

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Retail Markets Working Group : Docket No. M-00072009

**COMMENTS ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE  
REGARDING PROPOSED GUIDELINES  
FOR EGS REFERRAL PROGRAMS**

**I. BACKGROUND**

The Pennsylvania Public Utility Commission (“Commission”) issued a policy statement at *Default Service and Retail Electric Market*, Docket No. M-00072009 (Order entered May 10, 2007) (“Policy Statement Order”). The Commission’s Default Service Policy Statement (“Policy Statement”) appears at Chapter 69 of Title 52, Pa. Code. In 52 Pa. Code §69.1812 – 69.1818, the Commission provided guidelines on the integration of default service with the competitive retail market. In ordering Paragraph 7 of the Policy Statement Order, the Commission directed the Commission staff to convene a Retail Markets Working Group (“RMWG”).

On January 5, 2010, the Commission staff sent an e-mail requesting Comments on its proposed guidelines for an electric generation supplier (“EGS”) referral program. Specifically, the Commission staff is trying to design a generic customer referral program through which customers could be referred to specific EGSs or a random EGS on a voluntary basis. The referral could occur at any time there is a contact by the customer with the electric distribution company (“EDC”).

The Office of Small Business Advocate (“OSBA”) submits the following comments in response to the Commission’s invitation.

## **II. ADJUDICATION**

The RMWG was created by the Commission’s Policy Statement Order entered on May 10, 2007. On June 10, 2008, interested parties in the RMWG submitted one round of position papers. As can be seen from the position papers submitted by the interested parties in the RMWG, many of the parties disagree as to whether or not the public interest would be served by creating customer referral programs. The position papers submitted by the statutory parties, *i.e.*, OSBA and OCA, informed the Commission and the other interested parties in the RMWG as to the concerns they had with creating customer referral programs that are opt-out and with creating customer referral programs that are based on other states’ models, *e.g.*, New York.<sup>1</sup>

The OSBA urges the Commission to delay further action on creating customer referral programs until the Commission has examined the most recent shopping statistics to determine whether customer referral programs are necessary. The OSBA also proposes that if customer referral programs are deemed necessary, the programs be opt-in. Furthermore, the OSBA recommends that the programs not be designed in a way which baits consumers into entering into contracts with EGSs for short-term savings and then switches those consumers to rates that could be higher than the default service rate, *i.e.*, the New York Model. Finally, because these issues are highly contested, the OSBA requests that the Commission decide them through an on-the-record adjudication which would then be subject to appeal.

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<sup>1</sup> OSBA Position Paper at 8-9 and OCA Position Paper at 5-6.

### III. GENERAL COMMENTS ON CUSTOMER REFERRAL PROGRAMS

Section 69.1815 of the Commission's Policy Statement, 52 Pa. Code § 69.1815, sets forth the Commission's guidelines with regard to customer referral programs. Significantly, the Policy Statement does not conclude that these programs *must* be established. Rather, Section 69.1815 states:

The public interest would be served by *consideration* of customer referral programs in which retail customers are referred to EGSs.<sup>2</sup>

Before the Commission determines proposed guidelines for customer referral programs, the Commission needs to determine whether or not the public interest would be served by creating customer referral programs. As part of the *consideration* of this matter, the Commission needs to examine whether customer referral programs are necessary for all customers in light of Pennsylvania's Shopping Statistics for January 1, 2010, as published by the OCA.

The Shopping Statistics indicate that a large number of commercial and industrial customers are shopping in the PPL Electric service territory. Specifically, 23.3% of the commercial customers and 68.6% of the industrial customers are shopping in PPL, which is above the percentage of customers who are shopping in Duquesne Light's service territory (19% for commercial and 52.7% for industrial).<sup>3</sup> By examining the load profiles of the customers that are, and are not, shopping, the Commission can assess whether customer referral programs are needed and what (if any) rate classes the customer referral programs should be targeting.

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<sup>2</sup> 52 Pa Code § 69.1815. (emphasis added)

<sup>3</sup> See Pennsylvania Electric Shopping Statistics January 1, 2010, at <http://www.oca.state.pa.us/>.

