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I. INTRODUCTION

As the Commission correctly notes in its order initiating this proceeding, “in 1996, Pennsylvania emerged as a national leader in electricity policy” with the passage of the Electricity Generation Customer Choice and Competition Act (“Choice Act”).¹ The Choice Act was intended to give the Commonwealth’s residents and businesses the opportunity to free themselves from their decades long need to rely exclusively on the electric distribution company (“EDC”) for their electricity generation service.² Instead, the Choice Act envisions consumers receiving their generation from the competitive market through electric generation suppliers (“EGS”) such as Liberty Power Corp. LLC (“Liberty Power”)³

The reason for transitioning away from the traditional monopoly supply approach is clear – “competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.”⁴ The legislature implicitly recognized that a well functioning, robust competitive market is the best way to provide the most innovative products and services at the most reasonable prices. Recognizing that breaking the well established monopoly would take time, the Choice Act set forth a transition plan which the Commission has been dutifully implementing for almost a decade and a half now – first through EDC restructuring plans, then through the adoption of regulations implementing the Choice Act and, more recently, through the approval of default service plans for the EDCs as well as numerous retail market opening initiatives and rulemakings.

Pennsylvania has made a tremendous amount of progress in implementing the goals of the Choice Act. Today, EGSs (including Liberty Power) are providing service to all types of customers in Pennsylvania. However, the status of retail competitive market development is markedly different across customer classes and EDC service territories. Customer migration

¹ *Investigation of Pennsylvania’s Retail Electricity Market*, Docket No. I-2011-2237952, Order entered April 29, 2011 (“*Investigation Order*”) at 1; 66 Pa.C.S. § 2801 et. seq.

² 66 Pa. C.S. § 2806(a).

³ Liberty Power is a privately-held electric generation supplier founded in 2001. Liberty Power is currently licensed in 16 states, and is operating in 13 of those markets serving businesses of all sizes, as well as the public sector and residential customers. Liberty Power’s Pennsylvania operations began in earnest in the fall of 2009 when it began serving customers in the Duquesne and PPL territory. Liberty Power has since expanded to the all major utility territories in the Commonwealth.

⁴ 66 Pa. C.S. § 2802(5).

levels are substantially higher for the large commercial market where default service is structured as a fully market responsive hourly priced product. On the other hand, in the smaller customer market, where default service is structured as a quarterly adjusted fixed price product based largely on longer term supply contracts, customers have been much slower to switch. To date, only approx. 20% of all Pennsylvania service accounts have switched to a competitive supplier. Now that the generation rate caps – an artificial pricing of generation that bore no relationship to the market price – have been removed for all EDCs the question becomes whether additional actions are needed to realize the “end state” envisioned by the Choice Act which is a market where competitive suppliers – and not the monopoly EDCs – are providing generation service to a significant number of consumers in all customer classes. Liberty Power’s answer is unequivocally yes.

In summary, Liberty Power fully supports the Commission’s initiative in this proceeding to “to address the status of the current retail market and explore what changes need to be made to allow customers to realize the benefits of competition.”⁵ As an active member of the Retail Energy Supply Association (“RESA”) since 2007, Liberty Power supports the comments RESA has submitted in this proceeding. Liberty Power’s individual comments primarily seek to reinforce RESA’s position by emphasizing certain points raised by RESA.

II. RESPONSES TO QUESTIONS SET FORTH BY COMMISSION

A. Question No. 1: What is the present status of competition for retail electric generation for customers, by class and service territory, and for alternative suppliers?

