, deciding in 2009 to locate its North American headquarters of Direct Energy Business, in Pittsburgh where it currently has 356 employees. Direct Energy acquired Clockwork Home Services in June 2010, which has 29 small businesses in the state, employing approximately 215 people, and its affinity group members employ another 314 people throughout Pennsylvania. In 2011, Direct Energy Residential has established the headquarters for its Northeast division in Pittsburgh, representing 30 additional jobs, and also acquired Gateway Energy, which has an office in Kingston, with approximately 74 employees. In total, Direct Energy’s employment levels have increased from 225 to approximately 1,000 since 2009. Direct Energy has a significant annual economic impact, based on the salaries, taxes and community investment funds paid in the region. It is also active with charitable organizations and its employees provided over 4,000 hours of community volunteering in 2010 across the Commonwealth.

provided by EGSs through a competitive bid process. These recommendations are subject to the filing of comments from stakeholders and interested parties and a final Commission order.

Direct Energy enthusiastically welcomes these recommendations as a significant and material step along the path toward reforming the existing retail electric market structure and, in turn, allowing consumers in the Commonwealth to realize the benefits of fully competitive retail electricity markets. Direct Energy respectfully submits that several clarifications and additions would help to insure that the Commission achieves its goals and that robust, sustained and real retail electric competition, benefitting all Pennsylvanians, will take place as soon as reasonably possible.

The Implementation of Longer Term Reforms Should Occur As Soon As Possible

The Commission should confirm that (consistent with the July 28 Order) it still intends to issue an order in the first quarter of 2012 that will set forth a plan for reforming default service to enhance competition on a long term basis. Direct Energy understands that in order to assure that it has in place the necessary legal and/or regulatory authority and approvals, the PUC elected to direct the EDCs to file two year “bridge” plans with the directive that all procurements would end at that point and the assumption that the Phase II default service reforms would be put in place at the conclusion of the bridge period (June, 2015). But if the necessary authorizations are provided sooner than June 2015, the Commission should clarify that the longer term measures should similarly be implemented more quickly. To give the Commission the opportunity to incorporate longer term reforms as soon as the Commission receives authorization, Direct Energy suggests that the Commission revise its Tentative Order to direct the EDCs to file one

year plans with the ability to extend the procurements for an additional year, if required.

This would provide greater flexibility to the Commission and the EDCs to accommodate future legislative or regulatory changes.

Whether the Commission elects to direct one-year plans as Direct Energy recommends, or maintains its original two-year directive, the final order must specify that the EDC's filed plans should be sufficiently flexible to permit the implementation of longer term reforms sooner than June, 2015, if the PUC obtains the legal or regulatory authority to do so. This means that the Commission should state explicitly that default service may be significantly altered or ultimately restructured during the pendency of the bridge plans. This could occur for all customers or for a segment of default load, such as large commercial and industrial customers, if the Commission determined that it had the legal authority to move forward and that the reforms were operationally feasible for a particular segment of customers. The terms and conditions of wholesale supply contracts solicited by the EDCs must, therefore, not restrict the Commission's ability to order changes to default service, and be flexible enough to permit the transition to a different form of default service prior to June 2015. To provide the Commission this degree of authority and flexibility, the Commission should state explicitly that bridge plans should rely on shorter term and spot contracts, no advanced procurement periods, no contracts extending beyond the end of the default service period (either May 31, 2014 or May 31, 2015), and no expectation that the full procurement schedule must be adhered to. That is, the plans should be comprised of procurements with shorter terms and spot purchases, no advanced procurement periods, no contracts extending beyond the end of the default service period (either May 31, 2014 or May 31, 2015) and no expectation that the full

procurement schedule must be adhered to. The Commission should direct the companies to include such flexibility in their plans, subject to final resolution in the default service proceedings.<sup>2</sup>

#### Intermediate Competition Enhancing Measures

Direct Energy recommends that the Commission also clarify that it intended to direct that intermediate competition enhancing measures mentioned in the Tentative Order (as well as any others recommended by the RMI Stakeholder process or other parties) be implemented as soon as possible after the Commission issues its order in December ruling on these measures. Many intermediate competition enhancing measures can be implemented prior to the end of the existing default service plans. For example, a “traditional” referral program for default service customers who contact the utility for non-emergency, non-termination-related issues,<sup>3</sup> as well as a “new/mover” referral program<sup>4</sup> applying to new or moving customers, can, and should, be implemented right now. There is no need to wait until the beginning of the next default service plan in June, 2013. Other intermediate competition enhancing measures, such as accelerated

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<sup>2</sup> Direct Energy continues to believe that the Commission presently has the legal authority to implement many default service reforms, such as transferring the obligation to EGSs and to conduct opt-out auctions of default customers as Direct Energy has recommended. But the Commission would likely be required to amend its existing regulations.

<sup>3</sup> As discussed herein, such programs (which are operated by EDCs) offer to refer/enroll customers with an EGS whereby the customers receive a promotional rate.

<sup>4</sup> As discussed herein, a “New/Mover” Program is one whereby customers may sign up for service from a competitive supplier when they initiate service. None of the EDCs permit a customer to do so today. Rather than giving the customer a choice when service is initiated, the customer is placed on default service.

switching, opt-in auctions (pilot and full-scale),<sup>5</sup> are also capable of being implemented prior to the end of the existing default service plans. While the tentative recommendation of the sub-group studying this specific issue is to implement full scale opt-in auctions so that customers would be taking service from participating EGSs starting on June 1, 2013, the Commission should make clear that it intends that the steps necessary to implement this measure will have taken place prior to the start of the next default service period so that “power will be flowing” – and the benefits to customers accruing – by June 1, 2013, at the latest. This is important not only to get this program started as soon as possible but also to permit the opt-in auctions to be better incorporated into the planning for the post-June, 2013 default service.

Rather than just “recommending” these steps, the Commission has the authority to, and should, issue these directives as policies that would then be the starting point for each EDC, subject to the outcome of the default service proceedings. Absent issuing such directives as policy statements, the Commission risks losing the opportunity to move forward expeditiously with retail competition reforms, should EDCs submit proposals in response to its “recommendations” that are inconsistent with the Commission’s goals and timelines for intermediate measures arrived at through the RMI Stakeholder process.

