

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1134 Session of
2007

INTRODUCED BY TOMLINSON, M. WHITE, PILEGGI, RAFFERTY,
WASHINGTON, ERICKSON, KITCHEN, LOGAN AND GREENLEAF,
OCTOBER 19, 2007

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
OCTOBER 19, 2007

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, in restructuring of electric utility
3 industry, providing for rate change mitigation and for energy
4 efficiency and demand-response measures; and further
5 providing for duties of electric distribution companies.

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

8 Section 1. Title 66 of the Pennsylvania Consolidated
9 Statutes is amended by adding sections to read:

10 § 2806.1. Rate change mitigation.

11 (a) Prepayment or deferment.--Following the expiration of a
12 generation rate cap, if a default service provider's total
13 retail rate for a customer class rises by more than 12%
14 following the expiration of a generation rate cap, the following
15 shall apply:

16 (1) The default service provider shall offer all of its
17 residential and small business customers using 25kW or less
18 in maximum registered peak load the opportunity to prepay or

1 defer a portion of the increase by implementing a deferral or
2 phase-in of the rate increase for up to three years.

3 (2) Competitively neutral rate mitigation options shall
4 be included in the rate deferral or phase-in program of the
5 default service provider to begin with the expiration of a
6 generation rate gap approved by the commission.

7 (3) Default service providers may fully recover the
8 reasonable carrying costs associated with a rate increase
9 deferral program, including associated administrative costs
10 and pay any reasonable carrying cost on prepayment by
11 customers.

12 (b) Other mitigation strategies.--In addition to the
13 mitigation strategy under subsection (a), a default service
14 provider may propose other reasonable rate mitigation strategies
15 that would reflect the incurrence of reasonable costs.

16 § 2806.2. Energy efficiency and demand-response measures.

17 (a) Policy.--It is the policy of the Commonwealth that
18 electric distribution companies are required to use cost-
19 effective energy efficiency and demand-response measures to
20 reduce delivery load. Requiring investment in cost-effective
21 energy efficiency and demand-response measures will reduce
22 direct and indirect costs to consumers by decreasing
23 environmental impacts and by avoiding or delaying the need for
24 new generation, transmission and distribution infrastructure.

25 (b) Goals.--Electric distribution companies shall implement
26 cost-effective energy efficiency and conservation measures to
27 meet the following energy saving goals:

28 (1) By May 31, 2013, each electric distribution company
29 shall reduce its total annual deliveries to retail customers
30 by 2%. This load reduction shall be measured against the

1 expected load forecasted by the commission for June 1, 2012,
2 through May 31, 2013. The commission shall determine and make
3 public the forecasts to be used for each electric
4 distribution company no later than May 31, 2008.

5 (2) By November 30, 2013, the commission shall evaluate
6 the costs and benefits of these efficiency and conservation
7 programs. If the benefits have been shown to exceed the
8 costs, consistent with the total resource cost test, the
9 commission shall set additional, incremental energy
10 efficiency and conservation goals for the period ending May
11 31, 2018.

12 (3) After May 31, 2018, the commission shall continue to
13 evaluate the costs and benefits of efficiency and
14 conservation measures and may adopt additional incremental
15 load reduction standards for electric distribution companies.

16 (c) Reduction in peak demand.--

17 (1) Electric distribution companies shall implement
18 cost-effective demand response measures to reduce peak demand
19 by at least 3% in the 100 hours of highest demand. This
20 reduction will be measured against the electric distribution
21 company's peak demand in the 100 hours of greatest demand for
22 June 1, 2007, through May 31, 2008. The reductions shall be
23 accomplished by May 31, 2012.

24 (2) By November 31, 2012, the commission shall compare
25 the total costs of these demand-response measures to the
26 total savings in energy and capacity costs to Pennsylvania
27 retail customers. If the benefits have been shown to exceed
28 the costs, consistent with the total resource cost test, the
29 commission shall order electric distribution companies to
30 seek additional incremental peak demand reductions for the

100 hours of greatest demand or an alternative measure adopted by the commission. The reductions shall be measured from the electric distribution company's peak demand for the period from June 1, 2011, through May 31, 2012. The mandated reductions shall be accomplished no later than May 31, 2017.

(3) After May 31, 2017, the commission shall continue to evaluate the costs and benefits of demand-response measures and may adopt additional incremental peak reduction standards for electric distribution companies.