Furthermore, the Commission has already required that EDCs provide information about shopping. *See Policies to Mitigate Potential Electricity Price Increases*, Docket No. M-00061957 (Order entered May 17, 2007). Specifically, the Commission ordered that EDCs implement consumer education plans tailored to their service territories which include educating their customers about purchasing generation service from an alternative EGS.<sup>4</sup> While the OSBA agrees that consumers need to be educated regarding shopping, the OSBA disagrees with pushing consumers into customer referral programs which the consumers may not understand and which may expose those consumers to prices after the introductory period which exceed the default service rates.

#### **IV. SPECIFIC COMMENTS ON THE PROPOSED GUIDELINES**

##### **A. Enrollment**

On January 5, 2010, the Commission staff sent proposed guidelines for EGS referral programs to the RMWG. The proposed guidelines are not clear as to whether the customer referral programs would be opt-in or opt-out. As the OSBA noted in prior comments to the RMWG, the OSBA will not support referral programs such as PECO's Market Share Threshold Program in which customers were assigned to different EGSs.

With regard to PECO's Market Share Threshold Program, it has been alleged to the OSBA that many of the Small C&I customers assigned to an EGS would actually save money if they were returned to default service. Moreover, the OSBA has received consumer phone calls from PECO's Small C&I customers who were confused as to why they were automatically assigned to an EGS and who wanted to be returned to their default service provider immediately. It is the OSBA's position that it should be the

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<sup>4</sup> *Policies to Mitigate Potential Electricity Price Increases*, Docket No. M-00061957 (Order entered May 17, 2007) at 7.

business customer's choice to determine if the customer will, or will not, shop. In other words, a Small C&I customer should be on default service unless the customer takes affirmative action to be included in a referral program. The OSBA's position is in line with Section 2806(a) of the Public Utility Code, 66 Pa. C.S. §2806(a), which specifies that "[t]he ultimate choice of the electric generation supplier is to rest with the consumer."

Furthermore, the proposed guidelines would allow customers to be randomly assigned to an EGS, if the customer does not specifically choose a certain EGS.<sup>5</sup> By random assignment of customers to EGSs, some customers will receive a better post-introductory rate than others. As the OSBA observed with PECO's Market Threshold Program, inertia will keep a customer from shopping for a better deal unless the EGS's rates spike, thereby causing the customer to inquire into those rates. Assigning a customer to an EGS which may charge the customer more than the default service rate after two months of a discount will provide no net benefit to that customer.

#### **B. The Introductory Period**

The Commission staff proposed that "EGSs participating in a referral program shall offer all customers referred to them the introductory discount of 7% for the introductory period of two months." After the introductory period of two months, the EGS can set the price for the electric commodity service it is providing to the customer. Specifically, the EGS can change its price upon 15 days' notice to the customer as long as the notice is provided at least 30 days before the customer's next scheduled meter

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<sup>5</sup> Proposed Guidelines for EGS Referral Programs at para. 2.

reading.<sup>6</sup> Therefore, the EGS is allowed to set its own rate after the two-month introductory period, even if that rate is higher than what the default service provider is charging.

As Vice Chairman Christy recognized in his statement accompanying the proposed rulemaking in *Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets* at Docket No. L-2008-2069114, it is important to provide customers with the information needed to assess whether “the choice [to shop] they are making today will continue to be the right choice two, four or six months down the road.” The OSBA believes that the Vice Chairman’s concerns are well-founded, not only in the gas industry but in the electric industry as well.

As mentioned above, the OSBA has received numerous complaints from Small C&I customers of PECO Electric who were assigned to EGSs under the Market Share Threshold program. Although these customers initially saved money, they were not aware of, or did not understand, the parameters within which their EGSs could set prices after the guaranteed rate reduction transition period. At least when they complained to the OSBA, these customers were still shopping, even though they would have paid significantly lower rates on PECO’s default service than they were paying to their EGSs.

