BEFORE THE

Pennsylvania Public Utility Commission

Provider of Last	**:**
Resort (POLR) Roundtable	**: Docket No. M-00041792**
PA Pennsylvania Utility	**:**
Commission	**:**

May 26, 2004

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and three (3) copies of Three Mile Island Alert's Testimony in the above-referenced proceeding.

Sincerely,

Eric Joseph Epstein, Coordinator
EFMR Monitoring Group, Inc.

cc:
PA PUC Law Bureau

Consumer “choice” means that consumers have the option to choose or not to choose. We can evaluate certain shopping behaviors based on empirical data and lessons learned form the restructuring of the electric generation industry. For the most part, Providers of First Resort(POFR) are also the default Providers of Last Resort (POLR).

The Public Utility Commission's (PUC) staff has captured the balance we need to achieve by requiring Electric Distribution Companies (EDCs) to provide POLR service.

> Staff recommended that EDCs should have the duty to make reasonable forecasts and assumptions about the amount of load that will need to be served and to make appropriate arrangements to acquire the supply needed to meet that load. The reasonableness of procurement decisions should reflect each EDC’s individual circumstances and be consistent with providing reliable supply services to its consumers. To the extent that the EDC’s efforts are reasonable and prudent, Staff is of the view that they should be permitted to fully recover their supply costs, as well as other reasonable costs associated with acquiring that supply. (1)

The Commission should be commended for its comprehensive efforts to educate Pennsylvania consumers. Pennsylvanians were exposed to the most effective and extensive public education and outreach campaigns of any state involved in retail electric competition which “set the standard for consumer education.” (*USA Today*.) This $26 million dollar effort was funded by rate payers: ‘Where do you think you are, Pennsylvania?’, “combined a witty approach to a subject (electricity and the monthly electric bill) that most consumers did not pay attention to on a regular basis” (2).

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1 “Provider of Last Resort Working Group”, Karen Moury, Assistant Executive Director, PA PUC, February 27, 2003, p.2 .

2 National Association of State Utility Consumer Advocates, “Consumer Education Programs to Accompany the Move to Retail Electric Competition”, July 10, 2002, p. 17.

Pennsylvania has the longest consumer education program of any state (four years) and spends an average of $1.42 per customer. Pennsylvania spent $14 million annually on consumer education, New Jersey spent $4.5 million or .56 cents per customer.

Baselice and Associates found in March 2000 and March 2001 "89% of Pennsylvanians had seen, read or heard something recently about choosing a supplier". In Maine, 88% of consumers are **unaware** of retail electric competition two years after the market was opened (Survey conducted by the Independent Power Producers of Maine.)

Educational information on alternative energy providers is easily accessible at the Pennsylvania Public Utility Commission's web site: www.utilitychoice.org, or by contacting the PUC's toll free hotline at 1-800-782-1110 or 1- 888-PUC-FACT. This information is written in plain English and Spanish, and is clear and direct.

The PUC site includes an on-line calculator and lists providers and suppliers. As former-Commissioner Aaron Wilson Jr. pointed out, the web site includes: "Braille displays, screen readers with speech synthesizers, and magnification browsers which allow people with hearing and visual disabilities to access the web site" (***PA Residents Enjoy Choice***, "The Digest", July 30, 2002.)

The PUC actively partners with the Council for Utility Choice which includes the Pennsylvania Rural Development Council, the Governor's Advisory Commission on African-American Affairs; the Governor's Advisory Commission on Latino Affairs; the Office of Consumer Advocate, and representatives from business and education as well as community based organizations.

Pennsylvania consumers, after an initial shopping spurt, have gradually returned to their incumbent utility during a period of sustained economic downturn. Similar patterns have occurred in other states, e.g., Connecticut, Ohio and New York (3).

Grid expansion and over construction of base load on PJM's grid have forced prices downward. PJM's Marketing Monitoring Unit reported average prices dropped 13.8% in 2002 (4). PJM Expansion currently includes, but is not limited to: PJM-South (Dominion Peoples Plus), and PJM-West (First Energy and Illinois Power & Dynegy). AEP, ComEd and Dayton Power & Light were approved admission by the FERC on April 1, 2003, but Dominion's case is conditioned upon input from Arkansas, Virginia, and Louisiana as well as the RENG and EMM&TG generating organizations.

