

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held July 16, 2013

Commissioners Present:

Robert F. Powelson, Chairman  
John F. Coleman, Jr., Vice Chairman  
Wayne E. Gardner  
James H. Cawley  
Pamela A. Witmer

Petition to Amend the Commission's August 12, 2012 Order and the November 8, 2012 Secretarial Letter Approving Default Service Procurement Bidding Rules	P-2011-2273650, P-2011-2273668, P-2011-2273669 & P-2011-2273670
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**ORDER**

**BY THE COMMISSION:**

On February 28, 2013, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively First Energy or the Companies) filed a Petition to Amend the Commission's August 12, 2012 Order and the November 8, 2012 Secretarial Letter Approving Default Service Procurement Bidding Rules (February Petition).

The Companies request that the Commission amend its Order of August 16, 2012 (August 2012 Order) and its November 8, 2012 Secretarial Letter (November 2012 Letter): to (i) clarify that suppliers of default service for the Companies' industrial customers will be paid the winning prices bid in the Companies' hourly-priced default service supply auction, in addition to a variable spot price established by PJM Interconnection, Inc. (PJM) and a fixed adder to cover the cost of ancillary services and

other supply components, as provided by the Companies' industrial class default service supplier master agreement (SMA) approved by the Commission; and (ii) to adopt revised bidding rules which reflect the same clarification to the price that will be paid to industrial default service suppliers.

## **Discussion**

Per the August 2012 Order and the November 2012 Letter, the Companies conducted procurements for industrial, residential and commercial default service supply on January 15, 2013. On January 16, 2013, the Commission issued a Secretarial Letter in which it approved the results of the Companies' residential and commercial class procurements. However, the Commission rejected the results of the Companies' procurement for the industrial class because the bid results for the industrial default service supply did "...not appear to have been conducted in accordance with the RFP Processes and Rules, filed pursuant to the Commission's Opinion and Orders."

On February 28, 2013, the Companies' filed the February Petition. In the petition, the Companies request Commission approval to amend the August 2012 Order and the November 2012 Letter. The Companies note that per the approved default service plan the only procurement scheduled for industrial default service supply was the January 2013 auction. Therefore, the Companies propose that a second procurement for industrial customer default service be conducted in September 2013, at the same time as the next scheduled solicitation for residential and commercial customers default service supply. The proposed term length for the industrial default service contracts to be procured would be eighteen months (December 1, 2013 – May 31, 2015). During the period June 1, 2013, to November 30, 2013, the Companies propose to procure the

necessary physical supply for default service industrial customers directly from PJM, as well as associated ancillary products<sup>1</sup>.

On March 20, 2013, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Penn Power Users Group and the West Penn Power Industrial Intervenors (collectively, the Industrial Customer Group) jointly filed an Answer to the February Petition. The Industrial Customer Group states that both of the Companies' proposals, a September 2013 competitive procurement and a short-term in-house procurement, are just, reasonable, and consistent with Commission precedent, particularly under the unique circumstances involved. The Industrial Customer Group also submits that an impromptu competitive procurement before September 2013 could result in higher bid amounts and insufficient bidder interest due to low Large C & I default service participation. Therefore, the Industrial Customer Group requests that the Commission: "...(1) approve the Companies' proposed competitive procurement for the industrial class in September 2013; (2) approve the Companies' proposed in-house procurement for the industrial class from June 1, 2013, to November 30, 2013; and (3) allow any such other relief as it deems necessary."

On March 20, 2013, the Retail Energy Supply Association (RESA) also filed an Answer to the February Petition. In its answer RESA states that it opposes the Companies' proposal and recommends that a competitive auction be held as soon as possible so that default supply is attained from competitive suppliers to produce the most competitive prices and the greatest benefit to consumers. RESA also argues that a self-supply approach in the interim as the Companies have proposed is arguably inconsistent with the Electricity Generation Customer Choice and Competition Act (Competition Act) and is a departure from both the Companies' and the Commission's expressed preference that Hourly-Priced Service (HPS) be procured through competitive auctions.