#### New/Mover Program

The Commission should also clarify that it intended to direct the EDCs to include in their default service plans proposed procedures that would fully eliminate the

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<sup>5</sup> These would be voluntary, opt-in auctions, in which customers could choose to be part of an aggregation pool in return for receipt of a “switching premium” or a promotional rate, or both.

discrimination in favor of default service when customers apply for new service or move to a new residence or business location. The current system elevates default service beyond the status of “provider of first resort” to “provider of only resort,” as customers are not permitted (much less encouraged) to begin service with a competitor. This reform has been characterized in the Stakeholder process as a “New/Mover Program.” In the RMI Stakeholder process, this issue has been discussed in two phases: first, in the context of traditional “referral programs” (because it appears that it will be recommended that the problem first be addressed by establishing a referral mechanism for new and moving customers); and, second, in a longer-term context. The longer term solution would additionally modify the EDCs’ systems so that new or moving customers can immediately take competitive service and do not have to subscribe to default service if they would rather enjoy the benefits of the competitive market from the beginning of their electric service. This longer term solution to the new and moving customer issue should be explicitly directed to be included as part of each EDC’s next default service plan, subject to the outcome of those proceedings.

## **II. BACKGROUND**

On April 29, 2011, this Commission issued an Order initiating an Investigation of Pennsylvania’s retail electricity market.<sup>6</sup> The April 29 Order articulated the goal “of

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<sup>6</sup> *Investigation of Pennsylvania’s Retail Electricity Market*, I-2011-2237952 (Order entered April 29, 2011)(“April 29 Order”). The resulting investigation is referred to herein as either the “Investigation” or “RMI.”

making recommendations for improvements to ensure that a properly functioning and workable competitive retail electricity market exists in the state.”<sup>7</sup>

On July 28, 2011, after review of both the written comments and the comments conveyed during the *en banc* hearing of June 8, 2011, the Commission issued an Order initiating stakeholder processes for the discussion of both intermediate and longer term reforms to the retail electricity market.<sup>8</sup> At that time, the Commission announced that an order covering intermediate competition enhancing measures would be issued in December 2011, and an order covering longer term reforms would be issued in the first quarter of 2012.<sup>9</sup>

With the issuance of the Tentative Order, the Commission has issued for public comment recommendations concerning the intermediate competition enhancing measures to be incorporated into the EDCs’ upcoming default service plans.<sup>10</sup> Comments on the Tentative Order are due by November 3, 2011, and an *en banc* hearing is scheduled for November 10, 2011.

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<sup>7</sup> April 29 Order, at p. 2, citing *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company and Trans-Allegheny Interstate Line Company*, Docket Nos. A-2010-2176520 and A-2010-2176732 (Order entered March 8, 2011), at p. 46.

<sup>8</sup> *Investigation of Pennsylvania’s Retail Electricity Market*, I-2011-2237952 (Order entered July 28, 2011)(“July 28 Order”).

<sup>9</sup> July 28 Order, at p. 10.

<sup>10</sup> Tentative Order, at p. 3 (“This Order represents intermediate recommendations from OCMO as to how EDCs should develop the format and structure of their upcoming default service plans. The Commission has considered OCMO’s recommendations and tentatively adopts them, subject to the filing of comments from stakeholders and interested parties.”).

The current default service procurement plans for most EDCs end on May 31, 2013. Plans for the next default service period must be filed, at least nine months before the expiration of the current default service procurement plan.<sup>11</sup> This means that the next procurement plan would need to be filed before August 31, 2012 at the latest. But, in order to complete procurements before the effective/delivery date of June 1, 2013, as well as to implement the competition enhancing measures (especially full-scale opt-in auctions) by that date, EDCs would need to file and receive approval from the Commission well in advance of the outside deadline. Thus, for practical purposes, and to meet the Commission's goals with respect to competition-enhancing measures, EDCs need to file their next procurement plans at the end of 2011 or in the first quarter of 2012, at the latest.

### **III. DIRECT ENERGY'S COMMENTS ON THE TENTATIVE ORDER**

#### **1. The Tentative Order Inadvisably Delays the Implementation of Long Term Changes in the Nature and Structure of Default Service Until At Least June 2015.**

The Commission's July 28 Order announced that "Pennsylvania's current retail market requires changes in order to bring about the robust competitive market envisioned by the General Assembly when it passed [the Electric Choice Act]."<sup>12</sup> In the July 28 Order, the Commission directed its Staff to investigate both competitive enhancements that could be enacted relatively quickly (Phase I of the Investigation) as well as what

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<sup>11</sup> 66 Pa. C.S. § 2807(e)(3.6).

<sup>12</sup> *Investigation of Pennsylvania's Retail Electricity Market*, I-2011-2237952 (Order entered July 28, 2011)("July 28 Order"), at p. 7.

changes were needed “to eliminate or at least minimize the impact of default service on the competitive retail market [(Phase II)].”<sup>13</sup>

The Commission announced it would vote on the Phase I competition enhancing steps, in December 2011, and rule on the longer term changes to default service in the first quarter of 2012.<sup>14</sup> Since that time, the Commission Staff has diligently (and professionally) pursued a very transparent stakeholder process during which the specifics of various competitive enhancements and reforms for the intermediate and longer term have been discussed. The longer term (or Phase II) reforms<sup>15</sup> could, theoretically, start in June 2013 because the current default service procurement plans end in May 2013.

Direct Energy’s interpretation of the Tentative Order is that the Commission intends to continue to follow the timelines announced in the July 28 Order as follows: 1) the issuance of an order on intermediate competition enhancing measures at the end of 2011<sup>16</sup> directing utilities to implement these measures as expeditiously as possible, and 2) an order announcing long term, Phase II reforms in the first quarter of 2012.<sup>17</sup> Direct Energy also understands and acknowledges that the implementation of long-term reforms may require a revision to the Commission’s existing default service regulations and/or

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<sup>13</sup> July 28 Order, at p. 8-9.

<sup>14</sup> July 28 Order, at p 10.

<sup>15</sup> Direct Energy and RESA has recommended such long term reforms as transferring the default service function from the utilities to EGSs, opt-out auctions and restructuring default service so that it serves as a true back-up to the competitive market. *See* Comments (Phase I) of Direct Energy; Comments (Phase I) of RESA.

<sup>16</sup> July 28 Order, at p. 10 (“We anticipate that the intermediate work plan will be presented to this Commission in December of 2011.”).

<sup>17</sup> July 28 Order, at p. 10 (“The long range work plan will be presented in the first quarter of 2012.”).

enactment of revisions to the Public Utility Code.<sup>18</sup> Finally, Direct Energy understands that the Commission's rationale in ordering the EDCs to file new default service plans with two year durations<sup>19</sup> is, at least in part, to provide time in which to secure these approvals for the envisioned longer term reforms.

