



**Before the Consumer Affairs Committee
Pennsylvania House of Representatives
January 31, 2008**

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Retail Energy Supply Association and Strategic Energy, LLC**

Chairman Preston, Chairman Godshall, and Distinguished Members of the Committee:

My name is Richard Hudson, I am the Pennsylvania Chairman of the Retail Energy Supply Association (RESA), an industry trade association. I am also the Manager of Regulatory and Government Affairs for Strategic Energy, a homegrown, Pittsburgh-based competitive energy supplier. My comments today represent the views of RESA as an association of electric generation suppliers (EGSs), not necessarily the views of any particular member company with respect to any specific issue. Attached to my testimony are comments on and recommended amendments to House Bill 2201. These comments are supported individually by Strategic Energy, Direct Energy and Constellation.

We would like to express our appreciation to the committee for the opportunity to present our views regarding energy policy for Pennsylvania. The Retail Energy Supply Association is a broad and diverse group of retail energy suppliers devoted to promoting competitive retail energy markets for all of Pennsylvania's residential, commercial and industrial consumers. RESA members includes companies like Direct Energy, a US subsidiary of an international company with operations across Canada, Texas and the north-eastern U.S. and which serves more than 32 million customers worldwide. And Hess Corporation, a *Fortune 100* company with retail fuel oil, gasoline, natural gas and electric operations across the Mid-Atlantic and New England regions and which is the largest retail natural gas marketer in Pennsylvania. And Reliant

Energy, which serves 1.9 million customers in the United States and operates 17 generating plants in Pennsylvania employing over 1200 Pennsylvanians across the Commonwealth. Other RESA members include: Sempra Energy Solutions, US Energy Savings Corp, Liberty Power Corp, Consolidated Edison Solutions, Gexa Energy, Commerce Energy, Integrys Energy and Suez Energy Resources, N.A. RESA members compete in electric markets in other states and are bringing the benefit of their experience and knowledge to Pennsylvania consumers. In Pennsylvania, RESA member companies serve thousands of customers – including residential homes, businesses, schools & universities, sports stadiums and several city, township and county entities – in the utility service territories that have fully transitioned to a competitive market.

My testimony today is focused on pointing out several concerns that we have with House Bill 2201 and our recommendations to address these concerns so customers can experience the benefits imagined with the passage of the Electric Choice Act over a decade ago. As you know, the policies and regulatory framework put in place today will shape the future of Pennsylvania's energy industry and, ultimately, Pennsylvania's economy for decades to come. You can pass a bill that will either keep Pennsylvania on the path to a successful competitive market which will drive product innovation, promote energy efficiency and the development of green energy sources, and empower customers with more control over escalating energy costs. Or, you can pass HB 2201 in its current form which will threaten these goals, keep utilities entrenched in a monopoly position, reduce customer choice, and potentially place customers on the hook for billions of dollars in future stranded costs.

Default Service Procurement

More than any other policy, the method for acquiring default service supply and setting utility generation prices, will determine whether customers are empowered with greater choices and receive the benefits of a competitive market. It is critical that a utility's default service procurement plan be based on a competitive process that will produce market responsive rates.

The original Electric Choice Act recognized this by requiring that electricity be procured and priced at "prevailing market prices." HB 2201 replaces this standard with a "lowest reasonable cost" procurement standard. Some have expressed concern about the term "prevailing market prices", based on the fear that prevailing market prices would lead to rate shock or be too volatile. This fear is unfounded. Attached to my testimony is a study sponsored by Direct Energy that shows how, in the Duquesne Light service territory, residential and small business customers could have saved over \$100 million if the default rate had been based on prevailing market prices instead of a long-term fixed price, which carries a significant risk premium. We do not oppose specific legislative language that sets "lowest reasonable cost" as the standard for utility default service plans because we are confident that market responsive pricing will produce the lowest reasonable cost over time. However, great care must be taken to ensure that this new standard is not abused in an attempt to justify an over-reliance on long-term contracts and fixed priced rates, which will impose enormous risks and potentially greater costs on consumers. If this Committee decides that a "lowest reasonable cost" standard is necessary to protect default service customers, then you should also protect by also requiring that default service plans are designed to enable competitive market development. Attached to my testimony is alternative language that seeks to do this.

