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June 3, 2011

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Attached for filing on behalf of Brighten Energy LLC d/b/a Brighten please find its Comments to the Public Utility Commission's Order entered April 29, 2011 in the above matter. A copy of the Comments is being provided by electronic mail to the Office of Competitive Market Oversight at ra-OCMO@state.pa.us.

Should you have any questions, please contact the undersigned.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By

Charles E. Thomas, III

Encls.
cc: Office of Competitive Market Oversight (w/encl.) (via email only)
John Munn (w/encl.)
Keven Richardson (w/encl.)

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF BRIGHTEN ENERGY LLC TO ORDER ENTERED APRIL 29, 2011

Brighten Energy LLC ("Brighten") submits the following Comments of Brighten Energy LLC to Order Entered April 29, 2011 ("Comments") in accordance with the Pennsylvania Public Utility Commission's ("Commission") Order entered April 29, 2011 ("Order") in the above captioned proceeding:

1. On April 29, 2011, the Commission entered an Order adopted at April 28, 2011 Public Meeting, encouraging and inviting interested parties to submit comments in connection with the Commission's statewide investigation of the retail electricity market in Pennsylvania "with the goal of making recommendations for improvements to ensure a properly functioning and workable competitive retail electricity market exists in the state."[1]

2. The first phase of the investigation is designed to gather information to be used by the Commission "to assess the status of the current retail market and explore what changes need to be made to allow customers to best realize the benefits of competition."[2] To that end, the Order directs interested parties to provide responses to a list of questions that frame the issues associated with the investigation.

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[1] *Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952 (Order entered April 29, 2011), slip op. at 4 (quoting *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Intrastate Line Company and FirstEnergy Corp.*, Docket Nos. A-2010-2176520 and A-2010-2176732 (Order entered March 8, 2011), at 46).

[2] Id. at 4.

3. Brighten welcomes the opportunity to submit comments and address the issues raised by this investigation. Brighten's Comments are presented in Appendix A attached hereto. Brighten presents its Comments for discussion purposes in response to the Commission's invitation in the Order and without prejudice to any position Brighten might take in any subsequent proceeding or proceedings involving these or any other matters.

WHEREFORE, Brighten Energy LLC submits its Comments to the Pennsylvania Public Utility Commission's Order entered April 29, 2011 at Docket No. I-2011-2237952.

Respectfully submitted,

By________________________

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DATE: June 3, 2011

APPENDIX A

BRIGHTEN ENERGY LLC

Comments in Response to
Pennsylvania Public Utility Commission
Order entered April 29, 2011
Docket No. I-2011-2237952

I. Introduction

Brighten applauds the Commission's decision to open a statewide investigation into the Pennsylvania retail electricity market. Brighten appreciates the opportunity to provide comments to the Commission's Order entered April 29, 2011 and to be involved with the important issues related to a properly functioning and workable competitive retail electricity market. The Commission's examination of the issues raised during this investigation and its implementation of prudent changes are vital to developing a fully workable, robust, and competitive retail market in Pennsylvania, but also sustaining it to the benefit of consumers, Electric Generation Suppliers ("EGSs"), Electric Distribution Companies ("EDCs"), and other market participants alike. Brighten is keenly interested in the Commission's exploration of these issues and offers these Comments for the Commission's consideration in its examination and implementation of the decisions related to the issues raised in this investigation.

In providing these Comments, Brighten relies to a great extent on the experiences that its sister company, TXU Energy Retail Company LLC ("TXU Energy"), has had with analogous issues in the Texas retail market. These experiences are not meant to recommend that this Commission should take a particular course of action or to suggest a specific model or approach is best suited for the Pennsylvania retail market. Rather, they are provided to augment the discussion and debate around the issues and assist the Commission in its evaluation and implementation of prudent changes.

II. The Pennsylvania Retail Electricity Market

A. Status of the Present Market

The Pennsylvania retail market is a developing and emerging landscape that is ripe with potential. The market presents many exciting and interesting opportunities to consumers, EGSs, and EDCs alike. The end of rate caps has spurred competition in many areas throughout the state which has afforded customers of all classes the opportunity to shop for competitively priced electricity that did not exist a few years ago. To date, more than 1.1 million combined Pennsylvania customers – residential, commercial, and industrial – have actively engaged in switching retail suppliers.[1] Market participants, the Commission and the Consumer Advocate of Pennsylvania have done an effective job to date of promoting and informing retail customers of their ability to shop for electricity. Moreover, dozens of licensed EGSs have entered the marketplace offering their products and services to customers, giving most customers numerous options.

