

## 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

SENATOR TOMLINSON, CONSUMER PROTECTION AND PROFESSIONAL  
LICENSURE, AS AMENDED, JUNE 26, 2008

## AN ACT

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

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

9 ~~Section 1. Title 66 of the Pennsylvania Consolidated~~ <—  
10 ~~Statutes is amended by adding sections to read:~~

11 ~~§ 2806.1. Rate change mitigation.~~

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

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

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

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

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

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

~~§ 2806.2. Energy efficiency and demand response measures.~~

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

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

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

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

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

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

~~(c) Reduction in peak demand.~~

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

~~(2) By November 31, 2012, the commission shall compare the total costs of these demand response measures to the total savings in energy and capacity costs to Pennsylvania retail customers. If the benefits have been shown to exceed the costs, consistent with the total resource cost test, the commission shall order electric distribution companies to 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) Demonstrate that its proposed energy efficiency and demand response measures will achieve the requirements of this chapter.~~

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

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

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

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

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

~~(7) Provide for an annual independent evaluation of the performance of the cost effectiveness of the utility's portfolio of measures, as well as a full review of the five-year results of the broader net program impacts and, to the extent practicable, for adjustment of the measures on a 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(c) of Title 66, amended July 17,  
2007 (P.L.120, No.36), is amended to read:~~

~~§ 2807. Duties of electric distribution companies.~~

~~\* \* \*~~

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

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

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

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

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



~~service or if a customer does not choose an alternative electric generation supplier, the default service provider shall provide electric generation supply service to that customer pursuant to a commission approved competitive procurement plan. 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 proposal.~~

~~(iii) Bilateral contracts negotiated between the electric distribution company or commission approved alternative supplier and a wholesale electric supplier, except that the bilateral contracts shall be entered into at the sole discretion of the electric distribution company or commission approved alternative supplier and the commission shall have no authority to require the contracts and shall be at prices no greater than reasonable forward market prices.~~

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

~~(3.2) The commission shall not modify contracts or disallow costs associated with contracts entered into pursuant to an approved competitive procurement process. Prices obtained through the competitive procurement processes shall be deemed to be prevailing market prices. The resources procured pursuant to this paragraph may reflect a mix of long term, short term or spot market purchases. The commission may disallow cost recovery if there has been 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~~

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

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

SECTION 1. SECTION 2803 OF TITLE 66 OF THE PENNSYLVANIA  
CONSOLIDATED STATUTES IS AMENDED BY ADDING DEFINITIONS TO READ:  
§ 2803. DEFINITIONS.

THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER  
SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE  
CONTEXT CLEARLY INDICATES OTHERWISE:

\* \* \*

"BILATERAL CONTRACT." AN AGREEMENT, AS APPROVED BY THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION, REACHED BY TWO PARTIES,  
EACH ACTING IN ITS OWN INDEPENDENT SELF-INTEREST, AS A RESULT OF  
NEGOTIATIONS FREE OF UNDUE INFLUENCE, DURESS OR FAVORITISM, IN  
WHICH THE ELECTRIC ENERGY SUPPLIER AGREES TO SELL AND THE  
ELECTRIC DISTRIBUTION COMPANY AGREES TO BUY A SPECIFIED QUANTITY  
OF ELECTRIC ENERGY AT A PRICE FOR A SPECIFIED PERIOD OF TIME  
UNDER TERMS AGREED TO BY BOTH PARTIES, AND WHICH FOLLOWS A  
STANDARD INDUSTRY TEMPLATE WIDELY ACCEPTED IN THE INDUSTRY OR  
VARIATIONS THERETO ACCEPTED BY THE PARTIES AND APPROVED BY THE  
COMMISSION. STANDARD INDUSTRY TEMPLATES INCLUDE THE EEI MASTER  
AGREEMENT FOR PHYSICAL ENERGY PURCHASES AND SALES AND THE ISDA  
MASTER AGREEMENT FOR FINANCIAL ENERGY PURCHASES AND SALES.