But the Commission's Tentative Order "recommends that EDCs file default service plans that run for two years."<sup>20</sup> This recommendation appears to assume that the process of obtaining legislative authorization (or approval of regulations) will take a full two years and that long term reforms will not be able to begin until June 2015 at the earliest.<sup>21</sup> While there may be valid reasons for assuming that a two year "bridge" will be needed, the fact remains that if the Commission were able to secure approval for long term changes earlier than June 2015, the Tentative Order's directive could unnecessarily delay the implementation of real, permanent and significant changes that are needed to assure full and robust competition. Moreover, reforms could potentially be implemented more quickly for certain classes of customers (e.g., medium and large industrial and commercial customers), either because the requisite approvals are able to be secured sooner or the Commission might determine that it already possesses the legal authority to make the reforms and further legislative authorization isn't necessary. Moreover, the Commission may well find that certain barriers to the implementation of material reforms

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<sup>18</sup> Direct Energy does not believe that legislative changes are required to enact many of the proposed long-term changes (e.g., transferring the default responsibility to EGSSs), but also understands that the Commission may well wish to present the changes to the General Assembly for review and approval even if the Commission arguably presently possesses the legal authority.

<sup>19</sup> Tentative Order, at p. 4.

<sup>20</sup> Tentative Order, at p. 4.

<sup>21</sup> Tentative Order, at p. 4.

in default service for residential customers (especially the existence of supply contracts that extend beyond the end of the existing default service plans) are not, in fact, barriers, or are not barriers with respect to other customer classes.

In light of the foregoing, Direct Energy recommends that the PUC reconsider its Tentative Order and instead announce that it intends to put into effect the long term solutions to reforming the present default service structure as soon as feasible. To facilitate this goal, the Commission should revise its Tentative Order to direct the EDCs to file one year plans with the ability to extend the procurements for an additional year, if required.

In any event, the Commission should order the EDCs to file plans that will be sufficiently flexible so as to permit default service reforms as soon as possible either for all customers or for specific rate classes, such as commercial and industrial customers. To accomplish this, the Commission needs to do at least three things:

First, it should explicitly reaffirm the existing intent and contractual terms for full requirements service contracts, under which any wholesale suppliers electing to supply full requirements power for default service are not guaranteed any particular level of load.<sup>22</sup> Moreover, it should put wholesale suppliers on notice that the Commission

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<sup>22</sup> For example, the Commission has noted that the full requirements approach “insulates default supply customers from the volatility associated with wholesale market conditions with the supplier bearing the risks of factors such as customer migration, weather, load variation and economic activity.” *Implementation of Act 129 of October 15, 2008*, PUC Docket No. L-2009-2095604, 2011 Pa. PUC LEXIS 114 (Final Rulemaking Order entered October 4, 2011). This fact is reflected in the full requirements requests for proposals issued by PPL (for July 2009) and PECO (for Fall 2011), which are available at: <http://www.pplelectric.com/Business+Partners/polr-dspp/Supplier+Documents.htm#load> and <http://www.pecoprocurement.com/index.cfm?s=background&p=archivesDocument&archiveTypeId=6>.

intends to enact, as soon as possible during the bridge plans, intermediate competition enhancing measures with the goals of effectuating more switching and a more robust competitive market. The Commission should also state clearly that it could implement long term reforms, including but not limited to transferring default service responsibility to EGSs, during the period the bridge plans are in effect. Such a statement will give EDCs notice that this expectation should be explicit in all future procurements, and give wholesale suppliers an opportunity to structure their default service procurement offers accordingly, as well as to build in adequate risk allowances for those contingencies.

Second, to effectuate the long term transition of default service from an EDC-provided service to one provided by an EGS, the block contracts could contain provisions which explicitly permit their assignment to alternative default service providers, or the Commission could provide certainty that such contracts will be honored by EDCs, if such action is necessary to effectuate this transfer as soon as possible.<sup>23</sup> Direct Energy understands that these fixed volume contracts were entered into in accordance with default service plans approved by the Commission, and that changing the allocation of risk among EDCs, wholesale suppliers and ratepayers after the fact would be unfair and inappropriate.<sup>24</sup>

Finally, the default service supply plan put in place for the June 2013 through May 2015 period should be structured so that reforms could be implemented at any point

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<sup>23</sup> In the unlikely event that the quantity of power purchased by EDCs under existing block contracts exceeds remaining default service load at some point during the contract, the EDCs may resell such power into wholesale markets or to other suppliers.

<sup>24</sup> We note further, however, that the allocation of risk related to full requirements contracts is different than that for fixed volume block contracts, and Direct Energy encourages the Commission to continue to explore all reasonable option for mitigating any negative impact on its policy goals that full requirements contracts that extend beyond May 31, 2013 may have.

during that period. This will most likely mean no more block contracts, full requirements supply contracts of no longer than 3-6 months, spot purchases, shorter procurement lead times, no contracts extending beyond the end of the default service period (either May 31, 2014 or May, 2015) and flexibility to alter or suspend the full procurement schedule if conditions so warrant.<sup>25</sup>

Contracts of such length and with such terms will facilitate compliance with the “least cost” requirements of Act 129.<sup>26</sup> As the Commission is well aware, Act 129 requires that default service be provided via a portfolio of wholesale supply contracts that represent a “prudent mix” of long, medium and short terms, which produce electricity prices to customers that are the “least cost” over time.<sup>27</sup> With the implementation of competition enhancing steps, and the potential that longer term reforms may be implemented during the terms of the default service “bridge” plans, implementing longer term contracts, or contracts that might extend beyond June, 2015 due to laddering, would create the potential for longer default service obligations than necessary or appropriate. This would occur due to the potential that longer term fixed volume contracts might have to be assigned or sold into the market to accommodate a new default service structure.<sup>28</sup> This contingency likely would cause longer term or laddered wholesale contracts to be

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<sup>25</sup> It is crucially important that the Commission retain authority within the context of supervising the EDCs’ default service plans to suspend the procurement schedules for any or all of the companies if the Commission determines that further purchases would be unnecessary or imprudent due to the implementation of default service reforms.

<sup>26</sup> 66 Pa. C.S. § 2807(e)(3.4).

<sup>27</sup> 66 Pa. C.S. § 2807(e)(3.7).

<sup>28</sup> As noted above, full requirements contracts for default service differ from fixed volume block contracts in such a way that they should not present the same barrier to implementation of important default service reforms as do block contracts.

higher cost and shorter term and spot to be the “prudent mix” of contract lengths and be the “least cost to customers over time.”

Direct Energy also recommends that the Commission confirm that it still intends (consistent with the July 28 Order) to issue an order in the first quarter of 2012 that will set forth a plan for reforming default service to enhance competition on a long term basis. The plan should require having EDCs no longer provide default service, and transferring that responsibility to qualified EGSs. This, again, is important to ensure that wholesale suppliers and EDCs are fully on notice about these potential changes.

Finally, and as discussed in more detail below, rather than issue these pronouncements as “recommendations” Direct Energy recommends that the PUC issue them as policy statements which would be required to be the starting point for the issue in the EDCs’ default service proceedings.