B. Observations from the Texas Market

Brighten sees many parallels with Pennsylvania's current market and the Texas competitive retail electricity market during its early years. By way of background, the Texas electric market evolved from one of monopoly regulation of vertically-integrated utilities to a robust marketplace for wholesale and retail competition over the past fifteen years. The success of the Texas competitive electric market is due, in large part, to the systematic nature by which

[1] Pa. P.U.C., *Weekly PAPowerSwitch Update* (June 1, 2011), *at* http://extranet.papowerswitch.com/stats/PAPowerSwitch-Stats.pdf?/download/PAPowerSwitch-Stats.pdf (last visited June 3, 2011).

competition was introduced. Hallmarks of this process included separation of vertically-integrated utilities into three distinct, independent functions – generation, transmission/distribution, and retail – and the enactment of protections to ensure that the regulated transmission/distribution utility did not give its competitive affiliates an advantage to the detriment of new market entrants. Additionally, and as discussed at more length later herein, the establishment of transitional mechanisms such as the "Price to Beat" was critical in fostering an environment for the success of the Texas retail electric market. While the Price to Beat ended in 2007, it served its purpose of helping to develop a robust marketplace. Scores of new providers and hundreds of innovative products exist in the Texas market today, which makes choice among retail electric offerings a meaningful reality for Texas consumers.

The introduction of retail competition to the Texas electric market occurred in stages. First, in 1995, the Texas Legislature adopted Senate Bill 373, which amended the Texas Public Utility Regulatory Act ("PURA") to foster competition in the wholesale electric market.[2] The successful introduction of wholesale competition in the Texas market served as a significant stepping stone for the introduction of retail competition a few years later. As explained by the Public Utility Commission of Texas ("PUCT"), a "vibrant wholesale market is important for a retail market to work."[3]

Senate Bill 7 ("SB 7"), passed by the Texas Legislature in 1999, ushered in the start of retail electric competition in Texas.[4] SB 7 established a framework to allow retail electric customers of certain investor-owned utilities to select their provider of electricity beginning

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[2] Act of May 12, 1995, 74th Leg., R.S., ch. 231, 1995 Tex. Gen Laws 2017, *repealed by* Act of May 8, 1997, 75th Leg., R.S. ch. 166, 1997 Tex. Gen Laws 1018 ("PURA95").

[3] Pub. Util. Comm'n of Tex., Report to the 77th Tex. Leg., *Scope of Competition in the Electric Industry in Texas* at 4 (Jan. 2001).

[4] Act of May 27, 1999, 76th Leg., R.S., ch. 405, 1999 Tex. Gen. Laws 2543.

January 1, 2002 (after a modest pilot was completed in 2001).[5] As a first step, vertically-integrated electric utilities in those areas of Texas that were to become open to competition were required to "unbundle". Specifically, those utilities were required to separate their business activities from one another into the following three units: (1) a power generation company; (2) a retail electric provider; and (3) a transmission and distribution utility.[6] To ensure this separation had meaning, each unbundled electric utility was required to file a Code of Conduct, to be approved by the PUCT, demonstrating that its regulated function (*i.e.*, transmission and distribution) would not subsidize or unfairly advantage its competitive affiliates (*i.e.*, power generation company and retail electric provider).[7] In developing rules relating to affiliate activities, the PUCT explained that one of its primary objectives was to foster fair competition for all participants in the market place.[8]

From the beginning, retail electric providers ("REPs")[9] in the Texas market have had a very defined and distinct function – they operate as retail providers of electricity and energy services and serve as the primary contact with retail customers. The PUCT took great care to ensure that all REPs, whether they were affiliated with a formerly vertically-integrated electric utility or not, would be similarly situated at market open. The PUCT adopted rules prohibiting a REP from suggesting or implying to potential customers that the provider could furnish the customer with better quality service from the transmission and distribution utility.[10] Over time,

[5] *See supra* note 4; Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001 – 66.016 (Vernon 2007 & Supp. 2009) ("PURA"), Chapter 39 ("Restructuring of Electric Utility Industry").

