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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1121 Session of 2013

INTRODUCED BY MENSCH, RAFFERTY, WAUGH, YUDICHAK, WHITE, FOLMER, CORMAN, ARGALL AND ALLOWAY, OCTOBER 10, 2013

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE, OCTOBER 10, 2013

AN ACT

Amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, in powers and duties, further providing for assessment for regulatory expenses upon public utilities; in restructuring of electric utility industry, further providing for duties of electric distribution companies and providing for next generation default service; and making a related repeal.

The General Assembly finds and declares as follows:

(1) The economic vitality of this Commonwealth and its citizens will be advanced by innovative and competitively priced electric generation products and services.

(2) The most economically efficient means of assuring the availability of adequate, safe and efficient electric generation at the most economically efficient prices is by fully implementing the existing policy of the Commonwealth to establish full and sustainable competitive retail electric generation markets.

(3) The present provision of default service by electric distribution companies has and will continue to prevent retail electric generation markets from becoming fully and

sustainably competitive.

(4) The implementation of a default service structure that relies on the competitive market, with necessary back-up protections, will assure that all retail customers have access to electric service and help deliver the jobs, economic development and other benefits of competitive markets to this Commonwealth.

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

Section 1. Section 510(a) of Title 66 of the Pennsylvania Consolidated Statutes is amended and the section is amended by adding subsections to read:

§ 510. Assessment for regulatory expenses upon public utilities.

(a) [Determination of assessment] <u>Assessment</u>.--Before November 1 of each year, the commission shall estimate its total expenditures in the administration of this part for the fiscal year beginning July of the following year, which estimate shall not exceed three-tenths of 1% of the total gross intrastate operating revenues of the public utilities<u>, electric generation suppliers and natural gas suppliers</u> under its jurisdiction for the preceding calendar year. Such estimate shall be submitted to the Governor in accordance with section 610 of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929." At the same time the commission submits its estimate to the Governor, the commission shall also submit that estimate to the General Assembly. The commission or its designated representatives shall be afforded an opportunity to appear before the Governor and the Senate and House Appropriations Committees regarding their estimates. The commission shall subtract from the final estimate:

(1) The estimated fees to be collected pursuant to section 317 (relating to fees for services rendered by commission) during such fiscal year.

(2) The estimated balance of the appropriation, specified in section 511 (relating to disposition, appropriation and disbursement of assessments and fees), to be carried over into such fiscal year from the preceding one.

The remainder so determined, herein called the total assessment, shall be allocated to, and paid by, such public utilities in the manner prescribed. If the General Assembly fails to approve the commission's budget for the purposes of this part, by March 30, the commission shall assess public utilities on the basis of the last approved operating budget. At such time as the General Assembly approves the proposed budget the commission shall have the authority to make an adjustment in the assessments to reflect the approved budget. If, subsequent to the approval of the budget, the commission determines that a supplemental budget may be needed, the commission shall submit its request for that supplemental budget simultaneously to the Governor and the chairmen of the House and Senate Appropriations Committees.

<u>(a.1) Electric generation supplier assessment.--The commission may impose an annual assessment upon electric generation suppliers. The assessment shall be used to reimburse the commission for incremental expenditures associated with carrying out the provisions of Chapter 28 (relating to restructuring of electric utility industry), but the assessment may not exceed $5,000 per licensed entity per year.</u>

* * *

<u>(h) Definitions.--As used in this section, the following</u>

words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Electric generation supplier." As defined in section 2803 (relating to definitions).

"Natural gas supplier." As defined in section 2202 (relating to definitions).

Section 2. Section 2807(e)(3.1) of Title 66 is repealed:

§ 2807. Duties of electric distribution companies.

* * *

(e) Obligation to serve.--A default service provider's obligation to provide electric generation supply service following the expiration of a generation rate cap specified under section 2804(4) (relating to standards for restructuring of electric industry) or a restructuring plan under section 2806(f) is revised as follows:

* * *

[(3.1) Following the expiration of an electric distribution company's obligation to provide electric generation supply service to retail customers at capped rates, if a customer contracts for electric generation supply service and the chosen electric generation supplier does not provide 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 shall be procured through competitive procurement processes and shall include one or more of the following:

(i) Auctions.