\* \* \*

"DEFAULT SERVICE PROVIDER." AN ELECTRIC DISTRIBUTION COMPANY

1 WITHIN ITS CERTIFICATED SERVICE TERRITORY OR A PENNSYLVANIA  
2 PUBLIC UTILITY COMMISSION-APPROVED ALTERNATIVE SUPPLIER  
3 PROVIDING GENERATION SERVICE TO RETAIL ELECTRIC CUSTOMERS WHO:

4 (1) CONTRACT FOR ELECTRIC POWER, INCLUDING, BUT NOT  
5 LIMITED TO, ENERGY AND CAPACITY, AND THE CHOSEN ELECTRIC  
6 GENERATION SUPPLIER DOES NOT SUPPLY THE SERVICE; OR

7 (2) DO NOT CHOOSE AN ALTERNATIVE ELECTRIC GENERATION  
8 SUPPLIER.

9 \* \* \*

10 SECTION 2. TITLE 66 IS AMENDED BY ADDING A SECTION TO READ:  
11 § 2806.1. RATE CHANGE MITIGATION.

12 (A) DEFERRAL PROGRAM.--AN ELECTRIC DISTRIBUTION COMPANY  
13 WHOSE TOTAL RETAIL RATE INCLUDING GENERATION, TRANSMISSION AND  
14 DISTRIBUTION SERVICE COMPONENTS AND ANY APPLICABLE SURCHARGE FOR  
15 A CUSTOMER CLASS IS ANTICIPATED TO RISE BY MORE THAN 12% UPON  
16 THE EXPIRATION OF A GENERATION RATE CAP ESTABLISHED IN AN  
17 ELECTRIC UTILITY RESTRUCTURING PROCEEDING SPECIFIED IN SECTION  
18 2804(4) (RELATING TO STANDARDS FOR RESTRUCTURING OF ELECTRIC  
19 INDUSTRY) OR A RESTRUCTURING PLAN SHALL SUBMIT A RATE MITIGATION  
20 PLAN TO THE COMMISSION FOR APPROVAL NO LATER THAN ONE YEAR PRIOR  
21 TO THE DATE OF THE EXPIRATION OF THE GENERATION RATE CAP. THE  
22 RATE MITIGATION PLAN SHALL PROVIDE THE FOLLOWING:

23 (1) A RATE MITIGATION PHASE-IN PROGRAM, WHICH SHALL BE  
24 AUTHORIZED FOR RESIDENTIAL OR SMALL BUSINESS CUSTOMERS, USING  
25 25KW OR LESS IN MAXIMUM REGISTERED PEAK LOAD. THE RATE  
26 MITIGATION PROGRAM SHALL LIMIT THE ANTICIPATED TOTAL RETAIL  
27 RATE INCREASE FOR THE INITIAL DEFAULT SERVICE GENERATION RATE  
28 INCREASE FOR A PERIOD OF UP TO FIVE YEARS IN ACCORDANCE WITH  
29 THE FOLLOWING:

30 (I) THE PLAN SHALL PROVIDE FOR RESIDENTIAL AND SMALL

BUSINESS CUSTOMERS USING 25KW OR LESS TO BE PERMITTED TO  
MAKE PAYMENTS IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:

(A) YEAR ONE FOLLOWING THE EXPIRATION OF THE  
GENERATION RATE CAPS - NO MORE THAN A 9% INCREASE  
OVER THE RATE ON THE EFFECTIVE DATE OF THIS SECTION  
OR AS CERTIFIED BY THE COMMISSION.

(B) YEAR TWO FOLLOWING THE EXPIRATION OF THE  
GENERATION RATE CAPS - NO MORE THAN AN 18% INCREASE  
OVER THE RATE ON THE EFFECTIVE DATE OF THIS SECTION  
OR AS CERTIFIED BY THE COMMISSION.