[6] PURA § 39.051(b).

[7] PURA § 39.157; P.U.C. SUBST. R. 25.272.

[8] Pub. Util. Comm'n of Tex., Report to the 76th Tex. Leg., *Scope of Competition in the Electric Industry in Texas* at 56 (Jan. 1999).

[9] Known in Pennsylvania as electric generation suppliers ("EGSs").

[10] P.U.C. SUBST. R. 25.475(c)(1)(iii); *see also* P.U.C. SUBST. R. 25.471(b)(4).

these PUCT rules helped decrease consumer perception that the reliability of wires service from a REP affiliated with a transmission and distribution utility would be superior to service offered by unaffiliated REPs. Today, the benefits of the Texas Legislature and PUCT's systematic, multi-staged efforts to introduce and support retail electric competition are clear – in all areas of the state of Texas open to retail competition, there are dozens of REPs offering hundreds of products from which retail customers may choose.[11]

C. Opportunities for the Existing Pennsylvania Market

To augment the many positive developments in Pennsylvania to date, Brighten expects that this investigation may identify opportunities which can help the existing Pennsylvania retail market continue to evolve and advance in the future. Some attributes of the present market structure that have the potential to inhibit the growth of retail competition include: (i) the largely pure commodity market design that is dominated by price and creates disincentives for an EGS to market competitive offerings that differentiate on factors other than price; (ii) the limited opportunities for an EGS to develop deep customer relationships and introduce innovative, value added products and services; (iii) a switching process that can make it difficult for consumers to quickly switch providers or to set up service with an EGS when moving to a new service address; and (iv) the EDCs' role as default service providers, which may impede the development of full retail choice and competition.

As part of its objective to promote competition in the retail electricity market, Brighten respectfully requests that the Commission consider these items to improve the competitive landscape moving forward. To this end, the Commission should ask itself what it ultimately

[11] For example, residential customers in the Oncor Electric Delivery Company service area can choose from over 200 different products offered by over 40 retail electric providers. *See* Texas Electric Choice, Education Program (a/k/a the PUCT's "Power to Choose" website) *available at* http://www.powertochoose.org/_content/_compare/showoffers.aspx (searching offers by inputting Oncor Electric Delivery Company as "TDU Service Company") (last visited May 23, 2011).

wants in the retail market design – a market that competes on price alone, or one that offers innovative, differentiated products and services that Pennsylvanians value in addition to low price alternatives for retail customers?

1. Expanding Beyond the Commodity Price Focus

In the existing Pennsylvania market design, the basis of competition between EGSs is primarily on price and little else because price is the only point of differentiation which becomes part of the ongoing customer experience under the current billing structure. While a pure commodity market provides some competitive benefits to retail consumers, such a market may not be sustainable and may not create *robust* competition or a fully developed marketplace. Certainly large numbers of Pennsylvanians are moving off of default service or switching from one EGS to another to obtain "competitive offers." These simple commodity driven switches, however, do not mean that customers are realizing the full spectrum of potential benefits available through competition.

A market that defines success with any single metric such as price is not a robust, workable, or competitive market. A market should offer more than just low price electricity generation to consumers. Indeed, a market competing on price alone constitutes a barrier to entry by competitive EGSs because it stifles the innovation of unique products and services to the detriment of customers and does little to differentiate one supplier from the next. It also reduces customers' incentive to be educated about the value added products and services available to them in the market, as they focus solely on price when making their decisions in selecting a supplier.

Even within the construct of price, the Commission should encourage EGSs to promote breadth and depth of offers. Presently, in many situations, a customer may have limited choices with respect to the type of rate products available. A competitive market should incent EGSs to devise a range of rate products and value-added products and services tailored to the customer's specific needs – and then let customers decide what they value and choose among the offers.

For the commodity itself, if customers want to avoid exposure to market price fluctuations, they should be able to choose fixed-priced products over a range of terms. If, however, customers want to manage their demand and use based on changes in market prices, they should be able to avail themselves of those kinds of offerings. If customers want to avoid exposure to price fluctuations during certain hours of the day but not in others, they should be able to select an index, time of use, or other hybrid product offering. If customers are interested in clean/green energy, they should be able to select from several renewable offers. Ultimately, customers should be afforded the ability to choose from dozens of product offerings and find one that best meets their needs.