Most of the projected base load was anticipated to come from the construction of merchant gas plants. Many of these facilities have already been canceled due to the relatively inexpensive cost of energy.

> Simply put, the wholesale price of electricity fell from already low levels to even lower levels in 2002. These bargain-basement wholesale prices allowed retailers to deliver savings to more customers, even with the large stranded cost charges added to the prices offered by competitive retailers in most parts of Pennsylvania. (5)

Historically, Pennsylvania EDCs have maintained higher kwh prices for all rate classes compared to the national average. Prior to the competitive transition charge (CTC), Pennsylvania utilities charged disproportionately higher rates based on their percentage of nuclear assets .

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3 Source: International Association for Energy Economics, *Newsletter*, "Sobering Realities of Liberalizing Electric Markets", Ferreidoon P. Shogridhansi, pp. 24-32, Third Quarter, 2002, usaee@usaee.org.3

4 Posted: March 5, 2003, www.pjm.org.

5 *E3*, Citizens for Penn Future, February 3, 2003 Vol. 5, No. 2, "Examining the Retail Market."

Company/Percentage of nuclear generating assets/Price per kWh (6):

- Philadelphia Electric Company (PECO) 58%/13.2 cents per kWh
- Dusquesne Light Company 30%/12.8 cents per kWh
- General Public Utilities (GPU) 23%/9.7 cents/kWh
- Pennsylvania Power & Light (PP&L) 31%/8.3 kWh

Pennsylvania's pre-restructuring generation portfolio was dominated by coal and nuclear fuel. While coal and nuclear remain preeminent, Pennsylvania has integrated wind and more natural gas into the generation portfolio.

Energy source/State net generation (7):

- Coal: +59.51%
- Nuclear: +34.81%
- Oil: + 3.24%
- Gas: + 2.74%
- Hydro: - 0.3%

However, the "transition" has not been without substantial costs. Pennsylvanian rate payers paid a steep price for the "transition" to an unregulated GENCO market. Consumers underwrote "stranded cost" recovery for Beaver Valley, Limerick and Susquehanna nuclear generating stations through non-bypassable charges of over $11 billion. PECO Energy and PPL recovered over $8.3 billion in "uneconomical investments". This figure does not include the millions in savings incumbent utilities have accrued by unilaterally devaluing the combined "Revenue Neutral Reconciliation" tax assessments for their nuclear generating stations and other operating power plants (See Appendix A, pp. iii-v).

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6 "Public Utilities Fortnightly," October , 1993 and the "The Electricity Journal," MSB Energy Associates and the Conservation Law Foundation.

7 PA Pennsylvania Public Utility Commission, "Electric Utility Operational Report," PUC, August 1995.

Plummeting energy prices, rate caps, the power of incumbency and consumer experiences with telecom slamming, have produced a "stay at home" approach for the vast majority of Pennsylvania electric consumers.

While increased wind generation has been a positive development, the overbuilding of merchant and natural gas cycle facilities has adversely impacted PJM pricing. Driven by gas prices, PJM has developed into an irrational marketplace. However, gas volatility may serve as a catalyst to secure fuel-less energy for POLR providers.

Companies that stake out "green positions" and "green perceptions" outperform their competitors by a 10% margin in shareholder return on the Standard & Poor's 500 (8). Even an economically distressed electric company like Allegheny Energy has innovated creative renewable options for residential customers. Allegheny spent over $670,000 on a two year program to provide solar net metering to low-income, single-family households in western Pennsylvania. Allegheny also offered a renewable energy package complete with program financing ("Restructuring Today", August 13, 2002.)

However, Pennsylvanians are fickle consumers. There is no clear nexus between environmental behavior and environmental attitudes. The Pennsylvania Council for Environmental Education found environmental preferences do not necessarily drive consumption habits. (9)

The power of incumbency has been clearly demonstrated since the advent of Choice. This advantage is clearly demonstrated by viewing the most recent "switching" statistics displayed on the Pennsylvania Office of Consumer Advocate's web site, i.e., www.oca.state.pa.us.

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8 Innovest Strategic Value Advisors, 2002.

