

CAPTION SHEET

CASE MANAGEMENT SYSTEM

1. REPORT DATE: 00/00/00	:	
2. BUREAU: LAW	:	
3. SECTION(S):	:	
5. APPROVED BY:	:	4. PUBLIC MEETING DATE:
DIRECTOR:	:	00/00/00
SUPERVISOR:	:	
6. PERSON IN CHARGE:	:	7. DATE FILED: 04/13/07
8. DOCKET NO: L-00070184	:	9. EFFECTIVE DATE: 00/00/00

PARTY/COMPLAINANT: NOTICE OF PROPOSED RULEMAKING ON
 RESPONDENT/APPLICANT: RETAIL ELEC CHOICE ACTIVITY REPORTS
 COMP/APP COUNTY: UTILITY CODE: 999999

ALLEGATION OR SUBJECT

NOTICE OF PROPOSED RULEMAKING ON RETAIL ELECTRICITY CHOICE ACTIVITY REPORTS.

DOCUMENT
FOLDER

DOCKETED
APR 13 2007



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

April 19, 2007

MICHAEL G WOLFE
FIRST ENERGY SOLUTIONS CORP
2800 POTTSVILLE
PO BOX 16001
READING PA 19612-6001

DOCUMENT
FOLDER

IN RE: Retail Electricity Choice Activity Reports L-00070184

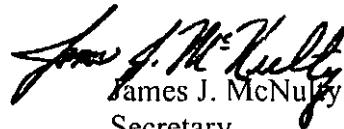
To Whom It May Concern:

The Commission, at Public Meeting of April 13, 2007, adopted a Proposed Rulemaking Order in the above captioned case.

This is to request that you please replace page 21 of the Proposed Rulemaking Order, double-sided for your convenience, with the enclosed corrected page. Please note that the Order Entered Date: April 17, 2007, was inadvertently omitted.

Thank you for your attention to this matter, and we regret any inconvenience caused by this oversight.

Very truly yours,

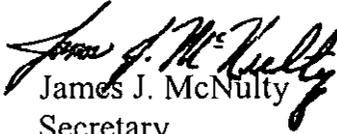

James J. McNulty
Secretary

Enclosure

6. That a copy of this Order and Annex A shall be served on all jurisdictional electric distribution companies, the Office of Consumer Advocate, the Office of Small Business Advocate and all other parties that filed comments at the docket, *Development and Production of Retail Electricity Choice Activity Reports*, Docket No. M-00061939.

7. That the contact persons for this Proposed Rulemaking are Charles F. Covage, 717-783-3835 (technical), and Patricia Krise Burket, Law Bureau, 717-787-3463 (legal).

BY THE COMMISSION,


James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: April 13, 2007

ORDER ENTERED: April 17, 2007

ANNEX A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 54. ELECTRICITY GENERATION CUSTOMER CHOICE

Subchapter H. RETAIL ELECTRICITY CHOICE SALES ACTIVITY REPORTS

§ 54.201. Purpose.

This subchapter establishes reporting requirements applicable to EDCs and active EGSs and requires the reporting of information related to retail electric generation sales activity. The Commission will use this information to fulfill its duty to monitor the Commonwealth's retail electric generation market and to police and arrest instances of market power abuse and discriminatory conduct. 66 Pa.C.S. § 2811. The information shall be used to conduct milestone reviews of the development of the retail market for the supply and distribution of electricity. 66 Pa.C.S. § 2804 (12).

§ 54.202. Definitions.

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

Active EGS – An EGS that is licensed to provide retail electric generation service and is providing service to one or more customers.

CEEP - The Bureau of Conservation, Economics and Energy Planning.

EDC - Electric Distribution Company - The term as defined in 66 Pa.C.S. § 2803.

EGS – Electric Generation Supplier. - The term as defined in 66 Pa. C.S. § 2803.



+bp 11-3-07

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

October 18, 2007

Mary Jane Phelps, Director
Pennsylvania Code & Bulletin
Room 647, Main Capitol Building
Harrisburg, PA 17120

DOCUMENT
FOLDER

Re: L-00070184/57-255
Proposed Rulemaking
Retail Electricity Choice Activity Reports
52 Pa. Code, Chapter 54

Dear Ms. Phelps:

Enclosed please find two (2) copies of the face sheet and above-captioned order along with a diskette containing the Executive Summary, Commission order and Annex A. The Attorney General approved the proposal on July 2, 2007. The Commission requests that this order be published as a **proposed** rulemaking in the Pennsylvania Bulletin.

Very truly yours,

Karen O. Moury
Director of Operations

Enclosure

cc: Chief Counsel Pankiw
Regulatory Coordinator DelBiondo
Assistant Counsel Burket
Mr. Covage
Docketing ✓

DOCKETED
NOV 1 2007

TO: LEGISLATIVE REFERENCE BUREAU

RE: PUC PROPOSED REGULATION

L-00070184/57-255
Proposed Rulemaking
Retail Electricity Choice Activity Reports
52 Pa. Code, Chapter 54

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 18, 2007, the Commission submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Committees. In addition to submitting the proposed rulemaking, the Commission provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commission. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the department, the General Assembly and the Governor of objections raised.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)**

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General.

BY *Amy M. Elliott*
(DEPUTY ATTORNEY GENERAL)

JUL 02 2007

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

Pennsylvania Public Utility Commission
(AGENCY)

DOCUMENT/FISCAL NOTE NO. L-00070184/57-255

DATE OF ADOPTION April 13, 2007

BY *James J. McNulty*

James J. McNulty

TITLE (SECRETARY)

Copy below is hereby approved as to form and legality. Executive or independent Agencies.

BY *Bohdan R. Pankiw*
Bohdan R. Pankiw
Chief Counsel

4-13-07
DATE OF APPROVAL

Check if applicable. No Attorney General approval or objection within 30 days after submission.

L-00070184/57-255
Proposed Rulemaking
Retail Electricity Choice Activity Reports
52 Pa. Code, Section 54

The Pennsylvania Public Utility Commission on April 13, 2007 adopted a proposed rulemaking order which proposes to adopt reporting requirements regarding electric generation market activity to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power. The contact persons are Charles Covage, Bureau of Conservation, Economics and Energy Planning, 783-3835 and Patricia Krise Burket, Law Bureau, 787-3463.

EXECUTIVE SUMMARY

L-00070184/57-255

Retail Electricity Choice Activity Reports

52 Pa. Code Sections §§ 54.201-54.204

On April 12, 2006, the PUC entered an order soliciting comments on establishing reporting requirements for monitoring sales activity and growth in the retail electric generation market. The proposed reporting requirements would apply to all electric distribution companies and active electric generation suppliers. Comments to the order were due by June 12, 2006; reply comments were due by July 11, 2006. *Development and Production of Retail Electricity Choice and Activity Reports*, Order entered April 12, 2006 at Docket No. M-00061939.

The proposed regulations at 52 Pa. Code §§ 54.201-54.204 require that all electric distribution companies and active electric generation suppliers report information by customer group relating to sales activity in the retail electric generation market. Distribution companies will be required to file quarterly reports while suppliers will be required to file annual reports. Reports must be filed using the appropriate report form. Draft forms are included in Annex A to facilitate public comment. The final report forms will not be published as part of the regulations, but will be available as paper copies by request to the Commission Secretary or in a downloadable electronic format on the PUC's internet website.

The PUC will use the sales activity information provided to fulfill its duty to monitor the Commonwealth's retail electric generation market and to police and arrest instances of market power abuse and discriminatory conduct. 66 Pa.C.S. § 2811. The Commission will also use the information to conduct milestone reviews of the development of the retail market for the supply and distribution of electricity. 66 Pa.C.S. § 2804 (12).

The contact persons for this proposed rulemaking are Charles F. Covage, 717-783-3835 (technical), and Patricia Krise Burket, 717-787-3463 (legal).

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

Public Meeting held April 13, 2007

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Kim Pizzingrilli
Terrance J. Fitzpatrick

Retail Electricity Choice Activity Reports

Docket No. L-00070184

**PROPOSED RULEMAKING
ORDER**

BY THE COMMISSION:

Under the *Electricity Customer Choice and Competition Act*, the Commission is charged with the duty of monitoring sales activity and conducting milestone reviews of the development of Pennsylvania's retail market for the supply and distribution of electricity. The Commission is also authorized to take steps to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power. *See* Pa.C.S. § 2804 (12) and 2811(a). To fulfill these duties, it is essential that the Commission be provided with timely information regarding sales activity in Pennsylvania's generation market.

By this order the Commission proposes to adopt reporting requirements regarding electric generation market activity. These proposed regulations will be applicable to both electric distribution companies (EDCs) and electric generation suppliers (EGSs), and will provide important information that will permit the Commission to fulfill the above-listed duties.

DISCUSSION

BACKGROUND

On April 12, 2006, the Commission entered an order soliciting comments on establishing formal reporting requirements for monitoring market activity and growth in the electric generation supply market. The proposed reporting requirements would be applicable to both electric distribution companies (“EDCs”) and electric generation suppliers (“EGSs”). Comments to the order were due by June 12, 2006; reply comments were to be filed by July 11, 2006. *Development and Production of Retail Electricity Choice and Activity Reports*, Order entered April 12, 2006 at Docket No. M-00061939.

Comments were filed by Constellation NewEnergy, Inc. (“Constellation”), Office of Consumer Advocate (“OCA”), Office of Small Business Advocate (“OSBA”), Energy Association of Pennsylvania (“EAPA”), Pike County Power & Light Company (“Pike”), Richards Energy Group Inc. (“Richards”), Retail Energy Supply Association (“RESA”),¹ First Energy Solutions Corp. (“FirstEnergy”). Two parties filed reply comments: Constellation and RESA.

Note that although not all of the comments are acknowledged or addressed in this order, the Commission carefully considered all comments and thanks the commenters for their help in defining the proposed reporting requirement in terms of its purpose, its content, its frequency and its applicability. We have drafted proposed regulations to implement the reporting process and developed two forms for submission of the reports. In the course of the regulatory review process, public comment will be solicited on these proposed regulations and the draft forms.

¹ RESA’s members include Consolidated Edison Solutions, Inc.; Direct Energy Services, LLC; Hess Corporation; Reliant Energy Solutions; Sempra Energy Solutions; Strategic Energy, LLC; SUEZ Energy Resources NA, Inc. and US Energy Savings Corporation.

ISSUES

The Commission's April 12, 2006 order listed specific questions that commenters were asked to address. We will discuss these questions and the corresponding comments received seriatim. In the process, we will present what we believe is a practical and reasonable reporting requirement that will allow this Commission to monitor retail electric generation market for sales activity and to some extent, consumer behavior (or market participation).

- 1. Should this Commission implement reporting requirements similar to ones created by the Maryland Public Service Commission (MD PSC)² to monitor competitive market development?**

Constellation states that the Commission should use a report that is similar to Maryland's report, but asserts that at this stage of the market, a less detailed report should be required. Constellation also states that the distribution companies have the bulk of the data that is available so that the suppliers should not be made to complete these reports. Constellation recommends waiting until retail markets have more fully developed and then forming a working group to develop the content of these reports. In its reply comments, Constellation reiterates its position that EDCs should file monthly reports because they have the data. Constellation also agrees with Pike, FirstEnergy and RESA that EGS reports are onerous and states in disagreement with Richards and OCA that there is no need for detailed reports.

Both RESA and Constellation report that Maryland only required suppliers to file the form one time. Richards states that the Maryland Report was not specific enough about rate class data, but too specific on non-normal rate structures.

² Copies of the MD PSC's forms -- *Maryland Choice Supplier Survey* and *Electric Choice Enrollment Monthly Report* -- were attached to the April 12, 2006 order to facilitate comment.

RESA prefers monthly reporting by the EDCs since they maintain this information. RESA states that requiring EGSs to file these reports would amount to a significant regulatory burden. RESA does not oppose making EGSs file reports annually, but would like to limit the content of the reports to types of products/services (fixed/variable) and the length of the contracts. In its reply comments, RESA agrees with EAPA that there needs to be a standardized treatment of customer drops and adds to achieve consistent data.

OSBA states that EDCs and EGSs should be required to report all of the data collected by the Maryland forms. However, instead of reporting some of that data only by number of customers, EDCs and EGSs should also be required to provide all of the data by designated rate groups and by megawatt hours. In addition, EGSs should be required to report their data by EDC service territory.

FirstEnergy does not support adoption of the form report created by the MD PSC for use in Pennsylvania on an ongoing basis. There are aspects of the form that are over-burdensome or otherwise not appropriate for disclosure. Specifically, the MD PSC form of report would require new programming of EGS systems to track the specific product/contract type information requested in the form. And of most concern, the MD PSC form of report would require that the EGS disclose confidential product offerings and contract terms with its customers.

Pike states that the proposed report is similar to one required by New York. Pike states that EDCs should file such reports, but such reports would be onerous for suppliers to file.

As a general comment, the EAPA notes that the proposed default service rules (Docket L-00040169) would require customers whose registered demand exceeds 500

Kilowatts (“KW”) to receive default service that reflects hourly pricing. This demand level can include customers from both the commercial and industrial categories as those categories are currently configured. Such a rule could provide an incentive to redefine the existing classifications. The EAPA recommends that any such reclassification should not be undertaken until the rulemaking is complete.