(d) Oversight.--Electric distribution companies shall be responsible for overseeing the design, development and filing of energy efficiency and demand-response plans with the commission. Electric distribution companies shall implement 100% of the demand-response measures in the plans. Electric distribution companies shall implement 100% of the energy efficiency measures approved by the commission and may, as part of that implementation, outsource various aspects of program development and implementation. A minimum of 10% of the entire portfolio of cost-effective energy efficiency measures shall be procured from units of local government, municipal corporations, school districts and community college districts. The commission shall coordinate the implementation of these measures. The portfolio of measures, administered by the utilities, shall be designed to achieve the annual savings targets described in subsections (b) and (c). The utility and the commission shall agree upon a reasonable portfolio of measures and determine the measurable corresponding percentage of the savings goals associated with measures implemented by the utility.

(e) Plan.--No later than November 15, 2008, each electric distribution company shall file an energy efficiency and demand-

1 response plan with the commission to meet the energy efficiency
2 and demand-response standards. No later than December 1, 2008,
3 each electric distribution company shall file an energy
4 efficiency, conservation and demand-response program to meet the
5 goals identified in subsections (b) and (c). Subsequent plans
6 shall be filed pursuant to the commission's direction to obtain
7 the delivered and peak load reduction goals. Every five years
8 thereafter, each electric distribution company shall file an
9 energy efficiency and demand-response plan with the commission.
10 If a distribution company does not file such a plan, it shall
11 face a penalty of \$100,000 per day until the plan is filed. Each
12 utility's plan shall set forth the utility's proposals to meet
13 the utility's portion of the energy efficiency standards
14 identified in subsection (b) and the demand-response standards
15 identified in subsection (c). The commission shall seek public
16 comment on the utility's plan and shall issue an order approving
17 or disapproving each plan at a set date after its submission. If
18 the commission disapproves a plan, the commission shall describe
19 in detail the reasons for the disapproval and describe a
20 procedure by which the utility may file a revised draft of the
21 plan to satisfactorily address the commission's concerns. If the
22 utility does not refile with the commission within 60 days, the
23 utility shall be subject to penalties at a rate of \$100,000 per
24 day until the plan is filed. This process shall continue and
25 penalties shall accrue until the utility has successfully filed
26 a portfolio of energy efficiency and demand-response measures.
27 Penalties shall be deposited into the appropriate sustainable
28 energy fund. In submitting proposed energy efficiency and
29 demand-response plans and funding levels to meet the savings
30 goals adopted by this section, the utility shall:

1 (1) Demonstrate that its proposed energy efficiency and
2 demand-response measures will achieve the requirements of
3 this chapter.

4 (2) Present specific proposals to implement new building
5 and appliance standards that have been placed into effect.

6 (3) Present estimates of the total amount paid for
7 electric service expressed on a per kilowatt hour basis
8 associated with the proposed portfolio of measures designed
9 to meet the requirements of this chapter.

10 (4) Coordinate with the commission to present a
11 portfolio of energy efficiency measures targeted to
12 households at or below 150% of the poverty level at a level
13 proportionate to those households' share of total annual
14 utility revenues in this Commonwealth.

15 (5) Demonstrate that its overall portfolio of energy
16 efficiency and demand-response measures, not including
17 programs covered by paragraph (4), are cost effective using
18 the total resource cost test and represent a diverse cross
19 section of opportunities for customers of all rate classes to
20 participate in the programs.

21 (6) Include a proposed cost-recovery tariff mechanism to
22 fund the proposed energy efficiency and demand-response
23 measures and to ensure the recovery of the prudently and
24 reasonably incurred costs of commission-approved programs.

25 (7) Provide for an annual independent evaluation of the
26 performance of the cost-effectiveness of the utility's
27 portfolio of measures, as well as a full review of the five-
28 year results of the broader net program impacts and, to the
29 extent practicable, for adjustment of the measures on a
30 going-forward basis as a result of the evaluations. The

resources dedicated to evaluation shall not exceed 3% of
portfolio resources in any given year.

(f) Allocation limit.--No more than 3% of energy efficiency
and demand-response program revenue may be allocated for
demonstration of breakthrough equipment and devices.

(g) Failure to meet standard.--If an electric distribution
company fails to meet the efficiency standards specified in
subsections (b) and (c), it shall be assessed a civil penalty in
an amount up to \$5,000,000 in accordance with this subsection.

In addition, the responsibility for implementing the energy
efficiency measures of the utility making the payment shall be
transferred to the commission if, after five years, or in any
subsequent five-year period, the utility fails to meet the
efficiency standard. The commission shall implement a
competitive procurement program to procure resources necessary
to meet the standards in this chapter.

