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November 3, 2011

Via Electronic Filing
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

On behalf of the Retail Energy Supply Association ("RESA") enclosed please find the original of its Comments in Response to the October 14, 2011 Tentative Order along with the electronic filing confirmation page with regard to the above-referenced matter.

Sincerely yours,

Deanne M. O'Dell

Deanne M. O'Dell, Esq.

DMO/lww
Enclosure

cc: ra-OCMO@state.pa.us w/enc.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION
IN RESPONSE TO THE TO THE OCTOBER 14, 2011 TENTATIVE ORDER

I. INTRODUCTION

In its October 14, 2011 Tentative Order, the Commission sought public comment on the recommendations of its Office of Competitive Market Oversight ("OCMO") related to the format and structure for the future default service plans of the electric distribution companies ("EDCs") for delivery beginning June 1, 2013. These recommendations are the result of an industry-wide stakeholder process that has been coordinated by OCMO following the Commission's April 29, 2011 Order at this docket which tasked participants to study how to best address and resolve issues relevant to improving the current retail electricity market. More specifically, the Commission seeks comment on the following tentative recommendations:

- that the plan periods be established from June 1, 2013 through May 31, 2015;
- that the use of long term supply contracts be limited with no contracts extending past the end date of the plan period;
- that each plan incorporate certain retail market enhancements including an opt-in auction program and a customer referral program;
- that each EDC contemplate contracting with a retail EGS to satisfy their statutory requirement to provide time-of-use (TOU) rates;
- that each EDC contemplate the incorporation of semi-annual default service rate adjustments; and,
- that each EDC contemplate expanding hourly-priced default service to the medium sized commercial and industrial class.

{L0461158.1}

The Retail Energy Supply Association ("RESA"),[1] a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than a regulated utility structure, has been involved in the stakeholder process and offers these comments in response to the Tentative Order.

First, RESA requests that the Commission clarify that its directive to the EDCs to include various retail market enhancements in their next default service plan petitions is not intended to preclude the earlier implementation of these, or other, pro-market measures as may be developed through the stakeholder process. As recognized in the Tentative Order, RESA agrees with the Commission that implementation of such measures should be balanced with adequate protections and consideration for holders of existing wholesale contracts whether that be honoring those contracts or developing a process for renegotiating those contracts should that be necessary. As explained further below, there are many significant and important measures the Commission can and should implement as soon as it is practical to do so as it moves toward achieving its end goal of improving Pennsylvania's retail electricity market. In some cases, these measures can be structured in a way that is not dependent on awaiting the next default service plan period of June 1, 2013 and, in the interest of achieving the end goal, may be implemented sooner rather than later.

Second, the structure of the default service plans needs to include as much flexibility as possible to ensure that the Commission can easily implement the pro-market measures developed

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[1] RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

as a result of the stakeholder process in both the short-term and the long-term. To achieve this flexibility, the structure of the default service plans should: (1) provide clear notice to wholesale suppliers that the Commission is undertaking this investigation which will result in changes to the market but that once the default service plans are approved, they are final; (2) rely on shorter term contracts; (3) incorporate a larger percentage of spot market purchases; (4) use shorter procurement lead times; and, (5) eliminate contracts extending past the expiration date of the default service plans. Implementing these concepts will give the Commission the flexibility necessary to implement the pro-market measures it desires with little to no disruption in the marketplace.

Finally, RESA supports requiring the EDCs to include proposals for expanding hourly-priced default service to the medium sized commercial and industrial class and utilizing EGSs to satisfy their statutory TOU requirements.