EAPA states that the reports must reflect existing groupings/offerings of EDCs. EAPA states that the Maryland Report states figures as of the last calendar day of the month, and the data reported by Pennsylvania utilities using that time frame may be inconsistent depending on how pending drops/enrollments are reported relative to billing cycles. EAPA states that the number of active suppliers should be defined as those that are licensed or those that are listed as active on the PUC webpage.

OCA states that both EDCs and EGSs should be made to file such reports.

Resolution

After due consideration, the Commission has developed the attached draft report forms that are similar, but not identical, to the ones used by the MD PSC. We have developed separate reporting forms for use by EDCs and suppliers. EGSs and EDCs will be required to use the appropriate form to report on customer shopping activity. An EDC will be required to report shopping activity in its service territory while an EGS will be required to report on a statewide basis. Note that only active EGSs need file these reports. For the purposes of this reporting requirement, active EGSs will be defined as: (1) suppliers that are licensed to provide retail electric generation service and (2) that are currently providing service to one or more customers. *See Annex A, sections 54.201, 54.202 and 54.203(a).*

2. What reporting frequency is optimal for EGSs and EDCs?

Constellation states that EDC reports should be filed annually, but as rate caps expire, the frequency for filing such reports should increase to semi-annually and then to quarterly. The schedule for increasing the report frequency should be flexible, based on market development. In its reply comments, Constellation clarifies that EDCs with rate caps in place should file annually and EDCs that no longer have rate caps in place should file reports on a quarterly basis. Constellation believes that monthly reports would be excessive.

RESA comments that the EDCs should file monthly reports while the EGSs should file the initial reports at the end of the first quarter after the requirement is adopted and then should be required to file reports annually. In its reply comments, RESA changes its position and states that EDCs with rate caps should file annually or quarterly while those without rate caps should be made to file monthly. RESA reiterates that EGSs should not be required to report on the same frequency as EDCs.

OSBA states that data should be reported on a monthly basis, consistent with the timetable used by the OCA to gather the data for its monthly reports. However, if EGSs object, the OSBA would favor less frequent reporting over less comprehensive reporting. OCA favors annual reports.

Richards states that the reports should be filed on a quarterly basis.

FirstEnergy, Pike, and the EAPA support quarterly EDC reports. Pike states that there will be insufficient data to justify monthly reporting.

Resolution

The majority of the commenters, including EAPA, favor quarterly reporting for EDCs. Therefore, the Commission proposes a requirement that EDCs file quarterly reports with the Commission's Secretary. These reports would be due 15 days after the end of the previous quarter.

As for EGSs, an EGS would be required to file its sales activity report annually. Such reports would be filed at the same time as the annual report is required to be filed by 52 Pa. Code § 54.39 (b) (relating to electricity generation supplier licensing; reporting requirements). This regulation requires that the EGS file an annual report for the previous calendar year on or before April 30 of each year.

An original and three copies of each completed report form would be filed by the EDC or EGS with the Commission's Secretary. When the report form is made available on line, the report form may be filed electronically and one paper copy of the report form must be filed with the Commission's Secretary within 15 days of the date the report is due. The Commission's Bureau of Conservation, Economics and Energy Planning will be designated as the lead bureau to track, retain and produce the reports. *See Annex A, section 54.203(b)(3) and (c).*

3. What data elements should be gathered from EGSs and EDCs?

Constellation states that EDCs should be made to file the following information by customer class (residential, commercial and industrial): (1) total number of customers in the class, (2) total number shopping; (3) change in number since last report; (4) total load in Megawatt ("MW"); (5) total load shopping MW; (6) number of EGS per territory; (7) change in number of EGSs since last report; and (8) percentage of market share.

Constellation replies that EDCs should provide data aggregated by: (1) customer class (residential, commercial and industrial); (2) by number of customers or load (in MW) served by EGS; and (3) percentage of customers or load (in MW) served by EGSs.

Richards comments that EDCs should report on two levels: (1) by major rate class of EDC and (2) by statewide customer category (residential, commercial and industrial). EGS should report data in two levels: (1) by EDC; and (2) by rate class category. Data reported should be in average cents per kilowatt-hour.

RESA states that EDCs should report information on “price to compare” - the low, high and average for each customer group based upon some agreed-upon standards of usage and demand.

FirstEnergy states that the information reported should include: (1) the number of customers served by group; (2) the number of megawatt-hours by group; and (3) the number of contracts, sub-categorized into fixed or variable, by group. Because the information will be made public, FirstEnergy believes that the information should be presented as an aggregate and not on an EGS basis.

Pike supports the data elements collected in the Maryland Report.

EAPA states that its members will provide the data required by the Maryland Report. EAPA suggests an additional data element be reported: the percentage of commercial and industrial customers on fixed price service. This would indicate whether those customers whose only available option under Default Service is hourly pricing are being forced into the market to take a fixed price product. RESA in its reply agrees with EAPA’s position on this data element.

EAPA provided no comment on the EGS Report, but stated that whatever data is requested from EGSs should be data that is available to EGSs through the normal data exchange processes that facilitate the switching of accounts, the scheduling of transmission and capacity, and the scheduling and settlement of energy. The EAPA objects to any reporting requirements that would require its members to provide data separate and apart from the normal data exchange processes for the purpose of EGSs reporting that data to the PUC.

In regard to data elements, OSBA reiterates its position that in addition to reporting the number of customers, data should be provided by rate groups and by megawatt-hours. EGS data should be reported by EDC territory.

OCA states that both EDC and EGS reports should also include the percentage of eligible customers selecting a given product. OCA also commented that EGSs should report aggregated prices offered to residential/commercial and industrial customers.

RESA replies that it disagrees with the OSBA and OCA about requiring such detail from EGSs in reports. RESA states that such requirements would be burdensome and duplicative of EDC reports.

Resolution

More detailed reports would provide the information necessary for this Commission to monitor which EGSs and which customer classes are participating in retail markets. This information may also be used to gauge whether EDC and Commission policies and practices are fostering or hindering the development of competitive markets.

To accomplish these goals, we propose to require that EDCs report the following information by customer class:

- (1) Number of customer accounts.
- (2) Sales by EGS (MWh).
- (3) Sales by the EDC (MWh).
- (4) Number of EGSs serving customer accounts.
- (5) Number of time of use customer accounts served by EGSs.
- (6) Number of time of use customer accounts served by the EDC.
- (7) Number of hourly/real time price customer accounts served by EGSs.
- (8) Number of hourly/real time price customer accounts served by the EDC.
- (9) Sales by EGSs to hourly/real time priced customer accounts (MWh).

Because the EDC-provided information will be made public, the information will be presented on an aggregated basis by EDC and no specific EGS data will be publicly provided. *See Annex A, section 54.204.*

EGS market share will be reported by EDCs as number of customer accounts served by EGS and the total sales in Megawatthours ("MWh") that these accounts represent. Specifically, we propose to require an EDC to report the following information for each EGS providing generation sales in the EDC's service territory:

- (1) Identity of EGS.
- (2) By customer class for residential customers, small C&I customers, medium C&I customers and large C&I customers, number of customer accounts served by the EGS.
- (3) By customer class for residential customers, small C&I customers, medium C&I customers and large C&I customers, sales in MW to customer accounts.

EDC-reported data related to EGS market share will be kept confidential. *See further discussion below at pp. 15-17.*

We propose that the EGSs will be required to report data by customer class for residential, small C&I customers, medium C&I customers and large C&I customers³ on a statewide basis. The information that EGSs will be required to report includes:

- (1) Number of customer accounts.
- (2) Number of flat rate customer accounts.
- (3) Number of seasonal rate customer accounts.
- (4) Number of time of use customer accounts.
- (5) Number of hybrid rate customer accounts.
- (6) Number of fixed term contract customer accounts by length of term.
- (7) Number of green power customer accounts.
- (8) Number of mandatory curtailable customer accounts.
- (9) Number of voluntary curtailable customer accounts.
- (10) Number of customer accounts based on billing methods.

This proposed reporting requirement is found in Annex A at section 54.203(a)(4).

4. What classes or sizes of customers should be grouped together in these reports?

Constellation states that sufficient information is provided if the data is reported by customer class –residential, commercial and industrial. EAPA supports using the groupings of residential, commercial and industrial customers. EAPA notes that the differences between EDCs in these classifications are not significant.

Pike states that the class groupings used in the Maryland Report are fine.

FirstEnergy states that residential customers should be reported as a group. Small commercial and industrial customers should be those with load less than 500 Kilowatt (“kW”) and large commercial and industrial customers should be those with load greater than 500 kW.

³ Customer classes are defined in the resolution section starting at p. 12.

RESA states that residential customers should be reported as one group and that commercial and industrial customers should be grouped according to load: small business customers – Peak Load Contribution (“PLC”) less than 25 kW; medium business customers – PLC greater than 25 kW and less than 300 kW; large business customers – PLC greater than 300 kW. In its reply, RESA states a compromise position—that it agrees with Constellation and FirstEnergy that grouping should be kept to the broad categories of residential, commercial and industrial.

Richards comments that data should be reported by rate class and by broad general categories – residential, commercial and industrial.

OSBA states it would be acceptable to combine all of an EDC’s General Services rate classes into one Small C&I group, but it would be preferable to separate commercial customers into two groups: small commercial and industrial customers and large commercial and industrial customers. The OSBA does not state where it would divide this group.

OCA supports the broad grouping of customers into a residential class. OCA has no comment on how commercial and industrial customers should be grouped.

Resolution

The issue of grouping retail customers into categories based on rate classes or on consumption has been debated in other Commission proceedings. No uniform solution has been reached.

First, the Commission regulations at 52 Pa. Code § 54.2 defines a “small business customer” as having a “maximum registered peak load” (“MRPL”) that was less than 25 kW in the last 12 months. This regulation went into effect on August 8, 1998. 28 Pa.B. 3780.

In *Petition of Duquesne Light Company for Approval of Plan for Post-Transition Period Provider of Last Resort Service*, Docket No. P-00032071, Order entered August 23, 2004 (*Duquesne POLR III*), the threshold for customers to participate in hourly priced service in the Large Customer Plan was established at 300 kW. See Order at p. 31 fn. 4. Large Customer Plan applies to Duquesne Rate Schedules GL, GLH, L and HVPS.

In the Penn Power Provider of Last Resort ("POLR") proceeding, the Commission directed that auction bidding be done by rate class. Thus, customers were grouped into residential, small commercial and large commercial categories consistent with existing rate classes as defined in Penn Power's tariff. In this order, the rate class for Penn Power's largest customers, those with minimum billing demand of 200 kva, was assigned to the "large commercial" customer category. See *Petition of Pennsylvania Power Company for Approval of Interim POLR Supply Plan*, Order entered April 28, 2006 at Docket No. P-00052188, pp. 26 - 27.

Most recently, in the *Advance Notice of Final Rulemaking* relating to POLR service in Annex A at proposed sections 54.187(h)(i) and (j), customers were again divided into groups according to MRPL: (1) customers with MRPLs up to 25 kW; (2) customers with MRPLs greater than 25kW and less than 500 kW, and (3) customers with MRPLs greater than 500 kW. See *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)*, Advanced Notice entered February 8, 2007 at Docket No. L-00040169.

This inconsistency in consumption-based customer classifications adds to confusion, and may increase the burden of companies, both EDCs and EGSs, in complying with regulatory requirements and Commission directives. For these reasons, a standard classification should be established for use across the board.

Because a customer's PLC is uniform throughout the PJM, a customer's classification based on PLC would not vary between EDC service territories. In our judgment, using a customer's PLC for classification would not only simplify reporting for EGSs operating in multiple EDC service territories, but also would allow for direct comparisons of sales activity among various EDC retail markets. For this reason, we believe that customer classification is best accomplished using PLCs, rather than the EDC-specific MRPLs.

As for the actual customer groupings, the Commission believes that the data should be collected and reported for the following groups: residential customers; small C&I customers are those with PLCs less than 25 kW; medium C&I customers are those with PLCs ranging from 25 kW up to and including 500 kW; and large C&I customers are those with PLCs greater than 500 kW. We have incorporated this grouping of customers into the proposed regulations. *See Annex A, section 54.202 and section 54.203(a).* Specific comment is requested regarding this proposal.

a. Should these classes be the same or be permitted to vary among different EDCs?

Constellation states that EDC should use the broad categories of residential, commercial and industrial customer groupings. Richards comments that data should be reported by rate class and by broad general categories – residential, commercial and industrial.

RESA and FirstEnergy state that the classes of customers should be made uniform for all EDCs. Pike says the customer groupings should be consistent with each company's tariff.

EAPA supports grouping customers into the broad categories of residential, commercial and industrial. Small differences in categorizing these customers between the companies should not be significant. EAPA members believe that the requirements, with the opportunity to report according to existing customer classifications and a six month period over which to implement and test reports, do not represent an undue burden, provided that the EDCs recover these costs through either a base rate proceeding or through a petition for deferred accounting treatment, which would ultimately be reflected in rates.

OSBA states that each EDC should group customers according to its rate classes; EGSs should report data based on each EDC rate class.

OCA states that the class groupings should be consistent among all EDCs.

Resolution

The Commission has addressed this issue above at pp. 11-14. Because of our creation of customer groupings based on PLCs, no further discussion is necessary here.

b. What information should be publicly available, and what information should be kept confidential?