9 Pennsylvania Center for Environmental Education, *Survey of Adult Pennsylvanians' Knowledge About, Attitudes Toward and Behaviors Related to the Environment*, 2001, Survey Conducted Roper-Starch Worldwide. Sponsors: Pennsylvania Department of Environmental Protection; Pennsylvania Business Roundtable; and, The National Environmental Education & Training Foundation.

Still, objective data and studies indicate that Pennsylvania is a working model for retail competition. A recent study of retail competition in Pennsylvania found:

> A few have been quick to pronounce Pennsylvania's retail electricity market dead. Yet just the opposite is true. Examining the amount of load served by alternative suppliers not participating in the competitive default supply market niche shows that the size of Pennsylvania's competitive electricity market has been growing at a steady rate for the last five quarters, since October 2001.
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> Disregarding the PECO Energy "competitive default supply" (CDS) program, under which some residential customers were assigned to a competitive supplier with the opportunity to remain with PECO default service, the load served under pure customer choice increased almost 29 percent - from 1,882 MW to 2,425 MW - during 2002.
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> There are approximately 12 suppliers seeking to serve commercial and industrial accounts. During 2002, the combined commercial/industrial load increased 58 percent, with statewide competitive commercial load increasing from 726 MW to 1,118 MW, and industrial load served by competitive suppliers increasing from 490 MW to 808 MW.
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> Growth was particularly strong in the GPU and PPL markets, and was significant in the PECO and Duquesne Light territories... Even when one factors the PECO competitive default service load into the numbers and the return to PECO of 175,000 customers by NewPower prior to its bankruptcy, total load served by competitive suppliers increased to 2,497 MW, up from 2,323 MW - an increase of about 7.5 percent. About 31,901 residential customers with a load of 72.8 MW still receive CDS service from Green Mountain. (10)

External events, self-inflicted behaviors, misguided realty prescriptions, and confused branding have also impacted consumers preference for plain vanilla services from traditional vendors (Refer to Appendix).

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10 *E3*, Citizens for Penn Future, February 3, 2003 Vol. 5, No. 2, "Examining the Retail Market."

Deregulated Pennsylvania must function in an ever-expanding PJM-RTO world that may soon include a generic Standard Market Design. A company's behaviors, strategies, and subsides have a direct and material impact on Pennsylvania's competitive playing field.

The GENCO Code of Conduct was designed to prevent anticompetitive cross-subsidies. The Code specifically precludes protection for specific competitors and insists on uniform tariff application. It is essential that the PUC provide a level playing field and counterbalance the advantages of vertical integration. Therefore, it is imperative that the GENCO Code of Conduct remain in place for POLR service.

While many lessons have been learned since Pennsylvania restructured the electric industry, numerous unresolved issues linger. EFMR believes the following recommendations will ensure transparent and reliable POLR standards that will facilitate economical and environmentally responsible electric generation.

Recommendations

• Recognize that most incumbent EDCs will become the POLR provider;

• Of paramount importance are economic pricing and improved reliability standards;

• The primary long term goal is to foster a forward and transparent market with daily and liquid transactions;

• One stop, easy-to understand shopping is the key component of consumer education and customer shopping;

• User-friendly one-stop shopping opportunities should also encourage "green" and "dark green" (noncombustible resources that rely solely on hydro, solar, wave and wind sources) choices. For example, the Niagara Mohawk model in New York state allows consumers to choose portions of their generation composition (which in Pennsylvania could include a 10% RPS) without leaving their traditional generator;

• Fixed price service(s) and rate allocation may differ by class and consumption levels;

• A portfolio approach should not be mandated, and must afford the EDC the flexibility of meeting supply requirements through a matrix of options, e.g., auction or no auction bidding; short-term or long term Power Purchase Agreements; Demand Side Management;

• While POLR portfolios may not necessarily require annual reconciliations, the EDC must be subject to uniform and transparent reporting requirements;

• Renewable energy purchases must be consistent with the Renewable Portfolio and can fall below mandates floors;

- Risk premium should be embedded in products without subsidizing artificial stimulation;

- Continue to reward certain classes with real-time metering, interruptible rates, public purpose donations and/or voluntary rationing;

- Expand realtime meter purchasing as a transparent pricing option;

- CAP, low-income support, and social programming should continue to be funded through through non-bypass T&D tariffs; and,

- Convene a working Group to address the inequities embedded in vertical corporate integration.