Although Pennsylvania has seen a range of competitive offers developing for large business customers in the state, the market has probably not yet met its potential for delivering innovation for smaller business and residential customers. Our experience in Texas indicates that many customers desire value-added products and services, and the Commission should consider the incentives required for companies to provide them as discussed further below.

2. Facilitating Innovation Around Value Added Products

Brighten submits that the existing retail market design may not facilitate the full development of competitive demand side and other value added products which assist mass market consumers in managing, controlling and monitoring their energy use. A robust market should promote innovative products and services, educate customers on these products and services, and allow for the creation of meaningful supplier and customer relationships. Brighten maintains that the focus should always be on the customer and how the customer experience can be improved.

Brighten believes that saving money is one of the key drivers of customer value. To develop a robust marketplace, the Commission should ensure that the market design encourages the development of innovative products and services by leveraging the natural economic incentives consumers have to save money by reducing consumption or to access improved service levels. In doing so, customers will become more motivated, more engaged, and more likely to shop. As evidence, retail suppliers in Texas are helping customers use less energy through innovative customer solutions. Innovative home and business energy management tools offered by retail suppliers include web based applications that supply usage data with analytical tools that allow customers to make more informed energy decisions, energy monitoring devices that help customers understand how and when they use electricity, and internet programmable thermostats that allow customers to remotely monitor and manage home or business temperature settings and enable reductions to peak energy demand.

Brighten's sister company, TXU Energy, has been a market leader in developing and launching new innovations for all customer classes in Texas such as the following:

- The Brighten℠ iThermostat. This innovative device was initially introduced in June 2008 to overwhelmingly positive customer and media interest. TXU Energy launched a more enhanced version in June 2009 and continues to add enhancements and improved functionalities. In July 2010, TXU Energy announced it had added smart phone functionality to the iThermostat web portal, allowing customers to access their iThermostats via their smart phones. Participating customers receive a fully web-enabled programmable thermostat that lets them monitor and manage home temperatures from any internet device and can allow TXU Energy to manage peak energy demand by cycling customers' A/C equipment. This can save customers money, help the environment, improve grid reliability, and give customers greater control of their home heating and cooling energy costs.

- The Brighten[SM] Power Monitor. This device was introduced initially in a 2006 pilot program and continues to be improved and sold more broadly. This innovative device helps customers manage and reduce wasteful electricity consumption by providing energy use information in near real-time, month-to-date consumption and cost, as well as projected monthly costs.
- Solar Leasing Program. TXU Energy introduced an innovative joint solar leasing program with SolarCity in early 2010 to offer North Texas homeowners a new way to enjoy the benefits of using solar power without the steep upfront costs. Customer response was tremendous, greatly exceeding expectations.
- Lighten[SM] Distributed Renewable Generation (DRG) buy-back offer. This program offers customers a purchase price for the "surplus" electricity generated by their at-home solar and wind-powered DRG equipment (i.e., electricity not used on-premise that flows back to the grid).
- TXU Energy EV Accelerator Program. This program was first announced during 3Q 2010 to help jump-start electric vehicle adoption in North Texas. As part of signing an eligible business customer commodity contract with TXU Energy, the company will purchase and install a specified number of Level 2 or Level 3

charging stations in coordination with local leaders. TXU Energy has announced agreements with the cities of Dallas, Fort Worth, and McKinney.

In summary, Pennsylvania innovation can be addressed through multiple approaches. These include encouraging the natural incentives for customer-focused innovation, customer education and adoption, and policy development via a range of stakeholder processes including this investigation.

3. Improving the Switching Process

Brighten believes there may be an opportunity to improve the switching process in the present Pennsylvania market design to facilitate a consumer's ability to enroll with an EGS when the customer is moving into a new service address or is switching providers. Opportunities to make the switch process more efficient and streamlined should always be investigated by this Commission as this will facilitate competition. Brighten believes that customers should be given every opportunity to proactively choose who will supply their electricity at all times. Based upon TXU Energy's experiences in Texas, Brighten believes that there might be opportunities to improve the customer experience over time related to these activities.