**2. The Commission Should Clarify That It Intends To Implement Intermediate Competitive Enhancements As Soon As Possible And Does Not Intend To Wait Until After They Are Approved In Individual EDC Default Service Plans.**

Direct Energy recommends that the Commission clarify that it intends for intermediate “competition enhancing measures” to be implemented as soon as possible. The Tentative Order specifically recommends that the EDCs include several of the competition enhancing steps in their proposed default service supply plans (which will go into effect on June 1, 2013).<sup>29</sup> It does not alter or amend the provisions of the July 28 Order in which the Commission announced that it intended to decide on a package of

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<sup>29</sup> Tentative Order, at p. 8-9.

intermediate competition enhancing steps after first phase of the Investigation is completed and via an order to be issued in mid-December.<sup>30</sup>

The timing of the intermediate competition enhancing measures is critical to successfully energizing the retail markets and making them truly competitive. Direct Energy therefore submits that the most reasonable reading of the Tentative Order and the July 28 Order is that the Commission intends:

1. That the Investigation should continue and that the Commission shall consider recommendations for directing the implementation of intermediate “competition enhancing measures” by order in December, 2011. Those “competition enhancing measures” shall include those listed in the Tentative Order as well as any others deemed as beneficial by the Commission, including those recommended by the Office of Competitive Market Oversight (“OCMO”) or another party;
2. That the EDCs should also include provisions for including the intermediate competition enhancing measures in their default service “bridge” plans;

and

3. That any intermediate “competition enhancing measures” which can be implemented prior to the beginning of the next default service period (June 2013) should be so implemented.

This interpretation of the Tentative Order was confirmed by the Staff during the RMI call on October 27, 2011.<sup>31</sup>

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<sup>30</sup> July 28 Order, at p. 10 (“We anticipate that the intermediate work plan will be presented to this Commission in December of 2011.”).

<sup>31</sup> Recap of RMI Technical Conference of October 27, 2011, p. 6 (“[W]e Understand there’s concern re: timing of competition enhancements. Interpretations that all enhancements (e.g., accelerated switching, referral programs, etc.) will be delayed. Not the case from Staff perspective. Commission will clarify, if need be, in final order. Staff intention was to signal that by 2013 those programs will be components of DS plans. Need to figure out parameters now, do any pilots, etc. now. That way these programs can be included in DS plans. Feel free to request clarification in comments.”) The recap is available at [http://www.puc.state.pa.us/electric/Retail\\_Electricity\\_Market.aspx](http://www.puc.state.pa.us/electric/Retail_Electricity_Market.aspx).

Many intermediate “competition enhancing measures” are capable of being implemented prior to the end of the existing default service plans. For example, a “traditional” referral program can be implemented prior to the end of the existing default service plans. The Commission has already concluded that the public interest would be served by consideration of customer referral programs.<sup>32</sup> Simply put, the EDC could introduce the referral program when a customer calls<sup>33</sup> the EDC’s call center on certain issues (e.g., to start or move service, high bill complaint, service issues, etc.).<sup>34</sup> These referral programs would provide customers with the opportunity to obtain a discount off the EDC’s commodity price for an introductory period when switching to an EGS (who has elected to participate in the referral program). Other intermediate “competition enhancing measures” that could be implemented prior to the end of the existing default service plans include: opt-in auction pilots; and new/mover programs.<sup>35</sup>

Some commentators in the RMI process have voiced concerns about implementing any competition enhancing measures prior to the end of the existing EDC default service plans for fear that the switching prompted by the measure could interfere with existing wholesale supply contracts. But, the competition enhancing measure can be implemented without any such legitimate concern. There are two issues that need to be addressed with respect to existing contacts: (1) the effect on wholesale supply block purchases, and (2) wholesale full requirements, load following contracts. As discussed

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<sup>32</sup> 52 Pa. Code § 69.1815.

<sup>33</sup> Other communication channels could also be used by the EDC to facilitate customer enrollment in the referral program.

<sup>34</sup> Direct Energy would not advocate that default service customer calls involving outages, service emergencies, or disconnections be included in the traditional referral program.

<sup>35</sup> This item is discussed in greater detail below.

above, since full requirements suppliers agree to provide power to a share of the default load, however large or small, and have always been on notice through Commission statements, EDC procurement documents and contract language that supply volumes are unknown and not guaranteed, the effect of switching on full requirements contracts should not be a legitimate concern.

With respect to block contracts, as the attached analysis shows, with the exception of Duquesne, none of the existing EDC default service supply plans have load served by block or other types of fixed contracts that exceed 51% of estimated residential load in October 2012 a potential date for when pilot opt-in auctions could take service with the winning EGS(s).<sup>36</sup> And with respect to the commercial and industrial classes, no EDC has entered into block contracts for default service supply. There is little chance that the competition enhancing steps, including opt-in pilots would cause switching that would result in more than 50% of the existing default service load to switch to competitive supply. Therefore clarifying that the PUC intends that the competition enhancing steps be implemented as soon as possible is both important for competition and technically feasible.

- a) The Commission Should Clarify That the Elements and Principles of the Competition Enhancing Measures it Establishes in Its December 15 Order Shall Be Incorporated By the EDCs in Their Default Service Plans.

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<sup>36</sup> See Appendix I Analysis Provided by Analysis Group, on behalf of Direct Energy, Exhibits I-1 and I-2. This analysis also demonstrates that full scale opt-in auctions, as well more fundamental default service reforms could be implemented starting in June, 2013 and without interfering with existing or planned block contracts. For most of the service territories, only small portions of the projected load will be served by such contracts, and the amounts diminish moving forward beyond June 2013. *Id.*, Exhs. I-3 through I-6.

Finally, if the process of implementing competition enhancing measures is going to be done in a uniform and rational manner throughout the Commonwealth, it is vitally important that each utility be directed to utilize the principles and procedures identified by the PUC in December as the starting point for their individual plans. Accordingly, in its December 15 Order, Direct Energy recommends that the Commission establish the format and key elements of each of the competition enhancing measures and issue them as policy statements which the EDCs are directed to include in their default service plans. These policy directives would be presumptively valid, subject to the right of parties to present evidence to rebut that presumption of validity in the individual default service cases.

Direct Energy would simply note that for some of the potentially most effective competition enhancing steps, such as full-scale opt-in auctions, to be in effect starting June 1, 2013 it will be important for the Commission to articulate these auction elements as uniform policies soon enough that they can be fully incorporated into the default service plans of each of the EDCs. Since those plans need to be filed at the end of December 2011 or January 2012 in order to fully implement the competition enhancing measures for power flow as of June, 2013, it is extremely important that the Commission maintain the existing plan to issue an order with regard to these measures in December and do everything possible to maintain uniformity throughout EDC service territories.