(C) YEAR THREE FOLLOWING THE EXPIRATION OF THE  
GENERATION RATE CAPS - NO MORE THAN A 27% INCREASE  
OVER THE RATE ON THE EFFECTIVE DATE OF THIS SECTION  
OR AS CERTIFIED BY THE COMMISSION.

(D) YEAR FOUR FOLLOWING THE EXPIRATION OF THE  
GENERATION RATE CAPS - NO MORE THAN A 36% INCREASE  
OVER THE RATE ON THE EFFECTIVE DATE OF THIS SECTION  
OR AS CERTIFIED BY THE COMMISSION.

(E) YEAR FIVE FOLLOWING THE EXPIRATION OF THE  
GENERATION RATE CAPS - NO MORE THAN A 45% INCREASE  
OVER THE RATE ON THE EFFECTIVE DATE OF THIS SECTION  
OR AS CERTIFIED BY THE COMMISSION.

(II) A CUSTOMER MAY ELECT, BUT SHALL NOT BE  
REQUIRED, TO PARTICIPATE IN THE RATE MITIGATION PHASE-IN  
PROGRAM UNDER THIS PARAGRAPH. THE ELECTRIC DISTRIBUTION  
COMPANY SHALL PROVIDE NOTICE OF THE ABILITY TO ELECT TO  
PARTICIPATE IN THE RATE MITIGATION PROGRAM IN AT LEAST  
FOUR BILLING STATEMENTS PRIOR TO THE EXPIRATION OF THE  
GENERATION RATE CAP. NOTICE SHALL ALSO BE POSTED ON THE  
ELECTRIC DISTRIBUTION COMPANY'S INTERNET WEBSITE. THE

1           NOTICE SHALL INCLUDE:

2                   (A) A FORM TO ELECT PARTICIPATION IN THE  
3                   PROGRAM.

4                   (B) A TOLL-FREE TELEPHONE NUMBER TO ALLOW A  
5                   CUSTOMER TO ELECT PARTICIPATION IN THE PROGRAM BY  
6                   TELEPHONE OR TO RECEIVE ADDITIONAL INFORMATION.

7                   (III) IN ORDER TO PARTICIPATE IN THE RATE MITIGATION  
8                   PHASE-IN PROGRAM, THE CUSTOMER SHALL FILE A WRITTEN OR  
9                   ELECTRONIC ELECTION TO PARTICIPATE.

10                  (2) A COMPETITIVELY NEUTRAL RATE MITIGATION OPTION  
11                  APPROVED BY THE COMMISSION BEFORE BEING IMPLEMENTED. A  
12                  CUSTOMER TAKING GENERATION SERVICE FROM EITHER THE DEFAULT  
13                  SERVICE PROVIDER OR AN ALTERNATIVE ELECTRIC GENERATION  
14                  SUPPLIER MAY SELECT THE OPTION.

15                  (3) IN ADDITION TO THE MITIGATION STRATEGY UNDER THIS  
16                  SUBSECTION, AN ELECTRIC DISTRIBUTION COMPANY MAY PROPOSE  
17                  OTHER REASONABLE RATE MITIGATION STRATEGIES.

18                  (B) COMMISSION DUTIES.--THE COMMISSION SHALL REVIEW THE PLAN  
19                  AND CERTIFY THE RATE AS OF THE EFFECTIVE DATE OF THIS SECTION AS  
20                  IT PERTAINS TO RESIDENTIAL AND SMALL BUSINESS CUSTOMERS USING  
21                  25KW OR LESS IN MAXIMUM REGISTERED PEAK LOAD PRIOR TO THE START  
22                  DATE OF THE PROGRAM.

23                  SECTION 3. SECTION 2807(E) OF TITLE 66 IS AMENDED TO READ:

24                  § 2807. DUTIES OF ELECTRIC DISTRIBUTION COMPANIES.