Competition truly began to develop more expansively in Pennsylvania as the rate caps in the PPL service territory were lifted on January 1, 2010. True, rate caps in territories like Duquesne, Penn Power, Pike County, and others did expire prior to January 2010, but generally speaking these were smaller territories representing only a small percentage of Pennsylvania ratepayers. The expiration of the rate caps in PPL, as well as various market opening policies adopted by the Commission led to a renewed interest in the Pennsylvania retail electric market, and led to market entry by a number of competitors. On January 1, 2011 the remaining

⁵ *Investigation Order* at 2.

generation rate caps expired (for consumers living in the PECO, West Penn Power (Allegheny), and Met-Ed/Penelec territories). The removal of rate caps across the state, combined with the proven growth of the competitive market in PPL, along with Commission policies that foster customer choice under a competitive framework, led to even more competitors, offering more products and services, in more territories. Today, all types of customers are enjoying the benefits of competition, and have the ability to select among a wide and growing variety of electric products or services that best suits their needs – whether it be budget certainty, sustainability, customer service, cost-savings, etc.

This Commission, the legislature, consumer advocates, and market participants (including retail and wholesale suppliers and the EDCs) deserve significant credit for working to implement foundational policies to promote the development of retail competition and for fostering greater customer awareness of retail choice. While the initial post-rate cap period has been widely viewed as a success story, the current status of retail competition in Pennsylvania is far from the desired end-state envisioned when the Choice Act was first enacted.

Switching or migration statistics are often considered one appropriate measure of the relative success of retail markets, as it provides a snapshot in time of how many customers (and their respective load) are being served by an EGS. Below are the Commission’s latest switching statistics:

CUSTOMERS SWITCHING TO AN ELECTRIC GENERATION SUPPLIER													
WEDNESDAY, MAY 25, 2011													
Electric Utility	Date Updated	Total Switching Customers			Residential Switching Customers			Commercial Switching Customers			Industrial Switching Customers		
		#	%	% of Load	#	%	% of Load	#	%	% of Load	#	%	% of Load
Duquesne	5/21/11	163,617	27.9	68.9	144,120	27.5	29.9	18,337	30.6	76.7	660	57.0	92.1
Met-Ed	5/25/11	17,777	32	38.5	7,066	1.5	1.0	9,996	15.5	37.0	715	48.7	83.0
PECO	5/24/11	306,697	19.0	51	243,061	17	18	61,074	38	54	2,562	81	91.0
Penelec	5/25/11	33,429	5.7	43.8	15,449	3.1	1.0	17,111	20.8	39.3	869	54.0	85.4
Penn Power	5/25/11	30,269	18.9	54.6	25,632	18.3	12.4	4,463	22.7	64.7	174	71.3	96.6
Pike County	5/17/11	3,343	72.0	63.0	2,692	74.0	71.0	648	67.0	56.0	3	43.0	63.0
PPL	5/21/11	543,668	38.7	73.4	464,630	37.9	42.4	76,358	44.0	83.2	2,680	60.8	95.7
UGI	5/21/11	464	0.7	16.0	1	0.0	0.0	401	4.8	29.4	62	32.8	76.3
West Penn Power	5/25/11	31,933	4.5	35.3	13,845	2.3	0.6	17,978	18.9	50.1	110	87.3	64.8
Statewide Total	5/25/11	1,131,197	20.0 *	49.4 **	916,496	18.4	19.6 **	206,866	29.1	54.5**	7,835	59.5	83.1 **

* Percentage based on the total number of customers of regulated electric utilities in Pennsylvania as of 12/31/10. (4,970,057 Residential + 680,045 Commercial/Industrial = 5,650,102 Total Customers).

** Percentage represents megawatt hours currently delivered by alternative suppliers.

From these statistics, there are some key indicators that suggest competitive electric markets in the Commonwealth are still far from fully developed:

- 80% of total Pennsylvania customers receive their electric supply from their local default service provider
 - While some may suggest the market simply needs time (without further “intervention”) to develop, these statistics show that it is not simply “just a matter of time”. Case in point, Penn Power, where rate caps expired long ago (2007), yet nearly 73% of commercial customers remain with the local EDC. Duquesne figures tell a similar story.
- There are significant gaps between the percent of *customers* that have switched, versus the percent of *load* that has switched (within each customer segment).
 - These findings suggest that the largest energy-users (with the highest energy costs) are arguably more knowledgeable about their electric choice options and more likely to exercise their power to choose a retail provider, while smaller, perhaps less sophisticated energy-users are either unaware or unsure about their ability to select among a number of supply options. Mandatory hourly pricing (or more market reflective pricing) may also be a contributing factor to this gap.