- b) The Commission should issue its directives as policy statements that would be required to be the starting point for EDC Plans.

The Commission carefully characterized all of its pronouncements in the Tentative Order as “recommendations,” presumably to assure that it had not prejudged the issue prior to the adjudication of each EDCs’ default service plans and to allow for review and on-the-record comments from stakeholders. But “recommendations” are just that – non binding suggestions. Direct Energy is concerned that some EDCs might decide to decline to follow the PUC’s “recommendations” and file proposals in their plans that do not use the PUCs pronouncements in the final version of this Order as the starting points for their plans. Therefore, Direct Energy recommends that the PUC issue each of its directives as policy statements.

As the Commission is well aware, while a policy statement is not a final determination of an issue as applied to individual EDCs it is the starting point.<sup>37</sup> The policy pronouncement is presumptively valid, subject to the right of any party, including the EDCs, to submit evidence that would overcome the presumption that the Commission should follow that policy.<sup>38</sup> Issuing its directives here would provide much greater assurance that all of the EDCs will use this Order’s pronouncements as a starting point

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<sup>37</sup> A policy statement would provide guidance as to “the course which the agency intends to follow in future adjudications.” *Pa. Human Relations Comm’n v. Norristown Area School District*, 374 A.2d 671, 679 (Pa. 1977). A properly crafted policy statement will provide improved transparency as to the elements of the default service procurement plans and the information that the Commission will consider in evaluating and making determinations on those elements.

<sup>38</sup> *See, e.g., Re: Interconnection Application fees* M-00051865 at p. 1 (Order entered Feb. 27, 2009) (“The standard[s] established in this Policy Statement will be presumed reasonable. An . . . EDC . . . that wishes to deviate from the standard . . . set forth in this Policy Statement will . . . have the burden of proof to establish in an on the record proceeding, that the proposed deviation is justified.”)

and will make it far more likely that the ultimate results will be more uniform and consistent from service territory to service territory. This will also make it more likely that the process can be completed without further delay.

**3. The Commission Should Clarify That It Intended To Require EDCs To Include A Longer Term “New/Mover” Program In Their Next Default Service Plans.**

A “New/Mover” Program is one whereby customers may sign up for service from a competitive supplier when they initiate service. None of the EDCs permits a customer to do so today. Rather than giving the customer a choice when service is initiated, the customer is automatically placed on default service.

Simply put, a “New/Mover” Program would give customers “the opportunity to purchase electricity from their choice of EGSs”<sup>39</sup> upon the initiation of distribution service from the EDC. This eliminates the obvious discrimination in favor of default service and furthers the legislative goal of having the “ultimate choice” rest with the consumer.”<sup>40</sup>

In its Tentative Order, the Commission “recommends that EDCs incorporate a referral program within their default service plans.”<sup>41</sup> Direct Energy believes that the Commission intended to direct the implementation of the “New/Mover” plans by the EDCs when it directed them to include “referral programs” because (1) the July 28 Order identifies “new/mover” programs as an item for consideration,<sup>42</sup> and (2) such programs

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<sup>39</sup> 66 Pa. C.S. § 2806(a).

<sup>40</sup> *Id.*

<sup>41</sup> Tentative Order, at p. 6.

<sup>42</sup> July 28 Order, at p. 10.

were actively discussed at the RMI stakeholder process as part of the referral program initiative and no party objected to the concept.

The stakeholders had recommended that, as an intermediate step towards addressing the issues with new and moving customers, the EDCs should provide a referral type option to residential and small commercial applicants for service or for customers moving from one location to another within a utility's service territory. Direct Energy believes that there is broad agreement among stakeholders that a referral program at service initiation is an important near-term step but cannot and should not take the place of a more fundamental reorientation of the relationship among customers, EGSs and EDCs, which begins (literally) at the time a customer initiates service. Thus, stakeholders have discussed to follow the near-term implementation of referral programs with a longer term effort to enable all customers who initiate service to be served from the very beginning by an EGS of the customer's choice (which is not permitted by any EDC today) combined with greater efforts to convince new and moving customers to take advantage of the competitive market, rather than simply accepting the "default" of the Default Service.

Direct Energy recommends that the Commission clarify that it intended that New/Mover Programs be implemented both as part of a "traditional" referral program and a longer term process to fully eliminate the bias in favor of default service at the point of service initiation. Both of these initiatives should be included as a intermediate competition enhancing measures and longer term solutions should be included by the EDCs in their upcoming default service plans.

#### IV. CONCLUSION

Direct Energy appreciates the opportunity to present comments on the Tentative Order. The Tentative Order's recommendations will implement various retail market enhancements and are a good step toward realizing the goal of a robust competitive retail market. To continue the forward movement in this direction, Direct Energy recommends that the Commission expeditiously finalize these recommendations and direct implementation of, *inter alia*, an opt-in auction program, a traditional referral program and a "New/Mover" program to be effective on June 1, 2013.

Direct Energy specifically recommends the following modifications or clarifications be reflected in the Commission's Final Order:

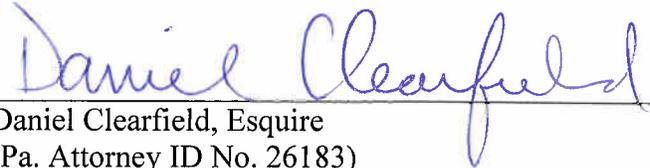
1. The Commission should clarify its intention and confirm that (consistent with the July 28 Order) it still intends to issue an order in the first quarter of 2012 that will set forth a plan for reforming default service to enhance competition on a long term basis.
2. The Commission should revise its Tentative Order to direct the EDCs to file one year plans with the ability to extend the procurements for an additional year, if required.
3. The Commission should clarify its intention to implement long term reforms to the present default service structure as soon as it receives legislative authorization, and direct that the EDC's filed Default Service plans should be sufficiently flexible to permit the implementation of longer term reforms sooner than June, 2015, if the PUC obtains the legal or regulatory authority to do so.
4. The Commission should clarify and state explicitly that (a) default service may be significantly altered or ultimately restructured during the pendency of the bridge plans; and (b) that bridge plans should rely on shorter term and spot contracts, no advanced procurement periods, no contracts extending beyond the end of the default service period (either May 31, 2014 or May 31, 2015), and no expectation that the full procurement schedule must be adhered to.
5. The Commission should (a) explicitly reaffirm that any wholesale suppliers electing to supply full requirements power for default service is not guaranteed any particular level of load; and (b) put wholesale suppliers

on notice that, for any contracts not entered into by the entry date of the Final Order here, the Commission intends to enact competition enhancing measures, the goals of which are to effectuate more switching and a more robust competitive market which may affect such contracts.

