
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1984 Session of
2007

INTRODUCED BY GEORGE, BENNINGTON, BLACKWELL, CURRY, DALEY,
DeLUCA, DeWEESE, FABRIZIO, FREEMAN, GINGRICH, GOODMAN, HANNA,
HARKINS, HENNESSEY, HORNAMAN, JAMES, JOSEPHS, KORTZ, KULA,
MAHONEY, McGEEHAN, McILVAINE SMITH, MOUL, MYERS, M. O'BRIEN,
PALLONE, PASHINSKI, PETRONE, SCHRODER, SHIMKUS, SOLOBAY,
STABACK, SURRA, WALKO, WANSACZ, WATERS, WHEATLEY, J. WHITE,
WOJNAROSKI, YOUNGBLOOD AND YUDICHAK, OCTOBER 29, 2007

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, OCTOBER 29, 2007

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, providing for an extension of rate
3 caps and for an implementation of a least-cost portfolio
4 approach at the end of rate cap period.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Section 2804(4) of Title 66 of the Pennsylvania
8 Consolidated Statutes is amended to read:

9 § 2804. Standards for restructuring of electric industry.

10 The following interdependent standards shall govern the
11 commission's assessment and approval of each public utility's
12 restructuring plan, oversight of the transition process and
13 regulation of the restructured electric utility industry:

14 * * *

15 (4) The following caps on electric utility rates shall
16 apply:

1 (i) For a period of 54 months from the effective
2 date of this chapter or until an electric distribution
3 utility is no longer recovering its transition or
4 stranded costs through a competitive transition charge or
5 intangible transition charge and all the customers of an
6 electric distribution utility can choose an alternative
7 provider of electric generation, whichever is shorter:

8 (A) the total charges of an electric
9 distribution utility for service to any customer who
10 purchases generation from that utility shall not
11 exceed the total charges that have been approved by
12 the commission for such service as of the effective
13 date of this chapter; and

14 (B) for customers who purchase generation from a
15 supplier other than the electric distribution
16 utility, the charges of the utility for non-
17 generation services that are regulated as of the
18 effective date of this chapter, exclusive of the
19 competitive transition charge and intangible
20 transition charge, shall not exceed the non-
21 generation charges that have been approved by the
22 commission for such service as of the effective date
23 of this chapter.

24 (ii) In addition to the rate cap set forth in
25 subparagraph (i), [for a period of nine years from the
26 effective date of this chapter or until an electric
27 distribution utility is no longer recovering its
28 transition or stranded costs through a competitive
29 transition charge or intangible transition charge and all
30 customers of an electric distribution utility can choose

1 an alternative provider of electric generation, whichever
2 is shorter] until January 1, 2013, the generation
3 component of a utility's charges to customers who
4 purchase generation from the utility, including the
5 competitive transition charge and intangible transition
6 charge, shall not exceed the generation component charged
7 to the customers [that has been approved by the
8 commission for such service as of the effective date of
9 this chapter] on December 31, 2007.

10 (iii) An electric distribution utility may seek, and
11 the commission may approve, an exception to the
12 limitations set forth in subparagraphs (i) and (ii) only
13 in any of the following circumstances:

14 (A) The electric distribution utility meets the
15 requirements for extraordinary rate relief under
16 section 1308(e) (relating to voluntary changes in
17 rates).

18 (B) Either the electric distribution utility is
19 required to begin payment under contracts with
20 nonutility generation projects that have received
21 commission orders, has been unable to mitigate such
22 costs, such costs are not recoverable in a
23 competitive generation market and such costs were not
24 previously covered in the competitive transition
25 charge or intangible transition charge, or the
26 utility prudently incurs costs related to
27 cancellation, buyout, buydown or renegotiation of
28 nonutility generating project obligations of the
29 utility consistent with section 527 (relating to
30 cogeneration rules and regulations) and such costs

1 were not previously covered in the competitive
2 transition charge or intangible transition charge.
3 Costs related to cancellation, buyout, buydown or
4 renegotiation shall be recovered from ratepayers over
5 a period not to exceed three years, unless the
6 commission determines within its discretion to
7 require a longer recovery period due to the magnitude
8 of such costs, but shall be accounted for by the
9 utility on a levelized basis over the total period in
10 which the generation portion of the utility's rates
11 are capped.