Long-term Contracts

On the issue of long-term contracts, contrary to what you may have heard from others, there is no legitimate reason why we should rely on the use of utility procured long-term contracts for the construction of new generation in this Commonwealth. Competitive wholesale suppliers are building new generation in Pennsylvania and across the country without the use of utility-backed long-term contracts. Texas is a prime example. In December ERCOT, the regional grid operator in Texas, announced the addition of over 3,000 MW of new generation capacity coming on line in 2009 and 2010. With respect to alternative energy, ERCOT reports

that there are more interconnection requests from wind projects than any other source. Here are some of the many risks associated with utility procured long-term contracts:

1. Long-term contracts distort price signals and impede conservation and efficiency measures.

Through the development of smart meters and the promotion of demand response and energy efficiency programs, HBs 2200 and 2201 will go a long way to promote conservation and reduce consumption. However, HB 2201 threatens this progress by requiring fixed priced default service rates and promoting the use of long-term contracts. These policies will result in prices that are entirely divorced from the true cost of electricity at any given point time. Under HB 2201 millions of customers will have no incentive to conserve because their electricity rate will be 1, 5, or even 20 years out of date with the true cost of electricity.

2. Long-term contracts will create a perennial issue of "sticker shock".

HB 2201, in its current form, will perpetuate this problem we're bracing for today of imposing years of rate increases on customers all at once. Had rates been market responsive over the past ten years, customers would have experienced gradual increases consistent with the rising cost of fuel and other generation costs. This would have avoided the "sticker shock" we are bracing for in 2010 and 2011 when rate caps expire. To illustrate this point, if the price of potatoes had been fixed at 1996 levels as was the price of electricity, then customers today would be hit with a 47 percent price spike for a bag of spuds. Allowing utilities to enter into 20-year contracts, even for a fraction of default service supply, will undoubtedly result in significant all-at-once rate hikes when the long-term contract expires. Even if energy prices only increase at the rate of inflation, compounded over 20 years, this would amount to an all at once increase of approximately 80 percent or more (assuming a 3 percent rate of inflation). Also, there is no guarantee that long-term contracts will produce any long-run savings. In fact, in Delaware, Delmarva conducted a study which showed that reliance on a long-term 25 year contract with a

coal plant would have cost customers \$4 to \$5 billion more than relying on more market responsive procurement methods.

3. Long-term contracts impede competitive market development.

When the default rate adjust according to market conditions, competitive suppliers remain on equal footing as compared to the utility's default rate. Conversely, long-term fixed priced default service rates create a "boom or bust" cycle for competitive suppliers. It becomes too risky to enter a market where, in a few years, you may become artificially priced out of the market. Thus, long-term contracts rob customers of the innovation, greater choice and potential costs savings available when competition is allowed to flourish.

4. Utility procured long-term contracts shift enormous risk onto default service customers

Under the old regulated model, utilities built new generation and received a guaranteed stream of revenue from ratepayers to recover their cost of generation investment. It's not hard to see why this didn't work so well. With nearly guaranteed cost recovery, there was no incentive to operate plants efficiently and, as you would expect, cost overruns were common. Because of this inefficiency, policies like the Electric Choice Act, injected market discipline into the equation. Today, generation owners only get paid if their output is needed. This has shifted the risk of generation investment away from customers and onto generation investors, thus shielding customers from bad investment decisions. However, if utilities are allowed to enter into long-term contracts to support new generation construction, the risk is all shifted back onto the backs of ratepayers. Utilities still have guaranteed cost recovery under the current law and HB 2201 even gives the right to automatically adjust rates to recover costs. So ask yourself this question, who would you rather take on the risk of multi-billion dollar long-term contract? The utilities, where if they make a mistake, customers (your constituents) are left holding the bag? Or competitive suppliers, where if they make a mistake, shareholders incur the cost? Pennsylvania

has already paid \$11.5 billion in stranded costs. Let's not put ourselves at risk for a new generation of stranded costs.

Rate Mitigation and Customer Education

RESA supports transitional measures, such as a rate increase phase-in or pre-payment plans, to help mitigate the impact of potential rate increases on residential and small business customers as rate caps expire. However, it is imperative that such programs be implemented in a competitively neutral manner so customers can participate in any utility offered rate mitigation plan regardless of whether they choose to take the utility's default service or generation service from a competitive supplier. For example, if a utility offers customers the option of paying a little extra on each bill in order to pre-pay a future rate increase, then if that customer leaves the utility to take service from a competitive supplier, the accrued balance of the customer's prepayment account should follow the customer when it leaves. If such programs are not implemented in a competitively neutral manner, then the rate mitigation plan will have the effect of keeping customers on the utility's monopoly service—and robbing them of potentially lower supply offers from the competitive market. The Public Utility Commission has recognized the need for competitive neutrality and we respectfully recommend that this Committee make the same clarification in HB 2201.

HB 2201 recognizes that an essential element of any rate mitigation strategy is customer education. The bill requires utilities to implement programs to educate customers about the cost of electricity and ways to help lower energy costs. RESA recommends that utility sponsored customer education programs should also inform customers about competitive supply options that are available from licensed suppliers. Customer education has been an effective tool in other states in delivering the benefits of competition to residential and small business customers. For example, a residential customer in Texas can go to a website, plug in their zip code and get a list of dozens of electricity supply offers from licensed suppliers.