6. The Commission should direct that the EDC's supply contracts contain provisions that would explicitly permit their assignment to alternative default service providers, or otherwise provide certainty that such contracts will be honored, if necessary to effectuate this transfer as soon as possible.
7. The Commission should direct that the default service supply plan to be effective on June 2013 should be structured so that the reforms could be implemented at any point prior to that date.
8. The Commission should also clarify that it intended to include proposals to modify EDC systems so that a new or moving customer can immediately obtain generation service from a competitive supplier (and not be required to take default service for any length of time) in the list of programs recommended for immediate implementation as well as for EDC inclusion in their next default service plans.
9. The Commission clarify its intention and direct that intermediate competition enhancing measures be implemented as soon as possible after the Commission issues its order in December ruling on these measures. Intermediate measures to be implemented as soon as possible, include (but are not limited to), accelerated switching, opt-in auctions, a "traditional" referral program, and a "New/Mover" Program.
10. The Commission should also make clear that it intends that intermediate competition enhancing measures mentioned in Paragraph 8 should be fully implemented at least by June, 2013. In particular, the opt-in auctions should be approved and implemented so that participating customers will be taking service starting on June 1, 2013 at the latest.

11. The Commission should issue all of its final pronouncements as policy statements which must be the starting point in each EDC's default service plan and are presumptively valid, subject to any party's right to rebut that presumption of reasonableness.

Respectfully submitted,



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Date: November 3, 2011

## **APPENDIX I**

### **Analysis of Existing and Planned Supply Commitments for Default Service**

**Exhibit I-1**

**Residential Default Service Procurement:  
Energy Not Committed through Block Contracts, October 2012**

EDC	Energy (GWh)	Percent of October 2012 Energy		Estimated Energy Available (GWh)	
		Not Committed through Existing Contracts	Not Committed through Existing or Planned Contracts	Not Committed through Existing Contracts	Not Committed through Existing or Planned Contracts
Duquesne	805	-	-	-	-
PECO	2,865	78.0%	78.0%	2,235	2,235
PPL	822	81.1%	67.0%	667	550
Met-Ed	1,192	51.9%	51.9%	619	619
Penelec	1,047	63.6%	63.6%	666	666
Penn Power	332	76.6%	76.6%	255	255
West Penn Power	NA	100.0%	100.0%	NA	NA

Source: EDC DS Procurement Plans, Analysis Group estimates.

Note: Percentage of residential energy not committed reflects a comparison of total forecast customer load to block contract amounts for each utility.

**Exhibit I-2**

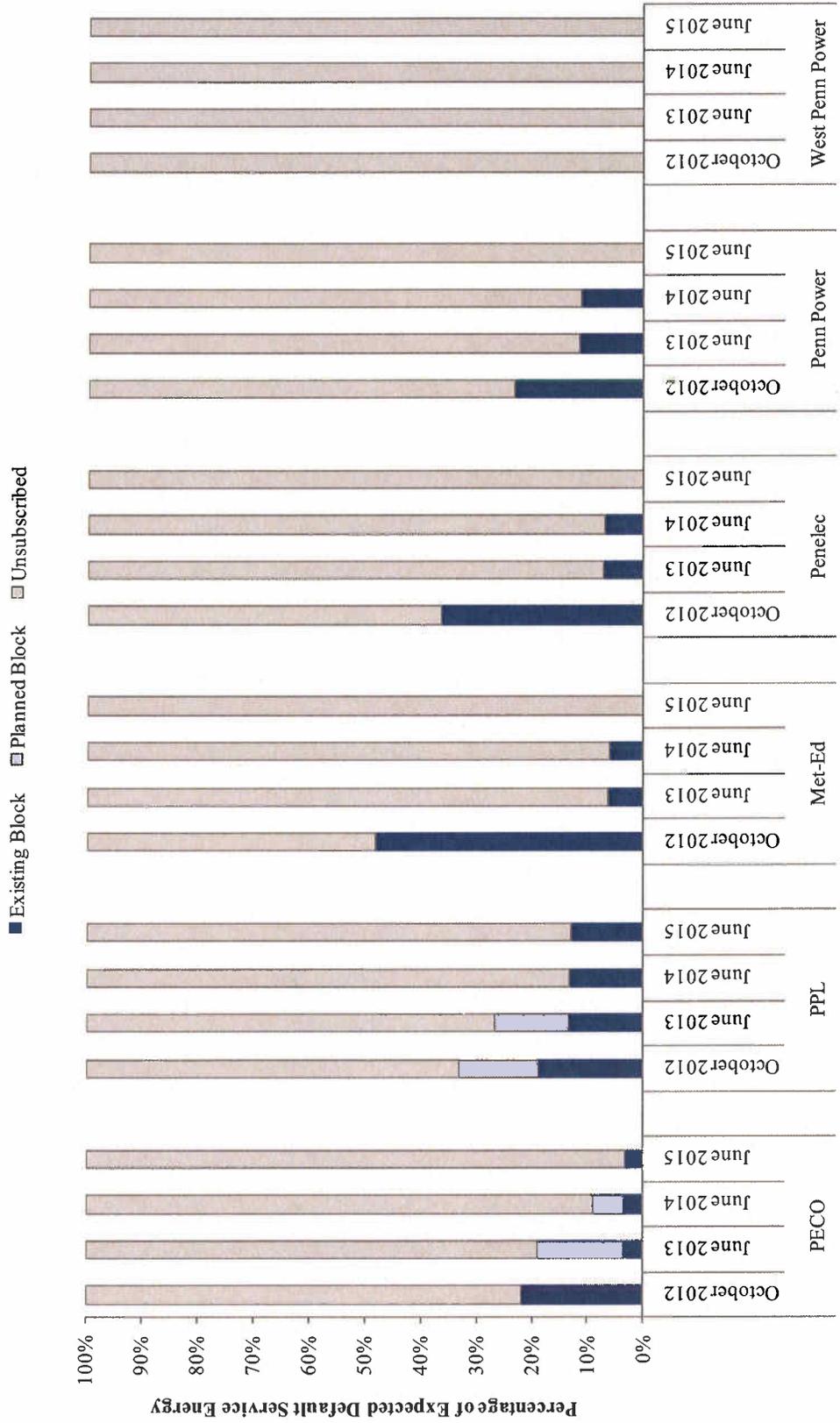
**Residential Default Service Procurement:  
Energy Not Committed through Block Contracts, June 2013 (Full Scale Auction)**

EDC	Energy (GWh)	Percent of June 2013 Energy		Estimated Energy Available for Full Scale Auction (GWh)	
		Not Committed through Existing Contracts	Not Committed through Existing or Planned Contracts	Not Committed through Existing Contracts	Not Committed through Existing or Planned Contracts
Duquesne	805	100.0%	100.0%	805	805
PECO	2,865	96.5%	80.9%	2,763	2,317
PPL	822	86.6%	73.2%	712	602
Met-Ed	1,192	93.6%	93.6%	1,116	1,116
Penelec	1,047	92.8%	92.8%	972	972
Penn Power	332	88.5%	88.5%	294	294
West Penn Power	NA	100.0%	100.0%	NA	NA

Source: EDC DS Procurement Plans, Analysis Group estimates.