25                  \* \* \*

26                  (E) OBLIGATION TO SERVE.--AN ELECTRIC DISTRIBUTION COMPANY'S  
27                  OBLIGATION TO PROVIDE ELECTRIC GENERATION SUPPLY SERVICE  
28                  FOLLOWING [IMPLEMENTATION OF RESTRUCTURING AND THE CHOICE OF  
29                  ALTERNATIVE GENERATION BY A CUSTOMER] THE EXPIRATION OF A  
30                  GENERATION RATE CAP SPECIFIED UNDER SECTION 2804(4) (RELATING TO

1 STANDARDS FOR RESTRUCTURING OF ELECTRIC INDUSTRY) OR A  
2 RESTRUCTURING PLAN UNDER SECTION 2806(F) IS REVISED AS FOLLOWS:

3 (1) WHILE AN ELECTRIC DISTRIBUTION COMPANY COLLECTS  
4 EITHER A COMPETITIVE TRANSITION CHARGE OR AN INTANGIBLE  
5 TRANSITION CHARGE OR UNTIL 100% OF ITS CUSTOMERS HAVE CHOICE,  
6 WHICHEVER IS LONGER, THE ELECTRIC DISTRIBUTION COMPANY SHALL  
7 CONTINUE TO HAVE THE FULL OBLIGATION TO SERVE, INCLUDING THE  
8 CONNECTION OF CUSTOMERS, THE DELIVERY OF ELECTRIC ENERGY AND  
9 THE PRODUCTION OR ACQUISITION OF ELECTRIC ENERGY FOR  
10 CUSTOMERS.

11 [(2) AT THE END OF THE TRANSITION PERIOD, THE COMMISSION  
12 SHALL PROMULGATE REGULATIONS TO DEFINE THE ELECTRIC  
13 DISTRIBUTION COMPANY'S OBLIGATION TO CONNECT AND DELIVER AND  
14 ACQUIRE ELECTRICITY UNDER PARAGRAPH (3) THAT WILL EXIST AT  
15 THE END OF THE PHASE-IN PERIOD.

16 (3) IF A CUSTOMER CONTRACTS FOR ELECTRIC ENERGY AND IT  
17 IS NOT DELIVERED OR IF A CUSTOMER DOES NOT CHOOSE AN  
18 ALTERNATIVE ELECTRIC GENERATION SUPPLIER, THE ELECTRIC  
19 DISTRIBUTION COMPANY OR COMMISSION-APPROVED ALTERNATIVE  
20 SUPPLIER SHALL ACQUIRE ELECTRIC ENERGY AT PREVAILING MARKET  
21 PRICES TO SERVE THAT CUSTOMER AND SHALL RECOVER FULLY ALL  
22 REASONABLE COSTS.]

23 (3.1) FOLLOWING THE EXPIRATION OF AN ELECTRIC  
24 DISTRIBUTION COMPANY'S OBLIGATION TO PROVIDE ELECTRIC  
25 GENERATION SUPPLY SERVICE TO RETAIL CUSTOMERS AT CAPPED  
26 RATES, IF A CUSTOMER CONTRACTS FOR ELECTRIC GENERATION SUPPLY  
27 SERVICE AND THE CHOSEN ELECTRIC GENERATION SUPPLIER DOES NOT  
28 PROVIDE THE SERVICE OR IF A CUSTOMER DOES NOT CHOOSE AN  
29 ALTERNATIVE ELECTRIC GENERATION SUPPLIER, THE DEFAULT SERVICE  
30 PROVIDER SHALL PROVIDE ELECTRIC GENERATION SUPPLY SERVICE TO



1 THAT CUSTOMER PURSUANT TO A COMMISSION-APPROVED COMPETITIVE  
2 PROCUREMENT PLAN. THE ELECTRIC POWER ACQUIRED SHALL BE  
3 PROCURED THROUGH COMPETITIVE PROCUREMENT PROCESSES AND SHALL  
4 INCLUDE A PRUDENT MIX OF THE FOLLOWING:

5 (I) AUCTIONS.

