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January 17, 2012

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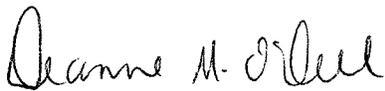
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

On behalf of the Retail Energy Supply Association ("RESA") enclosed please find the original of its Comments in Response to the December 16, 2011 Tentative Order along with the electronic filing confirmation page with regard to the above-referenced matter.

Sincerely yours,



Deanne M. O'Dell, Esq.

DMO/lww
Enclosure

cc: ra-RMI@state.pa.us w/enc.
Karen Moury, (via email only) w/enc.
Daniel Mumford (via email only) w/enc.
Kirk House (via email only) w/enc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation of Pennsylvania's Retail
Electricity Market: Intermediate Work Plan

:
: Docket No. I-2011-2237952
:
:

**COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION
IN RESPONSE TO THE TO THE DECEMBER 16, 2011 TENTATIVE ORDER**

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I. INTRODUCTION

In its December 16, 2011 Tentative Order, the Commission sought public comment on the proposed intermediate work plan developed by its Office of Competitive Market Oversight (“OCMO”). The proposed work plan identifies a variety of issues intended to improve the current retail electricity market to be resolved and implemented prior to the expiration of the next round of default service plans to be implemented by the electric distribution companies (“EDCs”) for delivery beginning June 1, 2013.

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

At the outset, RESA continues to support the goal the Commission is seeking to achieve with this investigation which is to move default service customers into the competitive market. RESA also strongly supports the Commission’s recognition with this Tentative Order that measures can and should be implemented in the short term as a glide path toward achieving that goal. RESA is also cognizant of the multitude of competing interests involved in travelling this path as well as the potential logistical and operational considerations that must be addressed to enable implementation of interim measures. Even after taking all of this into consideration, however, RESA respectfully recommends that the Commission’s final order direct implementation of a robust customer referral program in 2012 and consider implementation of

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

properly structured retail opt-in auction pilots in selected EDC service territories with below-average shopping as soon as practicable. As explained further below, RESA believes implementation of these programs are achievable 2012 and that the results of doing so will be a win-win for all stakeholders involved as well as Pennsylvania consumers. RESA also sets forth its concerns about placing the default service rate on all customer bills and other issues that remain regarding the coordination between EDCs and electric generation suppliers (“EGSs”). RESA looks forward to continuing to work with the Commission and other stakeholders on these important issues.

II. RESA COMMENTS

A. Small Business Customer Outreach

As part of its intermediate work plan, the Commission proposes to make a concerted effort to specifically target customer education efforts to small business customers, in particular those with a peak demand of 25 kW or less.² RESA supports this recommendation. While there is customer migration for the larger commercial customers, the smaller commercial customers continue to remain on default service. According to the most recent switching statistics, approximately 66.4% of “commercial customers” continue to receive default service from the EDC.³ RESA supports increasing education efforts to this market segment with the goal of encouraging more of these customers to shop for their electricity supplier. During the RMI process some stakeholders suggested modifying the PaPowerSwitch website to allow retail suppliers with generally available offers for the small business market to post these offers on the website. RESA supports this recommendation and looks forward to working with stakeholders

² Tentative Order at 6.

³ See Weekly PaPowerSwitch Update, Customers Switching to an Electric Generation supplier, as of January 4, 2012 available at www.papowerswitch.com.

to implement such changes. As further discussed below, RESA believes that properly structured referral programs can be an effective tool for promoting shopping for the small business market customers although careful consideration should be given to defining this market segment for such programs in a manner that can be effectively implemented by the EDCs.⁴

B. Acceleration of Supplier Switching Timeframes

The Commission issued proposed interim guidelines on November 14, 2011 intended to streamline the timeframe for customers to switch EGSs.⁵ RESA fully supports the Commission's desire to shorten the switching time in order to facilitate a more customer-oriented shopping experience. Requiring all customers to wait at a minimum 16 days and as much as 45 days (or longer) to establish service with his or her chosen EGS is frustrating and confusing for customers. Moreover, it is grossly out of line with standards for service in other industries, such as mobile phone service or cable television, where service can be initiated or changed in some cases instantaneously.

RESA suggested a number of substantive changes regarding the Commission's proposed interim guidelines which are more fully explained in its comments.⁶ In addition, RESA recommended that a stakeholder process be convened to establish the switching deadline, to implement the necessary operational and EDI changes resulting from the modified process and to address the interplay between the three-day rescission period and the new protocols related to

⁴ In this regard, while RESA does prefer efforts to move towards adoption of a uniform standard for identifying the small business segment, such as the 25 kW definition established in the Commission's customer information disclosure regulations, RESA also recognizes that in some cases it may be more practical to rely on existing EDC rate class designations. As such, RESA has recommended using each EDC's smallest non-residential rate class as the eligibility criteria for a standard offer customer referral program for the small business market.

