**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held December 15, 2011

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

Wayne E. Gardner

James H. Cawley

Pamela A. Witmer

Investigation of Pennsylvania’s I-2011-2237952

Retail Electricity Market:

Recommendations Regarding

Upcoming Default Service Plans

**FINAL ORDER**

**BY THE COMMISSION:**

By this Order, the Pennsylvania Public Utility Commission (Commission) issues guidance on the format and structure of Electric Distribution Companies’ (EDCs) upcoming default service plans. This guidance is based on a set of recommendations that the Commission received from its Office of Competitive Market Oversight (OCMO), which was provided pursuant to the Commission’s pending Investigation of Pennsylvania’s Retail Electricity Market. On October 14, 2011, the Commission entered a Tentative Order that issued OCMO’s recommendations for public comment.

The Commission has carefully considered the comments that were filed and in this Order, provides recommendations for EDCs to follow in developing future default service plans.

**Procedural History**

In its Order entered April 29, 2011, the Commission initiated an investigation into Pennsylvania’s retail electricity market. *Investigation of Pennsylvania’s Retail Electricity Market*, Docket No. I-2011-2237952 (Order entered April 29, 2011)(April 29 Order) (RMI or Investigation). The April 29 Order tasked OCMO, with the input of stakeholders, to study how to best address and resolve issues identified by the Commission as being most relevant to improving the current retail electricity market.

Initial stakeholder input was solicited via specific questions included in the April 29 Order. Thirty nine parties filed comments[[1]](#footnote-1) in response to the questions, which are available on the Commission’s website.[[2]](#footnote-2) Additionally, these topics and comments were further discussed at the June 8, 2011 *en banc* hearing, where representatives of consumer interests, EDCs, electric generation suppliers (EGSs), subject matter experts, and regulators were invited to testify.

After review of both the written comments and the comments conveyed during the *en banc* hearing, the Commission issued an Order initiating the second phase of its Investigation. *Investigation of Pennsylvania’s Retail Electricity Market*, Docket No. I-2011-2237952 (Order entered July 28, 2011)(July 28 Order). In the July 28 Order, the Commission concluded that:

Pennsylvania’s current retail market requires changes in order to bring about the robust competitive market envisioned by the General Assembly when it passed the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S.

§§ 2801, et seq., in 1996.

July 28 Order at 7.

Consequently, the Commission directed OCMO to hold technical conferences to address intermediate and long-term issues pertaining to the competitive market. The Commission also directed OCMO to present specific proposals for changes to the existing retail market and default service model.

On October 14, 2011, the Commission entered a Tentative Order that issued for public comment intermediate recommendations from OCMO as to how EDCs should develop the format and structure of their upcoming default service plans. *Investigation of Pennsylvania’s Retail Electricity Market: Recommended Directives on Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Order entered October 14, 2011)(October 14 Order). The October 14 Order provided recommendations regarding the next default service plan time period, contract durations for upcoming default service purchases and a number of competitive enhancements that may be implemented during the next default service plan time period.

In the October 14 Order, the Commission noted that the recommendations are intended to achieve three goals: (1) to ensure that the upcoming default service plans do not hinder the ability of the Commission to implement changes that will be addressed within the Investigation; (2) to advise EDCs and other parties that they will be expected to amend proposed default service plans when possible to incorporate changes which may arise out of the Investigation; and (3) to provide guidance on default service plan components that the Commission believes can better facilitate the competitive marketplace.

The Commission also indicated that the recommendations are intended to provide EDCs with the flexibility to craft default service plan filings in a manner in which they see appropriate. Finally, the Commission noted that the recommendations in the October 14 Order are designed to strike a balance between the needs of all interested parties and stakeholders who participate in the Investigation.

The following parties filed comments to the October 14 Order: AARP and Pennsylvania Utility Law Project (AARP & PULP), Citizens’ Electric Company and Wellsboro Electric Company (Citizens’ and Wellsboro), Citizens for Pennsylvania’s Future (PennFuture), Citizen Power, Inc. (Citizen Power), Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (Constellation), Direct Energy Services LLC (Direct Energy), Dominion Retail, Inc. and Interstate Gas Supply (Dominion Retail and IGS), Duquesne Light Company (Duquesne), Exelon Generation Company and Exelon Energy Company (Exelon), the First Energy Companies (Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power) and West Penn Power Company (West Penn)), Hess Corporation (Hess), the Industrial Customer Groups (Industrial Energy Consumers of Pennsylvania (IECPA), Duquesne Industrial Intervenors (DII), Met-Ed Industrial Users Group (MEIUG), Penelec Industrial Customer Alliance (PICA), Penn Power Users Group (PPUG), Philadelphia Area Industrial Energy Users Group (PAIEUG), PP&L Industrial Customers Alliance (PPLICA) and West Penn Power Industrial Intervenors (WPPII)), National Energy Marketers Association (NEM),

Office of Consumer Advocate (OCA), Office of Small Business Advocate (OSBA), PPL Electric Utilities Corporation and PPL EnergyPlus (PPL), PECO Energy Company, Pike County Light and Power Company (PCL&P), Retail Energy Supply Association (RESA), Solar Alliance and UGI Energy Services, Inc. (UGIES),

The York County Solid Waste and Refuse Authority filed a letter indicating that it will not be submitting comments to the October 14 Order.

Additionally, these recommendations were further discussed at the November 10, 2011, *en banc* hearing, where representatives of EDCs, EGSs and consumer interests spoke. The Commission received supplementary comments on these recommendations after the *en banc* hearing from the following stakeholders: Direct Energy, Dominion Retail and IGS, Duquesne, the Energy Association of Pennsylvania (EAPA), the First Energy Companies, First Energy Solutions (FES), the Industrial Customer Groups, OCA, OSBA, PECO Energy Company (PECO) and the Pennsylvania Energy Marketers Coalition (PEMC).[[3]](#footnote-3)

**Discussion**

The October 14 Order provided recommendations regarding the following topics: default service plan time period, energy contract durations, the possible implementation of a retail opt-in auction, the possible implementation of customer referral programs, establishment of time of use rates, the default service rate adjustment structure and the use of hourly priced default service for medium commercial and industrial (C&I) customers.

Several parties requested clarification from the Commission as to whether it was issuing suggested recommendations or mandated requirements in the October 14 Order. Some parties cautioned the Commission that it may only impose regulatory obligations through a rulemaking or adjudicated proceeding, and not through a Tentative Order process.[[4]](#footnote-4) Other parties would like the Commission to issue directives so that EDCs will be required to follow the Commission’s pronouncements in their upcoming default service plans. The Commission clarifies that its intent is to issue recommendations and flexible guidelines with respect to the format and structure of EDCs’ upcoming default service plans.[[5]](#footnote-5) The Commission encourages EDCs to view the recommendations as the starting point in developing the next phase of default service plans.

Further, several parties requested clarification as to whether the Commission’s recommendations apply to current default service plans, as well as to future default service plans. The Commission intends any recommendations that affect the structure and format of default service plans to be applicable to the next phase of default service plans and not to existing plans. These recommendations include the length of the plans, energy contract durations, the establishment of time of use rates, the default service rate adjustment structure and the use of hourly priced default service for medium C&I customers. The Commission has already approved existing default service plans, which may have been subjected to litigation and/or resulted in comprehensive settlement agreements, and the Commission does not intend to disrupt existing plans.

However, competition enhancing measures, such as the customer referral program, the retail opt-in auction and other measures that may be included in the RMI intermediate work plan, which do not necessarily modify the structure of existing default service plans, can be implemented upon Commission approval. This may occur prior to the beginning of the next default service period, which for most EDCs is June 1, 2013. In any event, the Commission recommends that all competition enhancing measures that it adopts become components of the next phase of default service plans.

The parties’ comments are addressed under the discussion related to each topic.

**Default Service Plan Time Period**

The majority of EDCs have current default service plans that are scheduled to expire on May 31, 2013. Under Commission regulations at 52 Pa. Code § 54.185(a),EDCs are required to file default service plans no later than 12 months prior to the conclusion of the currently effective default service program. However, EDCs’ first procurements of default supply can occur up to a year before the start of a new plan. As such, most EDCs are scheduled to file their next round of default service plans by the end of 2011 or in the first quarter of 2012.

Within the context of the RMI, the parties discussed three options with respect to the length of time that the upcoming default service plans will cover: (1) a one-year bridge plan that will cover June 1, 2013 through May 30, 2014; (2) a one-year extension of existing plans; and (3) submission of a plan that is consistent with current regulations and practices.

The Commission weighed the benefits and detriments of the above-described options. In the October 14 Order, the Commission recommended that EDCs file default service plans that last for two years and are synchronized with the PJM Energy Year, which runs from June 1 to May 31.

In support, the Commission noted that a two-year default service plan is consistent with its regulations and policy statement. Section 54.185(c) of the Commission’s regulations provides that an EDC’s initial default service plan was to be filed for a period of two to three years, or for a period necessary to comply with subsection 54.185(d)(4)(relating to a Regional Transmission Organization’s planning period), unless another period is authorized by the Commission. 52 Pa. Code § 54.185(c). The Commission’s Policy Statement on Default Service and Retail Electric Market provides that subsequent programs should be for two years, unless otherwise directed by the Commission. 52 Pa. Code § 69.1804.

Additionally, the Commission indicated its belief that a two-year plan will provide a reasonable time period to allow for implementation of any long-term changes proposed in the Investigation.

**Comments**

The majority of commenters that submitted remarks on this topic support the Commission’s recommendation of a two-year plan for the next round of default service plans. These commenters include the following: OCA, Exelon, Dominion Retail and IGS, NEM, Constellation, Citizens’ and Wellsboro, Duquesne and PPL.

OCA noted that a two-year time frame will allow initiatives that are designed to enhance retail choice, and are under consideration in the RMI, to be developed. Further, OCA supports each EDC’s ability to design a two-year default service plan that meets the needs of its customers and complies with Act 129[[6]](#footnote-6) and Commission regulations.

Exelon concurs that a two-year plan should provide a reasonable time period to implement any long-term changes resulting from the RMI. Further, Exelon stated that a two-year plan is preferable to a one-year plan, where it would be difficult to develop and submit a plan that includes potential legislative, regulatory and programmatic changes resulting from the RMI, with a start date of June 1, 2014, by June 1, 2013.

Dominion Retail and IGS also agree that a two-year plan that includes competitive enhancements is reasonable. Conversely, Dominion Retail and IGS assert that a one-year plan does not provide enough time for customers to voluntarily transition through the proposed competitive enhancements, such as the retail opt-in auction and customer referral programs.

NEM recognizes the two-year plan as being reasonable, as it will allow the implementation of the long-term recommendations of the RMI. Constellation also supports the Commission’s recommendation of a two-year default service plan and suggests that default service rates that are set within similar time frames and pricing structures will help customers better understand the market and make educated shopping decisions. Constellation further suggests that a uniform schedule and approach will better enable EGSs to prepare and advertise offers across the Commonwealth.

Citizens’ and Wellsboro indicate their intention to file a two-year extension of their current joint default service plan, with the hope that such an extension will minimize litigation. PPL also indicated that it can develop a two-year default service plan that will conform to the Commission’s recommendations regarding energy contract durations, which are described in greater detail in the next section. Additionally, Duquesne supports the Commission’s recommendation of a two-year default service plan.

On the other hand, several parties believe that a three-year default service plan is preferable to a two-year plan. The First Energy Companies note that the time and expense associated with developing, obtaining approval of and implementing a default service plan is not immaterial and is an expense that is borne by default service customers. The First Energy Companies believe that a two-year default service plan may result in a period that is too short and will cause all parties to expend time and money on a more frequent basis. The First Energy Companies also argue that a two-year plan will not provide a reasonable opportunity to learn from the actual operation of default service procurements and the competitive enhancements that may be integrated into the next plan.