(h) Definitions.--As used in this section the following
words and phrases shall have the meanings given to them in this
subsection:

"Amount per kilowatt hour." The total amount paid for
electric service expressed on a per kilowatt hour basis.

"Cost-effective." Measures which satisfy the total resource
cost test.

"Total amount paid for electric service." The term includes,
without limitation, estimated amounts paid for generation,
transmission, distribution, surcharges and add-on taxes.

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

§ 2807. Duties of electric distribution companies.

* * *

1 (e) Obligation to serve.--[An electric distribution
2 company's obligation to provide] The obligation of a default
3 service provider to furnish electric service following
4 implementation of restructuring and the choice of alternative
5 generation by a customer is revised as follows:

6 (1) While an electric distribution company collects
7 either a competitive transition charge or an intangible
8 transition charge or until 100% of its customers have choice,
9 whichever is longer, the electric distribution company shall
10 continue to have the full obligation to serve, including the
11 connection of customers, the delivery of electric energy and
12 the production or acquisition of electric energy for
13 customers.

14 [(2) At the end of the transition period, the commission
15 shall promulgate regulations to define the electric
16 distribution company's obligation to connect and deliver and
17 acquire electricity under paragraph (3) that will exist at
18 the end of the phase-in period.

19 (3) If a customer contracts for electric energy and it
20 is not delivered or if a customer does not choose an
21 alternative electric generation supplier, the electric
22 distribution company or commission-approved alternative
23 supplier shall acquire electric energy at prevailing market
24 prices to serve that customer and shall recover fully all
25 reasonable costs.]

26 (3.1) From and after the expiration of an electric
27 distribution company's obligation to supply electric energy
28 and capacity to retail customers at capped rates, if a
29 customer contracts for electric energy and capacity and the
30 chosen electric generation supplier does not supply the

1 service or if a customer does not choose an alternative
2 electric generation supplier, the default service provider
3 shall provide electric generation supply service to that
4 customer pursuant to a commission-approved competitive
5 procurement plan. The electric power acquired to provide
6 electric generation service under this paragraph shall be
7 procured through competitive procurement processes that may
8 include one or more of the following:

9 (i) Auctions.

10 (ii) Requests for proposal.

11 (iii) Bilateral contracts negotiated between the
12 electric distribution company or commission-approved
13 alternative supplier and a wholesale electric supplier,
14 except that the bilateral contracts shall be entered into
15 at the sole discretion of the electric distribution
16 company or commission-approved alternative supplier and
17 the commission shall have no authority to require the
18 contracts and shall be at prices no greater than
19 reasonable forward market prices.

20 (iv) Any other electric energy approved by the
21 commission through regulation.

22 (3.2) The commission shall not modify contracts or
23 disallow costs associated with contracts entered into
24 pursuant to an approved competitive procurement process.
25 Prices obtained through the competitive procurement processes
26 shall be deemed to be prevailing market prices. The resources
27 procured pursuant to this paragraph may reflect a mix of
28 long-term, short-term or spot market purchases. The
29 commission may disallow cost recovery if there has been
30 fraud, collusion, market manipulation or similar activities

1 with regard to these contracts.

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

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

29 Information submitted under this paragraph shall be
30 subject to the commission's procedures for the filing of

1 confidential and proprietary information.

2 (ii) For purposes of providing service under this
3 paragraph to customers with a peak demand of 20 megawatts
4 or greater at one meter at a location within that
5 distribution company's service territory, an electric
6 distribution company that has completed its restructuring
7 transition period as of the effective date of this
8 paragraph may, in its sole discretion, acquire an
9 interest in a generation facility or construct a
10 generation facility specifically to meet the energy
11 requirements of the customers, including the electric
12 requirements of the customers' other billing locations
13 within its service territory. The electric distribution
14 company must commence construction of the generation
15 facility or contract to acquire the generation interest
16 within three years after the effective date of this
17 paragraph, except that the electric distribution company
18 may add to the generation facilities it commenced
19 construction or contracted to acquire after this three-
20 year period to serve additional load of customers for
21 whom it commenced construction or contracted to acquire
22 generation within three years. Nothing in this paragraph
23 requires or authorizes the commission to require an
24 electric distribution company to commence construction or
25 acquire an interest in a generation facility. The
26 electric distribution company's interest in the
27 generation facility it built or contracted to acquire
28 shall be no larger than necessary to meet peak demand of
29 customers served under this subparagraph. During times
30 when the customer's demand is less than the electric

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

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