In regard to what information should be made available to the public, Constellation states that EGS data should be made available on an aggregated basis and that there should be no identification of individual EGSs.

The EAPA believes that data regarding numbers of customers and amount of load served by individual EGSs should be kept confidential. The public release of such data could improperly influence individual customers' choice of a particular EGS.

Richards states that individual customer deals should be kept confidential and that the price per kilowatt-hour and number of customers shopping should be made public.

RESA states that information reported by EDCs, except EGS market share, should be publicly available. Also, information reported that is already available publicly elsewhere, e.g., on EDC websites and in Securities and Exchange Commission ("SEC") reports and reports/briefings for financial analysts, should remain publicly available. As with EDCs, information reported by EGSs that is already available publicly elsewhere, e.g., on EGS websites and in SEC reports and reports/briefings for financial analysts, should remain publicly available and should not be accorded confidential treatment in this PUC reporting process.

FirstEnergy states that information that should be kept confidential should include: EGS market share, financial information and contract terms. FirstEnergy believes that only state-wide aggregate data should be made available in public reports.

Con Edison states that EGS market share information should be held to be confidential. EAPA states that the number of customers and amount of load served by individual EGSs should be kept confidential.

OSBA stated that all of the data which Maryland collected on its reporting form should be collected in Pennsylvania and made publicly available. This data would include: (1) number of customers paying certain types of rates ("flat" rates, demand response rates, real-time rates, etc.); (2) number of customers buying green power; (3) number of customers with varying lengths of contracts (less than a year, greater than a year); (4) number of customers using credit cards or enrolled in automatic bill paying; (5)

number of customer switches to and from suppliers in the reporting month; and (6) number of accounts by service type.

OCA comments that EGS prices to individual industrial customers are confidential, but aggregate data involving residential, commercial and industrial customers are not confidential.

Resolution

The commenters are in general agreement that individual EGS market share information should remain confidential. We agree with the positions of the parties. EDC information/data that does not disclose individual EGS market share is not confidential and may be made public. *See Annex A, section 54.204.* Consistent with this determination, it is proposed that only page 2 of the attached EDC report form that solicits EGS market share information, reported as number of customer accounts served by EGS and the total sales in MWh that these accounts represent, at Section 6 be marked as being "CONFIDENTIAL." Section 6 of the EDC report form is entitled "EGS Market Share Reports." *See Annex A, draft forms*⁴.

WEST VIRGINIA/PA RATE COMPARISON

In our prior order, we requested comment on establishing a measurement that would allow rates paid by retail customers in a traditionally regulated state like West Virginia to be compared with rates paid by similarly-situated customers in Pennsylvania.

⁴ Note that the draft forms are included in Annex A only to facilitate public comment. The finalized report forms will not be published as part of the regulations in Title 52. Instead, the Commission will make available paper copies of the report forms by request, and will post electronic a link to the report forms for download at the Commission website.

The purpose for the measurement was to compare the rates set by competition in Pennsylvania with rates set by regulation in other states over a defined period of time. Specifically, comment was requested on the scope, content, methodology and frequency of data collection in regard to this proposed measurement.

The comments received were overwhelmingly negative in regard to this proposal. Constellation's comments cite "the varied classifications of retail customers by electric utilities not just between service territories but also from state to state" and comments that the "development of a useful measurement may not be possible and may not be meaningful due to extensive differences among historic rates, [and] rates classifications."

The Retail Energy Supply Association comments that "[a]ny such comparison would be 'apples to oranges' no matter how many adjustments would be made to make the comparisons valid." RESA suggests that the Commission "[w]ould be better served by requiring EDCs to submit calculations of what their rates likely would be under traditional regulation for comparison to their POLR rates and prices established by competition."

The Office of Small Business Advocate notes that "even before competition, rates varied greatly within Pennsylvania and between Pennsylvania and other states, because of factors such as generation mix, load growth and load profile." For similar reasons, it is possible that comparing post transition POLR rates in Pennsylvania with regulated rates in other states will yield ambiguous results. Therefore, any such comparison should be performed only once each year and should involve only the data needed to make comparisons at the 'macro' level.

Resolution

In our prior order we had sought comment regarding a measurement which would be used to compare retail electric generation prices in states with competitive markets and states with traditional rate regulation. The intent was to develop a measurement to assess the effect of a competitive market on Pennsylvania's retail electric generation prices. After reviewing the comments, we agree with the majority of the commenters that establishing this measurement would not produce information that would accomplish this goal. Moreover, information regarding electric generation prices and distribution rates is already being collected by the Energy Information Agency, and is readily available at its website: www.eia.doe.gov. For these reasons, we will abandon our efforts to establish such a measurement.

CONCLUSION

As a result of the comments received to our April 12, 2006 order, the Commission intends to amend its regulations to impose a reporting requirement on EDCs and EGSs. Pursuant to this requirement, EDCs and EGSs will be required to submit information regarding sales activity in Pennsylvania's electric generation market. To facilitate reporting, the Commission has developed two forms – one for EDCs and one for EGSs – that shall be used for submitting the required information.

The Commission seeks general comments on the proposed regulations and draft report forms. Persons submitting comments are requested to provide supporting justification for requested revisions, and propose suggested regulatory language for incorporation into the final-form regulations.

Accordingly, under sections 501, 504 and 2801-2812 of the Public Utility Code, 66 Pa.C.S. §§501, 504 and 2801-2812; sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, 45 P.S. §§ 1201-1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; section 204(b) of the Commonwealth Attorneys Act, 71 P.S. 732.204(b); section 745.5 of the Regulatory Review Act, 71 P.S. § 745.5; and section 612 of the Administrative Code of 1929, 71 P.S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231-7.234, we are considering adopting the proposed regulations set forth in Annex A, attached hereto; **THEREFORE,**

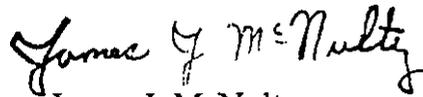
IT IS ORDERED:

1. That a rulemaking docket shall be opened to promulgate regulations and to finalize forms for the reporting of retail electric generation sales activity as set forth in Annex A.
2. That the Secretary shall submit this Order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.
3. That the Secretary shall submit this Order and Annex A for review and comments to the Independent Regulatory Review Commission and the Legislative Standing Committees.
4. That the Secretary shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.
5. That an original and 15 copies of written comments referencing the docket number of the proposed regulations be submitted within 60 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn.: Secretary, P.O. Box 3265, Harrisburg, PA 17105-3265. To facilitate posting, all filed comments shall be forwarded via electronic mail to Charles Covage at ccovage@state.pa.us, Patricia Krise Burket at pburket@state.pa.us, and Cyndi Page at cypage@state.pa.us.

6. That a copy of this Order and Annex A shall be served on all jurisdictional electric distribution companies, the Office of Consumer Advocate, the Office of Small Business Advocate and all other parties that filed comments at the docket, *Development and Production of Retail Electricity Choice Activity Reports*, Docket No. M-00061939.

7. That the contact persons for this Proposed Rulemaking are Charles F. Covage, 717-783-3835 (technical), and Patricia Krise Burket, Law Bureau, 717-787-3463 (legal).

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: April 13, 2007

ORDER ENTERED: April 17, 2007

ANNEX A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 54. ELECTRICITY GENERATION CUSTOMER CHOICE

Subchapter H. RETAIL ELECTRICITY CHOICE SALES ACTIVITY REPORTS

§ 54.201. Purpose.

This subchapter establishes reporting requirements applicable to EDCs and active EGSs and requires the reporting of information related to retail electric generation sales activity. The Commission will use this information to fulfill its duty to monitor the Commonwealth's retail electric generation market and to police and arrest instances of market power abuse and discriminatory conduct. 66 Pa.C.S. § 2811. The information shall be used to conduct milestone reviews of the development of the retail market for the supply and distribution of electricity. 66 Pa.C.S. § 2804 (12).

§ 54.202. Definitions.

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

Active EGS – An EGS that is licensed to provide retail electric generation service and is providing service to one or more customers.

CEEP - The Bureau of Conservation, Economics and Energy Planning.

EDC - Electric Distribution Company - The term as defined in 66 Pa.C.S. § 2803.

EGS – Electric Generation Supplier.- The term as defined in 66 Pa. C.S. § 2803.

kW – Kilowatts.

Large C&I customers – Commercial and industrial customers with PLCs greater than 500 kW.

Medium C&I customers – Commercial and industrial customers with PLCs ranging from 25 kW up to and including 500 kW.

MWh - Megawatthours.

Peak Load Contributions – PLC - The highest level of demand for a particular customer, based on the PJM Interconnection, LLC, peak load contribution standard, or its equivalent for a Pennsylvania EDC outside of PJM.

Small C&I customers - Commercial and industrial customers with PLCs less than 25 kW.

§ 54.203. Reporting requirements.

(a) Reporting requirements.

(1) An EDC or an active EGS shall report the information regarding retail sales of electric generation in accordance with this subchapter.

(2) An EDC shall report retail sales activity in its service territory. The EDC shall report the following information by customer class for residential, small C&I customers, medium C&I customers and large C&I customers:

(i) Number of customer accounts.

(ii) Sales by EGS (MWh).

(iii) Sales by the EDC (MWh).

(iv) Number of EGSs serving customer accounts.

(v) Number of time of use customer accounts served by EGSs.

(vi) Number of time of use customer accounts served by the EDC.

(vii) Number of hourly/real time price customer accounts served by EGSs.

(viii) Number of hourly/real time price customer accounts served by the

EDC.

(ix) Sales by EGSs to hourly/real time priced customer accounts (MWh).

(x) Sales by the EDC to hourly/real time priced customer accounts (MWh).

(3) An EDC shall report the following information for an EGS providing service in the EDC's service territory:

(i) Identity of the EGS.

(ii) By customer class for residential customers, small C&I customers, medium C&I customers and large C&I customers, number of customer accounts served by the EGS.

(iii) By customer class for residential customers, small C&I customers, medium C&I customers and large C&I customers, sales in MWh to customer accounts.

(4) An active EGS shall report retail sales activity on a statewide basis. The EGS shall report the following information by customer class for residential, small C&I customers, medium C&I customers and large C&I customers:

(i) Number of customer accounts.

(ii) Number of flat rate customer accounts.

(iii) Number of seasonal rate customer accounts.

(iv) Number of time of use customer accounts.

(v) Number of hybrid rate customer accounts.

(vi) Number of fixed term contract customer accounts by length of term.

(vii) Number of green power customer accounts.

(viii) Number of mandatory curtailable customer accounts.

(ix) Number of voluntary curtailable customer accounts.

(x) Number of customer accounts based on billing methods.

(5) An EDC shall file quarterly sales activity reports with the Commission's Secretary. A quarterly report shall be filed no later than 15 days after the end of the previous quarter.

(6) An active EGS shall file an annual sales activity report for the previous calendar year on or before April 30 of each year.

(b) Report forms.

(1) The Commission shall provide separate report forms for EDC and EGS use. An EDC or an active EGS shall use the applicable report form.

(2) Report forms shall be made available in both paper and electronic format.

(3) An EDC or active EGS shall file an original and two copies of a completed paper report form with the Commission's Secretary. When the report form is filed electronically, one paper copy of the report form shall be filed with the Commission's Secretary no later than 15 days after the report is due.

(c) Compliance monitoring and enforcement. CEEP is the Commission bureau responsible for retaining reports filed pursuant to this subchapter, and for monitoring and enforcing compliance with this subchapter.

§ 54.204. Public information.

The Commission will make available to the public on an aggregated basis information contained in sales activity reports that does not disclose individual EGS market shares.