(ii) Requests for proposal.

(iii) Bilateral agreements entered into at the sole discretion of the default service provider which shall be at prices which are:

(A) no greater than the cost of obtaining generation under comparable terms in the wholesale market, as determined by the commission at the time of execution of the contract; or

(B) consistent with a commission-approved competition procurement process. Any agreement between affiliated parties shall be subject to review and approval of the commission under Chapter 21 (relating to relations with affiliated interests). In no case shall the cost of obtaining generation from any affiliated interest be greater than the cost of obtaining generation under comparable terms in the wholesale market at the time of execution of the contract.]

* * *

Section 3. Title 66 is amended by adding a section to read:

<u>§ 2807.1. Next generation default service.</u>

<u>(a) General rule.--On and after June 1, 2015, service under former section 2807(e)(3.1) (relating to duties of electric distribution companies) shall no longer be provided, and next generation default service shall be provided as set forth in subsection (b). On June 1, 2015, the commission shall conduct a competitive process for assigning existing default service customers to qualified electric generation suppliers as set forth in subsection (c). As set forth in subsection (c)(2), beginning January 1, 2015, new and moving customers shall be asked to select an electric generation supplier when initiating</u>

electric service. Subject to the authority set forth in subsection (f), on June 1, 2016, initiating or changing electric generation and distribution service shall be the responsibility of licensed electric generation suppliers.

(b) Next generation default service.--

(1) Next generation default service shall be provided by one or more electric generation suppliers. The provider or providers shall be selected for each electric distribution company service territory by a process that shall be established and conducted by the commission, and that shall require an electric generation supplier to meet reasonable and necessary financial fitness and bonding criteria to serve in that role. If no electric generation supplier meets the commission's requirements to provide next generation default service, the commission shall make the provision of next generation default service a condition of maintaining a license to provide electric generation service. When next generation default service is provided as a condition of maintaining a license, the commission may not impose any additional fees on electric generation suppliers providing next generation default service, but it may require additional financial fitness or bonding requirements. The commission may not require an electric generation supplier to provide next generation default service at rates that do not fully compensate the electric generation supplier for all of the costs and risks associated with providing the service.

(2) Next generation default service shall be available to any customer:

(i) Who has contracted for electric generation service with an electric generation supplier and whose electric generation supplier becomes unable to deliver service to the customer.

(ii) Who otherwise does not choose an electric generation supplier.

(3) The commission shall establish a pricing formula for the next generation default service rates that reflect the projected market price for electric generation during the time that the customer receives the service, together with all direct and indirect costs and risks of providing next generation default service, including cost of capital. The rate shall be set prospectively and may not be subject to reconciliation, but the electric generation supplier providing next generation default service may offer a customer an alternative generation product so long as the rate offered is lower than the next generation default service rate produced by the commission-established pricing formula.

(4) A customer may receive next generation default service at the formulaic price for a period of not more than 60 days or two billing cycles, whichever is shorter, after which the customer shall arrange to receive electric generation service from an electric generation supplier. A customer remaining on next generation default service at the end of the 60 days or two billing cycles shall be assigned to an electric generation supplier on a rotating basis to be determined by the commission and shall be transferred to that service as soon as reasonably possible.

(5) At the time that a customer is placed on next generation default service the electric generation supplier providing the next generation default service shall provide

notice to the customer:

(i) That the customer may take next generation default service for a maximum period of 60 days or two billing cycles, whichever is shorter.

(ii) The current price of the next generation default service that the customer will be charged.

(iii) The options available to the customer to select an alternative electric generation supplier, including notice that the customer may switch at any time without penalty.