B. Question No. 2: Does the existing retail market design in Pennsylvania present barriers that prevent customers from obtaining and suppliers from offering the benefits of a fully workable and competitive retail market? To the extent barriers exist, do they vary by customer class?

Yes to both questions. Liberty Power generally supports the comments provided by RESA, which identifies several barriers to entry and competitive advantages of the utility that impede competitive market development by varying degrees based on customer class. Specifically, points made about long-term procurement contracts, a lack of full unbundling (appropriately reflecting all costs of providing electricity supply in the Price to Compare), customer acquisition costs (exponentially less for an EDC than EGS), and a lack of equal access to necessary data are all valid concerns. For the purposes of these comments, Liberty Power will emphasize points RESA made regarding the “status quo bias”.

In Pennsylvania, the utility is considered the “default service provider” (“DSP”), meaning by “default” a customer will be served by the local utility under its default or standard offer service (“SOS”) rate unless they make an affirmative choice to change away from the default supply product and try an “alternative” option (an EGS product or potentially another product

offered by the utility, such as time-of-use products). As stated earlier, 80% of customers in Pennsylvania have not switched to an EGS. What is not clear is how many, if any, made an affirmative choice to stay with the utility, versus how many customers simply are not aware of their options, or have not contemplated making a choice in their electric supplier. Liberty Power believes that a “Newtonian” status quo bias does exist. Isaac Newton’s First Law of Motion holds that an object at rest will remain at rest until some force causes it to move. The very existence of a “default option” is counterproductive. A “default option” does not change consumers’ inertia (with up to 80% of Pennsylvania electric consumers “at rest”), and runs counter to one of the primary goals of electric restructuring which is to encourage consumers to make an affirmative choice for their electricity supplier. Moreover, establishing the incumbent EDC as the default service provider exacerbates the problem because nothing is changed from the customer’s perspective in terms of who is supplying their generation service – a customer at rest will remain at rest until some external force causes it to move.

Liberty Power acknowledges the strength of the status quo bias varies on a sliding scale from the smallest energy-consumers (greatest bias) to the largest energy-consumers (least bias). In part, this is because there is a greater presence of external forces that challenge the status quo (or default service) bias. For example, a large energy-user (such as a manufacturer) is most likely operating in very competitive industry, and must seek out ways to reduce costs and overhead in order to stay in business. Additionally, the implementation or lowering the threshold of mandatory hourly pricing (“MHP”) is also an external force that can break through the status quo bias by necessitating a re-evaluation (by the customer) of their energy options. In short, residential customers and smaller energy-users are not subject to the same external forces, or at least, not to the same degree.

Liberty Power encourages the Commission to promote policies that encourage consumers to make an affirmative choice regarding their electric supply, just as consumers make affirmative decisions regarding telephone, internet, or television service.

- C. Question No. 3: What are the economic and managerial costs associated with electric distribution companies (EDCs) fulfilling the default service role? Are the EDCs accurately passing those costs along to default service customers? Do default service rates include any elements that are not cost-based? Is an examination of distribution rates needed to ensure proper cost**

allocation? Are there barriers to competition as a result of having EDCs provide default service?

At this time, Liberty Power has nothing to add to the comments submitted by RESA.

D. Question No. 4: Are there unintended consequences associated with EDCs providing default service, and related products, such as time-of-use rates?

At this time, Liberty Power has nothing to add to the comments submitted by RESA.

E. Question No. 5: Should default service continue in its current form? Does default service impede competition or otherwise prevent customers from choosing electricity products and services tailored to their individual needs? Does default service provide an advantage to the incumbent EDC and/or its generation affiliate(s)?

