

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE

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June 3, 2011

HAND DELIVERED

Rosemary Chaivetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

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SECRETARY'S BUREAU

Dear Secretary Chaivetta:

In accordance with your Order entered on April 29, 2011, I am delivering for filing the original plus five copies of the Comments, on behalf of the Office of Small Business Advocate, in the above-captioned matter.

A copy of the comments has been served on the Office of Competitive Market Oversight via electronic mail. If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink that reads "William R. Lloyd, Jr." with a stylized flourish at the end.

William R. Lloyd, Jr.
Small Business Advocate
Attorney ID No. 16452

Enclosures

cc: Office of Competitive Market Oversight
ra-OCMO@state.pa.us

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

In approving the merger of FirstEnergy Corporation and Allegheny Energy Corporation, the Pennsylvania Public Utility Commission (“Commission”) stated its intention to initiate a statewide investigation “with the goal of making recommendations for improvements to ensure that a properly functioning and workable competitive retail electricity market exists in the state.”¹

By Order entered April 29, 2011, the Commission initiated the aforementioned investigation at Docket No. I-2011-2237952. In Ordering Paragraph No. 3, the Commission set June 3, 2011, as the deadline for interested parties to submit comments.

Although Ordering Paragraph No. 3 invites comments, the Commission also directed interested parties to answer a series of questions.² In accordance with that directive, the comments of the Office of Small Business Advocate (“OSBA”) consist of the following answers to the questions posed by the Commission:

¹ See *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.

² See April 29, 2011, Order, at 2-4.

1. What is the present status of competition for retail electric generation for customers, by class and service territory, and for alternative suppliers?

a. Measuring Success

The success or failure of retail competition should be measured by whether customers have a reasonable opportunity to shop and not necessarily by how many customers take advantage of that opportunity.

According to the periodic statistical reports filed by the electric distribution companies (“EDCs”), there is a significant amount of shopping by small business customers in the service territories of the major EDCs.³ That implies that there are a significant number of electric generation suppliers (“EGSs”) making competitive offers to small business customers.

It is likely that some small business customers are unaware of their shopping opportunities, are confused by the process, or both. The solution is to improve consumer education. The solution is *not* to pressure those customers into shopping by ending default service, by making default service rates “ugly,” or by assigning customers to service by an EGS on an opt-out basis.

The focal point of today’s political debate is by how much to *reduce* the role of government. Having state government decide for customers that they should shop for electricity would not be consistent with limiting the role of government.

b. Savings Not Universal

Small business customers range from one-person offices and retail shops to box stores and small manufacturing facilities. Because their load profiles vary considerably, it would be

³ For default service procurement purposes, small business customers are usually grouped into one or more procurement groups. Depending upon the EDC, small business customers are labeled as “Commercial” customers, small commercial and industrial (“Small C&I”) customers, or Medium C&I customers.

incorrect to assume that all small business customers (or even most of them) would save money if they shopped for electricity.

The bids by wholesale suppliers in a default service procurement reflect the load profile of all of the customers in a given procurement group. All else equal, a small business customer is likely to save money by shopping if the percentage of the customer's usage that is on-peak is less than the average for the procurement group. On the other hand, a small business customer could waste money by shopping if the percentage of that customer's usage that is on-peak is more than the average for the procurement group.⁴

Therefore, it would be a perfectly rational decision for "peakier" small business customers to remain on default service.

c. Savings v. Costs

The assumption that more small business customers should shop ignores the competing demands for such customers' time and attention.

According to the reported data, shopping is higher among small business customers with maximum peak loads above 100 kW than among customers with maximum peak loads of 100 kW or below. A logical inference is that a small business' motivation to shop increases as the potential benefit increases.

The municipal aggregation agreement FirstEnergy Solutions ("FES") negotiated with the City of Meadville may provide a reasonable estimate of the potential savings for a small business shopping customer. In that agreement, FES promised a 4% discount from the default service rate

⁴ All else equal, unless an EGS provides a rate customized to an individual small business customer, the group of shopping customers for which the EGS charges the same rate will also experience intraclass subsidization. However, the intraclass subsidization may be less than in a default service procurement group if an EGS aggregates customers with less diverse load profiles than is found in a typical default service procurement group.

for small business customers with maximum peak loads of 25kW or below.⁵ Meadville is located in the service territory of the Pennsylvania Electric Company (“Penelec”). The posted Price To Compare (“PTC”) for customers with a maximum peak load of no greater than 25 kW in the Penelec service territory was \$0.07815 per kWh for the period ending May 31, 2011.