Appendix

- October 20, 1998:

"PA Consumers Lead Nation in Knowledge of Deregulation"

- Ninety-five percent of Pennsylvanians are aware of the fact that they can or will soon be able to choose their electric generation supplier, according to a statewide survey released today by the Pennsylvania Electric Choice Program. This compares to a nationwide awareness level of less than 40 percent (a) and is 15 percentage points higher than a benchmark survey conducted in June;

- March 3, 1999: The PUC voted to sanction PECO Energy for running misleading advertisements about electric competition in the fall of 1998;

- June 28, 1999: PPL was assessed a $125,000 fine by the Pennsylvania Attorney General relating to the Company's electric competition advertising and bill stuffing;

- September 27, 1999: GreenMountain.com, a hybrid of Green Mountain Power and Green Mountain Energy, was fined $100,000 by the Pennsylvania Attorney General Mike Fisher for misleading consumers about the cost of its products by failing to include state taxes in the Company's "competitive" rates;

- December 20, 1999: TMI-1's license was transferred from GPU Nuclear to AmerGen. AmerGen Energy announced that it reached an Agreement with GPU to purchase TMI-1 for $100 million. The sale included $23 million for the reactor, and $77 million, payable over five years, for the nuclear fuel;

- On January 1, 2000: Pennsylvania power plants were removed from PURTA, and places on the local property rolls for tax assessment purposes;

- 2000: GPU's solicitation for POLR bidders to supply 20% of its stranded offer service customers produced no offers. The designated retail rate cap was below the wholesale price of power and negative bids were not allowed;

- Fall, 2000: In the PECO Energy Company Competitive Default Service Program Bidding, Green Mountain successfully attained market share through litigation rather than open and fair competition. PECO selected New Power, after three bidders submitted RFPs by the required deadline on September 8, 2000;

- 2001: Pennsylvania's estimated new base load construction in 2001 was 13,000 mgw;

- February 7, 2001:

  "Pennsylvania Ranked No. 1 in Nation for Electric Deregulation"

  Gov. Tom Ridge today hailed yet another national study that cites Pennsylvania as the nation's leader in electricity deregulation. The Center for the Advancement of Energy Markets (CAEM) today announced that Pennsylvania will receive the 2000 "RED Carpet Award" for furthering "an effective transition from the monopoly model to the choice model";

- October, 2001: "Predatory gaming" began to threaten the sanctity of the Grid. The Federal Energy Regulatory Commission (FERC) filed a "show cause" order relating to PECO Power Team's purchase during a power auction that may have benefited from "informational advantage" from Peco. ("Philadelphia Inquirer", October 6, 2001.) On December 19, 2001, according to Exelon, the FERC "terminated its investigation into alleged wrongdoing…";

- 2002: PPL, citing Enron Corp.'s bankruptcy, canceled construction of six new power plants, and scaled back its generation-expansion program as a result of continuing declines in wholesale energy prices. Five of those plants were in Pennsylvania. In addition, Houston-based Enron's bankruptcy filing caused some PPL subsidiaries to end electricity and gas agreements;

- May-June, 2002: Officials in Northeastern School District, where more than 20 percent of the residents live below the poverty line, proposed cutting textbooks, maintenance, technology and athletics as PPL Corp. continues to withhold $2.2 million in back tax payments;

The York County Tax Claims Bureau mailed notices in May 2002 to all county taxpayers, including PPL, who have not paid their 2000 property taxes. Delinquent property owners were notified that their properties will be auctioned at a tax sale on Oct. 12, 2002 unless they pay up;

- On June 14, 2002, the Pa Public Utility Commission accused PPL of gaming the capacity market in the PJM grid in early 2001, but asked state regulators and federal authorities to investigate;

- October, 2002: The PJM Board approved interconnection to 39 projects or 8,600 mw. PJM has 6,500 mw under construction. "Since the start of PJM's Regional Transmission Expansion Plan (RTEO) two years ago, the agency has sanctioned more than $725 million in grid investments, for an 11% boost in assets, adding more than 6,000 mw in much needed generation," (*Restructuring Today*, October 8, 2002);