⁵ *Interim Guidelines Regarding Standards for Changing a Customer's Electricity Generation Supplier*, Docket No. M-2011-2270442, Tentative Order entered November 14, 2011.

⁶ Comments of the Retail Energy Supply Association filed at Docket No. M-2011-2270442 dated December 14, 2011.

switching. RESA recommended that the goal of the stakeholder process be clearly defined as focusing on developing the shortest timeframe possible, from an operational standpoint, which would be uniformly applicable to each EDC in Pennsylvania. RESA urges the Commission to give serious consideration to all of its proposals as more fully set forth in its comments.

C. Customer Referral Programs

In the Tentative Order, the Commission identifies two variants of customer referral programs – a “new/moving customer referral program” (“N/MCRP”) and a “standard offer customer referral program” (“SOCRP”).⁷ The Commission concludes that implementation of a N/MCRP is possible in 2012 and RESA agrees with this conclusion. In contrast, the Commission does not appear to contemplate implementing a SOCRP until June 2013 based on the fact that the Commission has directed EDCs to include a customer referral program in their upcoming default service plans which would not become effective until June 2013.⁸ RESA urges the Commission to reconsider its timing for a SOCRP as RESA believes implementation of a robust customer referral program which includes both variants in 2012 is achievable.

While RESA is supportive of the Commission’s goals here to implement a viable customer referral program, RESA submits that maximum value and benefit would be achieved by simultaneously implementing both the N/MCRP as originally proposed by RESA and the SOCRP in 2012. The end result would be a robust customer referral program similar in design to the well-received and fully implemented referral programs in effect in New York.

RESA offered the concept of a N/MCRP as an interim measure – pending implementation of a robust customer referral program – to effectuate selection of an EGS as soon

⁷ Tentative Order at 9-21.

⁸ *Investigation of Pennsylvania’s Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952, Final Order entered December 16, 2011.

as practicable at the time of service initiation, when transferring service to another location, or at other appropriate customer contact points. RESA's proposal was intended to be a logistically simple but efficient way to move customers away from default service and it was narrowly tailored to require the most minimal amount of work possible on the part of the EDCs. Despite this, some EDCs still raised logistical issues with RESA's original proposal though RESA continues to believe the identified issues can all be effectively and reasonably addressed.⁹

Unfortunately, RESA believes that the changes tentatively proposed by the Commission to RESA's originally proposed N/MCRP are likely to overcomplicate the program and, most importantly, are not likely to result in achieving the goal of the program – to encourage customers to participate in the competitive market. The Commission's proposed N/MCRP appears to require a customer contacting the EDC to already be aware of customer choice and, if not, then the EDC would refer the customer to the Commission's PA PowerSwitch website for further details.¹⁰ This would require the customer to end the call with the service representative, go to the internet, navigate to the Commission's choice website and then study the offers listed to determine whether or not the customer should switch. Instead, the purpose of the N/MCRP (or a SOCRP for that matter) should be to give the customer a one-stop shop experience whereby he or she can learn about choice and make an easy and convenient decision at the time to switch to an EGS. RESA believes its N/MCRP as proposed achieves this goal within the confines of existing processes and should be implemented as originally proposed as soon as possible.

Further, RESA notes that much of the same programming needed for the SOCRP should be adaptable for the N/MCRP as proposed by RESA and, therefore, there does not appear to be

⁹ See http://www.puc.state.pa.us/electric/docs/RMI/DD-NewMoving_Customer_Program_100511.docx

¹⁰ Tentative Order at 19.

any logistical barrier to forestalling implementation of the SOCRP until 2013. Below is a proposed timeline for implementation of the SOCRP:

- Commission Order March 1, 2012 directing EDCs to file plans implementing customer referral programs
- 45 day period for stakeholder meetings to develop EDC plans (April 16, 2012)
- EDC's submit individual plans by May 16, 2012
- Commission approves plans by June 7, 2012
- EDC implementation between September 2012 and November 2012

Under this timeline, implementation of a robust customer referral program could be at least nine months sooner than the current timeline chosen by the Commission. Further, focusing stakeholders on implementing a robust customer referral program sooner rather than later is a more efficient use of resources.