According to the Commission’s April 15, 2011, *Rate Comparison Report*, a customer with a 25 kW maximum peak load is assumed to use 10,000 kWh per month. Therefore, that customer would have saved \$31.26 per month under FES’s municipal aggregation proposal.

According to the same *Rate Comparison Report*, a Penelec customer with a maximum peak load of only 5 kW is assumed to use 1,000 kWh per month. Therefore, a customer of that size would have saved only \$3.13 per month under FES’s proposed municipal aggregation.

It is questionable whether savings of that magnitude would be sufficient motivation for the smallest of the small business customers to devote the time and effort required to shop.

d. Faulty Comparison

Comparing an EGS’s rate to the default service rate is not an apples-to-apples comparison. The Commission has focused substantial attention on purchase of receivables (“POR”) programs in an effort to reduce perceived discrimination against shopping. However, instances of actual discrimination in favor of shopping have received much less, if any, attention.

As interpreted by the Commission, the Electricity Generation Customer Choice and Competition Act (“Competition Act”), 66 Pa. C.S. Ch. 28, prohibits a default service provider from requiring a customer to remain on default service for a specified period of time and from limiting a shopping customer’s return to default service. As a result, wholesale suppliers in a

⁵ *Petition of FirstEnergy Solutions Corp. for Approval to Participate in Opt-Out Municipal Energy Aggregation Programs of the Optional Third Class Charter City of Meadville, the Home Rule Borough of Edinboro, the Home Rule City of Warren and the Home Rule City of Farrell* (“FES Petition”), Docket No. P-2010-2209253 (Filed November 9, 2010), at 9, para. 14.

default service procurement must build a premium for switching risk into their bid prices. In contrast, an EGS has the right to lock-in a shopping customer for a specified period of time. Therefore, the EGS's rate may often be lower than the default service rate simply because the EGS does not face the same switching risk as a wholesale bidder.

e. Beating the Market

There is no reason to believe that an EGS will be more successful in predicting the direction of market prices than the wholesale bidders in default service procurements. The Commission has frowned on the use of long-term contracts for default service load because of a concern that such contracts will become out of sync with the market price. All else equal, an EGS will face that same problem if the EGS offers to lock-in a rate for multiple years. This raises a question as to whether an EGS customer with a long-term contract will actually save money.

f. Consumer Education

As shown by the following statutory analysis, the Competition Act does not require customers to bear the marketing costs of EGSs.

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 in a competitive generation market through direct access.” (emphasis added) Nothing in Section 2804(2) provides that the Commission is to *encourage* customers to shop or 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 15 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) implies 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.

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?

According to the periodic statistical reports filed by the EDCs, there is a significant amount of shopping by small business customers in the service territories of the major EDCs.

That implies that there are a significant number of EGSs making competitive offers to small business customers. Therefore, there is no basis for concluding that barriers to competition are a significant impediment to a competitive retail market to serve those customers.

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?

The Commission has already approved POR programs for the major EDCs. There may, or may not, continue to be some procurement-related costs remaining in distribution rates. However, it is unclear whether any such costs are of sufficient magnitude to distort competition in a substantial way.

4. Are there unintended consequences associated with EDCs providing default service, and related products, such as time-of-use rates?

Instituting time-of-use (“TOU”) rates during a default service period (rather than at the beginning of the period) has created a potential shortfall in the EDC’s revenue. Specifically, the EDC must pay the wholesale supplier under a load-following contract on the basis of the bid price even if TOU customers are, on average, paying less than the default service rate.⁶

Beginning with the next default service period, the EDC may be able to avoid this problem by acquiring electricity for TOU customers separately from the electricity acquired for default service customers.

⁶ See, e.g., *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-2009-2122718 (Order entered March 9, 2010), at 8-18.

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)?

Other than ways to remove alleged barriers to retail competition, the most frequently litigated issue with regard to default service design has been whether a managed portfolio or a full-requirements contract will produce “the least cost to customers over time.” Unfortunately, this debate has been largely conceptual. When empirical evidence has been offered, that evidence has been difficult to evaluate because it has usually involved procurement in other states by utilities about which the Commission and most parties have limited knowledge. Furthermore, that evidence has often involved the purchase of default service electricity for customers whose right to shop is much more constrained than in Pennsylvania.