Retail Market Enhancement

RESA believes that empowering customers with greater control over rising energy costs is the most effective and enduring rate mitigation strategy. On that note, although RESA is not offering this as an amendment to HB 2201, attached to my testimony is a draft bill designed to promote retail market competition through a series of policies that would make it easier for new suppliers to enter the market, particularly to serve residential and small business customers. This bill calls for the creation of an Office of Retail Market Development at the Commission to promote and implement a variety of measures to stimulate customer shopping and new market entry by competitive suppliers. These measures include:

- More efficient billing options
- A billing option that would place competitive suppliers on equal footing to the utilities with respect to uncollectible debt expense
- More timely and efficient access to customer usage data so customers and their authorized agents can get the data needed to shop for electricity service
- A customer referral program to educate customers about competitive supply options and refer them to licensed suppliers when they call a utility call center or apply for new service

Both Illinois and Connecticut have passed similar bills this year to promote retail market development. And in New York, these types of programs along with a website with comprehensive competitive information were implemented several years ago. Provisions like these, coupled with competitively neutral rate mitigation programs will benefit customers enormously when rate caps expire by encouraging competition which will drive innovation and efficiency resulting in more choices and lower costs for customers. I have attached RESA's Retail Market Enhancement Legislation to my testimony for your information.

In conclusion, I would like to thank the Committee again for the opportunity to testify today about the importance of remaining on the path to a successful competitive market for the benefit of all Pennsylvanians.

Preliminary comments of Strategic Energy, Constellation Energy, and Direct Energy

PRIMARY ISSUES

Default Service Procurement

Option 1: The below amendment preserves the “prevailing market prices” standard for default service procurement and pricing as in the original Electric Choice Act. The language below has also been modified to be consistent with the procurement language in HB 1530 as that bill passed the House in June 2007. HB 1530 was a compromise bill that a wide and diverse group of stakeholders supported, including utilities, competitive suppliers, and small business and industrial customers. Preserving the “prevailing market prices” standard will promote the development of a robust competitive market for electric generation supply because it ensures that new suppliers who wish to enter the market are competing against a default rate that is in line with current market prices. Policy makers should not fear the “prevailing market prices” standard because evidence shows that market responsive pricing will ultimately deliver the most efficient pricing to customers over time. In fact one study has shown that customers in the Duquesne Light service area could have saved over \$100 million over a two year period if the utility default pricing had been market responsive instead of a longer-term fixed priced rate. Market responsive pricing for default service will also help Pennsylvania achieve other essential energy policy goals, such as demand response, conservation and energy efficiency. This is because market responsive pricing sends customers true and accurate price signals about the changing cost of electricity. These price signals provide the best incentive for customers to use less energy by investing in efficiency and conservation measures.

§2807(e)

(2) The default service provider shall provide electric generation supply service to its customers and meet the requirements of the act of November 30, 2004 (P.L. 1672, No. 213), known as the Alternative Energy Portfolio Standards Act, pursuant to a commission-approved competitive procurement plan that is designed to produce the lowest reasonable rates on a long-term basis and may include include a mix of long-term, short-term and spot-market purchases. The electric power acquired to provide electric generation service under this paragraph shall be procured at prevailing market prices through competitive procurement processes that may include one or more of the following:

(i) Auctions

- (ii) Requests for proposals.
- (iii) Spot-market purchases.
- (iv) Bilateral contracts, provided that such contracts be at prices no greater than the cost of otherwise containing generation in the wholesale market, as determined by the commission at the time of its approval of the plan, or otherwise consistent with a commission-approved competitive procurement process.

The competitive procurement process or processes shall be conducted, as determined and approved by the commission, for each customer class. The generation rates procured by the competitive procurement process or processes shall not allow the cross-subsidization of one customer class by another. The default service provider shall adjust rates at appropriate intervals as determined by the commission.

Option 2: If the legislature believes language in procurement must specifically refer to "least reasonable cost" it would be necessary to include language directing the Commission to consider the effect on competitive retail markets – the ultimate and durable protection for PA customers. Similarly, providing some discretion to the Commission regarding the mix of purchases which may compose a competitive procurement plan will allow for changes in market conditions to better represent "least reasonable cost" going forward while still providing enough variability to allow suppliers to compete for customers . The amendment below attempts to strike a balance between the "least reasonable cost" approach while still requiring market responsive default service procurement and pricing.