No, default service should not continue in its current form, particularly as it exists today for smaller energy-users. While the competitive retail market has shown greater development for larger energy-users, for the reasons outlined by RESA and Liberty Power in its response to various questions above, the current structure of default service impedes competition.

F. Question No. 6: Can/should the default service role be fulfilled by an entity, or group of entities, other than the EDC? If the default service role should be filled by an entity other than an EDC, what mechanisms could be employed to transition the default service role away from the EDC and onto competitive electric generation suppliers (EGSs)? Are different approaches appropriate for different customer classes? What criteria should be used to ensure that EGSs are qualified to assume the default service role and maintain reliable service?

In line with Liberty Power's earlier recommendation to foster policies that encourage consumers to make an affirmative choice by selecting an electric provider, Liberty Power holds that there should not be a default service provider. However, the role of the Provider of Last Resort ("POLR") is a necessary function in the marketplace, which can and should be fulfilled by a competitive EGS rather than the EDC.

To clarify, in Pennsylvania, the local utility serves as the DSP as well as the POLR. While some may use the terms DSP and POLR interchangeably, Liberty Power does not. In our view, POLR service is essentially a "safety net" for customers. If a customer is with a retailer

that defaults (a rare scenario), then the customer is transferred to a POLR under a regulated-rate. Also, there may be a scenario (also rare) where a customer cannot find an EGS willing to serve them (perhaps a large industrial customer with very poor credit). Whatever the reason may be, to ensure continuity of electric service, there must always be a POLR. The distinction between a DSP and a POLR is the DSP serves customers who have not made an affirmative choice⁶ while a POLR is there as a “regulatory backstop” to serve customers who either have or attempted to make an affirmative choice, but cannot be served by their selected EGS. In many markets, including Pennsylvania, the local utility provides both services – default and POLR service, which is why many people may not draw a distinction between the two. However, it is noteworthy that there are competitive retail electric markets where there is no default service provider, specifically Texas and the United Kingdom (where customers must make an affirmative choice if they want electric supply service) and there are also markets where EGS or retailers serve as a POLR. For example, Liberty Power serves as a POLR in Texas (as LPT LLC) for small commercial customers (below 50 kW) in all the competitive territories within the state.⁷

Liberty Power is generally supportive of RESA’s response (to Question No. 6). Liberty Power supports exploring a variety of mechanisms to transition customers away from the inert state of EDC default service to ultimately a state of affirmative action where customers must select a competitive offer or be placed on POLR service (which would be an EGS provided service). Liberty Power agrees with RESA that the mechanisms should adhere to common set of principle:

- A transition period should be established prior to transitioning the [POLR] role to competitive retail providers during which customers would be encouraged to affirmatively select an EGS;
- Any mechanism to transition customers to competitive retail providers should be nondiscriminatory among the EGSs and allow for maximum participation among eligible retail suppliers, rather than assigning customers to a single supplier; and

⁶ Liberty Power recognizes it is possible that some customers that have never shopped may in fact have examined all their options and made an affirmative decision to remain with the default service provider. Unfortunately, the number of customers who have made an affirmative choice to stay with the utility is not currently known nor easily measured

⁷ Public Utility Commission of Texas, Project No. 38229 – Provider of Last Resort – Final Determination (Revised); October 15, 2010

- Once customers are transitioned to this new [form of] default service, customers should maintain an unfettered ability to affirmatively choose an EGS (e.g., no switching restrictions or penalties)

In its comments, RESA outlines a process for a “transition period”, which refers to the period of time between now and when the EDCs would no longer be in the default service role (June 1, 2013, as suggested by RESA). The focus of the transition period is utilizing comprehensive educational campaigns to *facilitate* and *encourage* affirmative selection of an EGS. Elaborating further, RESA suggests customers would be directed to select from a list of available offers at new service initiation, when moving or transferring service, through bill inserts and when contacting the EDC’s customer care center. Liberty Power supports this concept, which is utilized in other markets (such as New York). Liberty Power also wishes to emphasize its support of another concept briefly outlined by RESA. RESA states prior to the “transition date” a notice should be sent to all customers to facilitate an affirmative selection of a supplier by individual customers.