Pennsylvania Retail Electricity Choice Activity Report: Electric Distribution Company (EDC) Survey

Reported By EDC Territory

EDC Name:

Reporting Period Date:

Data from EDC:	Residential	Sm C&I	Med C&I	Large C&I	Total
1. Number of Customer Accounts by Service Type					
Total Number of Customer Accounts Served by EGSS					
Total Number of Customer Accounts Served by EGSS & EDC					
Percent of Customer Accounts Served by EGSS	%	%	%	%	%
2. MWh Sales by Service Type					
MWh Sales of EGSS					
MWh Sales of EGSS & EDC					
Percent of MWh Sales of EGSS	%	%	%	%	%
3. Total Number of EGSSs Serving Customer Accounts by Class					
4a. Number of Use (Different prices for usage at different times during week days or every day. The rate has peak period & off-peak prices)					
Total Number of TOU Customer Accounts Served by EGSS					
Total Number of TOU Customer Accounts Served by EGSS & EDC					
Percent of TOU Customer Accounts Served by EGSS	%	%	%	%	%
4b. MWh Sales: Time of Use Customer Accounts					
MWh Sales of EGSS					
MWh Sales of EGSS & EDC					
Percent of MWh Sales of EGSS	%	%	%	%	%
5a. Number of Customer Accounts on Hourly/Real Time Priced Service					
Total Number of Hourly/Real Time Priced Customer Accounts Served by EGSS					
Total Number of Hourly/Real Time Priced Customer Accounts Served by EGSS & EDC					
Percent of Customer Accounts Served by EGSS	%	%	%	%	%
5b. MWh Sales: Hourly/Real Time Priced Customer Accounts					
MWh Sales of EGSS					
MWh Sales of EGSS & EDC					
Percent of MWh Sales of EGSS	%	%	%	%	%

Pennsylvania Retail Electricity Choice Activity Report: EDC Survey
Reported by EDC Territory
EDC Name:
Reporting Period Date:

EGS Market Share Reports Confidential		
Data from EDC	Number of Customer Accounts	MWh Sales
EGSs Serving Residential		
EGS Name		
EGSs Serving Small C&I		
EGS Name		
EGSs Serving Medium C&I		
EGS Name		
EGSs Serving Large C&I		
EGS Name		

**Pennsylvania Retail Electricity Choice Activity Report: Electric Generation Supplier (EGS) Survey
Reported on a Statewide Basis**

EGS Name:

Reporting Period Date:

Data from EGS	Residential	Small C&I	Medium C&I	Large C&I	Total
1. Total Number of Customer Accounts Served					
2. Number of Customer Accounts- Flat Rate*					
3. Number of Customer Accounts- Seasonal Rates*					
<i>Seasonal rates differ in summer/non summer</i>					
4. Number of Customer Accounts- Time of Use Rates*					
<i>Different prices for usage at different times during week days or every day. Example: rate has peak period & off-peak prices Monday-Friday in summer</i>					
5. Number of Customer Accounts-Hybrid Rate Schedule*					
<i>Includes any pricing arrangement which incorporates hourly rates and block rates</i>					
6. Number of Customer Accounts-Other Categories*					
<i>(Do not include customers in #2-5 or #8) Please Specify:</i>					
7a. Number of Customer Accounts in #2-6 on 1 year fixed term contract					
7b. Number of Customer Accounts in #2-6 on 2 year fixed term contract					
7c. Number of Customer Accounts in #2-6 on 3 year fixed term contract					
8. Number of Customer Accounts- Hourly/Real Time Rates*					
<i>Includes any pricing arrangement based on hourly or daily energy prices. Example: LMP based rate or rate based on prior day announced price</i>					
9a. Number of Customer Accounts-Mandatory Curtailable					
9b. Number of Customer Accounts-Voluntary Curtailable					
10. Number of Customer Accounts- Green Power					
<i>Defined as electric supply that has been promoted as having greater than required renewable content & exceeds existing minimum renewable content requirements for retail power. Products offered to customer when customer requests specialized service</i>					
11. Number of Customer Accounts-Supplier Billing					
<i>Includes all customers who are not billed by the utility for the supplier's services. Includes customers billed by a billing service other than the utility</i>					
12. Number of Customer Accounts- Auto Payment					
<i>Includes customers indicated in #11 who are billed automatically on credit cards or other automatic payment arrangements (i.e. bank transfer)</i>					
13. Number of Customer Accounts- Budget Billing					

* Do Not Include A Customer Under More Than 1 Rate Schedule in #2-6 & 8.

Regulatory Analysis Form

This space for use by IRRC

(1) Agency

Pennsylvania Public Utility Commission

(2) I.D. Number (Governor*s Office Use)

L-00070184/57-255

IRRC Number:

(3) Short Title

Proposed Rulemaking Re: Retail Electricity Choice Activity Reports

(4) PA Code Cite

52 Pa. Code Sections §§ 54.201-54.204

(5) Agency Contacts & Telephone Numbers

Primary Contact: Patricia Krise Burket (legal), 717-787-3464

Secondary Contact: Charles Covage (technical), 717-783-3835

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The proposed regulations, subchapter H of Chapter 54 of 52 Pa. Code.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

.66 Pa.C.S. § 501(relating to general powers); § 2804 (12)(relating to standards for restructuring of electric industry; milestone reviews of retail electric generation competition market) and § 2811(a)(relating to market power remediation.)

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The adoption of Subchapter H of Chapter 54 of 52 Pa. Code will allow the Commission to fulfill its statutory duty to monitor sales activity and growth in the retail electric generation market. 66 Pa. C.S. §2804(12)(relating to standards for restructuring of electric industry; market growth milestone review) and §2811 (relating to market power remediation).

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Under the proposed regulation, distribution companies and suppliers would be required to periodically report on information regarding sales activity in the electric generation supply market. Without this information, the Commission would be unable to monitor market conditions in the retail electric generation market and most importantly, could not police anticompetitive or discriminatory conduct by distribution companies and suppliers. Left unchecked this unlawful conduct by market participants could prevent retail electric generation customers from obtaining the economic benefits of a properly functioning and competitive electric generation market.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

All electric generation customers will benefit from the promulgation of the proposed regulations. The information on sales activity that will be filed by the electric distribution companies and generation suppliers will allow the Commission to monitor the growth of the retail electric generation market and to screen for possible anticompetitive conduct and discrimination, thus preserving the economic benefits of the competitive marketplace for customers.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

Except for the minimal costs associated with electric distribution companies and electric generation suppliers' compliance with the periodic reporting requirement discussed below at no 17, no person will be adversely affected by the proposed regulations.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All Pennsylvania electric distribution companies and active electric generation suppliers must comply with the proposed regulations. There are 11 electric distribution companies and approximately 40 electric generation suppliers licensed to sell electric generation to retail customers. Only those electric generation suppliers who are engaged in selling electric generation to retail customers are considered to be "active suppliers" and must comply with the proposed regulations.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

On April 12, 2006, the Commission issued an order requesting public comment on establishing a reporting requirement for information relating to sales activity in Pennsylvania's electric generation market. The comment period ended June 12, 2006; the reply comment period ended July 11, 2006. Comments were filed by eight interested parties - the Energy Association of PA, Office of Small Business Advocate, Office of Consumer Advocate, one electric distribution company--Pike County Power & Light Company, three suppliers -- Constellation NewEnergy, Inc., Richards Energy Group Inc., and First Energy Solutions Corp.; and Retail Energy Supply Association, a marketer trade association. Reply comments were filed by Constellation and RENA.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Costs of compliance with the proposed regulations will be minimal. Both electric distribution companies and the electric generation suppliers already collect and compile sales activity information for their own use and will be provided with a form for use in reporting this information. The form will be made available electronically at the PUC's internet web site. Electric distribution companies will file reports quarterly while electric generation suppliers will file reports annually.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

None.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

Additional legal or accounting costs associated with the implementation of this proposed regulation by the Commission will be minimal. There will be no savings to the Commission as a result of implementing this proposed regulation.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$ N/A	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community	minimal	minimal	minimal	minimal	minimal	minimal
Local Government	N/A					
State Government	minimal	minimal	minimal	minimal	minimal	minimal
Total Costs						
REVENUE LOSSES:	N/A					
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

The proposed regulations are not expected to result in any revenue losses, savings or costs to local governments. No revenue losses or savings are expected for the regulated community or state government. Costs associated with the preparation and filing the sales activity reports for the regulated community and the PUC are expected to be minimal. PUC costs related to docketing and filing the reports, to the extent that they exist, will be further reduced with the implementation of the PUC's electronic filing and docketing system (InfoMAP).

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A				

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Not applicable.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Not applicable.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Not applicable.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

Not applicable.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The minimal costs for electric distribution companies and electric generation suppliers associated with this periodic sales activity reporting requirement will not place Pennsylvania at a competitive disadvantage.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Yes, the proposed regulations establish a reporting requirement relating to sales activity in the retail electric generation market for electric distribution companies and electric generation suppliers. Since distribution companies and suppliers already compile this sales activity information, costs for record keeping for these two groups should not be affected.

Distribution companies and suppliers will be required to complete and file with the PUC secretary the appropriate form to report specific information regarding sales activity. Because this is a new reporting requirement, initially there may be a minimal increase in reporting costs for these two groups. However, these costs should ultimately be reduced as a result of the PUC's implementation of its electronic filing and docketing system InfoMAP.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Not applicable

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The proposed regulation will become final following publication in the Pennsylvania Bulletin after review of all comments submitted to the Commission and approval by IRRC. The Commission hopes to have final form regulations to receive all necessary approvals by the end of 2007.

(31) Provide the schedule for continual review of the regulation.

After taking effect, the final regulations will be reviewed and revised as is necessary.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

tbp 5-30-09

IN REPLY PLEASE
REFER TO OUR FILE

May 19, 2009

Mary Jane Phelps, Director
Pennsylvania Code & Bulletin
Room 647, Main Capitol Building
Harrisburg, PA 17120

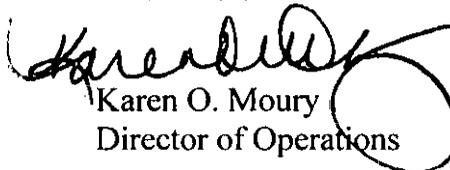
DOCUMENT
FOLDER

Re: L-00070184/57-255
Final Rulemaking
Retail Electricity Choice Activity Reports
52 Pa. Code, Chapter 54

Dear Ms. Phelps:

Enclosed please find two (2) copies of the face sheet and above-captioned order along with a diskette containing the Executive Summary, Commission Order and Annex A. The Attorney General approved the rulemaking on May 12, 2009. The Commission requests that this order be published as a **final** rulemaking in the *Pennsylvania Bulletin*.

Very truly yours,


Karen O. Moury
Director of Operations

cc: Chief Counsel Pankiw
Regulatory Coordinator DelBiondo
Assistant Counsel Burket
Mr. Covage
Docketing ✓

TO: LEGISLATIVE REFERENCE BUREAU

RE: PUC FINAL REGULATION

L-00070184/57-255

Final Rulemaking

Retail Electricity Choice Activity Reports

52 Pa. Code, Chapter 54

Under Section A of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15), the agency submitted a copy of the final rulemaking, which was published as proposed at 37 *Pa.B.* 5895 on November 3, 2007, and served on October 18, 2007, to the Independent Regulatory Review Commission and the Chairmen of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment. In compliance with Section 5(b.1), the agency also provided the Commission and the Committees with copies of all comments received, as well as other documentation.

This final form regulation was deemed approved by the House Committee on Consumer Affairs and was deemed approved by the Senate Committee on Consumer Protection and Professional Licensure, and was approved by the Independent Regulatory Review Commission on April 23, 2009, in accordance with Section 5(c) of the Act.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General.

BY *Amy J. Elliott*
(DEPUTY ATTORNEY GENERAL)

MAY 12 2009

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

Pennsylvania Public Utility Commission
(AGENCY)

DOCUMENT/FISCAL NOTE NO. L-00070184/57-255

DATE OF ADOPTION December 4, 2008

BY *James J. McNulty*
James J. McNulty

TITLE *Secy*
(SECRETARY)

Copy below is hereby approved as to form and legality. Executive or independent Agencies.

BY *Bohdan R. Pankiw*
Bohdan R. Pankiw
Chief Counsel

12-4-08
DATE OF APPROVAL

Check if applicable. No Attorney General approval or objection within 30 days after submission.

L-00070184/57-255
Final Rulemaking
Retail Electricity Choice Activity Reports
52 Pa. Code, Chapter 54

The Pennsylvania Public Utility Commission on December 4, 2008, adopted a final rulemaking order which adopts reporting requirements regarding electric generation market activity to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power. The contact persons are Charles Covage, CEEP, 783-3835 and Patricia Krisé Burket, Law Bureau, 787-3464.

EXECUTIVE SUMMARY

L-00070184/57-255

Retail Electricity Choice Activity Reports

52 Pa. Code Sections §§ 54.201-54.204

On April 12, 2006, the PUC entered an order soliciting comments on establishing reporting requirements on sales activity the retail electric generation market. *See* 66 Pa.C.S. § 2811. The reporting requirements would apply to all electric distribution companies and active electric generation suppliers. Order entered April 12, 2006 at Docket No. M-00061939. Eight comments and two reply comments were filed.

After reviewing the comments, the PUC issued its proposed rulemaking on *Retail Electricity Choice Activity Reports* on April 13, 2007. The proposed order was published in the *Pa. Bulletin* on November 3, 2007. IRRC and six other interested persons filed comments. The PUC issued its *Final Rulemaking Order* on August 7, 2008. On August 25, 2008, RESA filed a petition for reconsideration of the requirement that suppliers report data by customer class as defined in each distribution company's tariff. After notice and opportunity to be heard, the PUC granted RESA's request, and issued its *Final Rulemaking Reconsideration and Order* on December 4, 2008.

The regulations at 52 Pa. Code §§ 54.201-54.204 require that all electric distribution companies and active electric generation suppliers report sales activity information. A distribution company will file quarterly reports reporting by customer class as defined in its tariff. A supplier will file an annual report reporting for customer groups defined by annual usage. Reports must be filed using the appropriate report form that may be obtained from the PUC's Secretary's Bureau or the forms officer, or may be down-loaded from the PUC's internet website.

The PUC will use the sales activity information collected to monitor the retail electric generation market to prevent market power abuse and discriminatory conduct. The information will also be used to conduct milestone reviews of the development of the retail market for generation. *See* 66 Pa.C.S. § 2804 (12).

The PUC contact persons are Charles F. Covage, 717-783-3835 (technical), and Patricia Krise Burket, 717-787-3463 (legal).