12 (C) The electric distribution utility is subject
13 to significant increases in the rates of Federal or
14 State taxes or other significant changes in law or
15 regulations that would not allow the utility to earn
16 a fair rate of return.

17 (D) The electric distribution utility is subject
18 to significant increases in the unit rate of fuel for
19 utility generation or the price of purchased power
20 that are outside of the control of the utility and
21 that would not allow the utility to earn a fair rate
22 of return.

23 (E) The electric distribution utility is
24 directed by the commission or an independent system
25 operator or its functional equivalent to make
26 expenditures to repair or upgrade its transmission or
27 distribution system.

28 (F) The electric distribution utility seeks to
29 increase its allowance for nuclear decommissioning
30 costs to reflect new information not available at the

1 time the utility's existing rates were determined,
2 and such costs are not recoverable in the competitive
3 generation market and are not covered in the
4 competitive transition charge or intangible
5 transition charge, and such costs would not allow the
6 utility to earn a fair rate of return.

7 (G) As permitted by paragraph (16).

8 (iv) Consistent with the requirements of due
9 process, the commission may expedite proceedings that
10 invoke the provisions of subparagraph (iii).

11 (v) If an electric distribution utility rolls its
12 energy cost rate into base rates at a combined level that
13 does not exceed its combined level of such rates which
14 have been approved by the commission as of the effective
15 date of this chapter, the utility shall not be required
16 to reduce its capped rates below the capped level upon
17 the complaint of any party if the commission determines
18 that any excess earnings achieved under the cap are being
19 utilized to mitigate transition or stranded costs for the
20 benefit of ratepayers or to offset other known and
21 measurable cost increases that would be recoverable under
22 traditional ratemaking but are not included within the
23 capped rates.

24 (vi) This paragraph shall not apply to new services
25 offered for the first time after the effective date of
26 this chapter.

27 (vii) Notwithstanding the provisions of subparagraph
28 (ii), if the commission approves an increase in the
29 generation component of a utility's charge to customers
30 prior to December 31, 2007, the utility may increase the

1 generation component charged to customers pursuant to the
2 commission's approval, and such increased charge shall be
3 capped until January 1, 2013.

4 * * *

5 Section 2. Section 2807(e) of Title 66, amended July 17,
6 2007 (P.L.120, No.36), is amended to read:

7 § 2807. Duties of electric distribution companies.

8 * * *

9 (e) Obligation to serve.--An electric distribution company's
10 obligation to provide electric service following implementation
11 of restructuring and the choice of alternative generation by a
12 customer is revised as follows:

13 (1) [While an electric distribution company collects
14 either a competitive transition charge or an intangible
15 transition charge or until 100% of its customers have choice,
16 whichever is longer, the] The electric distribution company
17 shall continue to have the full obligation to serve,
18 including the connection of customers, the delivery of
19 electric energy and the production or acquisition of electric
20 energy for customers.

21 (2) [At the end of the transition period, the] The
22 commission shall promulgate regulations to define the
23 electric distribution company's obligation to connect and
24 deliver and acquire electricity under paragraph (3) that will
25 exist [at the end of the phase-in period] after January 1,
26 2013.

27 (3) [If a customer contracts for electric energy and it
28 is not delivered or if a customer does not choose an
29 alternative electric generation supplier, the] The electric
30 distribution company or commission-approved alternative

1 supplier shall acquire [electric energy at prevailing market
2 prices to serve that customer and shall recover fully all
3 reasonable costs.] a portfolio of electric generation
4 resources to serve customers who contract for electric
5 generation and do not receive it or customers who do not
6 choose an alternative electric generation supplier.

7 (i) The portfolio of resources acquired under this
8 subsection shall be designed to ensure reliable service
9 at the lowest reasonable rates to customers on a long-
10 term basis. The portfolio shall include an appropriate
11 mix of long-term, short-term and spot market purchases
12 and shall comply with the requirements of the act of
13 November 30, 2004 (P.L.1672, No.213), known as the
14 Alternative Energy Portfolio Standards Act.

15 (ii) The portfolio of resources shall be reviewed
16 and approved by the commission and shall be acquired
17 through procedures that may include, but not be limited
18 to:

19 (A) Auctions.

20 (B) Requests for proposals.

21 (C) Spot market purchases.