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<sup>1</sup> We note that First Energy has already started procuring default supply for industrial customers directly from PJM as of June 1, 2013.

RESA also notes that the default service plan includes a contingency plan in the bidding rules that was not followed by First Energy. RESA notes that the contingency plan bidding rules state:

“In the event that an auction is not fully subscribed, the Companies will rebid the unfilled tranches from that auction provided a minimum of 30 calendar days exists prior to the start of the delivery period. The unfilled tranches will be rebid in the next scheduled auction where supply is sought with the same delivery start date. If there is no such scheduled auction, then the unfilled tranches will be rebid in a separate solicitation no later than 30 days before the original delivery start date. For any remaining unfilled tranches, the Companies will purchase the necessary physical supply through PJM administered markets and meet any AEPS compliance requirements through purchases at market prices.”

RESA submits that First Energy did not rebid the default service supply for the industrial class in the next auction following the January 2013 auction, which was scheduled for February 13, 2013. RESA then opines that instead of proposing to conduct an additional auction by May 1, 2013, (30 days prior to the June 1, 2013 delivery date) per the rules, First Energy proposes to include the industrial class in the September 2013 auction for residential and commercial customers.

RESA submits that self-supply is the option of last resort and that the contingency plan does not provide options from which the Companies may choose from; it established procedures that are to be followed. RESA opines that as First Energy’s contingency plan does not contemplate or permit it to utilize self-supply to acquire the default service load for industrial customers, the Commission must reject First Energy’s proposal. As an alternative, RESA states that it supports an additional auction consistent with the processes already approved by the Commission. RESA submits that to the extent there is a concern about the costs of such process, the Companies’ should be directed to explore reasonable alternatives to minimize these costs. RESA suggests such options could include: (1) conducting a single round, sealed bid Request for Proposal

(RFP) process; (2) use of an online process; or, (3) Commission supervision of the auction (rather than hiring a consultant).

RESA requests that the Commission deny the Companies' proposal to self-supply default service for the industrial class for an interim period and instead direct the Companies to (1) conduct an additional auction prior to May 1, 2013, to procure supply for the delivery period of June 1, 2013, through May 31, 2015; (2) design the most cost effective method by which to conduct this auction; and, (3) grant any other relief deemed to be reasonable and appropriate under the circumstances.

On April 9, 2013, the Companies filed a Reply to the Answer of RESA. In their Reply, the Companies argue that RESA's proposal for the Companies to explore reasonable alternatives would likely result in another extended round of litigation over bid rules and procurement methodology, while the Companies' proposal would help maximize bidder participation and limit the amount of time the Companies would be expected to procure default service supplies directly from PJM. The Companies also argue that their proposal is consistent with the Commission's Final Order entered February 2013, at Docket No. I-2011-2237952, regarding the End State of Default Service, which recognized the importance of competitively sourcing hourly products simultaneous with residential and small commercial products. The Companies therefore opine that RESA's request for affirmative relief regarding alternative industrial default service supply procurement processes should be rejected.

On June 11, 2013, RESA filed a letter regarding the February Petition, requesting immediate action by the Commission to decide the matter and clearly establish how the Companies are to proceed.

On June 25, 2013, First Energy filed a response, which noted that while the February Petition stated that the scheduled September 2013 procurement would obtain

supply for both residential and commercial customers, the September 2013 procurement is actually planned to procure supply for commercial customers only, pending resolution of the February Petition.

In their Answers and Reply to Answers to the February Petition, neither RESA or the Industrial Customer Group made any comments regarding the Companies' request to (i) clarify that suppliers of default service for the Companies' industrial customers will be paid the winning prices bid in the Companies' hourly-priced default service supply auction, in addition to a variable spot price established by PJM Interconnection, Inc. (PJM) and a fixed adder to cover the cost of ancillary services and other supply components, as provided by the Companies' industrial class default service supplier master agreement (SMA) approved by the Commission; and (ii) to adopt revised bidding rules which reflect the same clarification to the price that will be paid to industrial default service suppliers.