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

Public Meeting held December 4, 2008

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
Robert F. Powelson
Kim Pizzingrilli
Wayne E. Gardner

Petition for Reconsideration of the Retail Energy
Supply Association: re: Final Rulemaking on Retail
Electricity Choice Activity Reports

Docket No. L-00070184

**FINAL RULEMAKING
RECONSIDERATION AND ORDER**

BY THE COMMISSION:

On August 8, 2008, the Commission entered a final rulemaking order at the above-captioned docket. These final regulations set forth reporting requirements for retail electricity sales for electric distribution companies ("EDCs") and electric generation suppliers ("EGSs"). Two subsequent events occurred before our order moved from the Commission to the remaining stages of the regulatory review process. First, on August 25, 2008, the Retail Energy Supply Association ("RESA")¹ filed a petition for reconsideration of the order's changes to the proposed EGS reporting requirements. The second event was the enactment of Act 129 of 2008 ("Act 129") which adds certain defined terms to the Public Utility Code. By this order, we will (1) grant RESA's petition

¹ Commerce Energy Inc., Consolidated Edison Solutions, Inc., Direct Energy Services, LLC; Gexa Energy, Hess Corporation, Integrys Energy Services Inc. Liberty Power Corps, Reliant Energy Retail

for reconsideration, (2) revise certain definitions in the final regulations to be consistent with Act 129, (3) withdraw the order entered on August 8, 2008, and (4) issue the revised final regulations in this final rulemaking reconsideration and order.

DISCUSSION

Background

On February 9, 2006, the Commission adopted an order soliciting comments at Docket No. M-00061939. *Development and Production of Retail Electricity Choice and Activity Reports*. Order entered April 12, 2006. The deadline for filing comments/reply comments was June 12, 2006 and July 11, 2006 respectively. Comments were filed by Constellation NewEnergy, Inc. (“Constellation”), Office of Consumer Advocate (“OCA”), Office of Small Business Advocate (“OSBA”), Energy Association of Pennsylvania (“EAPA”), Pike County Power & Light Company (“Pike”), Richards Energy Group Inc. (“Richards”), RESA, First Energy Solutions Corp. (“FirstEnergy”). Two parties filed reply comments: Constellation and RESA.

On April 13, 2007, the Commission adopted a proposed rulemaking order and requested comments at Docket No. L-00070184. *Retail Electricity Choice Activity Reports*, Order entered April 17, 2007. The proposed regulations were published in the *Pennsylvania Bulletin* on November 3, 2007. Comments were received from EAPA, PECO, UGI, OCA, OSBA, RESA and the Independent Regulatory Review Commission (“IRRC”).

The final rulemaking order we adopted on August 8, 2008 established reporting requirements for electric generation suppliers and electric distribution companies

Services, LLC., Sempra Energy Solutions; Strategis Energy LLC; SUEZ Energy Resources NA, Inc./ and US Energy Savings Corp.

regarding sales of electric generation. These reporting requirements will enable the Commission to collect data to monitor the development of Pennsylvania's competitive retail electricity market and to take steps, when necessary, to prevent anticompetitive or discriminatory conduct and the unlawful exercise of power in that market. As discussed above, we are withdrawing the prior order and issuing this new final rulemaking order.

This Final Rulemaking Reconsideration and Order first discusses and disposes of RESA's petition for reconsideration and the OSBA's answer in opposition. The substantive comments made in these two pleadings are discussed under the specific section of the proposed regulations to which they were directed together with comments previously filed to our Proposed Rulemaking Order. The changes made to the Public Utility Code by Act 129 will be incorporated within our discussion of the comments filed in response to Section 54.202 (relating to definitions) of the proposed regulations.

RESA Petition for Reconsideration

In its petition, RESA states that in the prior order the Commission incorporated the concerns raised by the Energy Association of Pennsylvania in its comments opposing the classification of customers for EDC reporting by Peak Load Contribution ("PLC"). RESA Pet. at ¶7. RESA asserts that the Energy Association did not oppose the Commission classifying customers for EGS reporting by PLC. RESA Pet. at ¶8. However, RESA asserts the Commission's final order changed both EGS and EDC reporting by PLC to EGS and EDC reporting by EDC rate class. RESA Pet. at ¶9.

Since there was no opportunity given to file reply comments, RESA now states that it would like the Commission to reconsider one issue in its final rules. The issue involves the requirement that EGSs report sales activity for commercial and industrial (“C&I”) or non-residential customers based on the EDC’s rate classification or, where applicable, the default service plan classification. RESA states that requiring EGSs, who report on a statewide basis, to modify their systems to classify customers based on specific EDC classifications would be costly, burdensome and time consuming and is not in accord with the PUC’s stated goals in regard to this issue. *RESA Petition*, p. 3, ¶ 5.

OSBA’s Answer

OSBA opposes RESA’s petition for reconsideration. OSBA’s position is that granting the petition would further delay the collection of important shopping data while the Commission considers the possible revisions and seeks additional public comment. *OSBA Answer*, p. 4, ¶ 10. OSBA states that there is no support given for RESA’s assertion that modifying the customer data base would be costly and burdensome. RESA also made no estimate of the costs or the time involved. *OSBA Petition*, p. 4, ¶ 11.

Standard for Granting Reconsideration

Petitions for reconsideration are governed by the provisions of Sections 703(f) and (g) of the Public Utility Code, 66 Pa.C.S. §703(f) and (g), which state respectively as follows:

(f) Rehearing. -- After an order has been made by the commission, any party to the proceedings may, within 15 days after the service of the order, apply for a rehearing in respect of any matters determined in such proceedings and specified in the application for rehearing, and the commission may grant and hold such rehearing on such matters. No application for a rehearing shall in anywise operate as a supersedeas, or in any manner stay or postpone the enforcement of any

existing order, except as the commission may, by order, direct. If the application be granted, the commission may affirm, rescind, or modify its original order.

(g) Rescission and amendment of orders. -- The commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders.

The standard for determining whether the Commission should exercise its discretion to grant a petition for reconsideration under the provisions of 66 Pa.C.S. §§703(f) and (g) was stated in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982). *Duick* held that a petition for rehearing must allege newly-discovered evidence not discoverable through the exercise of due diligence prior to the close of the record. *Duick at 558*. A petition for reconsideration under Subsection 703(g), however, may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, in whole or in part. Furthermore, such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed by us. *Duick at 559*.

Discussion and Disposition

The Proposed Rulemaking Order noted that the issue of grouping retail customers into categories based on rate classes or on consumption has been debated in several Commission proceedings and no uniform solution has been reached. Proposed Rulemaking Order at 12. The Commission crafted the PLC classification method as its attempt for a workable solution to the issue. In addressing the EDCs' concerns, the Commission's prior final order did not review sufficiently the impact of the chosen classification method on the EGSs. Accordingly, after review of RESA's petition and

OSBA's answer in opposition, we will grant reconsideration of our final rulemaking order.

The EDCs and EGSs each claim that classifying their reporting on the other's method will be unduly costly and burdensome. "[T]his change in reporting will require costly programming changes which will delay implementation and impose addition expenses plus a significant administrative burden on many of the EDCs." Comments of the Energy Association of Pennsylvania ("EAPA") at p. 5. "Such data gathering and sorting will be very costly, logistically cumbersome and potentially impossible for EGSs, many of which operate on a national basis and each of which generally categorizes based on their own individual criteria." RESA Pet. at ¶13.

However, most EDCs and EGSs appear to agree that reporting is feasible when based on broad customer classifications. EAPA Comments at p. 6 (proposing broad classifications of residential, commercial and industrial); RESA Petition at ¶¶13, 14 (proposing EGS reporting of non-residential customers on a volumetric basis). Therefore, in the regulations we will direct reporting by EDCs and EGSs on these respective classifications.

At this early point in the development of competitive markets we are hesitant to impose a reporting requirement on either EDCs or EGSs when each believes it to be costly and burdensome. We are hopeful that the differences in classifications will provide sufficiently useful data. However, we are mindful that the differences may not provide sufficiently useful information and that we may have to return to this issue in the future.

Following is a discussion and disposition of additional comments to specific sections made by various parties as well as other Commission-initiated changes and corrections to the August 8, 2008 Rulemaking Order.

Section 54.201. Purpose.

An error was identified in the last sentence of this section regarding the scope of the milestone review. This error has been corrected by deleting the words “and distribution” so that this sentence now reads as follows:

The information shall be used to conduct milestone reviews of the development of the retail market for the supply of electricity. (See 66 Pa.C.S. § 2804(12) (relating to standards for restructuring of electric industry).)

Section 54.202. Definitions.

A. Change in EDC and EGS Reporting Requirements and Definitions

In the proposed rulemaking, the use of “peak load contribution” (PLC) was proposed as a means to classify customers for the purpose of reporting EDC and EGS sales activity. Because we have dropped the use of PLC to classify customers into groups for the purpose of reporting sales activity in Section 54.203, we have deleted definitions for the terms “Peak Load Contribution – PLC,” “Small C&I customers,” “Medium C&I customers” and “Large C&I customers.”

On the other hand, we have added new definitions for “small non-residential customers,” “medium non-residential customers” and “large non-residential customers” since we have adopted new customer classification criteria for EGS reporting of sales activity. The classification is based on usage on a volumetric basis (kWh) rather than on demand. See Section 54.203(a)(4).

B. Definitions and Uniform Data

IRRC indicated that reporting requirements in Section 54.203(a)(4) use undefined terms “hybrid rate customer accounts” in subparagraph (v) and “green power customer accounts” in subparagraph (vii). IRRC recommends defining these terms so that uniform data is reported. OSBA adds that Time of Use (TOU) should also be defined.

We agree with IRRC’s comments, and have added the following definitions: “Capped Electric Generation Rates,” “Flat Rate Customer Account,” “Green Power Customer Account,” and “Hybrid Rate Customer Account.” The addition of definitions relating to “Time of Use” is discussed in the next section.

C. Definitions and Act 129

Act 129 has made two revisions to the Public Utility Code that must be recognized in these final regulations. First, Act 129 has deleted as a named Commission unit the Bureau of Conservation, Economics and Energy Planning (CEEP), the bureau that has been designated to be recipient of these reports in Section 54.203(a)(5)&(6). While we have not finalized any decision in regard to the continuation of CEEP as a bureau, the continuation of our duty to monitor the market for anti-competitive behavior and abuse of market power is certain. Accordingly, we have revised the definition of “CEEP” in Section 54.202 to provide for a successor unit that will receive and process/evaluate the EGS and EDC sales activity reports.

Act 129 also has added to the Public Utility Code a definition for the term “time-of-use rate.” *See* Act 129, Section 2, p. 62, amending Title 66 to add § 2806.1(m) (relating to energy efficiency and conservation program; definitions). Thus, we have

added a definition for “time of use customer account” and the new statutory definition for “time of use rate.”

Section 54.203. Reporting requirements.

A. Change in EDC and EGS Reporting Requirements

In its comments, the EAPA expressed concerns regarding the proposed use of PLC for classifying customers for reporting purposes. Specifically, EAPA indicated that using PLC would require costly programming changes and impose administrative burdens on its member EDCs. In addition, EAPA noted that as energy use changes, the customer may move from one rate classification to another. UGI voiced similar concerns. Both EAPA and UGI believe that using the EDC’s traditional rate schedules for reporting purposes is understood by all parties and will not require costly programming changes. IRRC indicated the Commission should provide a dollar estimate of the costs to EDCs and EGSs for reporting data according to PLC. In addition, the Commission should explain why classifying customer classes based on existing rate schedules is not sufficient.

RESA opposed the proposed reporting scheme whereby EGSs would need to report sales activity data for customer groups as defined by individual EDC rate schedules (for its customers located in EDC service territories where rate caps have not yet expired) or default service programs (for its customers located in those EDC service territories where rate caps have expired). RESA argued that the requirement would be burdensome and cumbersome. *RESA Petition*, p. 5, ¶11. RESA also argued that the reporting scheme would not provide the Commission with any meaningful data on the status of competition in Pennsylvania since the commercial and industrial reporting buckets will vary drastically from one EDC to the next, resulting in an “apples to oranges” categorization that will obscure any trends in customer or EGS behavior. *RESA Petition*, pp. 6-7, ¶ 13.

As an alternative to requiring the EGSs to report sales activity for non-residential customers divided into classes established in each EDC's tariff or default program filing, RESA suggested that the Commission require EGSs to classify customers into the following categories: "small non-residential," "medium non-residential" and "large non-residential." For each category, RESA recommended that the Commission require EGSs to report on a volumetric basis, *i.e.*, kWh basis rather than on a demand, *i.e.*, kW basis as follows:

Small Non-Residential	0 to 120,450 kWh annual usage (25 kW * 55% load factor * 8760 hours in the year)
Medium Non-Residential	120,451 to 2,409,000 kWh annual usage (500 kW * 55% load factor * 8760 hours in the year)
Large Non-Residential	2,409,001 kWh annual usage and greater

RESA explained that all energy companies use kWh to determine the amount of energy consumed by a home or a business for billing purposes, this information is readily available to all EGSs (and EDCs as well). *RESA Petition*, p. 7, ¶ 15. RESA states that by adopting its suggestions, the Commission will be creating a manageable way for EGSs to report data on a statewide basis to provide the Commission with the information that it needs. *RESA Petition*, p. 8, ¶ 16.