II. RESA COMMENTS

A. Commission Should Clarify That Pro-Market Measures May Be Implemented Prior To June 1, 2013

This proceeding was initiated by the Commission's April 29, 2011 Order which articulated the goal "of making recommendations for improvements to ensure that a properly functioning and workable competitive retail electricity market exists in the state."[2] Following written comments and oral testimony provided during an *en banc* hearing of June 8, 2011, the Commission issued a second order initiating a stakeholder process for the discussion of both

[2] April 29 Order, at p. 2, *citing Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company and Trans-Allegheny Interstate Line Company*, Docket Nos. A-2010-2176520 and A-2010-2176732 (Order entered March 8, 2011), at 46.

intermediate and longer term reforms to the retail electricity market.[3] In this second order, the Commission directed that an intermediate work plan addressing intermediate steps involving changes to the existing market model be presented to the Commission in December 2011 and that a long range work plan involving structural changes to the default service model be presented in the first quarter of 2012.[4]

Following the second order, OCMO convened the stakeholder process which, among other issues, focused on how to coordinate the retail market changes contemplated by the Commission with the May 31, 2013 expiration date of the current default service plans for the major EDCs. The EDCs are required to file their next default service plans before August 31, 2012 and would need to receive approval of the plans from the Commission prior to May 31, 2013 to ensure that supply could be procured and delivered effective June 1, 2013. In consideration of this timing, the Commission's Tentative Order intends to provide guidance to EDCs, and the market, regarding how they should develop the format and structure of their upcoming default service plans so that they can be coordinated with the pro-market measures that will be developed in the on-going investigation.

RESA, consistent with its June 3, 2011 comments, supports an ultimate transition of the default service role to an EGS or group of EGSs.[5] In its comments, RESA set forth a conceptual plan to achieve that goal by June 1, 2013 to coincide with the expiration of the current EDC default service plans.[6] While the timeline proposed by RESA appears to have slipped, RESA

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[3] *Investigation of Pennsylvania's Retail Electricity Market*, I-2011-2237952 (Order entered July 28, 2011)("July 28 Order").

[4] July 28 Order, at p 10.

[5] RESA Comments dated June 3, 2011 at 19-21.

[6] *Id.* at 35.

urges the Commission to continue to work toward the end goal of transitioning EDCs' default service role to non-EDCs and set the start date as soon as practically possible.[7]

In advance of the start date set for RESA's proposed plan, consumers need to be educated and measures need to be implemented to facilitate and encourage affirmative selection of an EGS. Much of the stakeholder process has already been spent discussing the details of these types of measures. In fact, the Commission's Tentative Order recommends that the EDCs to propose two of these measures – a retail opt-in auction and a customer referral program – in their next default service plan petitions.

RESA recognizes the Commission's sense of responsibility to protect holders of existing wholesale contracts. At the same time, RESA supports these pro-market measures and the Commission's recognition of their importance in its recommendations to the EDCs. RESA also acknowledges the Commission's statement that the filing of these default service plans is not intended "to inhibit in any way the ability of the stakeholders to recommend, and develop for implementation, changes in the competitive market that can help foster a more dynamic and robust retail electricity environment."[8] However, RESA respectfully requests that the Commission clarify in its final order that the recommendation to the EDCs to incorporate these concepts in their next default service plan petitions does not necessarily preclude their implementation prior to June 1, 2013.

In considering the impact of certain retail market enhancement measures on holders of existing wholesale contracts, RESA cautions against establishing a bright line test on this issue. The concern stems from the potential for certain policies to significantly increase migration

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[7] A copy of RESA's conceptual plan is available at http://www.puc.state.pa.us/electric/PDF/RetailMI/RESA_CONCEPTUAL_PLAN_TO_TRANSITION_FROM_EDC_PROVIDED_DEFAULT_SERVICE_(L0456208).pdf.

[8] Tentative Order at 8-9.

levels resulting in reduced volumes served by holders of existing default service contracts, which may have significant financial impacts to these suppliers. RESA recognizes the legitimacy of this concern. However, the potential for a particular policy to increase migration levels should not necessarily preclude its implementation. Many policies have the potential to significantly influence migration levels. Consider implementation of the Commission's www.papowerswitch website as an example. Creation of this site significantly increased customer awareness of retail choice and very likely increased shopping levels. Similarly, many of the operational reforms (better EDI transactions, publication of customer lists, greater access to data, etc.) instituted through the Commission's CHARGE working group have made it easier for EGSs to attract and serve customers, again likely increasing the overall level of customer migration. Clearly it would not have been appropriate to delay implementation of these policies based solely on the fact that they may increase shopping.