The Commission’s proposed guidelines are inviting the same type of problems Small C&I customers have had in the PECO Market Threshold Program. By allowing an EGS to offer a discount for only two months and then to set a rate which could be above the default service rate, the Commission is essentially allowing EGSs to use bait and switch tactics. Such tactics will likely frustrate consumers and sour them on shopping. As mentioned above, customers will not benefit by being placed into a customer referral

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<sup>6</sup> Proposed Guidelines for EGS Referral Programs at para. 5 and EGS Contract Option Requirements.

program that allows EGSs to charge above the default service rate after a two-month discount. The only party that will benefit from this type of customer referral program is the EGS. If the Commission is going to allow EGSs to offer a discount for only the first two months, the Commission should require that after the introductory period, EGSs can not charge consumers more than the default service rate for generation in that service territory.

**C. Incremental Costs**

With regard to recovering the EGS customer referral programs' administrative costs, the Commission staff's guidelines propose the following:

Costs for the administration of the [EGS customer referral program] by the utilities shall be recovered through a Retail Markets Surcharge. This charge shall be non-bypassable and shall be applicable to all customers within the residential and small commercial rate class.<sup>7</sup>

Throughout the regulatory review of electric default service regulations, some shopping advocates argued that an EDC should not be permitted to promote its own default service product. Unfortunately, the Commission's proposal to allow an EDC to recover "costs of competition related activities" could open the door to requiring the EDCs to incur costs to promote shopping. Costs related to the promotion of shopping are properly borne by the EGS and not by the EDC. Promotion of shopping at the expense of non-shopping customers is inconsistent with the Electricity Generation Customer Choice and Competition Act ("Choice Act") and with the principle that an EDC should not promote default service.

First, Section 2804(2) of the Public Utility Code, 66 Pa. C.S. §2804(2), provides that "the commission shall *allow* customers to choose among electric generation suppliers

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<sup>7</sup> Proposed Guidelines for EGS Referral Programs at para. 8.

in a competitive generation market through direct access.” (emphasis added) Nothing in Section 2804(2) authorizes the Commission to *encourage* customers to choose to shop or to choose not to shop.

Second, Section 2806(a) of the Public Utility Code, 66 Pa. C.S. §2806(a), specifies that “[t]he ultimate choice of the electric generation supplier is to rest with the consumer.” Nothing in Section 2806(a) provides for the EDC to *encourage* customers to choose to shop or to choose not to shop.

Third, although Section 2807(d)(3) of the Public Utility Code, 66 Pa. C.S. §2807(d)(3), provides for a consumer education program, Section 2807(d)(3) is not authority for requiring non-shopping customers to pay costs incurred to induce customers to shop. Specifically, Section 2807(d)(3) required an EDC to establish a consumer education program prior to the implementation of the EDC’s restructuring plan. However, the stated purpose of the consumer education program required by Section 2807(d)(3) was “informing customers of the *changes in the electric utility industry.*” (emphasis added) The reasonable inference is that the program was to educate consumers during the initial transition to competition rather than to promote competition thirteen years after enactment of the Choice Act.

Fourth, Section 2807(d)(2) authorizes the Commission to require EDCs and EGSs to provide consumer education on an ongoing basis. Significantly, however, Section 2807(d)(2) authorizes the Commission to “establish regulations to require *each [EDC] [EGS], marketer, aggregator and broker* to provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services offered by *that provider.*” (emphasis added) In other words, Section



2807(d)(2) stipulates that the EDC is to pay for costs related to the information about the default service product the EDC is offering and that the EGS is to pay for costs related to information about the product or products the EGS is offering.

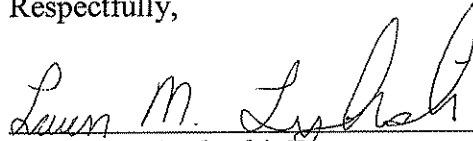
Furthermore, allowing recovery of administrative costs for EGS referral programs through a non-bypassable surcharge is inconsistent with the Commission's holding in *PPL Electric Utilities Corporation Retail Markets*, Docket No. M-2009-2104271 (Order entered August 11, 2009), in which the Commission stated that "default customers should not subsidize those customers who shop."<sup>8</sup>

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<sup>8</sup> *PPL Electric Utilities Corporation Retail Markets*, Docket No. M-2009-2104271 (Order entered August 11, 2009) at 29.

**WHEREFORE**, the OSBA respectfully requests that the Commission consider the foregoing comments before it implements guidelines regarding electric generation supplier customer referral programs.

Respectfully,



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