(6) A customer who does not choose an alternative electric generation supplier at the end of the customer's contract term shall remain a customer of the electric generation supplier on a month-to-month basis. The customer shall be permitted to shop for an alternative electric generation supplier without penalty or restriction, unless the customer affirmatively chooses another product offered by the customer's current electric generation supplier, or chooses an alternative supplier. An electric generation supplier shall provide such notices as the commission shall require, prior to the end of the customer's term of service, that explain the customer's options.

(c) Transition process.--The following transition process shall apply:

(1) The commission shall conduct a competitive assignment process of existing default service customers in sufficient time to allow customers to be transferred to winning electric generation suppliers beginning on the customer's first meter read date on or after June 1, 2015.

(i) The assignment of customers and the prices at which the participating electric generation supplier shall serve assigned customers by customer class shall be determined for each electric distribution company service territory through a competitive solicitation process that shall be administered by the commission. A response to the competitive solicitation shall include the following:

(A) An agreement by the electric generation supplier to remit a $100 customer acquisition fee for each customer that is assigned to and enrolls with the participating electric generation supplier. All due and payable customer acquisition fees shall be paid to the commission and shall be remitted by the commission into the General Fund of the State Treasury through the Department of Revenue.

(B) An agreement by the electric generation supplier to remit a $50 bonus to each customer that enrolls with the participating electric generation supplier pursuant to the assignment process.

(C) A proposed price, per kilowatt hour and per rate class, at which the electric generation supplier offers to serve customers that enroll with the electric generation supplier pursuant to the competitive assignment process and the number of tranches which the electric generation supplier proposes to serve.

(D) An agreement to provide service pursuant to a fixed price, 12-month contract with no early termination or cancellation fees.

(E) In addition to the payments under this subsection, each electric generation supplier participating in the competitive assignment process shall remit $2 per customer assigned to fund the commission's consumer education program under subsection (e). Any amounts to be paid under this clause shall be offset by the amount of any application fees not refunded pursuant to clause (F).

(F) An application fee that shall be the lesser of the product of the number of customers in each tranche bid multiplied by one dollar, or $5,000 per tranche bid. Application fees shall be retained by the commission only for tranches actually assigned, and application fees collected from electric generation suppliers for tranches bid but not assigned to them shall be refunded at the conclusion of the competitive assignment process. The application fee shall be used:

(I) To reimburse the commission for the costs of conducting the competitive assignment process.

(II) By the commission to educate customers about the assignment process.

(G) An agreement that at the end of the initial 12-month term, and for the subsequent 24 months, the electric generation supplier will publicly post the prices charged to customers who were assigned under this process, who continue to take service from the electric generation supplier, and who have not affirmatively chosen a different product from that electric generation supplier, in a manner to be required by the commission to ensure price transparency and to avoid customer confusion.

(ii) The commission shall select no fewer than four successful electric generation suppliers for each electric distribution utility on the basis of the lowest electric generation price bid in a single clearing price, single day process as determined by rate class. All customers in the same rate class and service territory receiving service under this process shall be served at the same price. No bidder may be awarded in excess of 25% of the number of tranches to be awarded for each rate class and service territory, except that the commission may waive this limitation if necessary to assure that all tranches are awarded. The commission may retain an independent third-party evaluator to assist in the conduct of the assignment process.

(iii) Subject to the commission's authority to revise the tranche size to reflect the customer base of the electric distribution company or to enhance the chances of success of the competitive assignment process, the response to the competitive solicitation shall reflect tranche sizes of 5% of the total default service received by residential customers and tranches of comparable load size for nonresidential customers, subject to minimum successful supplier requirements under subparagraph (ii).

(iv) The commission may establish additional financial fitness and bonding requirements as a condition of an electric generation supplier's participation in the competitive assignment process.