Likewise, Citizen Power prefers a three-year plan, and argues that it will allow adequate time to develop modifications to the default service model, study the impacts of those modifications and discuss the merits of each modification.

AARP and PULP oppose the Commission’s recommendation of a two-year default service plan and cite the Commission’s recent Final Rulemaking Order regarding Default Service,[[7]](#footnote-7) wherein the Commission refrained from establishing precise time constraints that would limit the flexibility of default service providers to design a procurement plan that best fits the needs of the customers and service territory. AARP and PULP disagree that there is a statutory and regulatory basis for determining that upcoming default service plans should cover only two years. AARP and PULP believe that this is an artificial constraint that will adversely impact the default service provider’s obligation to develop a procurement plan that assures the “least cost to customers over time.” 66 Pa. C.S. § 2807(e)(3.3), (3.4).

One commenter, Direct Energy, recommends that the Commission direct EDCs to file a one-year default service plan with the instruction that EDCs may extend procurements for an additional year, if required. Direct Energy believes that the Commission’s recommendation of a two-year plan rests on the assumption that it will take two years to obtain legislative authorization and promulgate regulations related to default service. Direct Energy believes that the Commission’s two-year recommendation could unnecessarily delay the implementation of changes that are needed to assure robust competition. Thus, Direct Energy would like the Commission to order EDCs to file one-year plans, with the direction that the default service plans should be flexible to permit the implementation of longer-term reforms sooner than June 2015, if the Commission obtains the legal and/or regulatory authority to do so. Further, Direct Energy would like the Commission to clarify that default service may be significantly altered or restructured during the pendency of the upcoming default service plans.

**Resolution**

After consideration of the comments that the parties filed on this topic, the Commission continues to recommend that the next phase of default service plans run for two years. The Commission asserts that a two-year plan complies with the requirements of Act 129 in that default service providers still have the flexibility to design a plan that produces the “least cost to customers over time.” The Commission also responds that a two-year plan is consistent with Commission regulations and the policy statement regarding default service. Section 69.1804, 52 Pa. Code § 69.1804, explicitly provides that subsequent default service plans should be for two years, unless otherwise directed by the Commission. Further, we agree with OCA, Exelon and NEM that a two-year plan will allow for the implementation of any long-term changes proposed in the RMI. A two-year default service plan that incorporates intermediate competitive enhancements allows sufficient time to incorporate long-term changes that affect default service while progressing towards a more competitive market.

We acknowledge AARP and PULP’s concern that the Commission refrained from prescribing a specific time period for default service plans in the Final Rulemaking Order, so as not to constrain the flexibility of a default service provider to design a procurement plan that best fits the character of the customer base and the service territory.[[8]](#footnote-8) However, in that Order, we also noted that most default service plans encompass a two to three year time period by virtue of how EDCs structure their procurement processes. Further, Duquesne, PPL, and Citizens and Wellsboro submitted comments indicating that they are able to structure a procurement process that meets Act 129 requirements and covers a two-year period.

We decline to accept Direct Energy’s recommendation that the upcoming default service plans encompass a one-year period. We also decline to accept the First Energy Companies’ and Citizen Power’s recommendations that the next phase of default service plans cover a three-year period. For the reasons stated above, we believe that a two-year plan balances the interests of all parties, allows sufficient time to implement long-term changes to default service, and complies with current statutory and regulatory law.

Lastly, the Commission is open to the consideration and implementation of major reforms to the default service model in the event that the Commission is given the legal and/or regulatory authority to do so prior the end of the two-year period, so long as appropriate measures can be taken to ensure that all affected parties, including customers, wholesale suppliers and EDCs, are made whole.

**Energy Contract Durations**

At the outset,there are several provisions under Act 129 that are relevant to the discussion in this section. Pursuant to Act 129, electric power that is procured by a default service provider shall include a prudent mix of: (1) spot market purchases; (2) short-term contracts; and (3) long-term purchase contracts of more than four and not more than 20 years. 66 Pa. C.S. § 2807(e)(3.2). Additionally, in reviewing a default service plan, the Commission must consider “the default service provider’s obligation to provide adequate and reliable service to customers” and whether “the default service provider has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis.” 66 Pa. C.S. § 2807(e)(3.7).

In the October 14 Order, the Commission made two recommendations regarding the duration of energy contracts in the next phase of default service plans. First, we recommended that EDCs file plans that limit or eliminate the existence of short-term energy contracts extending past the end date of the default service plan time period, which would be for two years. We noted that Act 129 does not define the duration of short-term contracts. Furthermore, the Commission’s Final Policy Statement regarding Default Service and Retail Electric Markets clarified that a short-term contract is one of four years’ duration or less.[[9]](#footnote-9)

Secondly, the Commission recommended that EDCs consider using already existing long-term contracts from previous or current default service plans, and that EDCs limit the proportion of long-term contracts that make up their upcoming default service plan energy portfolio.

In making its recommendations, the Commission indicated that it would avoid mandating a prescriptive portfolio of contract lengths to provide EDCs with the flexibility to formulate a portfolio of energy contracts that satisfy Act 129. Further, the Commission asserted its belief that these two recommendations can be achieved while still complying with Act 129.

**Comments**

A number of parties support the Commission’s recommendations regarding energy contract durations. These commenters include the First Energy Companies, Exelon, Hess, Dominion Retail and IGS, NEM, Citizen Power, Duquesne, PPL, Constellation and Citizens’ and Wellsboro.

The First Energy Companies state that contracts that do not extend past the end date of a particular default service plan promote a clean separation from one plan to another. The First Energy Companies indicate that they can abide by the Commission’s recommendation and not include contracts that extend beyond the life of the two-year plan, with the exception of long-term solar requirement contracts that the Companies are committed to procure pursuant to a settlement agreement.

Exelon agrees that Act 129 does not require short-term contracts to extend past the term of a default service plan in order to achieve a “prudent mix.” However, Exelon cautions that without contract “overhang,” a significant portion of supply may have to be obtained in the period prior to the end of the plan, which may create higher prices and rate volatility. Exelon suggests that the Commission recommend that EDCs develop plans that are laddered; short-term contracts that extend beyond the end of the plan can be procured close to the beginning of the delivery term. Exelon avers that this will ensure that contracts are market-reflective. Additionally, Exelon supports the Commission’s recommendation pertaining to long-term contracts and suggests that the Commission clarify that long-term contracts continuing from a previously-approved default service plan may be used to satisfy the long-term requirements of a “prudent mix” under Act 129 in a subsequent plan, without an EDC being obligated to procure new long-term contracts.

Hess agrees with the Commission’s recommendation to limit contracts that extend beyond the default service time period, and suggests that Pennsylvania uses uniform default service plans and procurement schedules to assist EGSs in navigating the different EDC service territories.

Dominion Retail and IGS aver that in the event that long-term contracts extend beyond the two-year plan, the Commission should ensure that the contracts be assigned to EGSs. This will assure that EDCs are able to manage their portfolios without assuming any risk exposure, as well as allowing EGSs to enter the market.

NEM states that using already-existing long-term contracts in the next default service plans will minimize EDCs’ reliance on long-term contracts as a component of their overall portfolios. NEM asserts that this is beneficial as it will promote market-based commodity pricing and will minimize long-term contractual obligations, which is important when phasing out the EDCs’ role as default service providers.

Citizen Power agrees that it is desirable to limit contracts extending beyond the end date of the default service plan, but suggests that this recommendation not be followed if it conflicts with the requirement to provide default service at the least cost to customers over time. Citizen Power also asserts that the recommendation should not be applicable to the procurement of renewable energy, where long-term contracts are necessary to provide renewable generators with a guaranteed revenue stream.

Duquesne agrees that limiting the proportion of long-term contracts and using already existing long-term contracts in the next default service plans is reasonable and satisfies the long-term contract mandate of Act 129. Duquesne asserts that long-term contracts carry the risk that customers will be forced to bear any future above-market costs for supply that is not necessary to serve the default service load. This scenario becomes more realistic if customers are going to shop for electricity at high levels. With respect to short-term contracts, Duquesne believes that laddering purchases at different times and having overlapping delivery periods will promote rate stability. Thus, Duquesne recommends that some delivery periods extend beyond the plan period.

With respect to the Commission’s recommendation to limit or eliminate short-term contracts that exist beyond the end date of the default service plan period, PPL concurs but states that plans should include the option of laddering supply. PPL also states that it will consider using existing long-term contracts in developing a balanced portfolio.

Constellation recommends that the Commission provide EDCs with the flexibility to use shorter-term wholesale supply contracts that extend beyond the life of the plan, as long as they are procured close in time to the delivery. Additionally, Constellation suggests that the Commission propose that EDCs refrain from procuring any future block products and make purchases that take the form of full-requirements purchases. If EDCs must purchase blocks, then Constellation suggests following PECO’s approach, which is to use blocks to satisfy a share of load, with excess and shortages dealt with in the spot market.

Citizens’ and Wellsboro intend to extend their current joint default service plan for an additional two years and believes that this plan satisfies the Commission’s recommendations regarding energy contract durations. Citizens’ and Wellsboro assert that continuing their portfolio approach, with the addition of products with delivery periods that are longer than one year, may result in the least cost to customers over time. However, Citizens’ and Wellsboro indicate that their situation is unique in that they are smaller EDCs. They believe that their ability to remain the default service provider to their customers is preferable and will better meet their customers’ needs.

Two parties, Solar Alliance and PennFuture, are concerned that the Commission’s recommendation for EDCs to use already existing long-term contracts from previous or presently effective default service plans will adversely affect Alternative Energy Credits (AEC) and Solar Renewable Energy Credits (SREC). PennFuture remarks that EDCs must enter into long-term contracts for AECs and SRECs to meet requirements under the Alternative Energy Portfolio Standard Act (AEPS Act). 73 P.S. §§ 1648.1-1648.8. In addition, Solar Alliance and PennFuture assert that long-term contracts are critical to the development of wind and solar energy projects, which rely on long-term contracts to obtain financing. Both parties noted that the Commission has a Policy Statement on Pennsylvania Solar Projects, which establishes policies to strengthen the solar industry by providing more credit price certainty and to reduce or eliminate barriers to solar project development. 52 Pa. Code §§ 69.2901-69.2904. The Policy Statement provides that contracts for the long-term procurement of SRECs should be from 5 to 20 years in length. 52 Pa. Code

§ 69.2904(a). In order for EDCs to meet the goals of the AEPS Act and incentivize growth of alternative energy technologies, Solar Alliance and PennFuture urge the Commission to clarify that the limitation regarding long-term contracts does not apply to the procurement of AECs and SRECs.

Three commenters suggest that the Commission take an approach that will more aggressively effectuate changes to the default service model. RESA suggests that default service plans should include shorter-term contracts, a larger portion of spot market purchases, a shortened procurement lead time and an elimination of contracts extending beyond the end date of the plan. RESA avers that this structure will ensure that pro-market measures can be quickly implemented and will bring the default service supply mix closer in line with current market prices and conditions.

Likewise, Direct Energy asserts that the Commission should order EDCs to file plans that will permit default service reforms as soon as possible. To accomplish this, Direct Energy recommends that the Commission explicitly “reaffirm” the existing intent and contractual terms for full requirements service contracts, under which any wholesale suppliers electing to supply full requirements power for default service are not guaranteed any particular level of load. Direct Energy also suggests that block contracts contain provisions that explicitly permit their assignment to alternative default service providers, or, in the alternative, that the Commission provides certainty that such contracts will be honored by EDCs. Direct Energy further recommends that the upcoming default service plans eliminate block contracts and include full requirements supply contracts of no longer than three-six months, spot purchases, shorter procurement lead times and no contracts extending beyond the end of the default service plan period. Direct Energy avers that implementing longer-term contracts will create the potential for longer default service obligations that are unnecessary. Longer-term fixed volume contracts may have to be assigned or sold into the market to accommodate a new default service structure. Direct Energy notes that this contingency may cause longer-term or laddered wholesale contracts to have higher costs, which would render shorter-term contracts and spot market purchases to be the “prudent mix” that will result in the “least cost to customers over time.”