Note: Percentage of residential energy not committed reflects a comparison of total forecast customer load to block contract amounts for each utility.

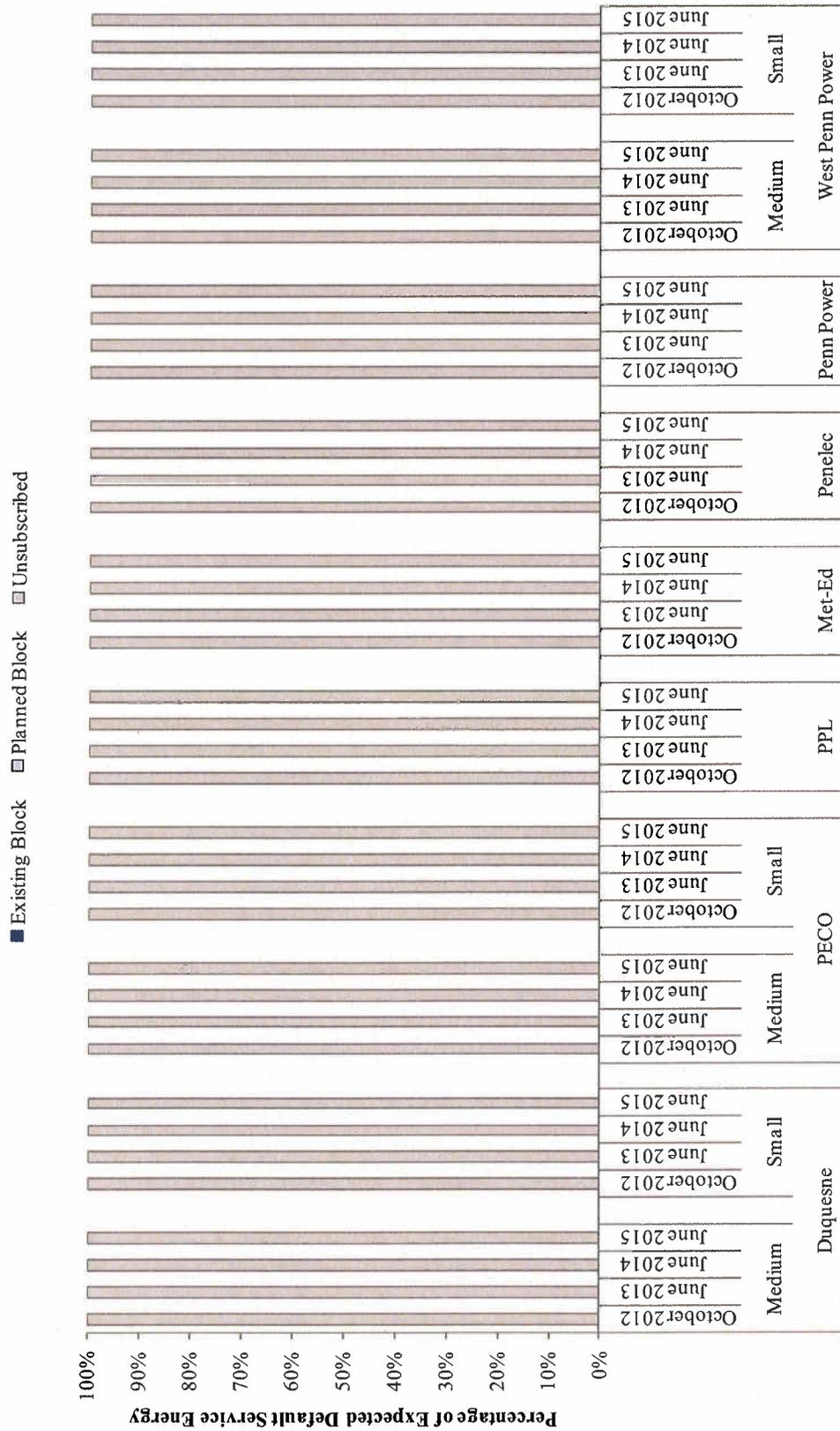
**Exhibit I-3**  
**Status of Default Service Procurements at Various Future Time Periods**  
**Residential Segment**



Note: Unsubscribed energy includes energy designated for full-requirement service and spot purchase.  
 Sources: EDCDS Procurement Plans, Analysis Group estimates.