§2807(e)

(2) The default service provider shall provide electric generation supply service to its customers and meet the requirements of the act of November 30, 2004 (P.L. 1672, No. 213), known as the Alternative Energy Portfolio Standards Act, pursuant to a commission-approved competitive procurement plan that is designed to produce the lowest reasonable rates on a long-term basis and enable sustainable wholesale and retail competitive market development for electric generation supply through reliance on market responsive procurement and pricing. The competitive procurement plan may includes include a mix of long-term, short-term and spot-market purchases. The electric power acquired to provide electric generation service under this paragraph shall be procured through competitive procurement processes that may include one or more of the following:

- (i) Auctions
- (ii) Requests for proposals.
- (v) Spot-market purchases.

(vi) Bilateral contracts, provided that such contracts be at prices no greater than the cost of otherwise containing generation in the wholesale market, as determined by the commission at the time of its approval of the plan, or otherwise consistent with a commission-approved competitive procurement process.

The competitive procurement process or processes shall be conducted, as determined and approved by the commission, for each customer class. The generation rates procured by the competitive procurement process or processes shall not allow the cross-subsidization of one customer class by another.

Long Term Contracts for Default Service Supply

Option 1: Recently approved Commission rules governing default service procurement provides discretion for utilities (electric distribution companies) to engage in long term contracts in their respective plans – contingent on Commission approval. However, importantly, the Commission's rules recognize the public policy benefits and risks of long-term contracts and attempt to strike the proper balance between the use of long-term contracts for rate stability and the use of market responsive procurement for competitive market development. Consequently, legislation to provide for this is unnecessary – particularly the current drafts prescriptive language. Further, long term contracts are being entered into now to meet competitive supply needs with the risks properly borne by generation investors instead of default service customers. For example, Constellation entered into a 10 year contract with a wind power developer to provide power to a retail customer in suburban Washington DC. This wind project is being built in Somerset, PA. Additionally, Constellation has entered into a five year contract with a power plant being developed in York County to meet supply needs in the PJM region. The risk of these substantial investments were borne entirely by shareholders with no guarantee of cost recovery. Conversely, because default service providers have a statutory right to guaranteed cost recovery, if long-term contracts are pursued consistent with the draft legislation, default service customers would bear all of the risk of such long-term contracts. For example, it is likely that the draft legislation, which would allow utilities to purchase up to 20 percent of default service supply through long-term contracts up to 20 years in duration could lead to a new round of "stranded costs" (out of market long-term obligations) similar to the ones that have just been paid for in the transition from regulation to market. Today's long-term contract may look attractive but fuel prices can move up and down just as they did from highs in the 1980s to lows in the 1990s and those with long term obligations entered into today may look to be high priced in a few years.

~~(5) A default service provider may enter into long term contracts, through a competitive procurement process, with durations longer than five years but no longer than 20 years for up to 20% of its projected default service load. In reviewing a competitive procurement plan pursuant to this section, the commission may require the default service provider to procure power pursuant to such long term contracts provided that the long term contract is expected to produce the lowest reasonable rate on a long term basis and that the procurement is conducted pursuant to a competitive process. Contracts longer than five years shall also be permitted for alternative energy credits and for demand side management resources, as those terms are defined in section 2 of the Alternative Energy Portfolio Standards Act. Once a long term contract has been approved by the commission, it shall be deemed approved for all subsequent competitive procurement plans filed under this section for the life of the approved contract.~~

Option 2: If the legislature believes specific language permitting long term contracts as part of default programs is necessary, it is essential to limit the length of the contract as well as the overall percentage of procurement further. This will provide additional protections to customers and will mitigate the risk of future "stranded cost" recovery. It is very difficult to accurately assess market conditions more than a few years from the present. This is evidenced by the fact that the number of contracts traded on the New York Mercantile Exchange (NYMEX) for natural gas – a commodity with less volatility than electricity – decreases significantly after five years. Additionally, limiting the amount of long term obligations to 10 percent of an overall procurement plan allows for suppliers and the contracting utility to minimize the possibility that the market will dramatically change lower with the utility holding obligations that are significantly more expensive than the then current market.

§2807(e)

(6) A default service provider may enter into long-term contracts, through a competitive procurement process, with durations longer than no greater than five three years but no longer than 20 years for up to 20% 10 percent of its projected default service load provided that the Commission finds that the long-term contract: (i) is expected to produce the lowest reasonable rate on a long-term basis, (ii) will not unreasonably impede the development of competitive wholesale and retail markets for electric generation supply, and (iii) the procurement is conducted pursuant to a competitive procurement process. In reviewing a competitive procurement plan pursuant to this section, the commission may require the default service provider to procure power pursuant to such long term contracts provided that the long term contract is expected to produce the lowest reasonable rate on a long term basis and that the procurement is conducted pursuant to a competitive process. Contracts longer no greater

than five years in duration shall also be permitted for alternative energy credits and for demand-side management resources, as those terms are defined in section 2 of the Alternative Energy Portfolio Standards Act. Once a long-term contract has been approved by the commission, it shall be deemed approved for all subsequent competitive procurement plans filed under this section for the life of the approved contract.