6 (II) REQUESTS FOR PROPOSAL.

7 (III) SPOT MARKET PURCHASES.

8 (IV) LONG-TERM PURCHASE CONTRACTS OF NOT LESS THAN  
9 THREE AND NOT MORE THAN 20 YEARS, UNLESS THE COMMISSION  
10 DETERMINES THAT A LONGER TERM IS NECESSARY FOR  
11 RELIABILITY IN THE ACQUISITION OF GENERATION AND THAT IT  
12 IS IN THE BEST INTEREST OF THE CONSUMER TO EXTEND THE  
13 TERM OF THE CONTRACT BEYOND 20 YEARS.

14 (V) BILATERAL CONTRACTS WHICH SHALL BE AT PRICES  
15 WHICH ARE:

16 (A) NO GREATER THAN THE COST OF OBTAINING  
17 GENERATION IN THE WHOLESALE MARKET, AS DETERMINED BY  
18 THE COMMISSION; OR

19 (B) CONSISTENT WITH A COMMISSION-APPROVED  
20 COMPETITIVE PROCUREMENT PROCESS. ANY AGREEMENT  
21 BETWEEN AFFILIATED PARTIES SHALL BE SUBJECT TO REVIEW  
22 AND APPROVAL OF THE PENNSYLVANIA PUBLIC UTILITY  
23 COMMISSION UNDER CHAPTER 21 (RELATING TO RELATIONS  
24 WITH AFFILIATED INTERESTS). IN NO CASE SHALL THE COST  
25 OF OBTAINING GENERATION FROM ANY AFFILIATED INTEREST  
26 BE GREATER THAN THE COST OF OBTAINING GENERATION  
27 UNDER COMPARABLE TERMS IN THE WHOLESALE MARKET AT THE  
28 TIME OF PURCHASE.

29 (3.2) THE PRUDENT MIX OF RESOURCES ACQUIRED PURSUANT TO  
30 PARAGRAPH (3.1) SHALL BE DESIGNED TO ENSURE:

1           (I) ADEQUATE AND RELIABLE SERVICE.

2           (II) THE LEAST COST TO CUSTOMERS OVER TIME.

3           (III) COMPLIANCE WITH THE REQUIREMENTS OF PARAGRAPH

4           (3.1).

5           (3.3) THE DEFAULT SERVICE PROVIDER SHALL FILE A PLAN FOR  
6           COMPETITIVE PROCUREMENT WITH THE COMMISSION AND OBTAIN  
7           COMMISSION APPROVAL OF THE PLAN BEFORE THE COMPETITIVE  
8           PROCESS IS IMPLEMENTED. THE COMMISSION SHALL HOLD HEARINGS AS  
9           NECESSARY ON THE PROPOSED PLAN. IF THE COMMISSION FAILS TO  
10          ISSUE A FINAL ORDER ON THE PLAN WITHIN NINE MONTHS OF THE  
11          DATE THAT THE PLAN IS FILED, THE PLAN SHALL BE DEEMED TO BE  
12          APPROVED AND THE DEFAULT SERVICE PROVIDER MAY IMPLEMENT THE  
13          PLAN AS FILED. COSTS INCURRED THROUGH THE COMPETITIVE  
14          PROCUREMENT PROCESSES SHALL BE DEEMED TO BE THE LEAST COST ON  
15          A LONG-TERM BASIS.

16          (3.4) NOTWITHSTANDING SECTIONS 508 (RELATING TO POWER OF  
17          COMMISSION TO VARY, REFORM AND REVISE CONTRACTS) AND 2102  
18          (RELATING TO APPROVAL OF CONTRACTS WITH AFFILIATED  
19          INTERESTS), THE COMMISSION SHALL NOT MODIFY CONTRACTS OR  
20          DISALLOW COSTS ASSOCIATED WITH AN APPROVED PROCUREMENT  
21          PROCESS WHEN IT HAS REVIEWED AND APPROVED THE RESULTS OF THE  
22          PROCUREMENT, UNLESS OTHERWISE SPECIFIED UNDER THIS TITLE.