For customers who are moving, the current rules require consumers to establish service with the incumbent EDC before they may enroll with an EGS. Customers in these situations essentially have no true "choice" about who provides their generation service for a period of time due to the current default service model. Customers are forced to take default service for up to two months before they may begin receiving service from the supplier of their choice (and that assumes the customer is diligent about (re)enrolling with the EGS). This can have unintended consequences that hinder the competitive marketplace and the consumer. First, when customers move within the same service territory who have already enrolled with a particular EGS, they must move back to default service, thereby interrupting or even destroying an established relationship between the customer and EGS. For example, a customer who moves to a new residence within the same neighborhood cannot continue to obtain electricity from a competitive retail company that is currently serving the customer, but must instead restart generation service at their new address as a default service customer with the incumbent EDC before completion of the reenrollment and "switch" to the EGS of choice. Second, the design can hinder the Commission's goal of promoting competitive shopping, as many customers may be discouraged or inconvenienced by the process of choosing an EGS when they are moving, if they cannot take service immediately from the retail supplier of their choice. Brighten believes that customers are far less likely to select a competitive retail company if they are forced to wait and settle in to their new residence for a month or two before being allowed to switch away from the EDC.

Experience in the Texas retail market can be informative in this regard. In Texas, customers who move actively engage in choosing their provider during the move process. Texas has continuously improved procedures to enable movement from one provider to the next in a matter of days, if not hours. This can be extremely valuable to consumers who typically have little free time prior to moving to establish utility services. Default service and the present market design in Pennsylvania – where the process can take weeks, if not months – could be viewed as suboptimal to both consumers and retail suppliers.

For customers who are switching providers but not moving, the process can also be inefficient and frustrating. Current rules require that all switches are on cycle which means that the switching process can take up to 45 days or so to complete. The slow pace of the switching process may discourage consumers' enthusiasm to shop and select a retail supplier. The inefficient process may also cause confusion and dissatisfaction for customers who do switch, which could negatively affect those customers' perceptions about the switching process and competitive suppliers. The current process sees a customer select an EGS and still receive one or two bills for electricity from their former provider prior to the switch effectuating. The current system requires that it take weeks, not days, to switch a provider which may discourage customers from switching and create confusion in the market.

4. Distinguishing the Role of the EDC

Under the Commission's regulations, most incumbent EDCs serve as the default service provider in their respective certificate service territories.[12] As such, EDCs are charged with the provision of reliable default service to retail customers who are not receiving generation services from an alternative EGS or whose alternative EGS has failed to deliver electric energy.[13] Moreover, Section 2806(h) of the Public Utility Code authorizes the Commission to approve the offering of flexible pricing and flexible rates by default service providers, including negotiated, contract-based tariffs designed to meet the specific needs of a utility customer and to address competitive alternatives.[14]

Such authority creates a market structure where EDCs, as default service providers, effectively "compete" with EGSs in the Pennsylvania retail electricity market. Although there are some advantages to this approach, there are also unintended consequences that may harm the competitive market and consumers. First, consumers may have a tendency to default to the known brand that is perceived to be safe and reliable. In Pennsylvania, this is the incumbent EDC that provides default service to retail customers using the same name, logo and branding as the transmission and distribution functions, thus creating a barrier to entry for an EGS that must

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[12] 52 Pa. Code § 54.183.

[13] 52 Pa. Code § 54.184; *see also* 66 Pa.C.S. § 2807(d).

[14] 66 Pa.C.S. § 2806(h); *see also* 66 Pa.C.S. § 2807(f)(5).

compete. It can prove extremely difficult for an EGS, particularly one that is new to the market, to build robust customer relationships and differentiate from the other EGSs. Under the current market structure, it may reasonably be seen as a rational move for a customer to stay on or select default service from an EDC because they understandably may be skeptical that the EDC will restore electric service in an outage for an EGS's customers with the same speed and efficiency that it will restore power to the hundreds of thousands of customers who are its own retail customers. Raising awareness of the competitive market and increasing customer education efforts likely will not be sufficient to persuade many consumers to change their view that the EDC will provide better service to its own retail customers than it will to retail customers of an EGS. This barrier is further exacerbated when one considers the current market's focus on price.