OSBA responded that adopting the customer classification proposed by RESA would cause confusion. For example, an EDC would report its shopping statistics by customer classification, *i.e.*, either the customer classes on which generation rates are capped or the customer classifications approved in EDC's most recent default service proceeding. *OSBA Answer*, p. 6, ¶ 14. Under RESA's proposal, the EGSs would report on

an entirely different basis. Consequently, it would be very difficult, if not impossible, to determine the portion of the EDC classification which is being served by each particular EGS and what product type is being purchased by a substantial number of customers in each classification. Without this information, it would be difficult to respond to arguments of a particular EGS in favor of pro-competition proposals in a default service proceeding. *OSBA Answer*, p. 6, ¶15.

Disposition

The Commission accepts EAPA and UGI arguments on this issue regarding the classification of non-residential customers for the purpose of EDC reporting. The Commission recognizes that using traditional rate classes is understood by all parties. Likewise, the Commission recognizes that using PLC would impose costs and administrative burden on the EDCs. Using PLC would also cause confusion by creating a fluid classification wherein a customer may move from one classification to another depending on peak usage at a specific time. For these reasons, we will abandon the use of PLC for purposes of customer classification.

The Commission however needs to have data reported in a way that will facilitate our understanding of default service policy and its impact on electric competition and customer shopping. The objective is to track the level of customer switching from the EDC to EGS for electric generation supply as well as customer preference for other products/services. To accomplish this objective, the Commission will require EDCs to report electric generation sales based on customer rate class. For an EDC under a generation rate cap², the customer rate classes will be those defined in its tariffs. For an EDC not under a generation rate cap, the customer rate classes will be defined by the default service program approved by the Commission.

Accordingly, EDCs currently operating under electric generation rate caps will report data according to residential, commercial and industrial rate classes. For commercial and industrial customers, data will be reported according to the EDC's specific rate schedules within these rate classifications or according to customer groups that are defined in Commission-approved EDC default service programs. On the report form, EDCs must identify each rate schedule within these rate classes, briefly define criteria for customer inclusion in that rate class, and report the level of customer shopping for that rate class. Residential customer shopping data will be reported in the aggregate without using the rate schedule breakdown. The EDCs are also required to report the total number of commercial and industrial customers being served.

This adjustment to the reporting requirements will provide relevant data for the analysis of the impact of default service on electric customer shopping without requiring costly programming changes or imposing additional administrative burden on EDCs. The EDCs are already using these rate schedules and should have readily available data on customer counts, shopping, etc.

For suppliers, we will adopt RESA's suggestion for classifying customers for reporting purposes based on usage. Under this change, instead of reporting customers based on PLC, suppliers will report sales activity for "small non-residential," "medium non-residential" and "large non-residential" classified by a volumetric basis, *i.e.*, kWh, rather than on a demand basis, *i.e.*, kW. This will not only make reporting more manageable for suppliers, but also will allow the Commission staff to make direct comparisons of supplier market share between NGDC service territories. Moreover, we are replacing a proposed EGS reporting requirement, which would have elicited substantially the same information as the EDC reporting requirement, with one that will

² A rate cap is the set point above which a utility's regulated price for generation may not rise.

provide different data. This will enable Commission staff to perform other analysis/evaluations that should provide us with a broader view of the retail market and greater insight into its operation.

To make this change in the proposed EGS reporting requirement, we added definitions for “small non-residential customers,” “medium non-residential customers” and “large non-residential customers” to Section 54.202. We then revised Section 54.203(a)(4) by inserting these now-defined terms for non-residential customer groups and by deleting the references to the EDC tariff or EDC default service plan for purpose of reporting data for non-residential customers. We have also revised Form 5³ to reflect the revisions made to Section 54.203(a)(4).

Section 54.203(b)(2) has been revised by adding a sentence explaining that report forms will be available for downloading at the Commission’s website, or will be provided in another medium upon request to the Commission’s form officer.

B. “Total sales,” “total customers” and “total sales of all EGSs serving the territory”

IRRC suggests that the Commission consider the addition of “total sales,” “total customers” and “total sales of all EGSs serving the territory” to the reporting requirements in Section 54.203(a)(2). OCA provided specific language to address this concern.

³ These forms are not part of the regulation, but are provided to facilitate reporting. When the revised final regulations become effective, the forms will be made available on the Commission website.

Disposition

The Commission agrees and has added these terms to the list of information that is to be reported. Annex A is amended accordingly. Also, for parallel construction, we have added an opening sentence to Section 54.203 (3) that is similar to the opening sentence of Section 54.203 (2). This sentence states that an EDC shall report sales activity of EGSs operating in its service territory.

C. EDC Deadlines for Submission of Quarterly Reports

EAPA, PECO and UGI suggest that Section 54.203 (a)(5) be changed to allow for an extension of thirty (30) instead of fifteen (15) days for the submission of EDC quarterly reports. The parties argue that additional time is needed for the EDC to reconcile sales data. IRRC indicates that the Commission should explain why data is needed “no later than 15 days” after the end of the quarter and how EDCs can reasonably meet that requirement.

Disposition

The Commission agrees with the parties and has revised Section 54.203(a)(5) in Annex A to reflect a thirty (30) day period.

D. Request for Clarification

EAPA requests clarification on Section 54.203(a)(2)(v) “Number of time of use customer accounts served by EGSs;” on Section 54.203(a)(2)(vii) “Number of hourly/real time priced customer accounts served by EGSs” and on Section 54.203(a)(2)(ix) “Sales by EGSs to hourly/real time priced customer accounts (MWh).” EAPA suggests there are

two interpretations of this request. One way would be to interpret Section 54.203(2)(v) would be to provide the number of EDC's TOU accounts being served by an EGS. A second way to interpret this request is to provide the number of accounts an EGS is serving and pricing on a TOU basis for each EDC. Similar interpretations can be made for paragraph numbers (vii) and (ix). EAPA indicates that EDCs will not have, and cannot readily obtain information for the second interpretation.

Disposition

The Commission agrees and has revised Section 54.203(a)(2) to clarify that EDCs shall report the number of EDC "TOU customer accounts" and the hourly/real time priced customer accounts served by EGSs. EDCs are also required to report their sales volume (MWh) to these customers. Also, for clarity, we have revised Subsections (a)(2)(i) – (a)(2)(xiii) so that the wording of the regulation and the report form will be consistent.⁴ Subsections (a)(2)(i) – (a)(2)(xiii) list the specific data that the EDCs are required to report. We have made similar revisions at Subsection (a)(4) to ensure consistency between the regulations and the reporting form.⁵

E. Consistent Reporting Requirements

Section 54.203 (a)(5)(6) requires EDCs and EGSs to submit reports on a quarterly and annual basis respectively. EAPA and PECO argue that there should be consistent reporting requirements for EDCs and EGSs.

⁴ Citations to the regulations have been added to the corresponding line in the reporting form for EDCs for clarity. *See Form at Tables 1 - 3.*

⁵ Citations to the regulations have been added to the corresponding line in the reporting form for EGSs for clarity. *See Form at Tables 4 - 5.*

Disposition

The Commission will retain the existing reporting frequency. The majority of the comments received under the proposed rulemaking, including EAPA, favor quarterly reporting for EDCs. Therefore, the Commission retains the requirement that EDCs file quarterly reports with the Commission's Secretary and CEEP. These reports are due 30 days after the end of the previous quarter.

The Commission will retain requirements that an EGS file its sales activity report with the Secretary and CEEP on an annual basis. The Commission previously ruled that annual reports are appropriate for EGSs at 52 Pa. Code § 54.39 (b) (relating to electricity generation supplier licensing; reporting requirements). The Commission will continue this schedule and require that EGSs file an annual report under these regulations at the same time as the annual report is to be filed at 52 Pa. Code § 54.39 (b). This will enable the EGS to coordinate submission of the two separate reports. EGSs are therefore required to file an annual report for the previous calendar year on or before April 30 of each year.

Section 54.204. Public Information.

Confidentiality

IRRC indicates that the Commission has not explained how confidentiality of EGS information will be accomplished. IRRC asks the Commission to establish protocols and procedures to protect the confidentiality of EGS information in its possession. EAPA, PECO, RESA and OSBA indicate that the regulations should ensure that EGS market share information is kept confidential. RESA adds that a confidential notation should be added to the EGS reporting form and Annex A.

Disposition

In the proposed rulemaking order on page 17, the Commission states that EDC information/data that does not disclose individual EGS market share is not confidential and may be made public.⁶ *See* Annex A, Section 54.204. Consistent with this determination, only page 2 (Section 6) of the attached EDC report form that solicits EGS market share information, reported as number of customer accounts served by EGS and the total sales in MWh that these accounts represent, will be marked as being “CONFIDENTIAL.” Section 6 of the EDC report form is entitled “EGS Market Share Reports.” *See* Annex A, report forms.⁷ In addition, the Commission has added language in Section 54.203 (a)(3) ensuring this information is marked confidential. Likewise, a confidential notation has been added to the EGS reporting form and Section 54.203 (a)(4) in Annex A.

CONCLUSION

The Commission adopts the regulations revised herein as final and imposes reporting requirements on EDCs and EGSs consistent with our statutory duty to monitor the retail electric generation market in Pennsylvania. 66 Pa.C.S. § 2804(12) and § 2811(a). To facilitate reporting, the Commission has developed separate forms – for EDCs and for EGSs – that shall be used for submitting the required information. The information will be used to monitor the retail electric generation market and to measure the impact of the Commission’s default service policy on customer shopping. For this

⁶ This decision is consistent with the Commonwealth’s new Right to Know Law at Section 67.708(d), 65 P.S. § 67.708 (d)(relating to exceptions for public records; aggregated data), that permits public access to aggregated data that is not otherwise protected. *See* 65 P.S. § 67.708(b)(1)-(5)(information related to the security of public utility facilities, service or operations is protected from public disclosure).

⁷ The report forms will not be published as part of the regulations in Title 52. Instead, the Commission will provide electronic and paper copies upon request. The report forms will also be accessible on the Commission’s website.

endeavor to be successful, cooperation is expected from all parties in timely submission of the reports.

Accordingly, under sections 501, 504 and 2801-2812 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504 and 2801-2812; sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, 45 P.S. §§ 1201-1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; section 204(b) of the Commonwealth Attorneys Act, 71 P.S. 732.204(b); section 745.5 of the Regulatory Review Act, 71 P.S. § 745.5; and section 612 of the Administrative Code of 1929, 71 P.S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231-7.234, we will adopt as final the proposed regulations to require reporting of data related to sales of electric generation that are set forth in Annex A, attached hereto; **THEREFORE,**

IT IS ORDERED:

1. That the *Petition for Reconsideration of the Retail Energy Supply Association: re: Final Rulemaking on Retail Electricity Choice Activity Reports* is granted.
2. That the *Final Rulemaking on Retail Electricity Choice Activity Reports* entered August 8, 2008 is withdrawn.
3. That the regulations of the Commission, 52 Pa. Code Chapter 54 are amended by adding Subchapter H. Retail Electricity Choice Sales Activity Reports consisting of §§ 54.201 – 54.204 to read as set forth in Annex A.
4. That the Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.
5. That the Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

6. That the Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by the Independent Regulatory Review Commission.

7. That the Secretary shall duly certify this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

8. That these regulations shall become effective upon publication in the *Pennsylvania Bulletin*.

9. That the contact persons for this final-form rulemaking are Charles F. Covage, CEEP, (717) 783-3835 (technical), Patricia Krise Burket, Assistant Counsel, (717) 787-3464. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Review Assistant, Law Bureau, (717) 772-4597.

BY THE COMMISSION

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: December 4, 2008

ORDER ENTERED: December 4, 2008

ANNEX A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 54. ELECTRICITY GENERATION CUSTOMER CHOICE

Subchapter H. RETAIL ELECTRICITY CHOICE SALES ACTIVITY REPORTS

§ 54.201. Purpose.

This subchapter establishes reporting requirements applicable to EDCs and active EGSs and requires the reporting of information related to retail electric generation sales activity. The Commission will use this information to fulfill its duty to monitor the Commonwealth's retail electric generation market and to police and arrest instances of market power abuse and discriminatory conduct. (See 66 Pa.C.S. § 2811 (relating to market power remediation).) The information shall be used to conduct milestone reviews of the development of the retail market for the supply and distribution of electricity. (See 66 Pa.C.S. § 2804(12) (relating to standards for restructuring of electric industry).)

§ 54.202. Definitions.

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

Active EGS--An EGS that is licensed to provide retail electric generation service and is providing THAT service to one or more customers.

CAPPED ELECTRIC GENERATION RATES -- ELECTRIC GENERATION RATES ESTABLISHED THROUGH RESTRUCTURING PLANS APPROVED BY

THE COMMISSION UNDER 66 PA.C.S. §§ 2801, ET SEQ. (THE ELECTRICITY GENERATION CUSTOMER CHOICE AND COMPETITION ACT).

CEEP--The Bureau of Conservation, Economics and Energy Planning OR A SUCCESSOR COMMISSION BUREAU ASSIGNED THE TASK OF MONITORING THE RETAIL ELECTRIC GENERATION MARKET FOR ANTI-COMPETITIVE BEHAVIOR AND ABUSE OF MARKET POWER.

EDC--Electric Distribution Company--The term as defined in 66 Pa.C.S. § 2803 (relating to definitions).

EGS--Electric Generation Supplier--The term as defined in 66 Pa.C.S. § 2803.

FLAT RATE CUSTOMER ACCOUNT -- A CUSTOMER ACCOUNT THAT IS CHARGED A FIXED CENTS PER KWH RATE THAT CHANGES NO MORE FREQUENTLY THAN MONTHLY, EXCLUDING SEASONAL RATES.