23          (3.5) IN DETERMINING IF THE DEFAULT ELECTRIC SERVICE  
24          PROVIDER HAS OBTAINED GENERATION SUPPLY AT THE LEAST COST,  
25          THE COMMISSION SHALL CONSIDER THE UTILITY'S OBLIGATION TO  
26          PROVIDE ADEQUATE AND RELIABLE SERVICE TO CUSTOMERS, AND SHALL  
27          MAKE SPECIFIC FINDINGS WHICH SHALL INCLUDE THE FOLLOWING:

28               (I) THE UTILITY HAS TAKEN ALL PRUDENT STEPS  
29               NECESSARY TO NEGOTIATE FAVORABLE GENERATION SUPPLY  
30               CONTRACTS AND TO RELIEVE THE UTILITY FROM TERMS IN

1 EXISTING CONTRACTS WITH ITS GENERATION SUPPLIERS WHICH  
2 ARE OR MAY BE ADVERSE TO THE INTERESTS OF THE UTILITY  
3 CUSTOMERS.

4 (II) THE UTILITY HAS TAKEN ALL PRUDENT STEPS  
5 NECESSARY TO OBTAIN LEAST COST GENERATION SUPPLY  
6 CONTRACTS ON A LONG-TERM, SHORT-TERM AND SPOT MARKET  
7 BASIS.

8 (III) NEITHER THE UTILITY NOR ITS AFFILIATED  
9 INTEREST HAS WITHHELD FROM THE MARKET ANY GENERATION  
10 SUPPLY WHICH SHOULD HAVE BEEN UTILIZED AS PART OF A LEAST  
11 COST PROCUREMENT POLICY. THE GENERATION RATES PROCURED BY  
12 A COMPETITIVE PROCUREMENT PROCESS SHALL NOT ALLOW THE  
13 CROSS SUBSIDIZATION OF ONE CUSTOMER CLASS BY ANOTHER. THE  
14 COMMISSION MAY DISALLOW COST RECOVERY IF THERE IS REASON  
15 TO BELIEVE THAT FRAUD, COLLUSION OR MARKET MANIPULATION  
16 WITH REGARD TO THESE CONTRACTS HAS OCCURRED OR FOR  
17 FAILURE TO IMPLEMENT THE COMPETITIVE PROCUREMENT PLAN  
18 APPROVED BY THE COMMISSION.

19 (3.6) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE  
20 TO THE CONTRARY, THE COMMISSION MAY MODIFY LONG-TERM  
21 CONTRACTS OR DISALLOW COSTS ASSOCIATED WITH CONTRACTS ENTERED  
22 INTO PURSUANT TO A COMMISSION-APPROVED PROCUREMENT PLAN IF  
23 THE COMMISSION DETERMINES THAT:

24 (I) THE CONTRACT DOES NOT COMPLY WITH THE  
25 COMMISSION-APPROVED PROCUREMENT PLAN; OR

26 (II) THE CONTRACT ADVERSELY IMPACTS THE RATES OF A  
27 CONSUMER DUE TO A CHANGE IN CIRCUMSTANCES.