Second, the market design and default service model blurs the EDC's traditional role with that of a competitive function. These roles are best kept separate and apart from one another in a fully-competitive market. Again, a consumer may presume that staying with the EDC under the default service option is a safer, more reliable decision that impacts whether their lights stay on or how fast service is re-established after an outage.

Third, EGSs must share certain competitively sensitive information regarding their sales and marketing practices with EDCs. For example, under the Commission's interim sales and marketing guidelines,[15] EGSs should provide advance notification and information to EDCs around marketing and sales activities,[16] including direct mail marketing and door to door

[15] *Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers*, Docket No. M-2010-2185981 (Order entered November 5, 2010).

[16] This requirement would become mandatory under the Commission's Proposed Rulemaking Order to establish new marketing and sales practice regulations. *See Rulemaking Re: Marketing and Sales Practices for the Retail Residential Energy Market*, Docket No. L-20102208332 (Proposed Rulemaking Order entered February 14, 2011) (proposed § 111.14).

marketing. This is an unusual practice in a competitive market where one role of an EGS is attempting to attract customers from the EDCs' default supply.

Fourth, each EDC appears to maintain a slightly different process for handling transactions. While these differences may be minor, they create barriers to entry for EGSs that would like to scale quickly across multiple areas. One method for streamlining transaction processes is to establish an independent registration agent. In Texas, ERCOT administers many of these transactions in a common manner across the entire market, thus facilitating scale-up by new entrants.

III. The Default Service Model and the Default Service Provider Role

Brighten applauds the Commission for examining the existing default service model and considering changes where appropriate. Brighten maintains that the customer experience should be a key consideration in this regard.

As discussed above, a key issue in the existing Pennsylvania market structure is that EDCs provide a retail function against which EGSs must compete. While this is permissible under the Public Utility Code, it impedes the development of a properly functioning and robust competitive retail electricity market and may create incentives for the EDCs to leverage their roles as predominate electricity providers and their existing relationships to the detriment of not only EGSs, but also consumers. Moreover, the fact that consumers must start out on default service can perpetuate or unintentionally enforce the mindset that the EDC, as the default service provider, offers safer, more reliable or better service than an EGS.

In developing its own market, the Texas Legislature clearly delineated among the retail function, generation function and transmission and distribution function. In addition, the Texas Legislature determined that an incumbent "handicap" of sorts would best serve the public during the introduction of retail competition. In the transition to a fully competitive retail market, the Texas Legislature recognized that affiliated REPs began with a significant competitive advantage in the form of an existing customer base inherited from the former vertically integrated utility.[17] In order to facilitate market entry by nonaffiliated REPs, the Legislature enacted PURA § 39.202, which created a mechanism to encourage competitors to enter the market, undercut the affiliated REP's price, and capture some of its customers.[18] Specifically, PURA § 39.202 provided for a transition period during which the affiliated REPs were required to provide service to residential and small commercial customers at a fixed, discounted rate. The discounted rates, determined in proceedings before the PUCT, were known as the "Price to Beat."[19]

The affiliated REPs were required to charge the Price to Beat from the start of competition on January 1, 2002, and were able to offer lower rates only when the transition period ended or when at least forty percent of the market in a region was served by nonaffiliated REPs.[20] Subject to various calculations for fuel-cost adjustments, the Price to Beat was set at six percent less than the utility's corresponding average residential and small commercial rates that were in effect on January 1, 1999.[21] By contrast, the Legislature imposed no pricing mechanism for nonaffiliated REPs. As a result, the legislative scheme both capped the price that an affiliated

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[17] *See State v. Public Util. Comm'n of Tex.*, 131 S.W.3d 314, 319 (Tex. App.—Austin 2004, no pet.).

[18] *See generally* Pub. Util. Comm'n of Tex, Report to the 78th Tex. Leg., *Scope of Competition in Electric Markets in Texas* (Jan. 2003).

[19] *See* PURA § 39.202(a).

[20] *Id.*

[21] *Id.*, P.U.C. SUBST. R. 25.41(g).