Accordingly, RESA encourages the Commission to take a balanced view in considering the implementation of various retail market enhancements while at the same time giving due consideration to existing wholesale contracts. Some policies (such as full scale transition of the default service role to another entity, or implementation of an opt-out auction or transfer of customers to EGSs) would severely upset existing wholesale contracts and RESA does not recommend implementation of these until existing contracts have run their course. However other policies (such as customer referral programs, accelerated switching timelines, education campaigns, and potentially small scale pilot programs for opt-in auctions) do not present the same level of concern and may be implemented sooner.

In fact, as the Commission recognizes in its order, a significant amount of time and effort has been spent by the stakeholders regarding the retail opt-in auction and customer referral program. RESA has lead the effort to work with all interested stakeholders to develop a New/Moving Customer Program which is intended to partially mitigate the current structural barrier resulting from existing protocols that automatically assign customers to EDC-provided default service at the time of new service initiation and when customers transfer service from one location to another.[9] Stakeholders have held several rounds of productive discussions on how this program could be implemented. There is no reason to delay implementation of the customer referral program to June 1, 2013 and to the extent the Commission's Tentative Order could be interpreted to require such delay, RESA respectfully asks that the Commission clarify this issue in its final order by making clear that EDCs may be directed to implement various retail market enhancements as soon as practicable in 2012.

B. Default Service Plans Should Be Structured With Flexibility So That Pro-Market Measures May Be Implemented As Soon As Practical

Consistent with RESA's position that the end goal of this investigation should be to transition the default service role to an EGS (or several EGSs) and that all necessary and appropriate measures toward achieving that goal should be taken in an expedient manner, RESA supports default service plan structures that provide sufficient notice to wholesale suppliers and provide as much flexibility as possible to implement the changes deemed appropriate by the Commission.

1. Plans Should Include Notice, Shorter Term Contracts, Larger Portions of Spot Market Purchase, Shorter Procurement Lead Times, and No Procurement Contracts That Eliminate Procurement Contracts Extending Past The Expiration Date Of The Default Service Plan.

RESA is sensitive to how changes in the retail market may impact wholesale suppliers who have successfully won bids to procure power for an EDC's default service obligation.

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9 A copy of the current discussion document is available at http://www.puc.state.pa.us/electric/PDF/RetailMI/RESA_DISCUSSION%20_FOR_NEW_MOVING_CUSTOMER_PROGRAM_AND_RELATED_CUSTOMER_CHOICE_EDUCATION_(L0456130).pdf

Unexpected changes to the market during the time these suppliers are fulfilling their contracts could have a negative impact in the marketplace. To address this concern, RESA recommends that the EDC default service plans make clear to potential wholesale supplier bidders that the Commission is undertaking this investigation which may result in increased overall customer migration levels and the implementation of various programs to educate customers about retail choice and facilitate customer migration to competitive suppliers. Wholesale suppliers should also understand that the transition of the default service function to one or more EGSs may occur directly after the expiration of the coming round of default service plans. By providing wholesale bidders notice, they can factor that migration risk into their bids and will be prepared when the Commission makes its final determinations regarding this investigation.

In addition to providing notice, the default service plans need to be structured with flexibility so that the pro-market measures can be implemented quickly and relatively easily. To do this, the plans must include shorter term contracts, incorporate a larger portion of spot market purchases, shorten the procurement lead time, and eliminate procurement contracts extending past the expiration date of the default service plan. Shortening the procurement lead time is necessary as longer term procurement contracts entered into significantly in advance of the service period covered by the contract effectively extends the length of the contracts further.

Adoption of these measures will bring the default service supply mix closer in line with current market prices and conditions. Further, the longer the contract term, the higher the capital costs that must be calculated into the wholesale supplier's bid prices. A default plan that consists of shorter contract terms, more closely aligned to the market rate, and free of contracts extending past the expiration date of the default service plan is one that can more easily adapt to the structural changes contemplated by the Commission in this proceeding.