Further, PEMC states that the Commission should order EDCs to refrain from entering into contracts that will overhang beyond the next default service plan, unless the EDCs demonstrate that it is the only way they can meet their statutory obligations.

Conversely, two parties oppose the Commission’s recommendations regarding energy contract durations for the next phase of default service plans. AARP and PULP do not believe that these recommendations can be implemented consistently with Act 129 or the Commission’s regulations regarding default service. AARP and PULP fear that these recommendations could seriously hamper the ability of EDCs to evaluate and analyze a variety of contracts and contract lengths that assure the “least cost to customers over time.”

OCA is also concerned that the Commission’s recommendations would impose unreasonable restrictions on default service providers as they develop plans to meet the requirements of Act 129. With respect to the Commission’s recommendation regarding short-term contracts, OCA is concerned that most short-term contracts will expire on May 31, 2015 under this recommendation. OCA asserts that this will create a hard stop that forces default service providers to purchase significant supply at the end of a period under a singular market condition. OCA suggests that the Commission recommend using a laddering approach and request that EDCs spread purchases of supplies over multiple dates, such as over three or four months at the end of the plan. OCA also submits that including three and four-year short-term contracts may be critical to meet the prudent mix required in Act 129. In contrast to the Commission’s recommendation regarding short-term contracts, OCA supports the purchasing approach that is used in the existing default service plans for a period of two years.

With respect to the recommendation concerning long-term contracts, OCA argues that there should be no pre-determined limitation on long-term contracts because Act 129 defines long-term contracts as those greater than four years and not greater than 20 years. OCA asserts that long-term contracts provide a valuable stabilizing effect on default service rates and support the development of traditional and renewable generation. OCA states that it is not possible at this time to know whether long-term contracts are necessary to meet the requirements of Act 129. OCA believes that it is inappropriate for the Commission to recommend that EDCs disregard market opportunities for long-term contracts where such opportunities will allow EDCs to meet their statutory obligations.

**Resolution**

In consideration of the fact that the majority of commenters support the Commission’s recommendation pertaining to energy contract durations, the Commission continues to recommend the following: (1) that EDCs file plans limiting or eliminating the existence of short-term energy contracts extending past the end date of the upcoming default service plan time period; and (2) that EDCs limit the proportion of long-term contracts that make up their default service plan energy portfolios, and consider using already existing long-term contracts from previous or presently effective default service plans.

Notably, these guidelines are not intended to inhibit EDCs from developing default service plans that include a prudent mix of contracts that achieve the “least cost to customers over time.” The Commission reiterates that it will not mandate a prescriptive portfolio of contract lengths and will allow EDCs to retain flexibility in developing plans that meet Act 129 requirements. For this reason, the Commission declines to accept RESA’s and Direct Energy’s recommendations that the Commission direct EDCs to develop portfolios that include a more specific mix of contracts.

In addition, several EDCs, including the First Energy Companies, Exelon, Duquesne and PPL, have already indicated their belief that they may be able to develop plans that adhere to the Commission’s recommendations while still complying with Act 129. Thus, the Commission disagrees with AARP’s and PULP’s belief that the Commission’s recommendations cannot be implemented without being consistent with Act 129.

OCA remarks that it is impossible to know whether long-term contracts will be necessary for EDCs to meet Act 129 requirements, and thus the Commission should not recommend limiting their use. The Commission reiterates that these recommendations

are not intended to constrain an EDC from meeting its statutory obligations.

Further, the Commission will refrain from making recommendations with respect to specific contractual terms and conditions for energy that will be procured for the next phase of default service plans, as suggested by Direct Energy. Providing guidance on specific, contractual provisions is outside the scope of the purpose of these recommendations.

The Commission also would like to clarify two points. First, several parties, including Exelon, Duquesne and OCA, raised the concern that if no short-term contracts extend beyond the end date of the default service plan, this will result in a “hard stop” that will require default service providers to purchase significant supply at the end of the plan under a singular market condition. These commenters recommend that the Commission permit EDCs to use a laddering approach, and suggest that laddering supply purchases at different times and having overlapping delivery periods may promote rate stability. The Commission believes that these concerns may be legitimate and we recognize that some EDCs may have delivery periods that extend beyond the end date of the next plan under a laddered approach, hence the use of our language recommending that EDCs “. . . limit or eliminate. . .” overhanging short-term contracts. Additionally, the Commission would like to note that spreading out purchases over time, for example purchasing energy nine months and three months prior to the “hard stop,” may help to mitigate any adverse impact created by unfavorable market conditions. However, consistent with the comments of Dominion Retail and IGS, any such contracts should be assignable.

Secondly, the Commission recognizes the concern of some parties, particularly PennFuture and Solar Alliance, who filed comments regarding the adverse impact that the Commission’s recommendation on long-term contracts could have on solar and renewable generation projects. The Commission wishes to clarify that its long-term contract recommendations do not pertain to Alternative Energy Credit and Solar Renewable Energy Credit solicitations.

Further, the Commission understands the concerns of Citizens’ and Wellsboro, and does not want to constrain the ability of smaller EDCs to develop default service plans that best serve the interests of the customers in their service territories.

**Retail Opt-In Auction**

In the October 14 Order, the Commission recommended that EDC’s include an opt-in auction program within their upcoming default service plans. The Commission explained that in an opt-in auction program, an EGS or EGSs bid to provide competitive retail service to a group of residential and/or small commercial customers within a specific EDC service territory who have affirmatively decided to have their accounts included in this group. The Commission stated that opt-in auctions represent a creative marketing program that can help increase customer awareness for shopping opportunities, provide customers with direct benefits and instill peace of mind for customers through potential standard offer requirements.

**Comments**

Dominion Retail and IGS support the use of opt-in auctions as a method to promote switching. Dominion Retail and IGS state that the opt-in auctions could be used during the two year default service terms as a “. . . means of stimulating competition so that when the time comes to move to an ‘end state,’ the least number of customers possible will be required to engage in some new form of default service.”

Direct Energy, in its informal *en banc* comments, contends that opt-in auctions

“can spur a quantitative and qualitative change in the level of migration and the strength of retail competition in the Commonwealth.” Direct Energy elaborates on certain elements it believes are core to an opt-in auction. These elements include allowing for residential and small business participants, including a bonus payment incentive, having a fixed price, using an auction mechanism such as a descending clock methodology, and formulating a transition process such as a one year fixed rate offer from the enrolled EGS after the conclusion of the auction. Direct Energy also states that no cap should be placed on the number of participants in any full-scale auction as such a limit would force some customers to be turned away and therefore discourage those customers from participating in the retail marketplace. Direct Energy also submits that opt-in auction prices should not include price ceilings. Price ceilings, such as the price-to-compare, have been part of the opt-in discussion, and Direct Energy contends that such a structure would make the program complicated for potential bidders by adding risk.

NEM supports the Commission’s recommendation to include opt-in auctions within EDCs’ upcoming default service plans. NEM contends that the opt-in auction

“represents one of the solutions that can be incorporated in the default service plan to overcome consumer reticence to shopping.”

NEM states that opt-in auction programs should be subject to formal Commission approval prior to implementation. NEM explains that “utilities shouldn’t be able to incorporate a placeholder in their plans for the opt-in auction program that does not provide stakeholders with a full opportunity to ascertain the details and does not subject the program to Commission scrutiny.” Lastly, NEM contends that it would be helpful if the Commission provided some guidance on the structure of opt-in auctions.

PEMC, in its informal *en banc* comments, avers that opt-in auctions will help to provide a “kick-start” for shopping. PEMC states that an auction designed on the general principles presented within the RMI subgroup proposal will be very good for customer participants. However, PEMC conveys its concern that any opt-in auction must not “impede those suppliers who are more than willing – and capable – to take on customers even if they are not participating in an opt-in auction.” As such, PEMC states that other market enhancements, such as referral programs, should run concurrently with any opt-in auction.

Citizen Power states that it supports the use of opt-in auctions. However, Citizen Power communicates that it is concerned about the risk premium that opt-in auctions may introduce into EDC’s default service procurements. Therefore, Citizens recommends that a 10% cap be placed on the number of customers who are allowed to participate in the opt-in auction in order to minimize the potential risk premiums.

FES, in its informal *en banc* comments, submits that it is not in favor of the implementation of a pilot opt-in auction prior to June 1, 2013. FES states that such pilots will interfere with existing default service supply contracts and introduce customer confusion.

FES also contends that the only limit for full scale opt-in programs should be based on EDC system and process limitations. Upon reaching such limits, the EDC could hold another auction months later to accommodate the additional customers. FES submits that opt-in auctions should provide customers the lowest price possible, provide for participation by all qualified suppliers, and foster participation through a simplified program structure.

FES avers that opt-in auctions should be limited to residential and small commercial customers and structured to provide a 24-month fixed price or percent off the price-to-compare. FES states that incentive payments “will not attract a meaningful number of customers, and will undoubtedly lead to higher bid prices by suppliers.” Further, FES contends that an incentive payment will limit EGS participation to the largest EGSs, who have the ability to fund up-front payments, and therefore negatively affect supplier diversity. FES recommends that any incentive amounts used be minimal, and that incentives be paid only to customers who remain in the program for six months, as shorter time period requirements for incentive collection will drive up price bids. Additionally, FES supports uniform incentive amounts throughout the state in order to avoid any perception of unfairness.

Additionally, FES submits in its informal *en banc* comments that any opt-in auction should not include a load cap for EGS participation. FES contends that such a cap will result in customers paying more than necessary. FES believes a minimal auction participation requirement, such as three EGSs, would be a good component.

AARP and PULP submit that they do not object to the consideration of an opt-in auction as a pilot program to be filed as part of the EDC’s default service plan if sufficient consumer protection policies are established by the Commission to govern the auctions. AARP and PULP note that the Commission’s Tentative Order does not appear to require that any consumer protection policies be developed prior to the development of an opt-in auction proposal.

AARP and PULP contend that the Commission should not give its approval to an opt-in auction without scrutinizing the details of any proposed auction program. As an example, AARP and PULP detail the unanswered questions surrounding low-income customers enrolled in EDC customer assistance plans and specifically inquire whether these customers are able to choose an EGS through and auction or other method. AARP and PULP aver that it would be premature for the Commission to pass judgment on the merits of an opt-in auction without having the benefit of the details and necessary protections for CAP customers. Consequently, AARP and PULP recommend that the Commission “note the ongoing discussions of a possible opt-in auction concept by the stakeholders and urge the stakeholders to continue their work on this concept in time for EDCs to consider these discussions and resulting recommendations (assuming there is any consensus on these matters) in the development of the forthcoming default service plans.”

OCA submits that a reasonably-structured opt-in auction of appropriate size should continue to be considered. OCA submits that at least two key benefits should be made available to customer participants in an opt-in auction. First, participants should receive assured benefits. Second, participants should be able to experience the retail electric market without any risk of harm. OCA also remarks that opt-in auctions should not harm those customers who chose not to shop for electricity. OCA then goes on to detail more specific elements of retail opt-in auctions that it believes are necessary for any such program to be successful.

First, the OCA emphasizes certain legal tenets. OCA avers that any auction should be structured in an opt-in format, that the terms and conditions of any auction product should contain certain elements to dispel misunderstandings and to allow customers to make an informed choice, and that the format of any auction be structured so as not to result in large risk premiums on default service bids as well as to avoid the potential exit of default service bidders.

Continuing, OCA opines that a maximum cap on participation should be established in order to make the program manageable, orderly, and potentially successful without disrupting default service. OCA proposes two methods for establishing a maximum cap: specifying a set maximum number of participants by EDCs, or, establishing a target percentage of total shopping customers for the EDC. Such caps would need to be established on an EDC by EDC basis.