Procurement

This amendment is designed to provide a timeline of implementation that will be less likely to be "out of date" and thus having unknown outcomes for customers or for its effect on the competitive retail market. As discussed below, assumptions on market conditions are subject to constant change just as assuming that crude oil would remain at high prices in the late 1980s when 3 years later it would be much lower.

§2807(e)

(11) The commission shall permit a default service provider to implement a competitive procurement process up to ~~36~~ 6 months prior to the date that it first has the obligation to supply electric generation supply service to retail customers under the terms of the commission's regulations.

Procurement

This amendment is designed to ensure that smaller customers obtain the benefits of some price stability while allowing for an environment that will encourage competitive retail suppliers to actively market services to these Pennsylvania customers. Additionally, providing discretion rather than prescribing fixed rates will prevent obligating a utility with a pricing approach that could be inconsistent with changing market conditions.

§2807(e)(14)

(iii) In addition to any other rates that may be offered, the default service provider shall may offer all residential and small business customers a rate that is fixed for a period of up to 6 months provided that customers are allowed to elect the fixed rate or elect to take service from a competitive electric generation supplier at any time without penalty or restriction. ~~shall change no more frequently than on an annual basis.~~ Such a rate may be subject to reconciliation to reflect any over-recovery or under-recovery of costs from the prior year or, at the option of the default service provider, may be provided on a nonreconcilable basis. All rates shall be reviewed by the commission to ensure that the costs

of providing service to each customer class are borne solely by that customer class.

Rate Mitigation

This amendment ensures that rate mitigation plans are implemented in a competitive neutral manner that does not impede competitive market development and does not permit utilities to use rate mitigation plans as an anticompetitive tool to retain market share. It ensures that customers can receive the full benefit of a utility provided rate phase-in or deferral program even if the customer chooses to take service from a competitive supplier. This will ensure that a customer can receive the benefit of the rate mitigation plan plus potentially lower generation supply costs through a competitive offer.

New paragraph to add at end of §2813:

(g) Any phase-in or other rate mitigation program shall be implemented in a competitively neutral manner such that a customer may participate in the program whether the customer chooses to take generation service from the default service provider or from an electric generation supplier. Rate phase-in or other rate mitigation programs shall utilize non-bypassable charges or credits to ensure competitive neutrality.

SECONDARY ISSUES

Consumer Education

The purpose of this amendment is to clarify that customer education programs should also inform customers about the benefits and increased choices available in the competitive market. Similar programs have been successful in Texas and New York which both have customer friendly websites to provide customers with information about competitive supply offers available from licensed suppliers. (www.powertochoose.com and www.powertochooseny.com)

§2807 lines 226 to 256 in Preliminary Draft.

(4) By July 1, 2008, and until the end of an electric distribution company's rate cap or rate phase-in plan filed pursuant to section 2813 (relating to rate phase-in plans), electric distribution companies, in conjunction with the commission, shall implement consumer education programs informing customers about available conservation and load-management programs, actions they can take to reduce their consumption, and default service price increases that the

customers may experience, and competitive electric generation supply offers that may be available from licensed competitive electric generation supplier. The commission shall initiate and permit default service providers to recover costs associated with customer education programs designed to promote the benefits of retail competition. The commission will reactivate the standing Council for Utility Choice to approve and oversee both the Statewide and electric distribution company education plans. Electric distribution company plans shall be coordinated with the Statewide education plans, and Statewide education should be funded and serve as the umbrella for coordinated electric distribution company plans. Electric distribution companies shall file their customer education programs with the commission for approval. Electric distribution companies may recover the reasonable and prudent costs, as determined by the commission, of any education programs at their option:

(1) by deferring costs for future recovery in base rates, with carrying charges equal to 6%; or

(2) on a full and current basis through a reconcilable automatic adjustment clause under section 1307 (relating to sliding scale of rates; adjustment). These costs shall be considered to be new services offered for the first time under section 2804 (4)(vi) (relating to standards for restructuring of electric industry). The electric distribution companies shall fully recover the costs of all approved education programs and deferrals.

Commission Updating of Default Service Regulations and Policies

The purpose of this amendment is to ensure that the Commission's regulations of default service procurement and pricing is flexible enough to adapt to changes in the dynamic energy markets. The Commission should review its regulation of default service procurement and pricing on a more frequent basis. The section is also modified to be consistent with the procurement language in Option 2.