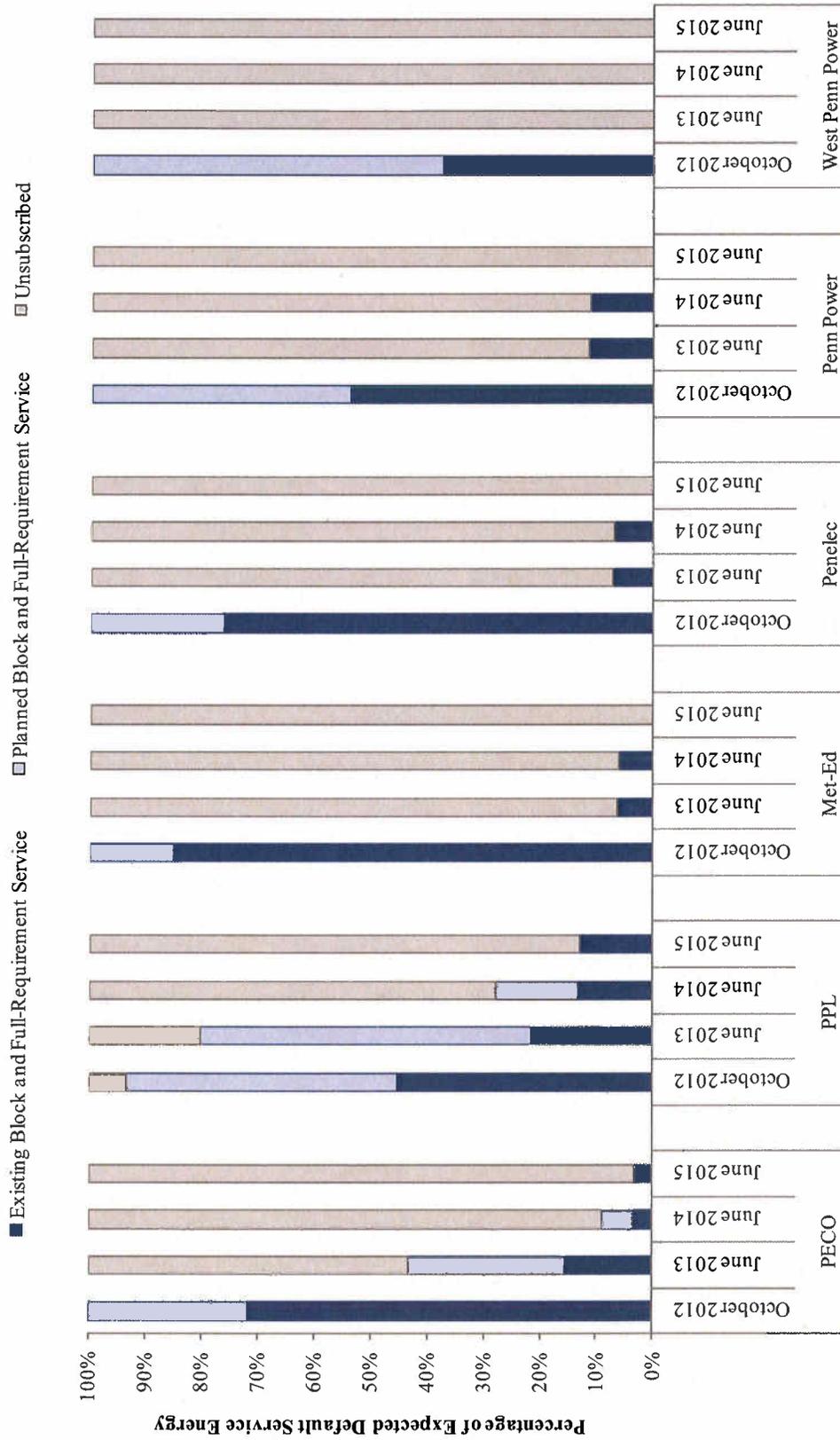
**Exhibit I-4**

**Status of Default Service Procurements at Various Future Time Periods  
Commercial Segment**



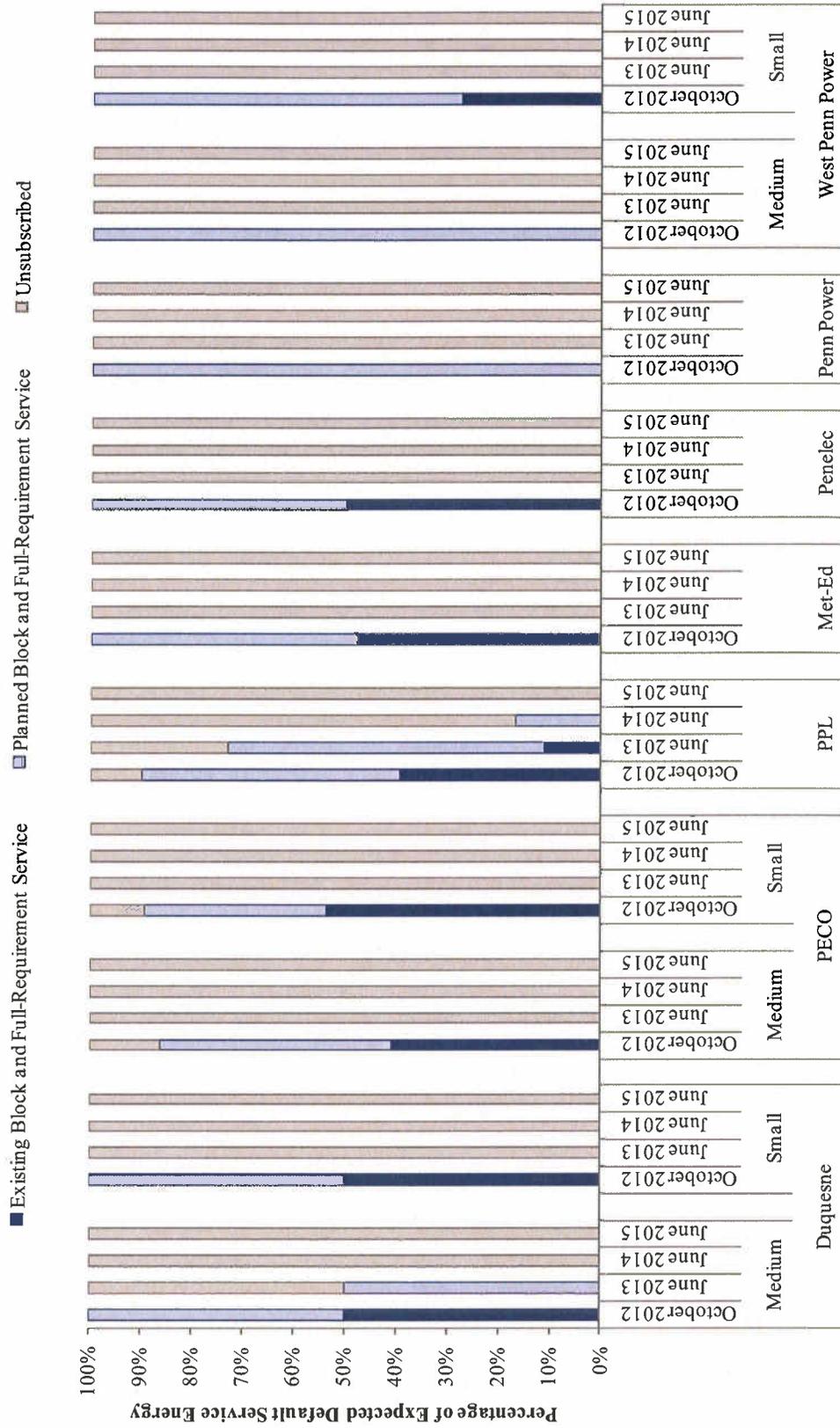
Note: Unsubscribed energy includes energy designated for full-requirement service and spot purchase.  
Sources: EDC DS Procurement Plans, Analysis Group estimates.

**Exhibit I-5**  
**Status of Default Service Procurements at Various Future Time Periods**  
**Residential Segment**



Note: Unsubscribed energy includes energy designated for spot purchase.  
 Sources: EDCDS Procurement Plans, Analysis Group estimates.

**Exhibit I-6**  
**Status of Default Service Procurements at Various Future Time Periods**  
**Commercial Segment**



Note: Unsubscribed energy includes energy designated for spot purchase.  
 Sources: EDCDS Procurement Plans, Analysis Group estimates.