GREEN POWER CUSTOMER ACCOUNT -- A RETAIL CUSTOMER ACCOUNT INCORPORATING ELECTRIC POWER SUPPLY THAT HAS GREATER THAN REQUIRED RENEWABLE CONTENT AS SPECIFIED IN 73 P.S. § 1648.3 (RELATING TO ALTERNATE ENERGY PORTFOLIO STANDARDS).

HYBRID RATE CUSTOMER ACCOUNT -- A RETAIL CUSTOMER ACCOUNT THAT IS CHARGED VIA AN ELECTRIC GENERATION PRICING ARRANGEMENT THAT INCORPORATES HOURLY AND BLOCK RATES.

kW--Kilowatts.

KWH -- KILOWATTHOUR.

Large C & I customers -- Commercial and industrial customers with PLCs greater than 500 kW.

~~Medium C & I customers -- Commercial and industrial customers with PLCs ranging from 25 kW up to and including 500 kW.~~

LARGE NON-RESIDENTIAL CUSTOMERS -- COMMERCIAL AND INDUSTRIAL CUSTOMERS WITH ANNUAL USAGE GREATER THAN 2,409,001 KWH.

MEDIUM NON-RESIDENTIAL CUSTOMERS -- COMMERCIAL AND INDUSTRIAL CUSTOMERS WITH ANNUAL USAGE RANGING FROM 120,451 UP TO AND INCLUDING 2,409,000 KWH.

MWh--Megawatthours.

~~PLC -- Peak Load Contributions -- The highest level of demand for a particular customer, based on the PJM Interconnection, LLC, peak load contribution standard, or its equivalent for a Pennsylvania EDC outside of PJM.~~

~~Small C & I customer -- Commercial and industrial customers with PLCs less than 25 kW.~~

SMALL NON-RESIDENTIAL CUSTOMERS -- COMMERCIAL AND INDUSTRIAL CUSTOMERS WITH ANNUAL USAGE RANGING FROM 0 UP TO AND INCLUDING 120,450 KWH.

TOU CUSTOMER ACCOUNT -- TIME OF USE CUSTOMER ACCOUNT -- A RETAIL CUSTOMER ACCOUNT THAT IS CHARGED A TIME OF USE RATE.

TIME-OF-USE RATE -- TOU -- A RATE THAT REFLECTS THE COSTS OF SERVING CUSTOMERS DURING DIFFERENT TIME PERIODS,

INCLUDING OFF-PEAK AND ON-PEAK PERIODS, BUT NOT AS FREQUENTLY AS EACH HOUR.

§ 54.203. Reporting requirements.

(a) Reporting requirements.

(1) An EDC or an active EGS shall report the information regarding retail sales of electric generation in accordance with this subchapter.

(2) An EDC shall report retail sales activity in its service territory. The EDC shall report the following information by customer class for residential, COMMERCIAL, ~~small C & I customers, medium C & I customers~~ and INDUSTRIAL ~~large C & I customers~~:. AN EDC WITH CAPPED ELECTRIC GENERATION RATES SHALL REPORT INFORMATION IN THE AGGREGATE FOR RESIDENTIAL CUSTOMERS, AND BY RATE SCHEDULE AND IN THE AGGREGATE FOR COMMERCIAL AND INDUSTRIAL CUSTOMERS. AN EDC THAT DOES NOT HAVE CAPPED ELECTRIC GENERATION RATES SHALL REPORT INFORMATION FOR RESIDENTIAL, COMMERCIAL AND INDUSTRIAL CUSTOMERS BY RATE CLASS AS DEFINED BY THE DEFAULT SERVICE PROGRAM APPROVED BY THE COMMISSION. THE EDC SHALL REPORT THE FOLLOWING INFORMATION:

(i) TOTAL NUMBER ~~Number of customer accounts~~ SERVED BY EGSS.

(ii) ~~Sales by EGS (MWh)~~ TOTAL NUMBER OF CUSTOMER ACCOUNTS BEING SERVED BY EGSS AND THE EDC.

(iii) ~~Sales by the EDC (MWh)~~ MWH SALES OF EGSS.

~~(iv) Number MWH SALES of EGSs AND THE EDC serving customer accounts.~~

~~(v) Number of time of use customer accounts served by EGSs SERVING CUSTOMER ACCOUNTS BY CLASS.~~

~~(vi) Number of time of use customer accounts served by the EDC TOTAL NUMBER OF EDC TOU CUSTOMER ACCOUNTS SERVED BY EGSS.~~

~~(vii) Number TOTAL NUMBER of EDC TOU hourly/real time price customer accounts served by EGSs AND THE EDC.~~

~~(viii) Number of hourly/real time price customer accounts served by the EDC MWH SALES OF EGSS TO EDC TOU CUSTOMER ACCOUNTS.~~

~~(ix) MWH Sales by SALES OF EGSs AND THE EDC to EDC TOU hourly/real time priced customer accounts (MWh).~~

~~(x) Sales by the EDC to hourly/real time priced customer accounts (MWh) TOTAL NUMBER OF EDC HOURLY/REAL TIME PRICE CUSTOMER ACCOUNTS SERVED BY EGSS.~~

~~(XI) TOTAL NUMBER OF HOURLY/REAL TIME PRICE CUSTOMER ACCOUNTS SERVED BY EGSS AND THE EDC.~~

~~(XII) MWH SALES BY EGSS TO EDC HOURLY/REAL TIME PRICED CUSTOMER ACCOUNTS.~~

~~(XIII) MWH SALES BY EGSS AND THE EDC TO EDC HOURLY/REAL TIME PRICED CUSTOMER ACCOUNTS.~~

(3) AN EDC SHALL REPORT RETAIL SALES ACTIVITY OF EGSS OPERATING IN ITS SERVICE TERRITORY. An EDC shall report the following information for an EGS providing service in the EDC's service territory, MARKING SUCH INFORMATION AS CONFIDENTIAL:

(i) Identity of the EGS.

(ii) By customer class for residential customers, small C & I customers, medium C & I customers and large C & I customers and number of customer accounts served by the EGS **NUMBER OF CUSTOMER ACCOUNTS SERVED BY THE EGS BY CUSTOMER CLASS FOR RESIDENTIAL, COMMERCIAL AND INDUSTRIAL CUSTOMERS.**

(iii) By customer class for residential customers, small C & I customers, medium C & I customers and large C & I customers and sales in MWh to customer accounts **SALES IN MWH OF CUSTOMER ACCOUNTS SERVED BY THE EGS BY CUSTOMER CLASS FOR RESIDENTIAL, COMMERCIAL AND INDUSTRIAL CUSTOMERS.**

(4) An active EGS shall report retail sales activity on a Statewide basis. The EGS shall report the following information by customer class for residential, SMALL NON-RESIDENTIAL CUSTOMERS, MEDIUM NON-RESIDENTIAL CUSTOMERS AND LARGE NON-RESIDENTIAL ~~small C & I customers, medium C & I customers and large C & I customers,~~ **MARKING SUCH INFORMATION AS CONFIDENTIAL:**

(i) Number of customer accounts.

(ii) Number of flat rate customer accounts.

(iii) Number of seasonal rate customer accounts.

(iv) Number of ~~time of use~~ TOU customer accounts.

(v) Number of hybrid rate customer accounts.

(vi) Number of fixed term contract customer accounts by length of term-
**THE ORIGINAL PRIMARY CONTRACT, SPECIFYING THE LENGTH IN
NUMBER OF YEARS.**

(vii) Number of green power customer accounts.

(viii) Number of mandatory curtailable customer accounts.

(ix) Number of voluntary curtailable customer accounts.

(x) Number of customer accounts based on billing methods.

**(XI) NUMBER OF HOURLY/REAL TIME PRICING CUSTOMER
ACCOUNTS.**

(5) An EDC shall file quarterly sales activity reports with the Commission's
Secretary AND CEEP. A quarterly report shall be filed no later than ~~15~~ 30 days after the
end of the previous quarter.

(6) An active EGS shall file an annual sales activity report for the previous
calendar year WITH THE COMMISSION'S SECRETARY AND CEEP on or before
April 30 of each year.

(b) Report forms.

(1) The Commission shall provide separate report forms for EDC and EGS use.
An EDC or an active EGS shall use the applicable report form.

(2) Report forms shall be made available in both paper and electronic format.
**REPORT FORMS IN ELECTRONIC FORMAT MAY BE DOWNLOADED AT
THE COMMISSION'S WEBSITE, OR WILL BE PROVIDED IN PAPER
FORMAT UPON REQUEST TO THE COMMISSION'S FORMS OFFICER.**

(3) An EDC or active EGS shall file an original and two copies of a completed
paper report form with the Commission's Secretary AND CEEP. When the report form is

filed electronically, one paper copy of the report form shall be filed with the Commission's Secretary no later than 15 days after the report is due.

(c) *Compliance monitoring and enforcement.* CEEP is the Commission bureau responsible for retaining reports filed pursuant to this subchapter, and for monitoring and enforcing compliance with this subchapter.

§ 54.204. Public information.

The Commission will make available to the public on an aggregated basis information contained in sales activity reports that does not disclose individual EGS market shares.

**Form 1. Pennsylvania Retail Electricity Choice Activity Report: Electric Distribution Company (EDC) Survey
Reported By EDC Territory: Residential**

EDC Name:

Reporting Period Date:

Data from EDC	Residential Totals
1. Number of Customer Accounts by Service Type §54.203 (a)(2)(i)(ii)	
Total Number of Customer Accounts Served by EGSs	
Total Number of Customer Accounts Served by EGSs & EDC	
Percent of Customer Accounts Served by EGSs	%
2. MWh Sales by Service Type §54.203 (a)(2)(iii)(iv)	
MWh Sales of EGSs	
MWh Sales of EGSs & EDC	
Percent of MWh Sales of EGSs	%
3. Total Number of EGSs Serving Customer Accounts by Class § 54.203 (a)(2)(v)	
4a. Time of Use (A retail customer account that is charged a rate that changes at different times of the day or night, or at different times during a 24 hour period or 7 day period but not as frequently as each hour to reflect the costs of serving the customer during different time periods)	
Total Number of EDC TOU Customer Accounts Served by EGSs §54.203 (a)(2)(vi)	
Total Number of EDC TOU Customer Accounts Served by EGSs & EDC § 54.203 (a)(2)(vii)	
Percent of EDC TOU Customer Accounts Served by EGSs	%
4b. MWh Sales: Time of Use Customer Accounts §54.203 (a)(2)(viii)(ix)	
MWh Sales of EGSs	
MWh Sales of EGSs & EDC	
Percent of MWh Sales of EGSs	%
5a Number of Customer Accounts on Hourly/Real Time Priced Service §54.203 (a)(2)(x)(xi)	
Total Number of EDC Hourly/Real Time Priced Customer Accounts Served by EGSs	
Total Number of EDC Hourly/Real Time Priced Customer Accounts Served by EGSs & EDC	
Percent of EDC Hourly/Real Time Priced Customer Accounts Served by EGSs	%
5b. MWh Sales: Hourly/Real Time Priced Customer Accounts §54.203 (a)(2)(xii)(xiii)	
MWh Sales of EGSs	
MWh Sales of EGSs & EDC	
Percent of MWh Sales of EGSs	%

**Form 2. Pennsylvania Retail Electricity Choice Activity Report: Electric Distribution Company (EDC) Survey
Reported By EDC Territory: Commercial & Industrial Rate Class Schedules**

EDC Name:

Reporting Period Date:

Note: Use Additional Sheets As Necessary

Data from EDC	Schedule	Schedule	Schedule	Schedule	Total
1. Number of Customer Accounts by Service Type §54.203 (a)(2)(i)(ii)	1	2	3	4	
Total Number of Customer Accounts Served by EGSs					
Total Number of Customer Accounts Served by EGSs & EDC					
Percent of Customer Accounts Served by EGSs					
2. MWh Sales by Service Type §54.203 (a)(2)(ii)(iv)					
MWh Sales of EGSs					
MWh Sales of EGSs & EDC					
Percent of MWh Sales of EGSs					
3. Total Number of EGSs Serving Customer Accounts by Class § 54.203 (a)(2)(v)					
4a. Time of Use (A retail customer account that is charged a rate that changes at different times of the day or night, or at different times during a 24 hour period or 7 day period but not as frequently as each hour to reflect the costs of serving the customer during different time periods)					
Total Number of EDC TOU Customer Accounts Served by EGSs §54.203 (a)(2)(vi)					
Total Number of EDC TOU Customer Accounts Served by EGSs & EDC § 54.203 (a)(2)(vi)					
Percent of EDC TOU Customer Accounts Served by EGSs					
4b. MWh Sales: Time of Use Customer Accounts §54.203 (a)(2)(viii)(ix)					
MWh Sales of EGSs					
MWh Sales of EGSs & EDC					
Percent of MWh Sales of EGSs					
5a. Number of Customer Accounts on Hourly/Real Time Priced Service §54.203 (a)(2)(x)(xi)					
Total Number of EDC Hourly/Real Time Priced Customer Accounts Served by EGSs					
Total Number of EDC Hourly/Real Time Priced Customer Accounts Served by EGSs & EDC					
Percent of EDC Hourly/Real Time Priced Customer Accounts Served by EGSs					
5b. MWh Sales: Hourly/Real Time Priced Customer Accounts §54.203 (a)(2)(xi)(xii)					
MWh Sales of EGSs					
MWh Sales of EGSs & EDC					
Percent of MWh Sales of EGSs					