22 (D) Long-term purchase power agreements to
23 support construction of new generation facilities,
24 including generation that meets the requirements of
25 the Alternative Energy Portfolio Standards Act.

26 (E) Bilateral contracts negotiated at arm's
27 length with affiliated or nonaffiliated suppliers,
28 provided that the cost of obtaining generation from
29 any affiliated supplier may be no greater than the
30 cost of obtaining generation under comparable terms

1 in the wholesale markets.

2 (F) Generation of the electricity by the
3 electric distribution company or a commission-
4 approved alternative supplier from its own generating
5 facilities, so long as the cost of obtaining
6 generation from such a facility is no greater than
7 the cost of obtaining generation under comparable
8 terms in the wholesale markets.

9 (iii) The electric distribution company or
10 commission-approved alternative supplier shall recover
11 fully all generation costs that are incurred in a manner
12 that is consistent with a commission-approved portfolio
13 plan. The commission may not modify contracts that are
14 entered into pursuant to a commission-approved portfolio
15 plan unless the commission determines either of the
16 following:

17 (A) the contract does not comply with the
18 commission-approved portfolio plan; or

19 (B) the commission determines that there has
20 been fraud, collusion, market manipulation or abuse
21 of market power.

22 (iv) The electric distribution company or
23 commission-approved alternative supplier shall offer all
24 customers a fixed rate that shall change no more
25 frequently than on an annual basis. This rate may be
26 subject to reconciliation to reflect any over-recovery or
27 under-recovery of costs from the prior year.

28 (v) The commission shall review all notes to ensure
29 that the costs of providing service to each customer
30 class are borne solely by that customer class.

1 (4) If a customer that chooses an alternative supplier
2 and subsequently desires to return to the local distribution
3 company for generation service, the local distribution
4 company shall treat that customer exactly as it would any new
5 applicant for energy service.

6 (5) (i) Notwithstanding paragraph (3), the electric
7 distribution company or commission-approved alternative
8 supplier may, in its sole discretion, offer large
9 customers with a peak demand of 15 megawatts or greater
10 at one meter at a location in its service territory any
11 negotiated rate for service at all of the customers'
12 locations within the service territory for any duration
13 agreed upon by the electric distribution company or
14 commission-approved alternative supplier and the large
15 customer. The commission shall permit, but shall not
16 require, an electric distribution company or commission-
17 approved alternative supplier to provide service to large
18 customers under this paragraph. Contract rates entered
19 into under this paragraph shall be subject to review by
20 the commission in order to ensure that all costs related
21 to the rates are borne by the parties to the contract and
22 that no costs related to the rates are borne by other
23 customers or customer classes. If no costs related to the
24 rates are borne by other customers or customer classes,
25 the commission shall approve the contract within 90 days
26 of its filing, or it shall be deemed approved by
27 operation of law upon expiration of the 90 days.
28 Information submitted under this paragraph shall be
29 subject to the commission's procedures for the filing of
30 confidential and proprietary information.

(ii) For purposes of providing service under this paragraph to customers with a peak demand of 20 megawatts or greater at one meter at a location within that distribution company's service territory, an electric distribution company that has completed its restructuring transition period as of the effective date of this paragraph may, in its sole discretion, acquire an interest in a generation facility or construct a generation facility specifically to meet the energy requirements of the customers, including the electric requirements of the customers' other billing locations within its service territory. The electric distribution company must commence construction of the generation facility or contract to acquire the generation interest within three years after the effective date of this paragraph, except that the electric distribution company may add to the generation facilities it commenced construction or contracted to acquire after this three-year period to serve additional load of customers for whom it commenced construction or contracted to acquire generation within three years. Nothing in this paragraph requires or authorizes the commission to require an electric distribution company to commence construction or acquire an interest in a generation facility. The electric distribution company's interest in the generation facility it built or contracted to acquire shall be no larger than necessary to meet peak demand of customers served under this subparagraph. During times when the customer's demand is less than the electric distribution company's generation interest, the electric

1 distribution company may sell excess power on the
2 wholesale market. At no time shall the costs associated
3 with the generating facility interests be included in
4 rate base or otherwise reflected in rates. The generation
5 facility interests shall not be commission-regulated
6 assets.

7 Section 3. This act shall take effect in 60 days.