To elaborate Liberty Power’s own understanding of the concept, prior to the end of the “transition period” all customers taking default service will receive an opt-in notice. Customers would affirmatively select (opt-in) from a checklist of competitive offers from a number of EGSs operating in the given utility area, serving that particular customer segment. There would also be the option to remain with the DSP. If the customer never takes affirmative action by responding to the notice, the status quo (default service) for that customer would be maintained. In implementing this process, the Commission, arguably, is not just *encouraging* an affirmative selection of an electric supplier, they are *asking* the customer to make an affirmative selection. While *informing* a customer of their competitive options is a great start, to be most effective, a customer needs to be *asked* to make an affirmative choice (of course, the customer can always decline to make a choice). The Commission would then have a greater sense for, out of the 80% of customers who have not switched to an EGS, how many are making an affirmative choice to remain with the DSP (by selecting the check box to remain on default supply) versus how many consumers are unresponsive.

G. Question No. 7: How can Pennsylvania's electric default service model be improved to remove barriers to achieve a properly functioning and robust competitive retail electricity market? Are there additional market design changes that should be implemented to eliminate the status quo bias benefit for default service?

To eliminate the status quo bias, there should be no “default” service as explained above (in response to Question No. 6). Customers should make an affirmative choice. Under the assumption that there is a default service provided by the local utility, RESA provides a number of suggestions for the Commission to consider *only if* the Commission rejects transitioning away from EDC provided default service. Liberty Power is supportive of policy recommendations made by RESA (found in the response to Question No. 8).

H. Question No. 8: What modifications are needed to the existing default service model to remove any inherent procurement (or other cost) advantages for the utility?

Liberty Power supports the comments by RESA. To review, first and foremost, default service rates must be market-responsive/reflective, utility rates need to be properly unbundled, default service should be “plain vanilla”, and EGS must be provided more flexible access and control of the content and format of customers’ consolidated bills, for those EGS that choose to utilize it.

I. Question No. 9: What changes, to Regulations or otherwise, can the Commission implement on its own under the existing default service paradigm to improve the current state of competition in Pennsylvania?

At this time, Liberty Power has nothing to add to the comments submitted by RESA.

J. Question No. 10: What legislative changes, including changes to the current default service model, should be made that would better support a fully workable and competitive retail market?

At this time, Liberty Power has nothing to add to the comments submitted by RESA.

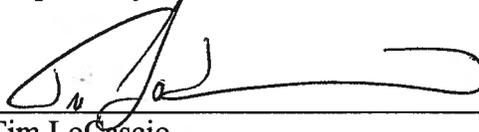
K. Question No. 11: Are there, or could there be, potential barriers being created by the implementation of the EDC Smart Meter plans?

At this time, Liberty Power has nothing to add to the comments submitted by RESA.

III. CONCLUSION

Liberty Power urges the Commission to find during Phase I of this investigation that several elements of the current default service structure and retail market design in Pennsylvania are not fulfilling the objectives of the Choice Act for all consumers and must be improved. Consumers must be fully educated and aware of their electric choice, awoken from their inert state, and encouraged to exercise their power to choose, by making an affirmative decision regarding their electric supplier. As part of Phase II of this proceeding, Liberty Power supports a detailed examination of all the changes most likely to effectuate the goals of the Choice Act to include a full analysis of how each of the changes may be implemented. Liberty Power appreciates the Commission's initiative in opening this investigation and looks forward to continued participation. Liberty Power also wishes to formally recognize and thank RESA's counsel and its members for its extensive advocacy efforts, both in this proceeding and the many others before it.

Respectfully submitted,



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Date: June 3, 2011