REP could charge particular customers and prevented affiliated REPs from dramatically cutting their rates in order to prevent nonaffiliated REPs from entering a service area.[22]

The importance of the Price to Beat cannot be understated. As noted by the PUCT, the Price to Beat was "perhaps the single most important provision of SB 7 with respect to the development of the competitive retail market for residential and small commercial customers."[23] During the transition period to retail competition, the Price to Beat allowed the affiliated REPs to change their retail rates to reflect underlying wholesale supply cost changes, which at the time were steadily increasing. Adjusting the Price to Beat based on changes in wholesale supply costs allowed new retail providers in the market an opportunity to offer lower rates and attract customers away from affiliated REPs.[24] Per the terms of PURA § 39.202(a), the Price to Beat expired on January 1, 2007. By that time, customers were well educated about their choices and the robust retail competition that the Legislature had hoped the Price to Beat would help foster had been realized – over 37% of the residential and small commercial customers, representing 58% of the eligible load, had switched service (at least once) to competitive providers and many others were being served at competitive rates by the former affiliated REPs.[25] Since then, competition has continued accelerating and there are now dozens of providers offering hundreds of offers that customers in competitive areas can choose. On average, residential customers in Texas have exercised more than four switch or move transactions since the market opened in 2002.

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[22] *See Reliant Energy, Inc. v. Public Util. Comm'n of Tex.*, 62 S.W.3d 833, 837 (Tex. App.—Austin 2001, no pet.).

[23] Pub. Util. Comm'n of Tex., Report to the 78th Tex. Leg., *Scope of Competition in Electric Industry in Texas* at 20 (Jan. 2003).

[24] Pub. Util. Comm'n of Tex., Report to the 80th Tex. Leg., *Scope of Competition in Electric Markets in Texas*, at 8 (Jan. 2007).

[25] Pub. Util. Comm'n of Tex., Report to the 81st Tex. Leg., *Scope of Competition in Electric Markets in Texas* at 43 (Jan. 2009).

IV. Smart Meters

Except for a few limited situations, smart meters have not been deployed in Pennsylvania. As such, Brighten cannot comment at this time whether there are, or could be, potential barriers created by the implementation of EDC smart meter plans. As the Pennsylvania market matures, however, smart meters and other "smart" innovations will become increasingly important to the advancement of the Pennsylvania retail market and can serve as important building blocks for customers and retail suppliers.

In Texas, TXU Energy has observed that the implementation of smart meters is unquestionably driving the next wave of customer innovation in the Texas competitive retail market. The deployment of smart meters allows retail companies to provide products and services like those listed in these Comments for consumers to become more educated about their energy consumption and use. These smart innovations are steering the market towards an advanced retail market and shaping how customers there interact with the marketplace. TXU Energy has been a leader in developing innovative solutions for customers which leverage smart meters such as the following:

- Residential time-of-use (TOU) plans. After being piloted in 2006, TXU Energy is making this offer more broadly in select areas where transmission and distribution utilities have deployed advanced metering infrastructure. TOU plans allow customers to save money by shifting some of their electricity use to morning, evening, and nighttime hours when electricity costs less. TOU plans are complemented by other programs, such as the iThermostat and solar leasing programs mentioned earlier, which help customers shift demand away from peak consumption hours.

- TXU Energy MyEnergy Dashboard^{SM}. Launched earlier in 2011, this online tool helps customers examine how and when they use electricity at home so they can reduce energy consumption and, ultimately, monthly bills. This solution brings the real-world benefits of smart meter technology to life for TXU Energy customers. It provides graphs that show historical and forecasted electricity usage and cost, and outdoor temperatures by year, month, week and day.
- TXU Energy Electricity Usage Report. Originally launched in 2010, this is a free, personalized weekly email that includes easy-to-read charts and graphs that show the customer's actual electricity usage. The information helps customers better understand the drivers of their usage so they can make informed decisions.

In addition to these developments, TXU Energy plans to continue introducing new products and services moving forward in conjunction with the advanced metering systems that are being deployed by several Texas transmission and distribution service providers. Future launches are expected to include new load control technologies, improved in-home energy displays, and advanced time-of-use pricing. These new technologies can provide customers with the ability to better manage their electricity use, reduce their electric bills, and help reduce system peak demand.

V. Conclusion

With the initiation of this statewide investigation, the Commission begins the process of examining the issues that may impede the development of truly robust and sustainable retail competition that empowers customers and enables them to shop for the specific products and services they desire. Brighten appreciates the opportunity to comment on the important issues discussed herein and looks forward to its future participation in this proceeding.