(v) The commission shall conduct the competitive assignment process set forth in this subsection so that customers can be physically transferred to the assigned electric generation suppliers in accordance with the time frame set forth in subsection (c)(1). Between January 1, 2015, and June 1, 2015, each electric distribution company shall provide at least three notices to its existing default customers, at least one of which shall be a separate notice sent by first class mail, informing default service customers of the scheduled competitive assignment process and their options both prior to and as a result of the process. Customers initiating service on or after June 1, 2015, and before June 1, 2016, shall be assigned to the electric generation suppliers serving assigned customers under this subsection, in the same proportion as the number of tranches served by each assigned electric generation supplier to the total number of tranches, per rate class, in each electric distribution company service territory.

(vi) Selected electric generation suppliers shall remit the amounts required under subparagraphs (i)(A) and (i)(E) to the commission after all customers are enrolled with an electric generation supplier under the assignment authorized in this section. All amounts required to be paid to customers under subparagraph (i)(B) shall be due after the customer has remained with that electric generation supplier for three complete billing cycles. The amount shall be remitted within 30 days after the amount becomes due.

(2) As set forth in subsection (a), the commission shall establish a procedure whereby, on or after January 1, 2015, and

through May 31, 2015, applicants for electric service and existing default customers moving from within the service territory of an electric distribution company shall be directed by the electric distribution company to select an electric generation supplier to supply electric generation service. If the applicant or customer fails to select an electric generation supplier, or declines to do so after no fewer than three requests by the electric distribution company, the applicant or customer shall be assigned to the default service provided by the electric distribution company.

(3) The following shall apply during the transition period:

(i) The commission may consider structures that minimize adverse effects on wholesale generation suppliers or any entity that has entered into a bona fide contractual relationship with an electric distribution company that is adversely affected by this section.

(ii) An affected entity under subparagraph (i), including a wholesale generation supplier, an electric generation supplier or an electric distribution utility, may make a claim with the commission to recover costs, including foregone profits, resulting from the transition to next generation default service. The commission shall consider only those transition costs shown to have occurred, or that are likely to occur, that are established on the record after a hearing and that the wholesale generation supplier or other entity meet all of the following:

(A) Were proximately caused by the transition to next generation default service.

(B) Were not a risk that existed at the time that the entity entered into the contract.

(C) Could not reasonably be avoided by the entity.

(iii) An electric distribution company shall, after taking reasonable steps to reduce transition costs, reimburse the wholesale generation supplier or other counterparty for the costs or for amounts that the commission determines will not be recovered due to the transition under this subsection. Any reimbursements shall be recoverable by electric distribution companies under subsection (h).

(iv) For any wholesale power supply contract for which a claim is made under subparagraph (ii), a reimbursable transition cost shall be the difference between the amount that the wholesale supplier actually supplies under the contract and the amount that it would have supplied absent the transition under this subsection, multiplied by the price for power set forth in the wholesale power supply contract. The commission shall make a determination of the amount of load by customer class that the wholesale supplier would have supplied absent the transition under this subsection and shall assume that the customer class default service load level absent the transition would be no less than the average default load in the previous 12 months. Absent clear and convincing evidence demonstrating that the claimed loss was caused by fraud or illegal activity, the commission shall direct the electric distribution company to reimburse the wholesale supplier for any unrecovered transition cost. Any reimbursements shall be recoverable under subsection (h).

(d) Customer billing and other services.--The following shall apply:

(1) On and after June 1, 2016, electric generation suppliers shall be permitted to utilize full supplier-consolidated billing where the electric generation supplier bills the customer for generation service, delivery and other charges currently billed by an electric distribution company. When an electric generation supplier provides a supplier-consolidated bill, it shall purchase the utility's distribution charges for service rendered on or after June 1, 2016, on a nonrecourse basis and remit payment to the electric distribution utility without discount and on schedules approved by the commission. An electric generation supplier providing a supplier-consolidated bill shall also receive a credit from the electric distribution company, in an amount determined to be reasonable by the commission, for the electric distribution company's avoided cost of providing a bill for the delivery and other charges currently billed by the electric distribution company.