OCA also addresses the timing of any retail opt-in auction. OCA believes any large scale implementation of an auction that is improperly timed could lead to higher wholesale default service bids in the future. OCA states that any opt-in auction should be conducted at such times and scales that the possibility of market disruptions or distortions can be significantly lessened, or even eliminated.

OCA recommends that current default service customers be the target customers for any auction. OCA states that shopping levels vary by EDC, and targeting default service customers could help jump start the competitive market in EDC territories where shopping is minimal.

OCA further submits that any participating customers be provided with tangible benefits. OCA states that a guaranteed percent off the EDC’s price-to-compare over a 12 month period would be a possibility. OCA also avers that no cancellation fees should be included in any opt-in auctions. Additionally, OCA submits that EGSs must not be permitted to drop customers from the program. OCA believes that the inclusion of tangible benefits, the exclusion of any cancellation fees, and the restriction of dropping participating customers, will help facilitate a positive experience for customers.

OCA contends that any auction should be a one-time only event. In support of this statement, OCA states that the auctions may not be the best business model for some EGSs in Pennsylvania and that multiple auctions could introduce a level of complexity for shoppers and pose a threat to competition. The OCA submits that a singular venture, done reasonably, could provide a shot-in-the-arm for service territories where switching has been light.

Regarding the end of the program, OCA states that EGSs should notify customers that the auction program is coming to an end and clearly inform customers of the next steps, including receiving new offers from EGSs for continuation of service. OCA avers that each successful EGS in the auction should be required to offer customers another 12 month fixed-rate at the conclusion of the initial auction period. Further, OCA states that EGSs must provide notices as required by the Commission’s regulations at 52 Pa. Code § 54.5(g)(1) (relating to disclosure statement for residential and small business customers; customer notification).

For those customers who do not respond to the EGSs’ notices of new terms and conditions, OCA proposes that EGSs continue to serve customers under a fixed term agreement that allows customers to cancel at any time, for any reason and without cancellation penalties. OCA notes that EGSs would be free to market other offers with different terms and conditions, but customers would have to affirmatively select those offers, and that customers would be free to return to default service or to enroll with another EGS if the customer does not wish to continue service with the EGS from the retail opt-in auction.

The First Energy Companies believe that the opt-in auction proposal discussed within the RMI can be used as a starting point, but that all aspects of the proposal need not be used by EDCs. Put differently, the First Energy Companies submit that EDCs should “have the flexibility to design an opt-in auction to best fit within the parameters of its DSP and to be in the best interests of the EDC’s customers.” The First Energy Companies explain that they do not support “teaser rates” or “marketing gimmicks” in the form of cash incentives because such measures can be followed by volatile or higher rates upon expiration of the initial rate. Such occurrences can damage the trust EDCs have earned with their customers and can increase burdens on EDC call centers. The First Energy Companies also submit that EDCs must be provided with full and current cost recovery for the administration of opt-in auctions.

The First Energy Companies anticipate the inclusion of an opt-in auction proposal within their upcoming default service plan filing. However, the First Energy Companies object to the implementation of an opt-in auction prior to the next round of default service commencing on June 1, 2013. In support, the First Energy Companies state that introducing a new form of customer migration in the midst of an existing default service plan creates an unforeseen regulatory risk. The First Energy Companies believe such risk could hinder wholesaler participation for years, which in turn could translate into increased costs for default service customers.

Duquesne comments that a properly designed opt-in auction would increase shopping. However, Duquesne believes that such a program could increase the cost of default service on remaining customers by increasing the switching risk and consequently increasing wholesaler’s bids to provide default service. Duquesne submits that a pilot program could be used to test the structure, degree of customer interest, and potential impact of an opt-in auction.

In its informal comments to the *en banc* hearing, Duquesne states that the Commission should carefully evaluate the costs and benefits of an opt-in auction. Further, Duquesne submits that any opt-in auction proposal should contain key principles, which include targeting non-shopping customers, avoiding the manifestation of increased risk premiums on wholesale auction bids, avoiding any interference with current default service supply arrangements, guaranteeing savings to participants, and allowing customers to move freely from the program to default service or another EGS. Duquesne also submits that any opt-in auction should be run as a single program that minimizes administrative costs and includes a cap on the number of allowable participants.

PPL states that a significant number of customers have already embraced shopping in its territory. PPL identifies a number of concerns around the implementation of opt-in auctions in its service territory. PPL avers that an opt-in auction may just result in shopping customers moving from one EGS to another, and have no real impact on the number of shoppers. PPL also submits that the proposed inducement levels within the RMI subgroup, upwards of $150 for residential customers, relative to revenue from an average customer may “actually harm the market by allowing only those EGSs with the financial ability to “buy market share” to remain in the market.” Further, PPL states that its low priced block energy purchases will become a larger part of the PTC as more customer migrate to EGSs, and therefore decrease the PTC. This scenario will place an increased financial burden on EGSs as they attempt to maintain guaranteed savings and as customers may exit the program as soon as they can claim their upfront inducement. For these reasons, PPL submits that the Commission should consider not adopting an opt-in auction and rather recommend a referral program.

Additionally, PPL contends that implementation of a pilot opt-in auction may provide little value, absent an evaluation or assessment of post-inducement behaviors, as the logistics are fairly straight-forward. PPL states that any pilot should consider the impact of existing supply contracts.

Last, PPL states that the costs of any auction or pilot should be paid by the EGSs that participate in and are beneficiaries of the auctions.

Constellation does not support the mandatory offering of an opt-in program. In support of its stance, Constellation avers that such auctions “would have an adverse impact on existing or future default service procurements as effective wholesale procurement for a subset of customers (Retail Opt-in) would cannibalize the other wholesale procurement ([Provider of Last Resort] POLR Service via the EDC).” Constellation submits that this scenario creates potential risk which would lead to higher wholesale generation auction price results. Constellation states that for these reasons, opt-in auctions should not be implemented until after the upcoming round of default service, or during the middle of the next round of default service.

Exelon submits that the mandatory offer of opt-in programs may be premature due to a lack of consensus among the RMI stakeholders participating in the opt-in auction working group. Exelon states that these participants have not been able to agree on characteristics such as permitted participation levels, the impacts on existing or future default service procurements, product design, and the possibility of customer confusion. Consequently, Exelon suggests that the Commission focus on developing an effective customer referral program.

UGIES asserts that the implementation of a retail opt-in auction may be premature at this time. UGIES states that customers are still adjusting to the complexities of the electric marketplace and that the introduction of administrative solutions to bolster choice may interfere with the natural progression of shopping over the long run. UGIES also states that the opt-in program may simply result in the same “status-quo” bias currently seen in EDC provided default service plans, as customers may simply stick to the EGS whom they were assigned. Continuing, UGIES contends that “standardizing product offerings runs the risk of making consumers believe that choice is based on price competition alone,” which UGIES claims is not the case. Further, UGIES states that implementing an EDC-run auction may lead customers to an incorrect understanding that their decision to switch to an EGS is only safe when handled as part of an EDC administered program.

UGIES claims that, given these reasons, retail opt-in auctions may serve to pick winners and losers in the market, instead of allowing the market to do that itself. UGIES states that the best steps to improving the retail electric market revolve around improving information flow to customers and addressing EDC operational frictions that act as impediments. However, UGIES submits that, if the Commission moves forward with opt-in auctions, such auctions should be structured to allow for residential and small business participants and the financial incentive should be set to attract participation without creating unrealistic customer expectations or interfering with existing contracts.

Hess requests that the Commission clarify which customer classes would be able to participate in any opt-in auction. Specifically, Hess recommends that the Commission clarify that any opt-in auction not be applicable to medium and large C&I customers with peak demand of 100 kW or greater. Hess claims that these customers are sophisticated and already cognizant of their energy costs. Further, Hess claims that opt-in auctions are contrary to the “core premise of retail competition – customer choice”, because these programs will place customers with an EGS that they did not affirmatively choose.

The Industrial Customer Groups, in their informal *en banc* comments, aver that EGSs should be responsible for the costs of implementing any opt-in auctions because they will benefit from the increased shopping. However, the Industrial Customer Groups submit that auctions should be funded by residential and small commercial customers if the Commission determines that customers should fund opt-in auctions.

The RMI working group opt-in proposal, at the time the Tentative Order was issued, excluded PCL&P and Citizens and Wellsboro from implementing any opt-in auction. Citizens and Wellsboro state that they agree with this exclusion due to their minimal load, their use of the portfolio procurement approach, and the potential administrative burdens. PCL&P submit that a significant portion of its customers are served by an EGS as a result of a previous aggregation program and therefore there is no need to incorporate an opt-in auction within its default service plan. PCL&P avers that if the Commission approves the implementation of opt-in auctions, PCL&P should be permanently excluded from the requirement.

**Resolution**

It is clear from the comments that the parties have very different views on the necessity of incorporating an opt-in auction in EDCs’ next default service plans. Parties like Dominion and IGS, OCA and PEMC submit that properly designed opt-in auctions can provide an effective means to stimulate competition in the state. Other parties comment that the incentive to shop that an opt-in auction may provide is unnecessary. For instance, PPL submits that it already has a significant number of shoppers in its service territory. Further, UGIES states that the auctions will interfere with the natural progression of choice through the Commonwealth.

Upon review of the extensive comments received on this topic, the Commission agrees with the parties like Dominion and IGS, OCA and PEMC that opt-in auctions represent a viable tool to “kick-start” retail competition. Shopping levels differ by service territories, particularly for residential and small business customers. As of November 30, 2011, PPL held the highest percentage of residential load serviced by an EGS within the large EDC service territories, those with 100,000 customers or more, at 40%.[[10]](#footnote-10) Other large EDCs, where rate caps have expired, show residential shopping loads in the 4% to 30% range. While these numbers are encouraging, there is definite room for improvement to achieve the robust competitive market envisioned by the General Assembly. To that end, the Commission believes that the implementation of a special program designed to incentivize those default service customers who have up to now been reluctant to switch to an EGS is warranted. Therefore, the Commission maintains its recommendation within the October 14 Order to have EDCs include an opt-in auction program in their upcoming default service plans.

Numerous parties, including those who do not agree with the inclusion of opt-in auctions in the next round of default service plans, submitted comments with detailed recommendations on how opt-in auctions should be designed. However, the Commission will not address the specifics of the auctions in this Order, as our purpose was to consider whether to recommend including opt-in auctions in future default service plans. Instead, the Commission will address the structure of opt-in auctions in its Intermediate Work Plan, which will be issued for public comment by Tentative Order. In this Tentative Order, the Commission will take the recommendations on the structure of the opt-in auction submitted herein and will propose specific recommendations on how retail opt-in auctions may be best designed. The Commission will finalize its recommendations after considering the comments and reply comments that may be filed to the Tentative Order.

**Referral Program**

In the October 14 Order, the Commission stated its belief that referral programs represent a viable means to educate customers about the retail electric market and may allow customers to achieve savings on their bills. The Commission recognized the various types of referral programs, which range from simply advising customers of the potential benefits they can achieve from shopping for electricity to assisting a customer in enrolling with an EGS that is offering some form of a standard offer product. EDC customer service representatives would act in these roles through predetermined customer contacts, such as when a customer initiates new service or makes an inquiry regarding bills. The Commission noted that several stakeholders are designing a referral program proposal within the context of the Investigation and, therefore, refrained from proposing a specific format for referral programs. The Commission recommended that EDCs use, as a starting point for prospective referral programs, the proposal being discussed by stakeholders in the Investigation.

**Comments**

The commenters unanimously support the concept of a customer referral program. However, the commenters reached little consensus as to how the program should be formatted and designed.

