

Informal Comments of the Office of Consumer Advocate
Regarding The Treatment Of Customers Who Have
Opted Out Of The Electric Eligible Customer List

On January 16, 2014, the Commission's Office of Competitive Market Oversight (OCMO) requested informal comments concerning each Electric Distribution Company's (EDC) Eligible Customer List (ECL). OCMO issued the request for informal comments in response to concerns expressed by Commissioners Cawley and Witmer in their August 15, 2013 Joint Motion in the Commission's Docket M-2012-2324075, Interim Guidelines for Natural Gas Distribution Company Eligible Customer Lists (Agenda No. 2324075-LAW).

As to the natural gas ECL, the Commission required that Natural Gas Distribution Companies refresh their ECLs on a triennial basis. The Commission initiated a triennial update, and required "NGDCs to re-solicit their entire residential and small commercial customer base every three years for the purpose of opting out of disclosing information on the ECL." Interim Guidelines for Natural Gas Distribution Company Eligible Customer Lists, Docket No. M-2012-2324075 (Final Order entered September 23, 2013, slip op. at 15). The Commission specifically held that a customer that "opts out" from the gas ECL would need to "opt out" every three years in order to restrict access to that customer's account data as found on the gas ECL. In its Comments regarding these guidelines, the OCA expressed concern regarding this procedure.¹

In Commissioner Cawley and Commissioner Witmer's Joint Motion, the Commissioners noted that there was no similar "re-authorization" requirement in the electric retail market. As a

¹ The OCA is concerned that customers may find a requirement that they re-authorize their decision to opt-out of the ECL both confusing and unsatisfactory. Once customers have taken the time to affirmatively opt-out, it is reasonable for them to assume that an affirmative action would be necessary for them to allow restricted data from being provided to unknown third parties. The OCA maintains these concerns for the natural gas ECL and does not support its implementation for the electric ECL.

result, the Commissioners referred the issue to OCMO to “explore the necessity of such a requirement for EDCs.”

The OCA submits that a change to the current refresh policies for EDCs is unnecessary given the scope of the retail electric choice market and the many avenues being used to market EGS products to customers. The retail electric market is considerably more developed than the natural gas retail market. A residential customer that opts-out of the ECL will still be exposed to substantial advertising efforts for EGS services. Resources such as PaPowerSwitch and the OCA Shopping Guide continue to gain traction among residential customers. Customers receive EGS marketing information from many forms of advertising, including direct mailings and telemarketing. Customers who “opt-out” of the electric ECL do not shut out the retail electric market – they merely restrict private account information they prefer to see restricted from being provided to marketers with which they have no relationship.

Unlike in the retail natural gas market, the Commission has recognized that marketing efforts for the retail electric market have been robust. The Commission has acknowledged that an over-saturation of marketing materials and educational efforts has at times resulted in substantial negative feedback from customers. In a Secretarial Letter issued May 21, 2012, the Commission cancelled a scheduled electric market mailing because of these concerns, stating:

Despite the apparent effectiveness of the postcard in driving consumers to www.PAPowerSwitch.com and in raising awareness about shopping opportunities, the Commission proposes to delay the mailing of the tri-fold flyer and the EDC letter by approximately six months each. **The primary reason for proposing these delays is feedback the Commission has received from consumers about the high volume of mail they receive from a variety of sources related to electric shopping. We are concerned about overwhelming consumers and giving them a negative impression of electric choice – the exact opposite of what is intended.** Also, while the mailings are viewed as a cost-effective way of educating consumers, the

Commission has a responsibility to ensure that ratepayer funds are used as effectively as possible.

Re: Investigation of Pennsylvania's Retail Electricity Market; Docket No. I-2011-2237952

(Secretarial Letter issued May 21, 2012) (emphasis added).

With this backdrop, the OCA submits that it would be particularly counterproductive to these efforts to require customers that have already opted-out of the electric ECL to respond to additional mailings that serve no purpose other than to maintaining the customer's "status quo." No other industry that the OCA is aware of addresses privacy in such a manner and this treatment will add to the "negative impression of electric choice" that has caused the Commission concern in the past.

Moreover, the OCA submits that customers may find this procedure confusing and unsatisfactory. Generally, such opt-out procedures used by other industries, such as credit card and banking institutions, maintain a customer's preferences unless and until the customer changes his or her preferences. Likewise, electric customers that choose to opt out of including their personal information on the electric ECL should have their preferences maintained unless and until they change them. The OCA submits that EDCs should provide periodic information to customers about the electric ECL, its benefits, and mechanisms to change preferences so that customers can change their preferences in order to have their information included on the electric ECL if they so choose rather than having to repeatedly opt-out.

As stated throughout multiple rounds of Comments concerning ECLs, the OCA strongly supports every customer's right to withhold private personal data, including a customer's usage history, from third parties. The OCA has not objected to the use of an opt-out procedure for customers to restrict any or all of their information on the ECL. The OCA, however, submits that rather than continually requiring customers to opt out, EDCs should provide initial and

ongoing education to customers about the electric ECL in order to provide customers with a meaningful opportunity to determine whether to include their information on the electric ECL. Given the levels of EGS advertising and Commission directed education efforts in the retail electric market, it is highly unlikely that EGS access to customers who choose to opt-out of the electric ECL will go “stale.” To that end, a customer’s initial preference regarding opting out of the ECL should be maintained unless he or she chooses to change their preference rather than requiring customers to repeatedly opt out of the electric ECL.

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