- October 19 , 2002: Fourteen boroughs brought suit against PPL for alleged market manipulation. The boroughs include: Blakely, Catawissa, Duncannon, Haven, Kutztown, Landsdale, Lehighton, Mifflinburg, Olyphant, Perkasie, Quakerton, Saint Clair, Schuylkill, and Watsontown;

- May 14, 2003: Penn Manor approved a lawsuit settlement with PPL Corp. and Safe Harbor Water Power Co. worth $500,000 in back taxes and about $1 million more in property taxes over the next four years. The deal was spurred by a panel of Commonwealth Court judges (2-1) who reversed a June decision by Lancaster County Court Judge James P. Cullen that would have given PPL a substantial tax break;

- June 19, 2003: The Attorney General rejected the PUC's claim that PPL manipulated wholesale electricity prices between January and April, 2001. Although prices spiked 30 times above normal seasonal rates, the AG "determined that that PPL did not violate antitrust in acquiring that market power";

The Attorney General did admit that PPL held extra capacity in 2001. As a result of the price gauging several smaller electric retailers were permanently forced out of the market;

- July 13, 2003 : "Utilities save big as towns lose out..."

> While homeowners are paying an average of 30 percent more than they did in 1997, Exelon, Pennsylvania Power & Light, and the other major electric utility companies in the state are paying 85 percent less in taxes on their plants, down from about $120 million annually to about $20 million, an Inquirer analysis has found.
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> Meantime, the utilities are passing on their real estate levies to their customers, based not on what the companies are currently taxed but on the far higher sums of six years ago...
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> ...For the previous 25 years, the power companies' property taxes were relatively cut-and-dried. Payments were calculated by the state and put into one important pot: the Pennsylvania Utility Realty Tax Act fund, or PURTA. For 1997, $167.5 million was paid in, the bulk of it by the two electric behemoths, Peco Energy Co. and Pennsylvania Power & Light.
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> ...When the state loosened its grip on the electric industry, the commercial power plants - 25 major ones, 55 much smaller - were gradually released from PURTA. For the first two years, 1998 and 1999, the utilities were allowed to appraise their plants for tax purposes; the fund tumbled to $60 million...
>
> ...Susquehanna nuclear power plant. Although the facility was built at a cost of $4 billion and assessed at $3.8 billion, PP&L argued in its appeal that it was worth only a fraction of that. In December 2000, a Luzerne County judge agreed, fixing the assessment at $165.4 million.

Anthony R. Wood, *Philadelphia Inquirer Staff* Writer

- November 10, 2003: Industrial users like FERC's proposed anti-gaming rules: "Some bad apples" have attempted to spoil the energy market, ELCON and groups of industrial users told FERC in support of the agency's proposed rules to prevent market manipulation and fraud nationwide. ...The users complained of "a crazy quilt of anti-gaming provisions that differ substantially from one region or market to another." The California ISO has "a rather vague definition" of gaming and anomalous behavior, FERC was told, while PJM's are "vague and insufficient" (*Restructuring Today*, November 10, 2003);

- 2004: AmerGen, a wholly-owned subsidiary of Illinois-based Exelon, owns Three Mile Island Unit-1 (TMI-1). The Company is currently disputing Dauphin County's $64.9 million assessment of TMI-1. According to TMI's owners, the plant is only worth $5 million. This position is baffling given the Company's recent replacement of the reactor vessel head at TMI for $18 million. To date, nobody at TMI or Exelon has been able to explain how a replacement part is worth $13 million more than the entire value of the nuclear power plant.

However, from 1998 through 2003, (according to AmerGen), TMI's tax payments to Dauphin County have steadily decreased: 1998: $506,956; 1999: $206,397; 2000: $129,171; 2000 through 2001: $146,940; and, 2002 through 2003 $146,940. The figures from 2000-2003 reflect an Interim Settlement Agreement amount. AmerGen may actually pay less in future years if they win their Appeal.

Lower Dauphin School District already has spent $75,000 in legal and appraisal fees to fight the Company's tax refusal plan.