Three EDCs, Citizens’, Wellsboro, and PLC&P, find the customer referral program that is being developed in the Investigation to be unnecessary in their service territories, at this time. Citizens’ and Wellsboro do not have any EGSs that are currently serving their territories. As such, referring customers to shop is unnecessary. However, once EGSs begin to serve the Citizens’ and Wellsboro territories, Citizens’ and Wellsboro will ensure that their customer service representatives inform customers of their right to seek a competitive supplier and will refer customers to the PA Power Switch website.

PLC&P does not oppose the concept of a referral program but states that the program being developed by the stakeholders in the Investigation would not work in its service territory. PLC&P’s service territory has a 71% market penetration rate in retail choice and, therefore, it is no longer necessary to introduce customers to the concept of competition. In addition, PCL&P only has three EGSs that are accepting customer enrollments in its service territory and one of the suppliers is an affiliate. Under these circumstances, PCL&P argues that there is a lack of options available to warrant making customer referrals. Further, PCL&P remarks that a program in which new customers are referred to EGSs would require PCL&P to restructure its billing system. In order to accommodate enrollment with an EGS at the initiation of service, PCL&P would have to modify the billing system at a significant expense. Therefore, PCL&P recommends that the Commission: (1) allow referral switches during the second billing cycle; (2) require EGSs in PCL&P’s service territory to pay for the costs associated with modifying PCL&P’s billing system; and (3) direct EGSs to pay for the costs associated with EDC customer service representatives referring customers to an EGS.

Two stakeholders filed general comments in support of the customer referral program. Dominion Retail and IGS believe that referral programs can engage customers in the process of electric choice. Dominion Retail and IGS assert that all customer referral programs should be considered and state that it may not be necessary to implement the most complex program. Dominion Retail and IGS caution that the program should not be viewed as an end, but merely one of the available tools that should be used to promote organic switching and allow customers to voluntarily engage in the competitive market.

Likewise, Citizen Power supports the use of customer referral programs to reduce the customer acquisition costs of EGSs and increase shopping levels. Citizen Power suggests developing an estimate as to how effective such a program may be before any default service auctions take place, in order to minimize the amount of risk premium faced by default service suppliers.

One commenter, UGIES, suggests that a customer referral program should solely perform an educational role and should not refer customers to EGS offers. UGIES supports changing the way that EDC representatives interact with customers regarding electric choice and asserts that EDCs should play an educational role in informing customers about competition and choice. UGIES suggests that EDC customer representatives should explain the benefits that a customer can achieve from shopping, direct customers to the PA Power Switch website and explain that customers can, at any time and without penalty, switch to one of the EGSs listed on the website. However, UGIES believes that a customer referral program that assists customers in selecting a specific EGS or, for those customers who do not express a preference, assigns customers to a random EGS that offers a standardized product for an introductory period is not an appropriately designed program. UGIES states that EDCs will effectively be stepping into the shoes of EGSs to market choice and products on their behalf, and will fully recover the costs of doing so from customers. UGIES argues that EDCs should be in the neutral role of providing information regarding choice. Further, UGIES notes that EGSs that have invested in marketing resources will be disadvantaged by this proposal, as it will “short cut” the customer acquisition process. Moreover, UGIES is concerned that the introductory offers will be administratively-determined with no adjustment to reflect current market conditions. UGIES suggests limiting a program that refers customers to EGSs to residential and small commercial customers defined as 25 kW and below; however, if the Commission adopts a more scaled back version of the program that focuses on educating customers about choice, UGIES believes that this program will be beneficial to all customers, regardless of class.

Two commenters, RESA and Direct Energy, urge the Commission to undertake the new and moving customer issue immediately. RESA states that it led the effort in developing a new/moving customer program, which is intended to partially mitigate the barrier of assigning customers to EDC-provided default service at the time of service initiation and when customers transfer service from one location to another. RESA suggests that there is no reason to delay the implementation of the customer referral program to June 1, 2013, and requests that the Commission clarify that it will direct EDCs to implement the customer referral program as soon as practicable in 2012.

Direct Energy suggests that the Commission direct EDCs to include a traditional customer referral program and the new/mover program in their upcoming default service plans. To the extent that these initiatives constitute intermediate enhancing measures and are not long-term reforms, the Commission should direct their immediate implementation. Under a traditional referral program, the EDC introduces the topic of electric competition when the customer calls and provides the customer with the opportunity to obtain a discount for an introductory period when switching to an EGS. The new/mover program allows customers to sign up for service from a competitive supplier when they initiate or transfer service. Direct Energy asserts that the Commission should direct EDCs to modify their systems so that new or moving customers can immediately take competitive service without first subscribing to default service.

The remaining stakeholders provided comments pertaining to the standard product that may be offered by an EGS under the customer referral program. However, the stakeholders disagree about the terms and conditions of the referral product.

FES believes that a customer referral program should apply to new or moving residential or small commercial customers requesting new service or providing notification of an address change. FES argues that these situations should not result in customers being placed on default service before EGS service can begin. With respect to the referral product, FES asserts that the product should be a standard fixed price or a discount off the PTC. The EDC should refer the customer to the EGS offering the lowest price and EGSs should have the ability to frequently update their prices. FES disagrees that a short term introductory price, followed by month-to-month pricing, is prudent. FES states that independent survey results have suggested that the complexity of the switching process deters customers from shopping and that a short term introductory price will force customers to shop again, after having shopped a couple of months earlier. FES also argues that the New York referral program will not work in Pennsylvania, since utility default service residential rates in New York change monthly. FES comments that residential customer shopping in New York is lower than such shopping in Pennsylvania. Finally, FES believes that EGSs should be responsible for customer enrollment after receiving a referral notification from an EDC, since EGSs have call centers with personnel trained in the process.

NEM supports customer referral programs, in particular, the introductory discount rate program used by the New York utilities. NEM suggests that each utility’s referral program be subject to stakeholder comment and formal Commission approval prior to its implementation.

Constellation supports the development of a well-planned customer referral program and indicates that stakeholders have held several rounds of productive discussions on how the program could be implemented. These discussions have included the lessons learned from New York’s customer referral program.

OSBA does not object to customer referral programs, but opposes the one being developed in the Investigation. OSBA describes this proposal as requiring EGSs participating in the referral program to offer all customers a 7% discount for two months and, after the expiration of the introductory period, to set their own rates. OSBA notes that the post introductory period rate could exceed default service and, thus, the program would promote “bait and switch” tactics. OSBA suggests that the Commission should prohibit EGSs from charging the customer more than the default service rate after the introductory period.

While AARP and PULP agree that customer referral programs can be implemented in the upcoming default service programs, AARP and PULP note that there are a variety of potential referral programs and educational initiatives that are being identified and discussed by stakeholders in the Investigation. AARP and PULP disagree that the stakeholders reached a consensus on the type of referral program that could be used by EDCs as guidance for the development of their default service plans. AARP and PULP remark that the referral program that is being used by the New York electric utilities failed to make a significant impact on customer migration to EGSs; only 21.6% of residential customers have migrated. AARP and PULP urge the Commission to carefully weigh the costs that would be imposed on ratepayers in light of the potential benefits of customer shopping. Further, AARP and PULP argue that it is premature to endorse the concept of referral programs suggested by the Commission, since program rules and customer protections have not yet been established. Before the Commission finally approves a referral program, AARP and PULP request that the EDC ratepayers not subsidize the costs of such a program and that appropriate customer protections be in place, such as clearly notifying customers that an upfront discount will not necessarily continue and that customers will be informed of their terms of service, including price changes, during the introductory period.

OCA submits that a properly designed referral program may serve as a reasonable method to educate customers about choice. OCA agrees that referral programs can be viewed on a sliding scale. On one end, EDC customer service representatives advise the customer of choice, provide a welcome kit with educational materials or supplier offers, and direct the customer to PaPowerSwitch.com or the OCA’s Electric Shopping Guide. This program can be performed at a relatively low cost and with minimal additional training. At the other end, customer service representatives enroll a customer in a standard product offered by an EGS. This program requires significant infrastructure changes with significant cost impacts.

OCA developed a series of key elements to be included in the program. First, OCA recommends that certain EDC processes, such as call center scripts and welcome kits, be reviewed and modified. Call center scripts should introduce customers to choice during appropriate contacts and welcome kits should include educational information on retail choice and can potentially include supplier offers. OCA also suggests that EDC call center process be developed to assist those customers who have already selected an alternative electric generation supplier when they initiate new service.

Once these steps are complete, OCA recommends that the Commission work towards a longer term referral program and allow customers to engage the retail market through a standard product and benefit without being harmed. If a standard product offer is implemented, OCA suggests that the program must be carefully tailored to ensure that customers are informed about their options and protected from harm. OCA also urges the Commission to review the costs of such a program to ensure that they are justified and appropriately allocated among stakeholders. OCA offers the following elements of a standard product referral program: (1) dissemination of program information should be done in a brief and thorough manner with program details to follow in writing; (2) customers should not be required to enroll in the referral program during the initial contact; (3) information relating to choice should be limited to calls from new or moving customers; (4) the introductory period should last at least four months with a guaranteed benefit for that period; (5) at the end of the introductory period, customers should revert back to default service unless the customer affirmatively chooses to stay with its current EGS or move to another EGS; (6) participating EGSs should be required to offer customers a fixed rate product for the remaining period of the program year; and (7) EGSs should bear the costs of the referral program, as it is a method by which participating EGSs acquire new customers. OCA recommends that the Commission follow the format of the referral program that is used by Central Hudson Gas & Electric in New York.

PPL supports the development of a customer referral program and will consider proposing such a program in its next default service plan. In developing a customer referral program, PPL suggests the following: (1) the program should be secondary to the customer’s primary reason for initiating contact; (2) certain customer contacts, such as termination of service calls, are inappropriate to discuss a shopping referral; (3) the Commission should permit EDCs full and timely cost recovery of approved referral programs, and EGSs should fund a referral program that assists customers in selecting a standard product offered by EGSs; (4) referral programs should be aimed at appropriate groups of customers on a nondiscriminatory basis; and (5) a program that assists customers in enrolling in a standard product offered by an EGS should fully inform the customer as to the terms and conditions in both the introductory and post introductory periods.

Exelon supports including customer referral programs in upcoming default service filings, but states that significant implementation issues must be considered in their design, including revisions to call center procedures, information technology upgrades or establishing an external call center. Exelon requests that the Commission clarify that all costs incurred by EDCs associated with the development and operation of customer referral programs will be recoverable on a full and current basis.

Duquesne supports the Commission’s position not to propose a specific format for referral programs. In previous default service plan settlement agreements, Duquesne agreed to several initiatives to facilitate customer shopping and to educate customers about retail choice, including the following: (1) providing customers with access to the OCA residential shopping guide, OCA’s website and the PA Power Switch website; (2) circulating information on customer choice on a semi-annual basis; (3) advising new customers upon service initiation of the opportunity to obtain supply from an EGS; (4) informing customers who contact the Duquesne service center about retail offers; and (5) circulating information on competition enhancement programs and retail offers on a semi-annual basis.

In developing customer referral programs, Duquesne believes that it is important to consider that different service territories in Pennsylvania have varying levels of customer understanding of competition and shopping. Further, Duquesne asserts that customer satisfaction is paramount, and that educational efforts should be made at appropriate times and not when customers are calling about outages and payment arrangements. Duquesne also believes that “bait and switch” offers should not be a part of the referral program; the program should guarantee savings for a period of time, such as one year. Duquesne recommends that the referral to an EGS should be simple to implement and easy for customers to understand. Duquesne requests that the Commission recognize EDC call center metrics, including longer call times, will be affected by the program.

In addition, Duquesne lists other issues that should be considered: (1) what are the costs of the program, (2) who should pay for the costs, and (3) whether a referral program with an EGS standard offer should be implemented at the same time as the retail opt-in auction. Duquesne also cautions that a referral program where several EGSs offer the same prices and services as part of a standard offer could involve antitrust issues.