2. Any move from quarterly to semi-annual rate adjustments must be balanced with changes to the underlying default service supply portfolio

The Commission also asks the EDCs to contemplate the incorporation of semi-annual default service rate adjustments within their next default service plans as the Commission is interested in weighing the benefits of semi-annual energy rate adjustments and/or six month reconciliation adjustments.[10] RESA believes that default service rates must be as market responsive and market reflective as possible to ensure that default service rates accurately track the market price of electricity. However, several factors influence the ultimate level of market responsiveness of default service rates. These include the frequency of changes to the default service rate, the frequency of any reconciliation adjustment, the length of underlying fixed price wholesale contracts, the procurement lead time embedded in underlying fixed price contracts, and the amount of spot market supply that is factored into the procurement portfolio. Currently most EDC default service plans utilize a quarterly adjustment to the retail rate (i.e. the Price to Compare, "PTC"), to permit the rate to adjust with market conditions. Also, most EDCs default service plans include in this quarterly rate adjustment changes to the rate to reconcile the costs of providing default service to consumers. Adoption of a less frequent rate adjustment or reconciliation schedule, such as implementing a semi-annual rate adjustment process, when considered in isolation is a step backwards in terms of market responsiveness. A less frequent rate adjustment schedule would delay the time in which the rate could be adjusted to reflect changes in the spot market pricing component, the expiration or renewal of underlying fixed price contracts, or to account for any variance in projected costs versus actual costs through the reconciliation process. A less frequent rate adjustment means that consumers are not seeing the true cost of their default service which leads to a default service rate that bears less of a

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[10] Tentative Order at 7.

relationship to the market. Without some rational relationship to the market, EGSs cannot price competing offers and may not enter that market. Such a result would undermine the intent of the Choice Act to promote retail electric competition. For these reasons, RESA cautions against adopting a less frequent rate adjustment process as a standalone measure.

However, as discussed earlier, the overall market responsiveness of the default service rate is influenced by many factors, including the nature of the underlying procurement portfolio. Accordingly, adoption of a semi-annual rate adjustment and reconciliation process coupled with the inclusion of shorter term contracts with shortened procurement lead times, and incorporating a larger portion of spot market purchases could produce an overall more market responsive default service rate. As such, any change to a less frequent PTC adjustment schedule should be balanced with other changes, as discussed above, to the default service plan to ensure a market responsive default service rate.

C. RESA Supports Expanding Hourly-Priced Default Service For Commercial Classes

The Commission recommends that the EDCs contemplate expanding hourly-priced default service to the medium sized commercial and industrial class.[11] RESA supports lowering the threshold for application of hourly priced service in the context of the upcoming default service plans on a transitional/interim basis. However, as explained in RESA's comments, it may be appropriate to consider transitioning this hourly priced service to a non-EDC default service provider as a long-term end goal.[12] EDC provided default service that relies on the fully market responsive hourly default service model for the large commercial and industrial market does not appear to create the same level of barriers to full competition as exist for the smaller

[11] Tentative Order at 8.
[12] RESA Comments at 21-23.

mass market. In fact, experience in both Pennsylvania and other utility service territories shows that hourly pricing has led to robust competition in the large customer market segment.

Therefore, requiring EDCs to expand the hourly priced service threshold to commercial and industrial customers is reasonable. Although the Commission suggests expansion to those customers with demand greater than 100 kW, consideration should be given to transitioning to an even lower threshold as long as the EDC remains the default service provider. All of these customers are larger businesses and institutions who are more sophisticated buyers of goods and services and can understand the implications of being placed on a more market responsive procurement plan. Moreover, as these customers migrate into the competitive market, hourly-priced default service is a reasonable procurement approach for the remaining default service customers. This is because the hourly priced service model provides the EDC more flexibility to handle migration and, therefore, minimizes the costs necessary to provide default service to those remaining on default service in the customer class.