RESA believes that a robust SOCRP can be implemented in 2012 with the following program elements:

- A product modeled closely after the NY customer referral programs. Many RESA members participate in this program and it is widely viewed as a successful way to introduce customers to the concept of receiving service from an EGS.
- The introductory discount rate would be 7 percent off of the Price to Compare and would be valid for the first 3 months, instead of 2. This allows for additional time to send the two mandatory notices required by PA regulations.
- Value-added products through the customer referral program: RESA recommends that only a standard product be implemented under a customer referral program at this time. However, after one year of experience with the program, RESA recommends that the Commission and stakeholders consider developing a second, value added product that could be offered through the referral program (such as a green product, dynamic pricing product, or other standardized value-added offering)
- All properly licensed EGSs should be permitted to participate
- Customers permitted to select an EGS by name or could be randomly referred to a participating supplier
- Customer class eligibility would include residential and small business customers. Until such time that a uniform definition of small business could be implemented (i.e., 25 kW), the small business class would be defined according to the EDC's

smallest non-residential general service rate schedule: Duquesne, GS-Small under 25 kW; Met-Ed & Penelec, GS-Small under 1500 kWh per month, PPL GS1, etc.

- Only default service customers are eligible
- As with the NY programs (with the exception of Central Hudson), customers would automatically renew onto a month-to-month product with the EGS with no early termination fees.
- The EGS would be responsible for handling the enrollment and providing the terms and conditions to the customer. For example, when the customer agrees to participate in the program during a conversation with the EDC's CSR, the EDC would record the customer's name, account number and other relevant information and would transmit this information to the EGS (via EDI preferably, but could also be a manual report generation process if easier to implement). EGS generates EDI 814 enrollment transaction and delivers the required disclosure statement to the customer.

RESA believes that a robust customer referral program incorporating the above program elements could be implemented quickly in 2012 given that this type of program has been operational by other utilities, has been utilized by customers and EGSs, and has been the subject of significant discussions in the RMI Sub-groups focusing on this issue. In fact, one of the participating EDCs stated that it could implement the program as advocated by RESA in six months. If the Commission is not inclined to require a SOCRP with these proposed program elements prior to 6/1/13, then RESA recommends further consideration be given to requiring additional operational protocols which would enable the EDCs to process the enrollment within their systems as they do today in New York's customer referral programs.

Further, if the Commission chooses to retain its current tentative recommendation reserving implementation of the SOCRP until 2013, then RESA recommends that the Commission direct the EDCs to immediately implement a direct mail program similar to the successful one recently implemented for the Met-Ed and Penelec EDCs. Pursuant to this direct mail program, Met-Ed and Penelec issued mailers to all residential and small business customers

which included specific retail offers from suppliers choosing to participate. The program offered significant flexibility to participating suppliers and allowed them to present a wide range of offers to customers. The participating suppliers designed marketing inserts that were included in the residential and small business customer mailers. The direct mail program would be in addition to the N/MCRP contemplated by the Commission but would provide EGSs with another valuable channel in which to reach customers.

Implementation of this alternative approach is logical in consideration of the fact that the Commission is already directing EDCs to send customer education post cards and letters during 2012. The value of these mailers would be maximized by adopting the successful program used by Met-Ed and Penelec which permitted interested suppliers to include marketing inserts as part of the mailer. Prior to implementation of this direct mail program, about 2.6% of customers in Met-Ed and 10.1% of customers in Penelec had chosen an EGS. Today, in addition to the entrance of additional EGSs and their specific marketing activities, and after implementing the direct mail program, shopping levels have increased to 9.3% for Met-Ed and 14.6% for Penelec. Although there is significant room for improvement in residential migration at these EDCs, this does demonstrate a significant increase resulting from the direct mail program and related direct marketing efforts by participating suppliers.

In conclusion, RESA firmly believes that its proposed N/MCRP and SOCRP can and should be implemented in 2012. If, however, the Commission is unwilling to implement the SOCRP in 2012, then RESA believes that immediate implementation of the direct mail program is a way to achieve at least some positive value in the short term from a “customer referral” type program.

D. Retail Opt-in Auction Programs

1. Customer Eligibility

While the Commission proposes that all residential customers be eligible to participate whether they are receiving default service or service from a competitive supplier, it also recommends that the retail opt-in auction program be specifically targeted to default service customers.¹¹ Although RESA recognizes the various issues that need to be weighed regarding this issue, a Retail Opt-In Auction that is overtly open to shopping customers should not be adopted for a number of reasons.

First, the purpose of the opt-in auction is to introduce default service customers to the competitive market. Customers who are already receiving service from a competitive supplier are already experiencing the purpose of the retail opt-in auction and, therefore, including them in the retail opt-in auction does not further the purpose of the program.