The First Energy Companies believe that the format of the customer referral program that is being discussed by stakeholders in the Investigation can be used as a starting point. However, the First Energy Companies assert that EDCs should have the flexibility to design a referral program to best fit the parameters of their default service plans, the capabilities of existing systems and the best interest of their customers. Such a design may include some aspects of the proposal being discussed in the Investigation, but should not be required to use all aspects of the format. The First Energy Companies state that the flexibility should include the types of calls during which customers would be referred to an EGS. The First Energy Companies note that flexibility is consistent with the Commission’s recommendation to provide the EDCs with latitude to craft a default service plan.

In addition, the First Energy Companies argue that EDCs must be provided with full and current cost recovery with all of the costs associated with a customer referral program. The First Energy Companies further suggest that call center metrics measured and monitored by the Commission and addressed in prior stipulations and orders, should be appropriately modified in light of increased call volume and times. The First Energy Companies also recommend that the Commission refrain from ordering a customer referral program with a short-term, introductory teaser rate that can exceed the utilities’ default service rates after the introductory period; short-term teaser rates can divert call center operations away from their primary business responsibilities and may damage the trust that EDCs have earned from their customers. The First Energy Companies suggest that customers not be subject to early termination fees or penalties in the event they want to switch to another EGS or back to default service at the end of the introductory period.

The First Energy Companies proposed the following customer referral program in their default service plan that was filed on November 17, 2011: the Companies will inform non-shopping customers of certain available offers during new mover, high bill complaint and customer choice calls. Each EGS will be given an opportunity to present an offer at a predetermined interval of time, such as weekly or monthly, for a standard product with multiple terms. Upon receipt of these presentations, the Companies will present the lowest offer to those customers who are interested in the referral. The First Energy Companies are presenting these offers to all non-shopping residential customers, including CAP customers. The Companies propose cost recovery through a non-bypassable, competitively neutral automatic adjustment rider and request relief with regard to call center metrics.

**Resolution**

In general, all parties who submitted comments on this topic recognize that customer referral programs are a practicable way to educate customers about retail choice and facilitate electric shopping. However, how the customer referral program should be structured is somewhat contentious. Some parties believe that a customer referral program should perform a purely educational role while others assert that the program should include a referral to a standard product offered by an EGS. With respect to the latter option, the parties were unable to agree to the exact terms and conditions of the referral program.

Given that the parties unanimously agree that customer referral programs represent a viable means to educate customers about the retail electric market and may allow customers to achieve savings on their bills, the Commission will retain its recommendation that EDCs include a customer referral program in their upcoming default service plans. We will not address the details of the plans here.

Instead, like the opt-in auctions discussed previously, the Commission will take the recommendations filed herein under advisement and will propose recommendations for the implementation of customer referral programs in the Intermediate Work Plan at this docket, Docket No. I-2011-2237952. The Commission will issue the Intermediate Work Plan as a Tentative Order and will allow the parties an opportunity to comment on the Commission’s recommended structure of the customer referral program. After review of the comments filed, final recommendations on customer referral programs will be issued.

**Time of Use Rates**

In the October 14 Order, the Commission recommended that EDCs contemplate contracting with a retail EGS to provide time of use (TOU) rates in effort to alleviate the challenges that EDCs face with offering the statutorily required generation product.

**Comments**

OCA, Citizens Power, The First Energy Companies, Duquesne, RESA, NEM, UGIES, Dominion Retail and IGS agree with the Commission’s recommendation to have EDCs contemplate contracting with a retail EGS in order to satisfy the statutory requirement that a default service provider offer TOU rates.

OCA avers that many of the problems faced with current TOU offerings from EDCs, namely subsidizations and reconciliations, may be avoidable under the proposed construct. In support, OCA states that TOU rates are an optional default service that differs from conventional fixed rate default service. As such, the optional TOU service does not necessarily have to be supplied through energy that is procured to meet conventional default service obligations.

RESA recommends various options for implementing this proposal. First, RESA states that under EDC consolidated billing scenarios EDC billing systems could be designed to adjust EGS fixed rates by predetermined discounts and premiums over specific hours based on historical on-peak and off-peak differentials. Further, RESA states that under dual billing scenarios for which EGSs are already providing TOU rates, the Commission could determine that the availability of these offerings is sufficient to satisfy the EDC’s statutory TOU requirements. Lastly, RESA, as well as the First Energy Companies, submits that a competitive bidding process could be used to contract with an EGS to fill the TOU role.

Exelon states that it generally supports the Commission’s recommendation to have EDCs contemplate contracting with an EGS to offer TOU rates. Exelon believes that Section 2807(f)(5) of the Public Utility Code permits either the bidding out of TOU rates to an EGS or the contracting of a conservation service provider to manage TOU offerings, in lieu of the EDC, within the scope of the EDC’s default supply. 66 Pa. C.S. § 2807(f)(5). However, Exelon requests that the Commission clarify in its Final Order that an EDC be availed flexibility in the implementation of its TOU program, as Exelon contends such flexibility is important to ensure technical issues associated with integrating TOU offerings into smart meter plans will be fully addressed.

Constellationstates that the Commission’s proposal to bid out TOU rates to a retail EGS is a creative suggestion to address the concerns raised by the TOU mandate. Constellation compares this recommendation to the bidding out of the demand response requirements under Act 129. Constellation proposes that EDCs could conduct an open and transparent bid process to select an EGS or EGSs to provide the TOU product, similar to the EDCs’ currently-run default service energy procurement auctions.

Alternatively, Constellation proposes that EDCs could conduct a separate wholesale auction for TOU load that would require wholesale suppliers to bid TOU rates. Constellation states that this method is used in certain Maryland and Washington DC EDCs.

PPL contends that the problems already observed with existing TOU products would likely continue to exist under the proposal to use retail EGSs to satisfy the TOU mandate under Act 129. PPL also believes that an EGS-provided TOU product may not necessarily meet the “default service” requirements of current law. PPL states that a legislative “fix” should be developed as the best approach to comprehensively address the myriad of problems associated with default service TOU products.

OSBA avers that, rather than focusing solely on the recommendation that EDCs contract with EGSs to provide TOU rates, EDCs should consider complying with their statutory obligation by offering small C&I customers hourly-pricing on an optional basis.

AARP and PULP submit that there is little reason, or at least it may be premature, to hand the TOU obligation over to an EGS. AARP and PULP contend that their interpretation of present law requires the “default service provider,” the EDC unless otherwise ordered by the Commission, to offer TOU rates that contribute to peak load demand reductions. As such, AARP and PULP state that other offerings, such as peak time rebates, should be considered to satisfy the legal mandate. Further, AARP and PULP aver that it would be difficult to design an auction around an unknown number of customers, as it is not known how many customers would participate. Lastly, AARP and PULP state that it would be unfair and inappropriate for customers under an EDC-designed TOU rate to be transferred to an EGS-provided TOU rate without the customers’ express permission.

**Resolution**

The majority of commenters generally concur with the Commission’s recommendation that EDCs contemplate contracting with an EGS to help satisfy their TOU rate requirement. RESA recommends specific methods for which EDCs could implement such a recommendation. Other parties, such as PPL, OSBA, AARP and PULP disagree with the Commission recommendation. PPL opines that such a recommendation will not alleviate problems, and a legislative “fix” would be best. AARP and PULP contend that other products, such as peak time rebates, can be offered by EDCs and should be considered in order to satisfy the TOU requirement. Interestingly, Constellation provides a recommendation to hold separate TOU bids in the wholesale auctions.

After review of the comments, the Commission will maintain its recommendation that EDCs contemplate contracting with an EGS in order to satisfy their TOU requirement. The Commission does wish to clarify that this recommendation is not, in and of itself, a rejection of the other proposals raised, such as instituting peak time rebate offers or creating a separate wholesale auction for TOU rates. Such ideas may indeed have merit, and we will allow the EDCs to evaluate these proposals for possible inclusion in their next default service filings.

Further, the Commission does see value in a legislative fix, as proposed by PPL. Reconciling perceived inconsistencies in existing legislation between the requirement that an EDC provide a TOU product and the obligation that an EDC provide default service using a prudent mix of contracts on a least cost basis over time may clarify legislative intent and in turn, may reduce litigation and its associated costs. Consequently, the Commission encourages participants in the Investigation, to the extent there is agreement, to consider proposing and developing legislative amendments to address these and other perceived problems associated with default service as a long range goal.

As to Exelon’s request that the Commission clarify in its final Order that EDCs be allowed to exercise flexibility in the implementation of default service TOU programs, the Commission will not issue such specific clarifications within this final Order. This Order is intended to recommend that EDCs incorporate new formats and designs within their upcoming default service filings that can help alleviate the challenges that have arisen from TOU mandates. As such, the flexibility that Exelon seeks should be requested in conjunction within specific EDC default service filings, to the extent that such filings propose new TOU formats and designs.

**Default Service Rate Adjustment Structure – Residential and Small Commercial**

In the October 14 Order, the Commission communicated its interest in weighing the benefits of semi-annual (*i.e.*, six-month) energy rate adjustments and/or six-month reconciliation adjustments. Consequently, the Commission recommended that EDCs contemplate the incorporation of semi-annual default service rate adjustments within their next default service plans.

**Comments**

NEM, RESA, Dominion Retail and IGS express concerns with the Commission’s proposal to reconsider the current quarterly adjustments of default service pricing for residential and small commercial customers. In general, these parties believe that moving toward longer-term adjustments will, in fact, make default rates less market-reflective.

NEM questions the proposal to move from the current quarterly adjustment of utility default service rates for residential and small commercial customers to semi-annual energy rate adjustments and/or reconciliation adjustments. NEM states that default rates should remain at least as market-based as they are at present and goes even further in suggesting monthly or market-based commodity rates for small commercial and residential customers.

Dominion Retail and IGS contend that default service rates should be as market-relevant as possible so that customers receive the appropriate price signals and so that they are able to understand the economics of competitive offers. Dominion Retail and IGS believe that changing to an annual or semi-annual reconciliation will often allow for default service rates that are not market-relevant, which distorts any attempt at comparison.

RESA states that default service rates must be as market-responsive and market-reflective as possible to ensure default service rates accurately reflect market circumstances. RESA believes that the adoption of less frequent adjustments as suggested by the Commission is a step backwards in terms of market responsiveness. Additionally, RESA submits that default service prices should have a rational relationship to the market otherwise EGSs cannot price competing offers and consequently may not enter the market.

The First Energy Companies do not anticipate proposing semi-annual reconciliation in lieu of quarterly adjustments in their next DSP filing because they believe that adjustments less frequently than quarterly may result in a larger under-collection or over-collection reconciliation balance of default service costs. The First Energy Companies further note that the asymmetrical treatment of interest, where under-collections accrue interest at a rate less than over-collections, mixed with a lengthier adjustment period, would create a recovery risk for the EDC.

PCL&P strongly opposes the Commission’s recommendation that EDCs consider incorporating semi-annual rate adjustments within their next default service plans. PCL&P believes that such an approach could cause significant rate shock. PCL&P explains that lengthening the period of time EDCs must forecast future energy costs will result in less accurate forecasts and consequently could lead to larger adjustments and more pronounced swings in the default service pricing. PCL&P points out that for smaller EDCs “even a small amount of customer migration could have a measurable impact” and any “significant migration of customers from the EDC to an EGS to avoid the large adjustment charge will have the impact of decreasing the amount of usage across which the adjustment would be charged.” Additionally, because recovery occurs in a later period, it could result in recovery of those costs from customers other than those for whom the EDC incurred the costs.

Citizens’ and Wellsboro echo the concerns of PCL&P, namely that moving to a semi-annual rate calculation would mean that a larger portion of the future default service costs for each rate filing would be based on energy cost projections rather than actual forward transactions. Citizens’ and Wellsboro state they are concerned that semi-annual adjustments would lead to greater deviations between projected power costs and actual power costs, increasing the E-factor for future periods. Citizens and Wellsboro state that large swings in the E-factor could result in default service rates that are not consistent with market conditions, and provide customers with a false price signal regarding competitive offers from EGSs.