However, the Commission will soon have a very good opportunity to compare and analyze the results of differing procurement plans. Specifically, PPL Electric Utilities Corporation (“PPL”), PECO Energy Company (“PECO”), Metropolitan Edison Company (“MetEd”), and Penelec will be acquiring default service electricity for small business customers via a combination of full-requirements contracts and spot market purchases through May 31, 2013. At the same time, these default service providers (“DSPs”) will be procuring default service electricity for residential customers through a variety of spot market purchases, energy block purchases, and full-requirements contracts.⁷

⁷ See *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 Through May 31, 2014*, Docket No. P-2008-2060309 (Order entered June 18, 2009); *Petition of PECO Energy Company for Approval of Its Default Service Program and Rate Mitigation Plan*, Docket No. P-2008-2062739 (Order entered June 2, 2009); and *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Its Default Service Programs*, Docket Nos. P-2009-2093053 and P-2009-2093054 (Order entered November 6, 2009).

During that same time period, Citizens' Electric Company ("Citizens") and Wellsboro Electric Company ("Wellsboro") will be using an actively-managed portfolio to serve both residential and non-residential customers.⁸ In addition, UGI Utilities, Inc.—Electric Division ("UGI") will be using an actively-managed portfolio to serve residential customers and a combination of spot market purchases and full-requirements contracts to serve small business customers.⁹

Therefore, the Commission will have Pennsylvania-specific empirical evidence to help determine whether one procurement methodology consistently outperforms the other. The Commission will also have Pennsylvania-specific empirical evidence to help evaluate whether different contract lengths, different percentages of spot market purchases, or different procurement dates consistently yield significantly different default service rates. That empirical evidence should also enable the Commission to analyze what, if any, effect the choice of procurement methodology, contract lengths, spot market purchase quantities, and procurement dates has on shopping. Until it has assembled and analyzed that evidence, neither the Commission nor the General Assembly should change the design of default service.

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

⁸ See *Joint Default Service Plan for Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company for the Period of June 1, 2010 through May 31, 2013*, Docket Nos. P-2009-2110798 and P-2009-2110780 (Order entered February 26, 2010).

⁹ See *Petition of UGI Utilities, Inc.—Electric Division For Expedited Approval of a Default Service Procurement, Implementation and Contingency Plan*, Docket No. P-2008-2022931 (Order entered July 17, 2008); *Petition of UGI Utilities, Inc.—Electric Division For Approval of a Default Service Rate and AEPS Implementation Plan*, Docket No. P-2008-2063006 (Order entered January 22, 2009); and *Petition of UGI Utilities, Inc.—Electric Division for Approval of a Default Service Program Pursuant to 52 Pa. Code §§54.181-54.189, and Associated Potential Transactions with Affiliated Entities*, Docket No. P-2009-2135496 (Order entered May 11, 2010).

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?

The Commission has the statutory authority to approve a DSP other than the EDC.¹⁰ However, the Commission is prohibited by statute from terminating the default service option. In that regard, the statute explicitly states that “if a customer contracts for electric generation supply service and the chosen electric generation supplier does not provide the service or if a customer does not chose an alternative electric generation supplier, *the default service provider shall provide electric generation supply service to that customer . . .*”¹¹ (emphasis added)

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?

1. Summary

In view of the level of shopping among small business customers, it is not obvious that there are significant barriers to shopping. Unfortunately, the EGSs have traditionally opposed the release of market share and pricing data. Without that data, parties cannot conduct a rigorous review of the shopping statistics and of the EGSs’ assertion that any remaining barriers to competition are serious enough to have a major impact on shopping by small business customers.

2. Customer Referral Programs

The Commission has periodically evaluated proposals by which customers could be referred to specific EGSs or a random EGS on a voluntary basis. Some of those proposals have

¹⁰ See the definition of “Default service provider” in 66 Pa. C.S. §2803.

¹¹ See 66 Pa. C.S. §2807(e)(3.1). The Commission has already set forth the procedure and the parameters for approving an alternative DSP. See 52 Pa. Code §54.183.

simply involved providing information to customers to assist them in deciding whether or not to shop. However, some of the proposals have involved assigning customers to service from an EGS unless the customers affirmatively choose to remain on default service.

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.¹²

Before the Commission determines that each EDC must implement an aggressive customer referral program, 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 the significant shopping that is already occurring. By examining the load profiles of the customers that are, and are not, shopping, the Commission could assess what (if any) rate classes (or parts of rate classes) the customer referral programs should be targeting.

