

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

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INTRODUCED BY GEORGE, SHIMKUS, CALTAGIRONE, COHEN, CONKLIN,  
DALEY, GEIST, HARKINS, JOSEPHS, KULA, MAHONEY, MCGEEHAN,  
M. O'BRIEN, PARKER, SOLOBAY, SURRA, THOMAS, WALKO,  
WOJNAROSKI, K. SMITH, J. WHITE AND MURT, FEBRUARY 4, 2008

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
FEBRUARY 4, 2008

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. Sections 2804(4) and 2807(e) of Title 66 of the  
8 Pennsylvania Consolidated Statutes are 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:

17 (i) For a period of 54 months from the effective

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

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

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

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

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

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

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

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

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

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

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

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

27 (F) The electric distribution utility seeks to  
28 increase its allowance for nuclear decommissioning  
29 costs to reflect new information not available at the  
30 time the utility's existing rates were determined,

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

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

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

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

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

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

1       commission's approval, and such increased charge shall be  
2       capped until January 1, 2013.

3       \* \* \*

4   § 2807. Duties of electric distribution companies.

5       \* \* \*

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

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

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

24       (3) [If a customer contracts for electric energy and it  
25 is not delivered or if a customer does not choose an  
26 alternative electric generation supplier, the] The electric  
27 distribution company or commission-approved alternative  
28 supplier shall acquire [electric energy at prevailing market  
29 prices to serve that customer and shall recover fully all  
30 reasonable costs.] a portfolio of electric generation

1 resources to serve customers who contract for electric  
2 generation and do not receive it or customers who do not  
3 choose an alternative electric generation supplier.

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

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

16 (A) Auctions.

17 (B) Requests for proposals.

18 (C) Spot market purchases.

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

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

29 (F) Generation of the electricity by the  
30 electric distribution company or a commission-

1           approved alternative supplier from its own generating  
2           facilities, so long as the cost of obtaining  
3           generation from such a facility is no greater than  
4           the cost of obtaining generation under comparable  
5           terms in the wholesale markets.

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

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

16                (B) the commission determines that there has  
17                been fraud, collusion, market manipulation or abuse  
18                of market power.

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

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

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), the electric  
4 distribution company or commission-approved alternative  
5 supplier may, in its sole discretion, offer large  
6 customers with a peak demand of 15 megawatts or greater  
7 at one meter at a location in its service territory any  
8 negotiated rate for service at all of the customers'  
9 locations within the service territory for any duration  
10 agreed upon by the electric distribution company or  
11 commission-approved alternative supplier and the large  
12 customer. The commission shall permit, but shall not  
13 require, an electric distribution company or commission-  
14 approved alternative supplier to provide service to large  
15 customers under this paragraph. Contract rates entered  
16 into under this paragraph shall be subject to review by  
17 the commission in order to ensure that all costs related  
18 to the rates are borne by the parties to the contract and  
19 that no costs related to the rates are borne by other  
20 customers or customer classes. If no costs related to the  
21 rates are borne by other customers or customer classes,  
22 the commission shall approve the contract within 90 days  
23 of its filing, or it shall be deemed approved by  
24 operation of law upon expiration of the 90 days.  
25 Information submitted under this paragraph shall be  
26 subject to the commission's procedures for the filing of  
27 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   Section 2. This act shall take effect in 60 days.