However, Citizens’ and Wellsboro do submit that there is merit in reconciling certain generation-related cost components on an annual basis, such as transmission and capacity costs. Citizens and Wellsboro believe that moving to an annual reconciliation of these cost categories would be more accurate and stable and they anticipate filing a proposal with the Commission to change the reconciliation for these types of costs in the near future.

Exelon states that it supports the Commission’s recommendation to have EDCs consider the incorporation of semi-annual default service rate adjustments within their next default service plans. Exelon contends that recalculating rates and reconciling prior period under- and over-recoveries on a semi-annual basis may result in greater price stability for customers and more certainty concerning the price-to-compare (PTC) for EGSs.

Exelon suggests that the Commission give EDCs the flexibility to reconcile on an annual basis. Exelon notes that PECO currently reconciles on a quarterly basis, which means that any over/under difference arising in one quarter will be recovered beginning three months after the end of that quarter. Exelon states that ‘billing lag,’ the difference between the time generation supply costs are incurred by PECO and the time default service customers are billed for such costs, can create a substantial amount of over/under collections. The result is a PTC that fluctuates for reasons that are not directly related to the cost of default service supply. Exelon believes that using an annual schedule for reconciliation of ‘over/under’ amounts will smooth reconciliation adjustments and foster more market-based price signals for customers and EGSs.

Duquesne states that it supports the Commission’s effort to increase rate certainty for residential and small C&I customers in the Tentative Order by recommending a change from the quarterly rate adjustments to semi-annual rate adjustments. Duquesne suggests that the period be expressed as no shorter than six months. Duquesne believes that such flexibility allows EDCs the option to propose a longer period for customers where doing so is in the interest of the class, supports the continued development of retail markets, and aligns with the rate certainty intentions of Act 129. Duquesne notes that it currently offers residential default service customers a fixed, non-reconcilable 29-month rate that provides residential customers with price stability.

Duquesne avers that rate certainty is important for small customers and that exposing residential customer to short-term pricing, such as hourly, would not be good public policy. Duquesne anticipates shortening its present 29-month fixed rate in its upcoming default service filing and relying on full requirements solicitations to set its fixed rate prices.

PPL states that it is willing to consider various default service products, pricing terms, and reconciliation periods in its next filing. However, PPL believes that default products should be of terms that are more reflective of the market. PPL contends that the longer the pricing term, the more likely it is to rely on forecasts, and the greater the potential for over/under collections, which distort pricing.

PPL emphasizes that, regardless of the time period for price changes, it is critically important that default rates and costs be reconciled on an annual basis and not on a quarterly basis. PPL notes that quarterly reconciliations have caused a very substantial distortion in PPL’s’ POLR rates. PPL provides, as an example, its PTC for small C&I customers that increased from $0.9766/kW to $0.13028/kWh. PPL states that the primary reason for this substantial increase was an under collection of supply costs incurred by PPL to supply the small C&I customer class.

Constellation supports the Commission’s recommendation that EDCs consider semi‐annual default service rate adjustments within their next default service plans. However, Constellation believes that “more important than changing the time horizon for collection is how this adjustment is calculated.” Constellation opines that adjustments have been extreme in certain circumstances and that it does not seem apparent why such large balances are accruing. Constellation wonders if “potentially some snapshot of the working capital balance (even though it will be collected over time) is being used in the calculation of these rate adjustments” and proposes that since “these funds will eventually be collected through normal course of business, it appears that these adders have applied to rates as per policy rather than truly from funds owed as a result of a tariff rate miscalculation.” Constellation concludes that moving the time horizon out further would help alleviate the concern associated with this under collection and therefore Constellation supports moving to a six month time horizon.

OCA, Citizens Power, AARP and PULP are in general agreement in their support of the Commission’s proposal.

OCA agrees that it may be reasonable and beneficial to the EDCs and consumers alike. OCA believes that, given the length of time needed to effectuate a switch to an EGS, a customer’s decision to switch based on a current price can be quickly overcome by the new PTC. OCA believes that the “short cycle of a PTC may act as a detriment to those consumers looking to take advantage of longer-term EGS offerings” and that “a PTC that changes every six months or longer would tend to make shopping decisions a bit less complex.” OCA submits that a semi-annual energy cost adjustment that tracks the seasonal changes in the cost of supply could be easier for consumers to understand and react to as needed.

OCA also believes that the reconciliation process should be examined to ensure uniformity and appropriateness and that a 12-month reconciliation period is preferred because it should have the effect of smoothing out the reconciliation. OCA concludes that “[l]ess volatility in the PTC, and less frequent changes . . . should lead to greater consumer confidence in accepting EGS’ offers that provide savings over a current PTC.”

AARP and PULP also agree with the Commission’s proposal because the “legislative directive is to design the underlying default service portfolio to produce stable prices” and as such, default service plans should avoid significant changes in pricing. AARP and PULP also believe this would benefit consumers and provide more certainty regarding the customer’s ability to compare the PTC with EGS offers.

**Resolution**

The comments to this recommendation encompass a vast breadth of perspectives. Concerning energy rates, the parties’ main positions differ between harboring market-reflective rates or providing consumers with a less complex environment for decision making. However, concerning reconciliations, a majority of the parties appear to agree that semi-annual, or even annual, adjustments would be beneficial.

The Commission recognizes the argument that semi-annual rate adjustment may create rates that are less market-reflective. Further, the Commission agrees that longer reconciliation periods may help to smooth out over/under collections and therefore keep default rates more market-reflective. Therefore, the Commission will consider quarterly, as well as semi-annual or annual reconciliation periods in future default service proceedings.

The Commission also finds merit in the comments that the method of calculation of reconciled amounts may also have contributed to the volatility of reconciliation adjustment amounts to the generation and transmission bills. Therefore, EDCs are asked to include in their default service filings a clear description of how quarterly changes in supply charges will be calculated, adjusted, reconciled, and how various components of the default service costs will be allocated among default service customer rate classes.

Based on our review of the comments, we will amend our tentative recommendation to only encompass reconciliations. As such, the Commission recommends that EDCs contemplate the incorporation of quarterly, semi-annual and/or annual default service rate over/under collection reconciliations within their next default service plans, and include more detailed information on how supply charges will be calculated for default service customers.

**Hourly-Priced Default Service for Medium Commercial and Industrial Customers**

In the October 14 Order, the Commission recommended that EDCs contemplate expanding hourly-priced default service to the medium sized C&I class, generally those customers with demand greater than 100 kW. The Commission stated that expanding hourly-priced service to medium C&I customers may help to mitigate any cross-subsidies between small C&I and medium C&I customers and may facilitate more competitive offerings from EGSs by encouraging competitive market entry.

**Comments**

UGIES,RESA, Hess, Dominion Retail and IGS support the Commission’s recommendation to have EDCs contemplate the expansion of hourly-priced default service into the medium C&I customer class for upcoming default service plans.

UGIES states that the current default service product for medium C&I customers impedes the ability of said customers to realize the full benefits of the market because it allows default service to directly compete with EGS product offerings on an uneven playing field, as EDCs are guaranteed cost recovery from ratepayers. UGIES contends that structuring default service as hourly-priced for medium C&I will appropriately change the role of default service for these customers from an administrative barrier to competition to an appropriate backstop for choice and would therefore bolster competition.

RESA submits that such an expansion should only be on a transitional/interim basis, and that it may be appropriate to consider transitioning this hourly-priced default service to a non-EDC default service provider in the long run. RESA further proposes that expansion to an even lower threshold than the 100 kW example proposed in the Commission’s Tentative Order should be considered. In support, RESA states that its experience in both Pennsylvania and other jurisdictions shows that hourly pricing has led to robust competition in the large customer market and that the customers represented by these demand thresholds are large businesses and institutions who are more sophisticated buyers of goods and services. Last, RESA states that hourly-priced default service minimizes the costs necessary to provide default service to those remaining default service customers as more and more customers migrate to the competitive market.

The First Energy Companies opine that the expansion of hourly-priced service should only be contemplated if the respective customer class currently has interval-recording meters, or after all customers of the respective class have received smart meters. The First Energy Companies state that the majority of their medium C&I customers do not have interval-recording meters. Further, the First Energy Companies state that the smart metering requirements of Act 129 may eventually employ smart meters with interval-recording capability in the future. However, this is likely not to be the case by June 1, 2013. Continuing, First Energy states that requiring the installation of an interval-recording meter on these customers before the approval of the smart meter deployment plans would not be sound metering strategy as it may likely result in a stranded-meter investment.

Duquesne submits that it separates small C&I customers (demand less than 25 kW) from medium C&I customers (demand greater than 25 kW and less than 300 kW). Duquesne submits that this rate structure helps to avoid the passing of migration risk to the small C&I customers. Duquesne further states that all customers with demand greater than 300 kW are availed hourly-pricing service. Duquesne believes that, at this point, hourly-pricing service should not be required for its medium C&I customers and states that the Commission should continue to evaluate the expansion of hourly-priced service on a utility by utility basis.

PPL states that expanding hourly service from customers with demand greater than 500 kW to customers with demand greater than 100 kW would expand its hourly service customer base from a total of about 1,000 to a total of about 4,200 customers. Of these additional roughly 3,200 customers, 93% are presently shopping. PPL believes that it is likely that at least some premium is factored into the default service bids for these customers, or procurement group, in anticipation that a large number of customers may migrate back to default service. PPL submits that, given the current shopping level for this customer group, there appears to be little incentive to encourage further shopping. PPL acknowledges that this situation may be different in other service territories. PPL also states that its currently robust market for these customers could be reversed as market prices move relative to fixed default service prices due to procurement schedules. PPL submits that eliminating the fixed-price product allows the market to provide solutions to these customers.

Additionally, PPL states that it does have the meter capability for these 3,200 customers to provide hourly-prices service, but it will need to make billing system changes to bill these customers on hourly rates. Further modifications will be required of its billing systems to adjust procurement groups. PPL avers that the costs for such modifications will be significant and could be recovered through either a base rate proceeding or through revisions to its Commission-approved Smart Meter Rider.

Lastly, PPL comments that it is not clear how this modification to default service rates would be introduced during a period when individual customers will be served at each instant through both existing contracts and new contracts. PPL states that it may be necessary to delay such a change in procurement groups until there is a complete replacement of existing contracts with new contracts. PPL submits that it will continue to investigate the issues related to expanding hourly-priced service and believes that other EDCs should do the same.

Constellation avers that lowering the hourly-pricing threshold is not the only way to address the concerns about subsidies between small and medium C&I customers. Constellation states that these subsidies can be mitigated through the use of shorter-term, more market-reflective, default service products. Further, Constellation contends that lowering the hourly-pricing threshold may manifest metering or smart metering conflicts.

Exelon states that, currently, not all EDCs have the advanced metering and back office system capabilities to implement hourly interval pricing for medium C&I customers. Exelon states that PECO does have an extensive smart meter plan in place with the objective to procure, design, and deploy smart meter infrastructure within its service territory. However, Exelon submits that PECO will not achieve such deployment in 2013. Exelon avers that requiring hourly pricing at a lower threshold on an interim basis for its approximately 6,000 medium C&I customers would necessitate the replacement of current meters. Subsequently, Exelon states that these meters would have to be replaced with smart meters. Exelon believes this would be a substantial and unnecessary expense to customers.

Exelon states that the Commission can help move the retail market for medium C&I customers forward by encouraging EDCs to design procurement plans that offer shorter-term, market-reflective pricing to these customers in the next default service plans.