Significantly, the Commission has already required that EDCs provide information about shopping. In that regard, 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.¹³ While the OSBA agrees that customers need to be educated regarding shopping, the OSBA disagrees with pushing customers

¹² 52 Pa Code § 69.1815. (emphasis added)

¹³ *Policies to Mitigate Potential Electricity Price Increases*, Docket No. M-00061957 (Order entered May 17, 2007), at 7.

into referral programs which they may not understand and which may expose them to prices after the introductory period which exceed the default service rates.

If customer referral programs are deemed necessary, the programs should be opt-in. Furthermore, the programs should not be designed in a way which baits customers into entering into contracts with EGSs for short-term savings and then switches those customers to rates that could be higher than the default service rate. Finally, because these issues are highly contested, the Commission should decide them through an on-the-record adjudication which would then be subject to appeal.

3. Opt-Out

a. Bad Policy

The OSBA is strenuously opposed to a customer referral program that would assign a small business customer to service from an EGS on an opt-out basis. PECO's Market Share Threshold ("MST") Program illustrates the practical problems with the opt-out process.

Under PECO's MST Program, the parties to a *settlement* agreed that PECO would begin randomly assigning customers to EGSs only if shopping did not reach a designated level by January 1, 2003. Specifically, the MST was to be implemented only if shopping did not exceed 50% for residential and commercial customers (based on the number of customers for residential and small commercial customers, and based on peak load for large commercial customers). Failure to reach the specified shopping levels by January 1, 2003, triggered PECO's duty to make random assignments of customers to EGSs on an opt-out basis.¹⁴

¹⁴ *Petition for Approval of PECO Energy Company's Market Share Threshold Bidding/Assignment Process*, Docket No. P-00021984, and *Petition for Approval of "The Better Choice" Plan to Meet PECO Energy Company's Market Share Threshold Requirements*, Docket No. P-00021992 (Order entered February 6, 2003).

It was alleged to the OSBA that many of the small business customers assigned to an EGS under PECO's MST would actually have saved money if they had returned to default service during the latter years of capped rates. Moreover, the OSBA received inquiries from numerous small business customers that were confused as to why they had been assigned to an EGS and wanted to be returned to PECO default service immediately. One of those small business customers was being charged \$0.28 per kWh in mid-2008, before the collapse of energy prices.

The problems with PECO's MST Program reinforce the OSBA's fundamental position, *i.e.*, that it should be the business customer's choice to determine if the customer will, or will not, shop. In other words, a small business 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, there is an additional practical problem that argues against assignment of small business customers to service from EGSs on an opt-out process. Through random assignment of customers to EGSs, some customers will receive a better post-introductory rate than others. Assigning a customer to an EGS will not ultimately benefit that customer if, after the introductory period, the EGS can set the price for the electric commodity service it is providing to the customer at whatever the market will bear. As evidenced by the complaints to the OSBA about PECO's MST Program, inertia is likely to keep a customer from shopping for a

better deal unless the EGS's rates spike, thereby causing the customer to inquire into those rates.¹⁵

b. Unlawful

Even if the Commission were to favor referral of small business customers to an EGS on an opt-out basis, implementation of such a mechanism would require amendments to the Competition Act. Specifically, without such amendments, an opt-out mechanism would violate the Public Utility Code because it would unlawfully change the nature of "default service."

Section 2803 of the Public Utility Code, 66 Pa. C.S. §2803, defines the role of the DSP as follows:

'Default service provider.' An electric distribution company within its certified service territory or an alternative supplier approved by the commission that provides generation service to retail electric customers who:

(1) contract for electric power, including energy and capacity, and the chosen electric generation supplier does not supply the service; or

(2) ***do not choose an alternative electric generation supplier.*** (emphasis added)

Section 2807(e)(3.1) of the Public Utility Code, 66 Pa. C.S. §2807(e)(3.1), states the obligations of a DSP. In pertinent part, Section 2807(e)(3.1) provides as follows:

Following the expiration of an electric distribution company's obligation to provide electric generation supply service to retail customers at capped rates, if a customer contracts for electric generation supply services and the chosen electric generation supplier does not provide the service or ***if a customer does not choose an alternative electric generation supplier,*** the default service provider shall provide

¹⁵ In effect, the EGS will become the beneficiary of "status quo" bias. Ironically, one of the major objections by EGSs to the current default service design is that the DSP benefits from "status quo" bias that keeps customers on default service when better rates are available from EGSs.

electric generation supply service to that customer pursuant to a commission-approved competitive procurement plan. (emphasis added)

As Sections 2803 and 2807(e)(3.1) require, customers who take no action are to receive “default service” from the “default service provider” rather than service from an EGS. However, under an opt-out mechanism, the customer who makes no choice defaults to service by an EGS rather than to service from the DSP. In short, service by the EGS becomes the *de facto* “default service.”