28 (4) IF A CUSTOMER THAT CHOOSES AN ALTERNATIVE SUPPLIER  
29 AND SUBSEQUENTLY DESIRES TO RETURN TO THE LOCAL DISTRIBUTION  
30 COMPANY FOR GENERATION SERVICE, THE LOCAL DISTRIBUTION

1 COMPANY SHALL TREAT THAT CUSTOMER EXACTLY AS IT WOULD ANY NEW  
2 APPLICANT FOR ENERGY SERVICE.

3 (5) (I) NOTWITHSTANDING PARAGRAPH [(3)] (3.1), THE  
4 ELECTRIC DISTRIBUTION COMPANY OR COMMISSION-APPROVED  
5 ALTERNATIVE SUPPLIER MAY, IN ITS SOLE DISCRETION, OFFER  
6 LARGE CUSTOMERS WITH A PEAK DEMAND OF [15] SEVEN  
7 MEGAWATTS OR GREATER AT ONE METER AT A LOCATION IN ITS  
8 SERVICE TERRITORY ANY NEGOTIATED RATE FOR SERVICE AT ALL  
9 OF THE CUSTOMERS' LOCATIONS WITHIN THE SERVICE TERRITORY  
10 FOR ANY DURATION AGREED UPON BY THE ELECTRIC DISTRIBUTION  
11 COMPANY OR COMMISSION-APPROVED ALTERNATIVE SUPPLIER AND  
12 THE LARGE CUSTOMER. THE COMMISSION SHALL PERMIT, BUT  
13 SHALL NOT REQUIRE, AN ELECTRIC DISTRIBUTION COMPANY OR  
14 COMMISSION-APPROVED ALTERNATIVE SUPPLIER TO PROVIDE  
15 SERVICE TO LARGE CUSTOMERS UNDER THIS PARAGRAPH. CONTRACT  
16 RATES ENTERED INTO UNDER THIS PARAGRAPH SHALL BE SUBJECT  
17 TO REVIEW BY THE COMMISSION IN ORDER TO ENSURE THAT ALL  
18 COSTS RELATED TO THE RATES ARE BORNE BY THE PARTIES TO  
19 THE CONTRACT AND THAT NO COSTS RELATED TO THE RATES ARE  
20 BORNE BY OTHER CUSTOMERS OR CUSTOMER CLASSES. IF NO COSTS  
21 RELATED TO THE RATES ARE BORNE BY OTHER CUSTOMERS OR  
22 CUSTOMER CLASSES, THE COMMISSION SHALL APPROVE THE  
23 CONTRACT WITHIN 90 DAYS OF ITS FILING, OR IT SHALL BE  
24 DEEMED APPROVED BY OPERATION OF LAW UPON EXPIRATION OF  
25 THE 90 DAYS. INFORMATION SUBMITTED UNDER THIS PARAGRAPH  
26 SHALL BE SUBJECT TO THE COMMISSION'S PROCEDURES FOR THE  
27 FILING OF CONFIDENTIAL AND PROPRIETARY INFORMATION.

28 (II) FOR PURPOSES OF PROVIDING SERVICE UNDER THIS  
29 PARAGRAPH TO CUSTOMERS WITH A PEAK DEMAND OF 20 MEGAWATTS  
30 OR GREATER AT ONE METER AT A LOCATION WITHIN THAT