D. RESA Supports Reliance On EGSs To Provide TOU Programs

The Commission recommends that EDCs contemplate contracting with a retail EGS to meet the EDC's statutory obligation to offer a TOU program as required by 66 Pa. C.S. § 2807(f)(5).[13] RESA supports the goal of allowing the EDCs to meet their statutory requirements by reliance on competitive suppliers. As explained in its comments, requiring the EDC to provide other generation products, such as TOU rates, rather than relying on the competitive market further entrenches the utility in the role as a generation services provider which may create barriers depending on how the product is structured. In addition, requiring EDCs to

[13] Tentative Order at 7.

provide these programs can lead to unintended anticompetitive pricing and can complicate the EDC's cost recovery and reconciliation process.[14]

There are a number of different ways – either individually or in combination – that can permit the EDC to meet its statutory TOU requirements while relying on the competitive market. For example, the EDC could structure the TOU rate as a discount off or a premium on an EGS's standard fixed rate consistent with historical on-peak and off-peak price differentials. The EDC can facilitate this method by incorporating billing logic that applies the discount/premium to any EGS's standard offer. As all of the major utilities offer consolidated billing, the discount/premium can be applied through consolidated billing. Therefore, the participating customer is experiencing a TOU rate but receiving generation service from an EGS. Thus, any EGS with a standard fixed price offer utilizing consolidated billing would be able to serve customers on a time of use product[15] Similarly, for EGSs that already provide a TOU rate through dual billing, the Commission could determine that the availability of these offerings is sufficient to satisfy the EDC's statutory requirements regarding TOU.

Another example of how the goal of utilizing the competitive market to provide TOU rates can be fulfilled is through a competitive bidding process. Ideally such a process would afford interested EGSs flexibility in the design and structure of the TOU program. Under this approach an EDC could establish broad policy objectives for the program and interested EGSs could address the specific rate structure details in their RFP responses. However, if the EDC is committed to certain elements of the TOU program, such as the definition of on-peak and off-peak hours and the summer and non-summer pricing periods, the EDC could include these as

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14 RESA Comments at 14-17.

15 For example, an EGS with an offer of 10 cents per kWh could bill this as a TOU offer to customers using a modified EDC consolidated billing program. The EDC would convert this price into an on peak rate of perhaps 12 cents per kWh and an off peak rate of 8 cents per kWh.

requirements of the RFP. The details of the RFP should be developed through a collaborative process to ensure maximum interest and participation from EGSs. The EDCs could begin by conducting an initial stakeholder information session with registered EGSs to inform EGSs of the EDC's anticipated smart meter capabilities and to solicit input regarding the structure of the RFP. The EDCs could then contract with an independent third party entity to develop and implement the RFP, similar to the approach used for default service procurement. The RFP process should allow for significant flexibility in the RFP responses. For example, EGSs should be free to propose the specific pricing structure and terms and conditions for the TOU rate option in their individual RFP responses. Also, while the RFP would solicit TOU rate options for each customer class, participating EGSs should be free to limit their RFP proposal to a specific customer class. This recognizes the fact that some EGSs provide service only to certain market segments. Additionally, the RFP could allow the EDC to select multiple EGS TOU rate options rather than implementing only a single TOU program with a single supplier. This would allow the EDC to experiment with different TOU pricing options and better refine future TOU programs.

RESA recommends that the Commission consider all of these options as well as others that may be suggested and determine the best way to implement a time of use program for a particular market. The focus should be on enabling the EDCs to utilize the competitive market to offer a TOU product as required by the statute.

III. CONCLUSION

RESA appreciates the efforts of the Commission and interested stakeholders to date in working toward achieving its end goal of improving Pennsylvania's retail electricity market.

RESA generally supports the recommendations of the tentative order that the EDCs incorporate various retail market enhancements in their next default service plans. However, in its final order, RESA requests that the Commission: (1) make clear that implementation of any pro-market measures developed through the collaborative process will be implemented as soon as practical notwithstanding the EDCs' default service plan filings; and, (2) that the upcoming default plan structures are to be structured with as much flexibility as possible to ensure that the Commission can easily implement such measures.

Respectfully submitted,

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