(2) Upon petition of an electric distribution company and, after June 1, 2018, by any party, the commission may order an electric distribution company to provide billing functions and activities through a structurally separate affiliate, if the order is found to be in the public interest and to further advance the benefits of competition. The commission shall ensure that the electric distribution company allocates all direct and indirect costs of providing billing services to its structurally separate billing

subsidiary by utilizing reasonable cost allocation principles. The corresponding costs of providing billing services included in the electric distribution company's base rates shall be identified and removed. The structurally separate billing subsidiary shall provide billing services to electric distribution companies and to electric generation suppliers at the same rates, terms and conditions set forth in tariffs filed with and approved by the commission. The electric distribution company's structurally separate billing subsidiary may also provide unregulated billing services so long as the incremental costs and revenues of providing the services are removed and separated from the costs and revenues of providing regulated billing services for distribution and electric generation service.

(3) Unless the commission determines otherwise, an electric distribution company shall continue to be responsible for metering, scheduling, settlements, service termination and reinstatement, compliance with energy efficiency requirements and any other actions or activities necessary to provide safe and adequate electric distribution service.

(4) On and after June 1, 2016, unless an earlier date is selected by the commission, electric generation suppliers shall be responsible for providing net metering to customer generators pursuant to the act of November 30, 2004 (P.L.1672, No.213), known as the Alternative Energy Portfolio Standards Act, and consistent with commission rules regarding payments made to customer generators to purchase excess energy under the net-metering rules.

(5) On and after June 1, 2015, electric generation

suppliers shall be responsible for compliance with the Alternative Energy Portfolio Standards Act.

(e) Consumer education.--The commission shall also establish a multimedia consumer education campaign designed to educate consumers about the changes directed by the implementation of next generation default service and implement the consumer education campaign sufficiently in advance of the implementation of next generation default service. The consumer education planning process shall solicit the views of electric distribution companies, electric generation suppliers and representatives of residential and small commercial customers.

(f) Consumer protection and commission implementation.--The following shall apply:

(1) The commission may have the authority to issue regulations or policy statements necessary to implement this section and may establish consumer protections for the initiatives mandated by this section, including:

(i) Requiring periodic electric generation supplier license renewal.

(ii) Imposing fines and penalties upon electric generation suppliers for noncompliance with commission rules and regulations, after providing appropriate notice and opportunity for hearing.

(iii) Promulgating a consumer bill of rights setting forth rules for customer disclosure statements, marketing and advertising.

(iv) Creating and publishing, at least annually, an electric generation supplier report card that includes, but is not necessarily limited to, levels of sustained informal complaints and formal complaints against electric generation suppliers.

(2) On or after June 1, 2016, and to the extent applicable, Chapter 14 (relating to responsible utility customer protection) and any regulations or orders promulgated by the commission pursuant to Chapter 14 shall apply to electric generation suppliers to the same extent as electric distribution companies, except that electric distribution companies shall continue to be responsible for physically terminating or discontinuing service to a customer at the direction of the customer's electric generation supplier.

(g) Preservation of universal service.--After the implementation of next generation default service and the conduct of the competitive assignment process, the commission shall continue to provide for universal service support in accordance with its existing customer assistance program policies, as set forth in 52 Pa. Code § 69.261 (relating to general). Any universal service support shall be structured so as to insure that the program permits low-income customers to participate in the competitive process to the same degree as other customers. This subsection does not limit the authority of the commission to alter or amend its existing policies as necessary to assure that they are just, reasonable and in the public interest.

(h) Cost recovery.--Electric distribution companies shall file tariffs establishing methods for the automatic adjustment of its rates for the recovery on a nonbypassable basis of all costs incurred to implement the provisions of this section and ongoing associated administrative costs.

Section 4. All acts and parts of acts are repealed insofar as they are inconsistent with the amendment or addition of 66 Pa.C.S. §§ 510, 2807(e)(3.1) and 2807.1.

Section 5. This act shall take effect as follows:

(1) The repeal of 66 Pa.C.S. § 2807(e)(3.1) shall take effect June 1, 2015.

(2) The remainder of this act shall take effect immediately.