§2807(e)

(7) Not later than December 31, 2008, the commission shall promulgate final regulations to define the default service provider's obligations under paragraph (2). At least every five two years after final regulations have been promulgated, the commission shall hold hearings and issue findings regarding whether the regulations effectively promote the lowest reasonable rates on a long-term basis and enable sustainable wholesale and retail competitive market development for electric generation supply. The commission shall make any changes to the regulations it identifies in its findings that are consistent with this chapter, provided, however, that the commission may not modify or disallow costs associated with contracts previously entered into pursuant to regulations in effect at the time the procurement plan was approved.

Regulatory Process

The following amendments are designed to ensure that parties have the equal right and ability to participate in the regulatory process surrounding approval and review of default service procurement plans as the default service provider. Several sections of the draft bill give unilateral control of the regulatory process to the default service provider to propose changes to default service plans and would require final Commission approval of default service plans within 9 months. While we support regulatory certainty and an expeditious regulatory review process, the Commission's ability to review and modify default service plans should not be overly restricted and parties should have the same participatory rights as the default service providers.

§ 2807(e)

(3) The default service provider shall have the right to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause under section 1307, all reasonable costs incurred pursuant to this section and a commission-approved competitive procurement plan. The commission may approve, at the default service provider's or another party's request, an alternative cost-recovery mechanism that may include, but is not limited to, nonreconcilable default service rate offerings.

2807(e)

(8) The default service provider shall file a plan for competitive procurement with the commission and obtain commission approval of the plan before the competitive procurement process may be implemented. The commission shall hold hearings as necessary on the proposed plan. If the commission fails to issue a final an initial order on the plan within nine months of the date that the plan is filed, the plan shall be deemed to be approved and the default service provider may implement the plan as filed.

2807(e)

(10) The default service provider shall file an updated competitive procurement plan with the commission every three years.

(i) If requested by a party contesting the plan theThe commission shall hold hearings as necessary to review the plan and issue findings regarding whether the updated plan is designed to produce the lowest reasonable rates on a long-term basis and enable sustainable wholesale and retail competitive market development for electric generation supply.

(ii) The commission shall approve the default service provider's updated plan if it complies with the standards of this section. If the default service provider's updated plan does not comply with the standards of this section, the commission shall specifically identify the elements of the plan that do

not comply with the standards of this section, and the default service provider shall modify the plan to meet those standards and resubmit the plan to the commission for approval.

§2807(e)

(12) Any post-transition default service plan approved by the commission prior to the effective date of this paragraph shall remain in effect through its approved term. At its sole option, the default service provider may propose changes to its approved plan that are consistent with this paragraph, and interested parties shall have an opportunity to comment on the proposed changes and if material issues of fact are present the commission shall hold hearings prior to issuing a final decision on the proposed changes. ~~the~~ The commission shall issue a decision whether to accept or reject such proposed amendments within nine months. If the commission fails to issue a ~~final~~ an initial order on the proposed amendments within nine months after the date the amendments are filed, the amendments shall be deemed to be approved and the default service provider may implement the amendments as filed.

Smart Meters and Data Access

This amendment will provide for faster and more efficient deployment of smart meters in an equitable manner. The draft language required smart meter deployment for a set of customers making up a certain percentage of peak demand on the utility's system. The process for identifying which customers would receive a smart meter under such a scenario would be complicated and may result in only the largest customers (i.e., those with the most demand) receiving the benefits of smart meters. Requiring smart meters for a certain percentage of customers will make the deployment of smart meters more equitable for residential and small business customers. The amendment also ensures that customers and their authorized representatives receive free access to customer meter and usage data. Customers pay for the utility's meter and data collection infrastructure through their fully regulated distribution rates so it is reasonable for customers to receive free access to their usage and other meter information.

§2807(16)(ii)

- (ii) Electric distribution companies shall furnish smart meter technology to:
- (A) ~~Customers responsible for 40% of the distribution company's annual peak demand within four years after the effective date of this act.~~ customers by December 31, 2010.
 - (B) ~~Customers responsible for 75% of the distribution company's annual peak demand within six years after the effective date of this act.~~ customers by December 31, 2011.

(C) One hundred percent of its customers ~~within ten years after the effective date of this act~~ by December 31, 2012. Electric distribution companies shall, with customer consent and at no charge, make available electronic access to customer meter data to customers, and third parties, including electric generation suppliers and providers of conservation and load management services.

RESA
Retail Market Enhancement Legislation

Section 308. Bureaus and offices.

* * *

- (f). Office of Retail Market Development. - The Office of Retail Market Development shall develop and implement competitive retail market enhancement programs established pursuant to commission order or regulation and engage in other activities to evaluate and promote the proper functioning of the competitive retail electricity market. The Office of Retail Market Development, in conjunction with the Law Bureau, shall be authorized to investigate any matter affecting the development of competitive retail electricity markets and may accumulate information on behalf of the commission pursuant to sections 505 and 506, and may file complaints or request commission investigations to the extent otherwise authorized by this Part.