## **Disposition**

While RESA correctly points out that per the bidding rules there were two higher priority options for securing default supply for industrial customers that First Energy did not implement before proposing to resort to the option of last resort, self-supply; that argument is now moot, since both of those options had to occur prior to the start of the delivery period, which was June 1, 2013. Per the bidding rules, the necessary physical supply for any unfilled tranches would be purchased through PJM administered markets. However, First Energy has proposed an alternative, which modifies the auction schedule to add a second auction for industrial class default service to be held at the same time as the auction for the commercial customer class in September 2013. It would limit the time frame for self-supply from June 1, 2013, until November 30, 2013.

The Industrial Customer Group submits that both of the Companies' proposals, the September 2013 competitive procurement and a short-term in-house

procurement, are just and reasonable. We agree with the Industrial Customer Group. We also agree with RESA that a competitive auction be held as soon as possible and that self-supply should be minimized. We believe that at this date, First Energy's proposal results in both a timely auction and minimizes self-supply. In addition to concerns over competitive supply markets, we are tasked with the obligation to ensure adequate and reasonably continuous electric supply within the Commonwealth. The First Energy proposal, while arguably not *the most* competitive option, currently represents a reasonable and prudent backstop to the difficulties encountered in the January 2013 auction. The First Energy proposal is, overall, consistent with a competitive procurement process; we will not pursue the goal of fashioning perfectly competitive markets at the expense of all other considerations. Therefore, we will approve the addition of an auction for industrial customer default service supply to the September 2013 auction for commercial customers; as well as, approve and continue to allow the in-house acquisition of default service supply by the Companies for industrial customer default service that began June 1, 2013, through November 30, 2013<sup>2</sup>.

Finally, we note that no parties objected to the Companies' request to provide clarification to the prices that suppliers of default service for the Companies' industrial customers will be paid as provided by the Companies' industrial class default service supplier master agreement and to adopt revised bidding rules which reflect the same clarification. We agree that the stated clarifications are appropriate and will therefore approve the requested clarifications.

Upon full consideration of all matters of record, we find that approval of the February Petition is necessary and proper for the service, accommodation and convenience of the public; **THEREFORE,**

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<sup>2</sup> We note that FirstEnergy filed the February Petition in a timely manner to conduct an auction 30 days prior to June 1, 2013. However, given the time required to provide due process for parties that filed answers and replies, we were not able to dispose of the petition in sufficient time to allow for a May 1 auction.

**IT IS ORDERED:**

1. That the Petition to Amend the Commission's August 12, 2012 Order and the November 8, 2012 Secretarial Letter Approving Default Service Procurement Bidding Rules is hereby approved, consistent with this Order.

2. That the Companies' proposal for a second procurement for industrial customer default service to be conducted in September 2013, at the same time as the next scheduled solicitation for commercial customer default service supply, is hereby approved.

3. That the Companies' proposal to procure the necessary physical supply for default service industrial customers directly from PJM Interconnection, Inc., as well as associated ancillary products, for the period June 1, 2013, to November 30, 2013, is approved.

4. That the Companies' request to (i) clarify that suppliers of default service for the Companies' industrial customers will be paid the winning prices bid in the Companies' hourly-priced default service supply auction, in addition to a variable spot price established by PJM Interconnection, Inc. (PJM) and a fixed adder to cover the cost of ancillary services and other supply components, as provided by the Companies' industrial class default service supplier master agreement (SMA) approved by the Commission; and (ii) to adopt revised bidding rules which reflect the same clarification to the price that will be paid to industrial default service suppliers, is hereby approved.

5. The Companies are directed to file updated versions of the industrial class default service supplier master agreement, bidding rules and any other documentation that requires modification to reflect the changes approved in Ordering Paragraphs 2, 3 and 4 with the Commission no later than 30 days prior to the next scheduled auction.

6. That a copy of this Order shall be served on all active Parties to this proceeding.

7. That this proceeding at Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670 be closed.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta".

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: July 16, 2013

ORDER ENTERED: July 16, 2013