

RULES AND REGULATIONS

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 54]

[L-00070184/57-255]

Retail Electricity Choice Activity Reports

The Pennsylvania Public Utility Commission (PUC) 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.

Executive Summary

On April 12, 2006, the PUC entered an order soliciting comments on establishing reporting requirements on sales activity of 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 at 37 Pa.B. 5895 (November 3, 2007). The Independent Regulatory Review Commission (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 web site.

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).

Public Meeting held
December 4, 2008

Commissioners Present: James H. Cawley, Chairperson; Tyrone J. Christy, Vice Chairperson; 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; Doc. No. L-00070184

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 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 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

¹ Commerce Energy, Inc., Consolidated Edison Solutions, Inc., Direct Energy Services, LLC; Gexa Eenergy, Hess Corporation, Integrys Energy Services, Inc., Liberty Power Corps, Reliant Energy Retail Services, LLC, Sempra Energy Solutions; Strategis Energy, LLC; SUEZ Energy Resources NA, Inc. and US Energy Savings Corp.

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 § 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 nonresidential 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 section 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 66 Pa. Code § 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 § 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 nonresidential customers,” “medium nonresidential customers” and “large nonresidential 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 § 54.203(a)(4).

B. Definitions and Uniform Data

IRRC indicated that reporting requirements in § 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 § 54.203(a)(5) and (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 § 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 66 Pa. Code § 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 nonresidential 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 nonresidential,” “medium nonresidential” and “large nonresidential.” For each category, RESA recommended that the Commission require EGSs to report on a volumetric basis, for example, kWh basis rather than on a demand, for example, kW basis as follows:

Small Nonresidential	0 to 120,450 kWh annual usage (25 kW * 55% load factor *8,760 hours in the year
Medium Nonresidential	120,451 to 2,409,000 kWh annual usage (500 kW *55% load factor *8,760 hours in the year
Large Nonresidential	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, for example, 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 nonresidential 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

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

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, and the like.

For suppliers, we will adopt RESA's suggestion 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 nonresidential," "medium nonresidential" and "large nonresidential" classified by a volumetric basis, for example, kWh, rather than on a demand basis, for example, 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 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 nonresidential customers," "medium nonresidential customers" and "large nonresidential customers" to § 54.202. We then revised § 54.203(a)(4) by inserting these now-defined terms for nonresidential 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 § 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 § 54.203(a)(2). OCA provided specific language to address this concern.

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 § 54.203(3) that is similar to the opening sentence of § 54.203(2). This

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 web site.

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 § 54.203(a)(5) be changed to allow for an extension of 30 instead of 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 § 54.203(a)(5) in Annex A to reflect a 30 day period.

D. Request for Clarification

EAPA requests clarification on § 54.203(a)(2)(v) “Number of time of use customer accounts served by EGSs;” on § 54.203(a)(2)(vii) “Number of hourly/real time priced customer accounts served by EGSs” and on § 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 § 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 subparagraph (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 § 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)—(xiii) so that the wording of the regulation and the report form will be consistent.⁴ Subsection (a)(2)(i)—(xiii) lists 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.

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

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 and 5.

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, § 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 § 54.203(a)(3) ensuring this information is marked confidential. Likewise, a confidential notation has been added to the EGS reporting form and § 54.203 (a)(4) in Annex A.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the agency submitted a copy of the final-form rulemaking, which was published as proposed at 37 Pa.B. 5895 (November 3, 2007), and served on October 18, 2007, to IRRC and the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure (Committees) for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act (71 P. S. § 745.5b), the Commission also provided IRRC and the Committees with copies of all comments received.

This final-form regulation was deemed approved by the Committees and was approved by IRRC on April 23, 2009, in accordance with section 5(c) of the Regulatory Review Act.

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

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 web site.

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 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 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, *Therefore*,

It Is Ordered That:

1. The *Petition for Reconsideration of the Retail Energy Supply Association: re: Final Rulemaking on Retail Electricity Choice Activity Reports* is granted.

2. The *Final Rulemaking on Retail Electricity Choice Activity Reports* entered August 8, 2008 is withdrawn.

3. The regulations of the Commission, 52 Pa. Code Chapter 54 are amended by adding §§ 54.201—54.204 to read as set forth in Annex A.

4. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.

5. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

6. 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 IRRC.

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

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

9. 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.

JAMES J. MCNULTY,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 2420 (May 9, 2009).)

Fiscal Note: Fiscal Note 57-255 remains valid for the final adoption of the subject regulation.

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 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.

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.

Capped electric generation rates—Electric Generation Rates established through restructuring plans approved by the Commission under 66 Pa.C.S. Chapter 28 (relating to the Electricity Generation Customer Choice and Competition Act).

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 section 3 of the Alternative Energy Portfolio Standards Act (73 P.S. § 1648.3).

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 nonresidential customers—Commercial and industrial customers with annual usage greater than 2,409,001 kWh.

Medium nonresidential customers—Commercial and industrial customers with annual usage ranging from 120,451 up to and including 2,409,000 kWh.

MWh—Megawatthours.

Small nonresidential 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 information by customer class for residential, commercial, and industrial 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 of customer accounts served by EGSs.
- (ii) Total number of customer accounts being served by EGSs and the EDC.
- (iii) MWh sales of EGSs.
- (iv) MWh sales of EGSs and the EDC.
- (v) EGSs serving customer accounts by class.
- (vi) Total number of EDC TOU customer accounts served by EGSs.
- (vii) Total number of EDC TOU customer accounts served by EGSs and the EDC.
- (viii) MWh sales of EGSs to EDC TOU customer accounts.
- (ix) MWh sales of EGSs and the EDC to EDC TOU customer accounts.
- (x) 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 the information as confidential:

- (i) Identity of the EGS.
- (ii) Number of customer accounts served by the EGS by customer class for residential, commercial and industrial customers.

(iii) 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 nonresidential customers, medium nonresidential customers and large nonresidential customers, marking the 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 TOU customer accounts.
- (v) Number of hybrid rate customer accounts.
- (vi) Number of fixed term contract customer accounts by length of 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 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 web site, 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 under 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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