Section 2807.

- (c) Customer billing.-

* * *

- (3) The electric distribution company shall not be required to forward payment to entities providing services to customer, and on whose behalf the electric distribution company is billing those customers, before the electric distribution company has received payment for those services from customers except that, if an electric distribution company is billing customers on behalf of an electric generation supplier pursuant to an existing purchase of receivables program, or a purchase of receivables program that is authorized by or consistent with commission regulations or order promulgated pursuant to subsection (f), the electric distribution company shall forward payment to the electric generation supplier no later than thirty days after bills are issued without regard to whether payment from the customer has been received. If an electric generation supplier chooses to perform consolidated billing as authorized by the Commission pursuant to subsection (f), then, at the electric generation supplier's sole discretion, the ability to seek service termination may transfer to the electric generation supplier. Termination of electric service provisions contained in the Act of November 30, 2004 (P.L. 1578, No. 201), referred to as the Responsibility Utility Customer Protection Act¹ and the Commission's regulations, shall apply.

¹ 66 P.S.A. §§ 1401-1418.

- (f). Competitive Market Facilitation. - (1) The commission shall promulgate regulations requiring electric distribution companies to develop competitive market facilitation programs that shall include, but not be limited to:
- (i) the availability of electric distribution utility consolidated billing or consolidated billing at the option of an electric generation supplier;
 - (ii) a program wherein the electric distribution utility purchases the receivables of electric generation suppliers without charge, other than recovery of actual incremental costs;
 - (iii) a customer referral program to advise applicants for electric distribution and generation service of available alternatives for electric generation supply;
 - (iv) the provision of customer meter data and usage information to the customer or the customer's authorized representative, using customer identification information other than a customer account number, without charge in a timely and efficient manner including in electronic format;
 - (v) the one-time publication of utility customer lists, under reasonable terms and conditions common to all service territories, that give due consideration to customer privacy, provide security of information, and provide a customer an opportunity to restrict access to non-public customer information;
 - (vi) the designation of an independent third-party registration agent whose functions are to ensure that information relating to a customer's choice of retail electric provider is conveyed in a timely manner to the market participants who need that information and that electricity production and delivery are accurately accounted for among market participants. In carrying out these functions, the independent registration agent shall develop a centralized data management system for market transactions, and market participants shall comply with the requirements for use of the data management system as specified by the registration agent; and
 - (vii) any other program designed to facilitate the development of a competitive retail electric generation market in the electric distribution company's service territory.
- (2). The commission shall promulgate permanent regulations implementing this section within one year of the effective date of this act and may issue policy statements prior to the promulgation of permanent regulations setting forth guidelines for conduct by electric distribution companies consistent with this section.

Residential Class Total Cost Tariff v Market

Estimated Residential Class Generation Service Cost (Total \$) DQE Tariff v PJM Market

Price Period	Approximate Number of DQE Rate RS Customers	Estimated Generation Service Tariff Cost for Residential Class	Estimated Generation Service Market Cost for Residential Class	Delta
Jan-05	496,926	\$34,620,071	\$24,745,668	\$9,874,403
Feb-05	496,926	\$30,147,022	\$20,999,078	\$9,147,944
Mar-05	496,926	\$31,439,054	\$27,402,336	\$4,036,718
Apr-05	496,926	\$23,108,801	\$19,824,766	\$3,284,035
May-05	496,926	\$21,301,099	\$14,434,386	\$6,866,713
Jun-05	496,926	\$29,345,909	\$27,811,193	\$1,534,716
Jul-05	496,926	\$34,871,682	\$37,116,301	(\$2,244,619)
Aug-05	496,926	\$33,369,339	\$40,268,675	(\$6,899,335)
Sep-05	496,926	\$23,197,407	\$23,278,788	(\$2,081,381)
Oct-05	496,926	\$21,926,514	\$20,447,427	\$1,472,886
Nov-05	496,926	\$25,687,739	\$23,603,147	\$2,084,593
Dec-05	496,926	\$35,530,732	\$45,084,630	(\$9,553,897)
Jan-06	496,926	\$34,910,346	\$27,033,871	\$7,876,475
Feb-06	496,926	\$30,199,453	\$23,200,319	\$6,999,133
Mar-06	496,926	\$31,079,066	\$23,293,743	\$7,785,322
Apr-06	496,926	\$23,147,173	\$18,294,623	\$4,852,550
May-06	496,926	\$21,069,406	\$15,825,791	\$5,243,615
Jun-06	496,926	\$29,801,972	\$22,744,881	\$7,057,091
Jul-06	496,926	\$35,236,942	\$33,471,078	\$1,765,864
Aug-06	496,926	\$32,940,517	\$34,362,944	(\$1,422,427)
Sep-06	496,926	\$23,028,983	\$15,024,981	\$8,004,002
Oct-06	496,926	\$22,045,387	\$16,438,269	\$5,607,098
Nov-06	496,926	\$25,980,651	\$20,335,139	\$5,647,511
Dec-06	496,926	\$35,356,114	\$27,508,655	\$7,847,459
Jan-07	496,926	\$39,315,863	\$27,508,655	\$11,807,208
Feb-07	496,926	\$29,903,750	\$31,550,679	(\$1,646,929)
Mar-07	496,926	\$28,953,156	\$22,732,849	\$6,220,307
Apr-07	496,926	\$24,044,741	\$21,486,323	\$2,558,418
May-07	496,926	\$24,578,653	\$25,865,872	(\$1,287,219)
Total for Analysis Period		\$836,170,343	\$729,872,264	\$106,298,059