Form 2 Attachment

Summary of Commercial & Industrial Rate Class Schedule Definitions

Use Additional Rows As Necessary

Rate Schedule Name	Criteria for Inclusion in Rate Class: Usage Level, Etc.
1	
2	
3	
4	
5	
6	
7	
8	

**Form 4. Pennsylvania Retail Electricity Choice Activity Report: Electric Generation Supplier (EGS) Survey
Reported on a Statewide Basis: Residential**

EGS Name:

Reporting Period Date:

Confidential

Data from EGS	Residential Totals
1. Total Number of Customer Accounts Served §54.203 (a)(4)(i)	
2. Number of Customer Accounts- Flat Rate* §54.203 (a)(4)(ii)	
3. Number of Customer Accounts- Seasonal Rates* §54.203 (a)(4)(iii)	
Seasonal rates differ in summer/non-summer.	
4. Number of Customer Accounts- Time of Use Rates* §54.203 (a)(4)(iv)	
A retail customer account that is charged a rate that changes at different times of the day or night, or at different times during a 24-hour period or 7 day period but not as frequently as each hour to reflect the costs of serving the customer during different time periods.	
5. Number of Customer Accounts-Hybrid Rate Schedule* §54.203 (a)(4)(v)	
Includes any pricing arrangement which incorporates hourly rates and block rates.	
6. Number of Customer Accounts-Other Categories*	
(Do not include Customers in #2-5 or #8.) Please Specify:	
7a. Number of Customer Accounts in #2-6 on 1 year fixed term contract §54.203 (a)(4)(vi)	
7b. Number of Customer Accounts in #2-6 on 2 year fixed term contract	
7c. Number of Customer Accounts in #2-6 on 3 year fixed term contract	
8. Number of Customer Accounts- Hourly/Real Time Rates* §54.203 (a)(4)(xi)	
Includes any pricing arrangement based on hourly or daily energy prices. Example: LMP based rate or rate based on prior-day announced price.	
9a. Number of Customer Accounts-Mandatory Curtailable §54.203 (a)(4)(viii)	
9b. Number of Customer Accounts-Voluntary Curtailable §54.203 (a)(4)(ix)	
10. Number of Customer Accounts- Green Power §54.203 (a)(4)(vii)	
Defined as electric supply that has been promoted as having greater than required renewable content & exceeds existing minimum renewable content requirements for retail power. Products offered to customer when customer requests specialized service.	
11. Number of Customer Accounts-Supplier Billing §54.203 (a)(4)(x)	
Includes all customers who are not billed by the utility for the supplier's services. Includes customers billed by a billing service other than the utility.	
12. Number of Customer Accounts- Auto Payment §54.203 (a)(4)(x)	
Includes customers indicated in #11, who are billed automatically on credit cards or other automatic payment arrangement. (i.e. bank transfer)	
13. Number of Customer Accounts- Budget Billing §54.203 (a)(4)(x)	

* Do Not include A Customer Under More Than 1 Rate Schedule in #2-6 & 8.

Note: Items # 7a, b, c-- Number of fixed term customer accounts by length of the original primary contract, specifying length in number of years.

**Form 5. Pennsylvania Retail Electricity Choice Activity Report: Electric Generation Supplier (EGS) Survey
Reported on a Statewide Basis: Small, Medium & Large Non-Residential Classifications**

EGS Name:

Reporting Period Date:

Data from EGS: Confidential	Small	Medium	Large	Total
	Non-Residential	Non-Residential	Non-Residential	
1. Total Number of Customer Accounts Served §54.203 (a)(4)(i)				
2. Number of Customer Accounts- Flat Rate* §54.203 (a)(4)(ii)				
3. Number of Customer Accounts- Seasonal Rates* §54.203 (a)(4)(iii)				
Seasonal rates differ in summer/non-summer.				
4. Number of Customer Accounts- Time of Use Rates* §54.203 (a)(4)(iv)				
A retail customer account that is charged a rate that changes at different times of the day or night, or at different times during a 24 hour period or 7 day period but not as frequently as each hour to reflect the costs of serving the customer during different time periods.				
5. Number of Customer Accounts-Hybrid Rate Schedule* §54.203 (a)(4)(v)				
Includes any pricing arrangement which incorporates hourly rates and block rates.				
6. Number of Customer Accounts-Other Categories*				
(Do not include Customers in #2-5 or #8.) Please Specify:				
7a. Number of Customer Accounts in #2-6 on 1 year fixed term contract				
7b. Number of Customer Accounts in #2-6 on 2 year fixed term contract				
7c. Number of Customer Accounts in #2-6 on 3 year fixed term contract				
8. Number of Customer Accounts- Hourly/Real Time Rates* §54.203 (a)(4)(xi)				
Includes any pricing arrangement based on hourly or daily energy prices. Example: LMP based rate or rate based on prior-day announced price.				
9a. Number of Customer Accounts-Mandatory Curtailable §54.203 (a)(4)(viii)				
9b. Number of Customer Accounts-Voluntary Curtailable §54.203 (a)(4)(ix)				
10. Number of Customer Accounts- Green Power §54.203 (a)(4)(vii)				
Defined as electric supply that has been promoted as having greater than required renewable content & exceeds existing minimum renewable content requirements for retail power. Products offered to customer when customer requests specialized service.				
11. Number of Customer Accounts-Supplier Billing §54.203 (a)(4)(x)				
Includes all customers who are not billed by the utility for the supplier's services. Includes customers billed by a billing service other than the utility.				
12. Number of Customer Accounts- Auto Payment §54.203 (a)(4)(x)				
Includes customers indicated in #11 who are billed automatically on credit cards or other automatic payment arrangement. (i.e. bank transfer).				
13. Number of Customer Accounts- Budget Billing §54.203 (a)(4)(x)				

* Do Not Include A Customer Under More Than 1 Rate Schedule in #2-6 & 8.

Note: Items # 7a,b,c-- Number of fixed term customer accounts by length of the original primary contract, specifying length in number of years.

Form 5 Attachment
Classification Definitions

Classifications	Criteria for Inclusion in Classification
Small Non-Residential	0 to 120,450 kWh annual usage (25 kW * %55 load factor * 8760 hours in the year)
Medium Non-Residential	120,451 to 2,409,000 kWh annual usage (500kW * 55%load factor * 8760 hours in the year)
Large Non-Residential	2,409,001 kWh annual usage and greater

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Regulatory Analysis Form

(Completed by Promulgating Agency)



SECTION I: PROFILE

(1) Agency:

Pennsylvania Public Utility Commission (PUC)

(2) Agency Number:

L-00070184

Identification Number:

57-255

IRRC Number: *57-255*

(3) Short Title:

Final Rulemaking Order Re: Retail Electricity Choice Activity Reports

(4) PA Code Cite:

52 Pa. Code Sections §§ 54.201-54.204

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact:

Patricia Krise Burket (legal), 717-787-3464

Secondary Contact:

Charles Covage (technical), 717-783-3835

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
 - Certification by the Governor
 - Certification by the Attorney General

Regulatory Analysis Form

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The regulations require all electric distribution companies ("EDCs") and active electric generation suppliers ("EGSs") to report information relating to sales activity in the retail electric generation market by customer group. EDCs will be required to file quarterly reports while EGSs will be required to file annual reports.

(9) Include a schedule for review of the regulation including:

A. The date by which the agency must receive public comments:

Not applicable.

B. The date or dates on which public meetings or hearings will be held:

Not applicable.

C. The expected date of promulgation of the proposed regulation as a final-form regulation:

Not applicable. This is a final form regulation.

D. The expected effective date of the final-form regulation:

The regulation will become effective upon its publication in *PA Bulletin*.

E. The date by which compliance with the final-form regulation will be required:

EDCs will need to file their first quarterly reports no later than 30 days after the end of the previous quarter. Section 54.203(a)(5). EGSs will need to file their first annual report on or before April 30 of each year. Section 54.203(a)(6).

F. The date by which required permits, licenses or other approvals must be obtained: _____

Not applicable. The regulation is a reporting requirement and does not require that permits, licenses or other approvals be obtained.

(10) Provide the schedule for continual review of the regulation.

No schedule is necessary. This regulation will be continuously reviewed as EDCs and EGSs file compliance reports. The PUC will evaluate the usefulness of the reports' content in regard to fulfilling its duties to monitor the development of the retail electric generation market, and to police and arrest instance of anticompetitive behavior.

Regulatory Analysis Form

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

66 Pa.C.S. § 501(relating to general powers); § 2804 (12)(relating to standards for restructuring of electric industry; milestone reviews of retail electric generation competition market) and § 2811(a)(relating to market power remediation.)

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

This regulation will allow the PUC to fulfill its statutory duty to monitor sales activity and growth in the retail electric generation market. 66 Pa. C.S. §2804(12)(relating to standards for restructuring of electric industry; market growth milestone review) and §2811 (relating to market power remediation). It will also allow the PUC to assess the impact on customer shopping activity of its policies relating to default electric generation service.

Regulatory Analysis Form

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

Not applicable.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

Except for the minimal costs associated with EDCs and EGSs compliance with the periodic reporting requirement discussed below at no 17, no person will be adversely affected by the regulation.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

All Pennsylvania electric distribution companies and active electric generation suppliers must comply with this regulation. There are 11 electric distribution companies and approximately 44 active electric generation suppliers are licensed to sell electric generation to retail customers. Only those electric generation suppliers who are engaged in selling electric generation to retail customers are considered to be 'active suppliers' and must comply with the regulations.

Regulatory Analysis Form

SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Costs of compliance with the regulations will be minimal. Both electric distribution companies and the electric generation suppliers already collect and compile sales activity information for their own use and will be provided with a form for use in reporting this information. The form will be made available electronically at the PUC's internet web site. Electric distribution companies will file reports quarterly while electric generation suppliers will file reports annually.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

None. Local governments are not affected by this regulation.

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

Monitoring the development and operation of the electric generation market is a fundamental duty of the PUC. Additional legal or accounting costs associated with the implementation of this regulation by the PUC will be minimal. There will be no, or, at most, minimal savings to the PUC as a result of implementing this regulation.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$ N/A	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community	Minimal	Minimal	Minimal	Minimal	Minimal	Minimal
Local Government	N/A					
State Government	Minimal	Minimal	Minimal	Minimal	Minimal	Minimal
Total Costs						
REVENUE LOSSES:	N/A					
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Provide the past three year expenditure history for programs affected by the regulation.

N/A

Program	FY -3	FY -2	FY -1	Current FY
N/A				

Regulatory Analysis Form

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The regulations are not expected to result in any revenue losses, savings or costs to local governments. No revenue losses or savings are expected for the regulated community or state government. Costs associated with preparing and filing the sales activity reports for the regulated community and the PUC are expected to be minimal. PUC costs related to docketing and filing the reports, to the extent that they exist, will be further reduced with the implementation of the PUC's electronic filing and docketing system (InfoMAP).

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

On April 12, 2006, the PUC issued an order requesting public comment on establishing a reporting requirement for information relating to sales activity in Pennsylvania's electric generation market. The comment period ended June 12, 2006; the reply comment period ended July 11, 2006. Comments were filed by eight interested parties - the Energy Association of PA (EA-PA), Office of Small Business Advocate (OSBA), Office of Consumer Advocate (OCA), one electric distribution company--Pike County Power & Light Company, three suppliers -- Constellation NewEnergy, Inc., Richards Energy Group Inc., and First Energy Solutions Corp.; and Retail Energy Supply Association (RESA), a marketer trade association. Reply comments were filed by Constellation and RESA.

The proposed rulemaking was adopted on April 13, 2007 and published in the *Pennsylvania Bulletin* on November 17, 2007. Comments were filed by the EA-PA, RESA, OCA, OSBA, UGI Utilities, Inc., PECO Energy and IRRC. The PUC issued its final rulemaking order on August 7, 2008.

Subsequently, RESA filed a petition requesting the PUC reconsider the basis for grouping customers for EGS reporting purposes. By order issued December 4, 2008, the PUC granted RESA's request. A distribution company will file quarterly reports reporting by customer class as defined in its tariff. A supplier will file an annual report reporting by customer class defined by annual usage on a volumetric basis.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Not applicable. This regulation is the least burdensome means by which information necessary to the monitoring of sales activity in the electric generation market can be obtained.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

Not applicable.

Regulatory Analysis Form

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The minimal costs for electric distribution companies and electric generation suppliers associated with this periodic sales activity reporting requirement will not place Pennsylvania at a competitive disadvantage.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Copies of the reporting forms for EDCs and EGSs are attached as an appendix to the PUC's order. They will not be published as part of the regulations, but will be made available by request and for download in electronic format at the PUC's website.

These reporting requirements have been carefully drafted to minimize the burden placed on the affected entities – EDCs and EGSs. The frequency of the reports is reasonable; EDCs will submit quarterly reports while EGSs will submit annual reports. The information to be reported is readily available "off the shelf" sales activity data that does not require additional processing. Finally, EDCs and EGSs may file the reports in electronic format thus decreasing the costs of compliance.

Regulatory Analysis Form

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Not applicable.