1 DISTRIBUTION COMPANY'S SERVICE TERRITORY, AN ELECTRIC  
2 DISTRIBUTION COMPANY THAT HAS COMPLETED ITS RESTRUCTURING  
3 TRANSITION PERIOD AS OF THE EFFECTIVE DATE OF THIS  
4 PARAGRAPH MAY, IN ITS SOLE DISCRETION, ACQUIRE AN  
5 INTEREST IN A GENERATION FACILITY OR CONSTRUCT A  
6 GENERATION FACILITY SPECIFICALLY TO MEET THE ENERGY  
7 REQUIREMENTS OF THE CUSTOMERS, INCLUDING THE ELECTRIC  
8 REQUIREMENTS OF THE CUSTOMERS' OTHER BILLING LOCATIONS  
9 WITHIN ITS SERVICE TERRITORY. THE ELECTRIC DISTRIBUTION  
10 COMPANY MUST COMMENCE CONSTRUCTION OF THE GENERATION  
11 FACILITY OR CONTRACT TO ACQUIRE THE GENERATION INTEREST  
12 WITHIN THREE YEARS AFTER THE EFFECTIVE DATE OF THIS  
13 PARAGRAPH, EXCEPT THAT THE ELECTRIC DISTRIBUTION COMPANY  
14 MAY ADD TO THE GENERATION FACILITIES IT COMMENCED  
15 CONSTRUCTION OR CONTRACTED TO ACQUIRE AFTER THIS THREE-  
16 YEAR PERIOD TO SERVE ADDITIONAL LOAD OF CUSTOMERS FOR  
17 WHOM IT COMMENCED CONSTRUCTION OR CONTRACTED TO ACQUIRE  
18 GENERATION WITHIN THREE YEARS. NOTHING IN THIS PARAGRAPH  
19 REQUIRES OR AUTHORIZES THE COMMISSION TO REQUIRE AN  
20 ELECTRIC DISTRIBUTION COMPANY TO COMMENCE CONSTRUCTION OR  
21 ACQUIRE AN INTEREST IN A GENERATION FACILITY. THE  
22 ELECTRIC DISTRIBUTION COMPANY'S INTEREST IN THE  
23 GENERATION FACILITY IT BUILT OR CONTRACTED TO ACQUIRE  
24 SHALL BE NO LARGER THAN NECESSARY TO MEET PEAK DEMAND OF  
25 CUSTOMERS SERVED UNDER THIS SUBPARAGRAPH. DURING TIMES  
26 WHEN THE CUSTOMER'S DEMAND IS LESS THAN THE ELECTRIC  
27 DISTRIBUTION COMPANY'S GENERATION INTEREST, THE ELECTRIC  
28 DISTRIBUTION COMPANY MAY SELL EXCESS POWER ON THE  
29 WHOLESALE MARKET. AT NO TIME SHALL THE COSTS ASSOCIATED  
30 WITH THE GENERATING FACILITY INTERESTS BE INCLUDED IN

1 RATE BASE OR OTHERWISE REFLECTED IN RATES. THE GENERATION  
2 FACILITY INTERESTS SHALL NOT BE COMMISSION-REGULATED  
3 ASSETS.

4 (6) A DEFAULT SERVICE PLAN APPROVED BY THE COMMISSION  
5 PRIOR TO THE EFFECTIVE DATE OF THIS SECTION SHALL REMAIN IN  
6 EFFECT THROUGH ITS APPROVED TERM. AT ITS SOLE OPTION, THE  
7 DEFAULT SERVICE PROVIDER MAY PROPOSE AMENDMENTS TO ITS  
8 APPROVED PLAN THAT ARE CONSISTENT WITH THIS SECTION, AND THE  
9 COMMISSION SHALL ISSUE A DECISION WHETHER TO ACCEPT OR REJECT  
10 THE PROPOSED AMENDMENTS WITHIN NINE MONTHS OF THE DATE THAT  
11 THE AMENDMENTS ARE FILED. IF THE COMMISSION FAILS TO ISSUE A  
12 FINAL ORDER WITHIN NINE MONTHS, THE AMENDMENTS SHALL BE  
13 DEEMED TO BE APPROVED AND THE DEFAULT SERVICE PROVIDER MAY  
14 IMPLEMENT THE AMENDMENTS AS FILED.

15 (7) THE DEFAULT SERVICE PROVIDER SHALL OFFER RESIDENTIAL  
16 AND SMALL BUSINESS CUSTOMERS A RATE THAT SHALL CHANGE NO MORE  
17 FREQUENTLY THAN ON A QUARTERLY BASIS. ALL RATES SHALL BE  
18 REVIEWED BY THE COMMISSION TO ENSURE THAT THE COSTS OF  
19 PROVIDING SERVICE TO EACH CUSTOMER CLASS ARE NOT SUBSIDIZED  
20 BY ANY OTHER CLASS.

21 SECTION 4. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.