

PROPOSED RULEMAKING

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 54]

[L-000701184/57-255]

Retail Electricity Choice Activity Reports

The Pennsylvania Public Utility Commission (PUC), on April 13, 2007, adopted a proposed rulemaking order which would adopt reporting requirements regarding electric generation market activity to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power.

Executive Summary

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 to be codified in 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.

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 (relating to market power remediation)). 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) (relating to standards for restructuring of electric industry)).

Public Meeting held
April 13, 2007

Commissioners Present: Wendell F. Holland, Chairperson;
James H. Cawley, Vice Chairperson; Kim Pizzigrilli;
Terrance J. Fitzpatrick

Retail Electricity Choice Activity Reports:
Doc. No. L-00070184

Proposed Rulemaking Order

By the Commission:

Under 66 Pa.C.S. Chapter 28 (relating to 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 66 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 previously 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.

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

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.

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.

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 nonnormal rate structures.

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/offers 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, §§ 54.201, 54.202 and 54.203(a) (relating to purpose; definitions; and reporting requirements).

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 § 54.39(b) (relating to 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, § 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 (kWh).

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 (MWh) by group; and (3) the number of contracts, subcategorized 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 MWh. 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, § 54.204 (relating to public information).

EGS market share will be reported by EDCs as number of customer accounts served by EGS and the total sales in 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.

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 customers.

ers 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 § 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 kW and large commercial and industrial customers should be those with load greater than 500 kW.

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 in § 54.2 (relating to definitions) 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 at 28 Pa.B. 3780 (August 8, 1998).

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. 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 § 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 Under 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, §§ 54.202 and 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 6 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 previously. 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 kWh 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, such as, 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, such as, 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, § 54.204.

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. 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 RESA 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 OSBA 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. Under 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.

(*Editor's Note:* The draft report forms are available on the Commission's website www.puc.state.pa.us.)

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 and 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 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, *Therefore*,

It Is Ordered That:

1. 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. 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. 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. 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. 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. A copy of this order and Annex A shall be served on all jurisdictional electric distribution companies, the Of-

fice 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. 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).

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-255. No fiscal impact; (8) recommends adoption.

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

Sec.	
54.201.	Purpose.
54.202.	Definitions.
54.203.	Reporting requirements.
54.204.	Public information.

§ 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 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 (relating to definitions).

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.

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.

§ 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 and 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 and 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.

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