* The number of customers figures were obtained from DQE's 4th quarter of 2005 FERC FORM 1.

Small Commercial Class Total Cost Tariff v Market

Estimated Small Commercial Class Generation Service Cost (Total \$) DQE Tariff v PJM Market

Price Period	Approximate Number of DQE Rate GS/GM Customers	Estimated Generation Service Tariff Cost for Small Commercial Class	Estimated Generation Service Market Cost for Small Commercial Class	Delta
Jan-05	54,628	\$12,506,172	\$9,284,615	\$3,221,558
Feb-05	54,628	\$11,690,119	\$8,307,286	\$3,382,833
Mar-05	54,628	\$12,337,315	\$11,301,942	\$1,035,372
Apr-05	54,628	\$11,703,245	\$10,807,991	\$895,854
May-05	54,628	\$12,236,720	\$8,812,716	\$3,424,004
Jun-05	54,628	\$13,857,155	\$12,951,585	\$905,570
Jul-05	54,628	\$14,184,112	\$15,030,149	(\$846,038)
Aug-05	54,628	\$14,317,988	\$17,594,371	(\$3,276,683)
Sep-05	54,628	\$13,091,150	\$14,542,462	(\$1,451,313)
Oct-05	54,628	\$12,692,241	\$12,620,836	\$71,405
Nov-05	54,628	\$12,268,807	\$11,235,228	\$1,033,579
Dec-05	54,628	\$12,706,112	\$16,870,266	(\$4,164,153)
Jan-06	54,628	\$12,532,870	\$10,093,456	\$2,439,413
Feb-06	54,628	\$11,680,028	\$9,020,583	\$2,659,445
Mar-06	54,628	\$12,303,506	\$9,786,796	\$2,506,790
Apr-06	54,628	\$11,605,449	\$10,065,402	\$1,540,047
May-06	54,628	\$12,371,626	\$9,816,116	\$2,556,510
Jun-06	54,628	\$13,862,814	\$11,072,991	\$2,789,823
Jul-06	54,628	\$14,246,606	\$13,497,301	\$748,305
Aug-06	54,628	\$14,299,904	\$15,247,265	(\$947,361)
Sep-06	54,628	\$12,960,651	\$8,603,515	\$4,357,136
Oct-06	54,628	\$12,787,912	\$9,812,648	\$2,975,264
Nov-06	54,628	\$12,310,192	\$10,074,716	\$2,235,476
Dec-06	54,628	\$12,573,719	\$8,688,827	\$3,884,892
Jan-07	54,628	\$12,995,313	\$10,023,747	\$2,971,566
Feb-07	54,628	\$12,244,067	\$13,122,502	(\$878,436)
Mar-07	54,628	\$12,168,581	\$10,227,565	\$1,941,016
Apr-07	54,628	\$11,728,223	\$11,361,959	\$376,264
May-07	54,628	\$13,294,182	\$14,636,651	(\$1,342,469)
Total for Analysis Period		\$569,565,559	\$334,610,889	\$234,954,671

* The number of customers figures were obtained from DQE's 4th quarter of 2005 FERC FORM 1.

from the wholesale market, enhancements to our transmission system, and targeted purchases of renewable resources. Our analysis of these bids shows that such a combination of steps remains the best option for our customers."

Stockbridge said, "We understand and support the desire of the General Assembly, the Governor's office, the Public Service Commission, and other state agencies to look at options that can save customers money on energy, provide price stability, and offer environmental benefits. However, after a careful analysis, we conclude that these proposals are not the best means to achieve those objectives."

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Delmarva Power, a public utility owned by Pepco Holdings, Inc. (NYSE: POM), provides safe and reliable energy to more than 500,000 electric delivery customers in Delaware, Maryland and Virginia and over 118,000 natural gas delivery customers in northern Delaware.

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