The full name of the Competition Act is the “Electricity Generation Customer Choice and Competition Act.” The title of the Competition Act places emphasis on “Customer Choice.” Assignment of small business customers to service from EGSs on an opt-out basis redefines default service and takes away “Customer Choice.” The point of “Customer Choice” is to provide customers with information and the opportunity to shop, not to force them to shop. Adoption of an opt-out mechanism would force customers to shop unless they take affirmative action not to shop.

Assignment of small business customers to service from EGSs on an opt-out basis would also run afoul of Section 2807(d)(1) of the Public Utility Code, 66 Pa. C.S. §2807(d)(1). Specifically, Section 2807(d)(1) provides that “[t]he Commission shall establish regulations to ensure that an electric distribution company does not change a customer’s electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer’s consent to a change of supplier.” Significantly, the Commission has already decided

that, without a statutory amendment, opt-out municipal aggregation would violate Section 2807(d)(1).¹⁶

8. *What modifications are needed to the existing default service model to remove any inherent procurement (or other cost) advantages for the utility?*

As explained in the forgoing answer to Question No. 5, neither the Commission nor the General Assembly should change the design of default service prior to a rigorous analysis of default service rates and levels of shopping during the default service periods ending May 31, 2013.

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?*

The Commission's Power Switch web site enables a residential customer to identify the EGSs that are making offers in the service territory in which that customer is located and provides the PTC. However, similar information for small business customers is not easily available through Power Switch. Although a statewide list of EGSs licensed to serve business customers is available, there is no easy way to identify the size of business customer to which any particular EGS is making offers. Therefore, a small business customer must be willing to make a significant commitment of time just to find out what, if any, offers are available to it.

¹⁶ *Petition of the Retail Energy Supply Association for Investigation and Issuance of Declaratory Order Regarding the Propriety of the Implementation of Municipal Electric Aggregation Programs Absent Statutory Authority*, Docket No. P-2010-2207062; *Petition of Dominion Retail, Inc. for Order Declaring that Opt-out Municipal Aggregation Programs are Illegal for Home Rule and Other Municipalities in the Absence of Legislation Authorizing Such Programs*, Docket No. P-2010-2207953; and *Petition of FirstEnergy Solutions Corp. for Approval to Participate in Opt-Out Municipal Energy Aggregation Programs of the Optional Third Class Charter City of Meadville, the Home Rule Borough of Edinboro, the Home Rule City of Warren and the Home Rule City of Farrell*, Docket No. P-2010-2209253 (Order entered March 17, 2011), at 9-11.

The small business customer must then have the sophistication to compare EGS offers to each other and to the PTC in order to determine which choice is the best fit.¹⁷

Shopping information does appear to be available for small business customers on EDC websites, but those websites vary widely in their ease of use.

Without amending any statute or regulation, the Commission could improve the flow of information to small business customers by improving Power Switch and the individual EDC websites.

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?

For the reasons set forth in the foregoing answer to Question No. 5, there is no apparent reason to change the statute at this time.

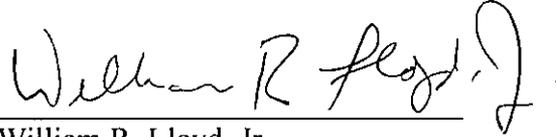
11. Are there, or could there be, potential barriers being created by the implementation of the EDC Smart Meter plans?

Section 2807(f) of the Public Utility Code, 66 Pa. C.S. §2807(f), requires the deployment of smart meters to *all* customers and not just to default service customers. Smart meters have the potential to enable EGSs to expand the level of shopping among small business customers by offering a wider variety of products.

¹⁷ One potential impediment to shopping by small business customers should be removed when all of those customers have finally transitioned to flat default service rates.

WHEREFORE, the OSBA respectfully requests that the Commission consider the foregoing comments as it develops the second stage of the investigation in the above-captioned proceeding.

Respectfully submitted,



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Small Business Advocate

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Dated: June 3, 2011

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