The Industrial Customer Groups contend that expansion of hourly-priced service to customers with demand greater than 100 kW will substantially increase the number of hourly-priced customers in many EDCs, including customers that have more unpredictable loads than those of the large C&I customer base. Consequently, the Industrial Customer Groups submit that wholesale suppliers are likely to increase the risk premium included in their competitive price adder bids to provide hourly-priced service. The Industrial Customer Groups state that the creation of a separate procurement group for the medium C&I customer group would best mitigate the possible effects large C&I customers may realize from being grouped together with the medium C&I customer base for hourly-priced service.

Additionally, the Industrial Customer Groups submit that the expansion of hourly-priced service may require changes to EDCs’ billing systems. The Industrial Customer Groups state that large C&I customers should not be expected to pay for billing system changes when they have already incurred similar costs when hourly-pricing was designated as their default service option.

OSBA states that such an expansion in hourly pricing would require a reconfiguration of the smart meter deployment schedules, as many customers with demand greater than 100 kW do not have the metering capability to receive hourly pricing, and would likely cause an increase in smart meter costs. Further, OSBA submits that the cross-subsidies addressed by the Commission can be avoided by establishing separate procurement groups for small C&I customers with demand of less than 100 kW. Continuing, OSBA contends that the minimal number of customers with demand greater than 100 kW that are not shopping may indeed not be shopping intentionally. OSBA states that imposing mandatory hourly pricing on these customers would be punitive and would be inconsistent with the replacement of the “prevailing market prices” standard by the “least cost to customers over time” standard. Lastly, OSBA quotes the section of the Electric Competition Act which states “the default service provider shall offer residential and small business customers a generation supply service rate that shall change no more frequently than on a quarterly basis.” OSBA contends that placing small business customers on hourly pricing would therefore be unlawful.

Citizens’ and Wellsboro submit that, due to the small size of their territories, they procure all default service energy for one single procurement class and offer one rate for all default customers. This single offering is not hourly-priced. Citizens’ and Wellsboro urge the Commission to extend the waivers they have been granted with respect to hourly-priced service.

**Resolution**

Upon review of the comments from EDCs, it has become clear that metering and/or billing upgrades may be necessary for the majority of EDCs to expand hourly-pricing service to the medium C&I class. It is important to note that these upgrades will occur in the future, as part of the EDCs’ smart meter deployment plans, but will not occur in time to support an expansion in hourly-pricing service for the next default service plans.

Based on the comments received, we believe it would be imprudent, and possibly unrealistic, to require meter infrastructure and billing upgrades to be implemented in such a short time frame. Therefore, the Commission rescinds its recommendation to have all EDCs contemplate the expansion of hourly-priced default service in their upcoming default service filings until interval metering or smart meters are installed for this customer class.[[11]](#footnote-11) Note that this rescission should not be interpreted as a Commission policy against the expansion of hourly-priced service, only that the Commission recognizes the hurdles of expanding hourly-priced service to customers with demand greater than 100 kW for default service plans commencing June 1, 2013.

Further, parties have commented that creating separate procurement groups for medium and small C&I customers can help to alleviate any cross-subsidies, as described in the Commission’s October 14 Order. Hourly-priced or short term contract default service portfolios can potentially minimize the costs necessary to provide default service to customer segments which are very active in the competitive supply market as more and more customers migrate to the competitive market. The Commission therefore modifies its October 14 Order to recommend the EDCs file default service plans that create separate procurement groups for medium C&I customers.

**Future Issues Identified Within the Investigation**

The October 14 Order reminded EDCs that any issues addressed and resolved in the RMI may be recommended or directed for incorporation within pending or approved default service plans, to the extent that such issues will not substantially affect wholesale bidders’ analyses of future default service plans. In the October 14 Order, the Commission also suggested that upcoming default service plans should not inhibit the ability of the RMI stakeholders to recommend, and develop for implementation, changes in the competitive market that can help foster a more dynamic and robust retail electricity environment.

**Comments**

Several commenters expressed concern regarding the Commission’s suggestion that it would direct EDCs to modify Commission-approved default service plans. Exelon notes that under Section 2807(e)(3.8) of the Public Utility Code, 66 Pa. C.S.

§ 2807(e)(3.8), the Commission may only modify default service supply contracts or disallow costs associated with a default service plan upon non-compliance with an approved plan or with “the commission of fraud, collusion or market manipulation.” Otherwise, Exelon states that a default service provider is entitled to recover all reasonable costs associated with a default service plan. Further, Exelon is concerned that, by requiring an EDC to modify an approved default service plan, the Commission may create unintended uncertainty, which may raise the price at which bidders are willing to supply default service for all customers. Exelon recommends that the Commission clarify that changes arising from the RMI will be applied only on a prospective basis and that an EDC’s right to full and current recovery of default service costs will not be impaired.

Likewise, the First Energy Companies, Constellation and Duquesne echo the concern that implementing competitive enhancements and other changes to existing default service plans will affect contracts under the approved plan. These commenters caution that wholesale bidders would be exposed to the risk of significant regulatory uncertainty, and wholesale bidders would likely add significant risk premiums to their bids or decline to bid at all. These commenters recommend that wholesale default service contracts be honored and that any change to default service supply contracts should be limited to contracts in future solicitations.

Further, the First Energy Companies urge the Commission to provide an opportunity for comments on issues that arise during the RMI, prior to their implementation.

PPL acknowledges the Commission’s concern that the upcoming default service plans not inhibit the ability to implement changes to the competitive market that can help foster a more dynamic and robust retail electricity environment. PPL suggests that the Commission establish reasonable approaches and timelines, and recognize full cost recovery when appropriate.

OCA reminds the Commission that default service plans, as well as competitive enhancements resulting from the RMI, must be in accord with Act 129 and Commission regulations regarding default service.

AARP and PULP are concerned that *any* adverse impacts may occur with respect to the wholesale bidders’ analysis of future default service plans. AARP and PULP assert that future recommendations resulting from the RMI require an evidentiary hearing to discern the impact on future wholesale market prices for default service, and to ensure that default service providers are able to provide service at the “least cost to customers over time.” AARP and PULP request that the Commission clarify that any future recommendations will be implemented in a manner that will not adversely impact default service plans.

**Resolution**

As stated earlier in this Order, the Commission does not intend to disrupt existing default service plans by recommending the implementation of certain competitive enhancements that will alter the structure and format of existing plans. Recommendations that affect the structure of default service plans should be applied on a prospective basis - to the next phase of default service plans. Likewise, the Commission does not intend to disrupt default service supply contracts under Commission-approved plans for the reasons articulated by the commenters. Further, the Commission reiterates that it will consider the impact of wholesale bidders’ analyses of future default service plans prior to issuing a recommendation arising from this Investigation. Therefore, the Commission will continue to provide an opportunity for stakeholders, including interested wholesale bidders, to offer input with respect to each recommendation, either through the solicitation of comments after the issuance of a Tentative Order or through participation in technical conferences.

The Commission declines AARP’s and PULP’s suggestion to send recommendations resulting from the RMI to the Office of Administrative Law Judge for evidentiary hearings. A better opportunity to discern the impact of any RMI recommendation on the “least cost to customers over time” mandate of Act 129 is within each specific EDC’s default service plan.

Additionally, in response to Exelon’s and PPL’s concern about cost recovery, any issues related to the costs of EDCs’ implementation of the recommendations in the RMI should be addressed in future proceedings where such costs are at issue.

**CONCLUSION**

For the reasons described herein, we are adopting these recommendations to provide guidance on the next phase of EDC default service plans, so that the plans do not hinder the ability to facilitate change to the current retail electricity market to create more robust electric competition in Pennsylvania.

**THEREFORE,**

**IT IS ORDERED:**

1. That the Recommendations Regarding Upcoming Default Service Plans, as set forth in this Final Order, are adopted.

2. That this Final Order shall be served on all Electric Distribution Companies, all licensed Electric Generation Suppliers, the Bureau of Investigation and Enforcement, the Office of Administrative Law Judge, the Office of Consumer Advocate, the Office of Small Business Advocate, the Energy Association of Pennsylvania, and all other parties who filed comments to the Tentative Order and the November 10, 2011, *en banc* hearing.

3. That a copy of this Final Order shall be filed at Docket No. I-2011-2237952 and posted on the Commission’s website at the Retail Markets Investigation web page: <http://www.puc.state.pa.us/electric/Retail_Electricity_Market.aspx>.

4. That the Office of Competitive Market Oversight shall electronically send a copy of this Final Order to all persons on the contact list for the Committee Handling Activities for Retail Growth in Electricity (CHARGE), and to all persons on the contact

list for the *Investigation of Pennsylvania’s Retail Electricity Market*, order entered April 29, 2011 at Docket No. I-2011-2237952.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: December 15, 2011

ORDER ENTERED: December 16, 2011

1. AARP, American Public Power Association, BlueStar Energy Services, Brighten Energy, Citizen Power, Citizens' Electric and Wellsboro Electric, City of Philadelphia, Community Legal Services of Philadelphia, Consolidated Edison Solutions, Constellation NewEnergy and Constellation Energy Commodities Group, Direct Energy Services, Dominion Retail, Duquesne Light, Energy Association of PA, Exelon, First Energy Solutions, Future Times Energy Aggregation Group, Hess Corporation, IECPA and Other Industrial User Groups, Liberty Power, Met-Ed, Penelec, West Penn Power and Penn Power - the First Energy Companies, Mid-Atlantic Renewable Energy Association, National Energy Marketers Association, NRG Energy, Office of Consumer Advocate, Office of Small Business Advocate, PA Coalition Against Domestic Violence, PA Energy Marketers Coalition, PA Utility Law Project, PennFuture, PPL Electric Utilities and PPL EnergyPlus, ResCom Energy, Retail Energy Supply Association, State Representative C. George, Stream Energy PA, Washington Gas Energy Services, and York Solid Waste & Refuse Authority. [↑](#footnote-ref-1)
2. <http://www.puc.state.pa.us/electric/Retail_Electricity_Market.aspx> [↑](#footnote-ref-2)
3. Stakeholders had the opportunity to file informal comments after the November 10th *en banc* hearing. Electronic copies of these comments can be found on the Commission’s website at <http://www.puc.state.pa.us/electric/Retail_Electricity_Market.aspx>. [↑](#footnote-ref-3)
4. *Pennsylvania Human Relations Commission v. Norristown Area School District*, 374 A.2d 671 (Pa. 1977). (Courts have generally accepted the notion that administrative agencies have the power to implement binding policy either through rulemaking (and its formal process to adopt substantive rules) or through the adjudicatory process—*i.e*. enforcement (and its creation of binding precedent). [↑](#footnote-ref-4)
5. Given that the Commission’s intent is to issue recommendations on upcoming default service plans, the caption of the Final Order has been modified to eliminate the word “directives.” [↑](#footnote-ref-5)
6. Act of October 15, 2008 (P. L. 1592, No. 129), codified at 66 Pa. C.S. §§ 2806.1, *et seq*. [↑](#footnote-ref-6)
7. *Implementation of Act 129 of October 15, 2008: Default Service and Retail Electric Markets*, Docket No. L-2009-2095604 (Final Rulemaking Order entered October 4, 2011), p. 44. [↑](#footnote-ref-7)
8. *Id.* [↑](#footnote-ref-8)
9. *Proposed Policy Statement Regarding Default Service and Retail Electric Markets*, Docket No. M-2009-2140580, (order entered September 23, 2011) Final Policy Statement at p. 10. [↑](#footnote-ref-9)
10. Shopping numbers are monitored and updated weekly by Commission staff. These numbers are uploaded to the Papowerswitch.com website. <http://extranet.papowerswitch.com/stats/PAPowerSwitch-Stats.pdf?/download/PAPowerSwitch-Stats.pdf> [↑](#footnote-ref-10)
11. As PPL already has this interval metering capability, the Company is directed to file testimony in its default service case setting forth the cost to convert its billing system to allow hourly priced service for all default service customers larger than 100kw. [↑](#footnote-ref-11)