Second, EGSs who have already invested in acquiring customers on an individual basis could face a negative return on their investment if their existing customers choose to participate in the opt-in auction. Such a result unfairly chooses “winners and losers” in a competitive market and erases any incentive on the part of individual EGSs to further invest in the Pennsylvania market. As the Commission states a “market consisting of a handful of dominant EGSs will not benefit consumers and could ultimately result in a more costly, less-competitive market in the long-run.”¹² Such a result could occur if EGSs who do not choose to participate in the retail opt-in auction have an increased risk of losing their already acquired customers as a result of the auction. An opt-in retail auction that includes an incentive bonus or rebate would further exacerbate these problems.

¹¹ Tentative Order at 26.

¹² *Id.* at 35.

Third, including shopping customers has the potential of causing these customers to incur unnecessary financial penalties as they cancel their existing contracts early. Customers who are already receiving generation service through a contract with a competitive supplier may have chosen a product that includes a cancellation fee if they cancel their agreement early. Customers who are enticed to join the opt-in auction may not realize this risk or may think that their participation somehow obviates the existing agreement with their supplier. This financial consequence would not be alleviated by requiring customers to return to default service for a period of time before they can participate in the opt-in auction because the customer would still need to cancel the current contract to participate.

Finally, at least one EDC, PPL, has made clear that it has the ability to identify the shopping status of its distribution customers for the purpose of assigning responsibility for its default service related reconciliation adjustments.¹³ Additionally, the Commission's interim guidelines for the Eligible Customer Lists require a data element to identify shopping versus default service status.¹⁴ Presumably, this logic can be applied for other purposes including identifying eligibility to participate in a retail opt-in auction.

Accordingly, the program details of an opt-in auction should specifically limit eligibility to only those customers receiving default service at the time that the auction is conducted. Additionally, all marketing and customer education about the program should inform customers that they are ineligible to participate if they are already receiving service from an EGS. If, for

¹³ *Petition of PPL Electric Utilities Corporation for Approval to Implement a Reconciliation Rider for Default Supply Service*, Docket No. P-2011,2256365, Amended Petition filed August 25, 2011 at ¶ 15 (“Application of the Reconciliation rider will be determined each time a customer’s shopping status changes between default service and shopping based on the customer’s status during the period immediately preceding the customer’s status change.”) A final Commission decision regarding PPL’s petition is pending.

¹⁴ *See Interim Guidelines For Eligible Customer Lists*, Docket No. M-2010-2183412, Final Order on Reconsideration entered November 15, 2011 at Appendix A, Minimum Element Number 12 (“POLR/Shopping Status”).

whatever reason, the Commission concludes that shopping customers attempting to enroll in the opt-in auction are not going to be deemed ineligible, the Commission should still avoid overtly advertising this in its marketing efforts. In other words, even if shopping customers attempting to enroll in the opt-in auction are going to be allowed, the messaging and marketing of the program should be focused and targeted toward default service customers. As stated above, the purpose of the opt-in auction is to introduce default service customers to the competitive market. Therefore, messaging and marketing should be laser focused on that market segment regardless of whether or not the Commission is going to also permit shopping customers to opt-in to the program.

2. EGS and EDC Participation

The Commission recommends that EGS participation be voluntary and that all appropriately licensed EGSs should be available to participation. The Commission also recommends that the three smallest Pennsylvania EDCs (Citizen's Electric, Wellsboro, and PCL&P) be excluded from the opt-in auction process. RESA does not oppose these recommendations. However, RESA would note that an opt-in auction could present a good opportunity to generate EGS interest in entering these smaller EDCs markets.

3. Pilot Programs

The Commission tentatively concludes that a pilot opt-in auction would be of limited usefulness that would require considerable effort by the participants and could not likely be accomplished in time to be implemented in 2012.¹⁵

RESA recommends that the Commission reconsider this tentative determination. A properly structured pilot implemented in 2012 and specifically targeted to one or more EDC

¹⁵ Tentative Order at 28.

service territories with low customer migration, as compared to the statewide average, could provide significant practical value. If all interested stakeholders are working toward the same goal of developing a properly structured pilot that could benefit all from the lessons learned, there is no legitimate reason why such a pilot could not be appropriately designed, implemented and in place in 2012. A pilot program, as discussed in the RMI sub-group assigned to this issue, could be completed by the fourth quarter of 2012 with lessons learned incorporated into the June 1, 2013 statewide auctions.

4. Program Length/Term

The Commission recommends that the program term be no shorter than six months and no longer than 12 months.¹⁶ This appears to be a reasonable term for the program as anything longer creates greater risk.

5. Timing

The Commission tentatively concludes that the retail auction occur first, followed by customer enrollments so that the exact price the participating customers will be required to pay is known before the customer has to decide whether or not to participate.¹⁷ While RESA understands the goal the Commission is trying to achieve, to provide pricing information to the customer before requiring him or her to commit, and timing the auction to occur prior to enrollment may discourage EGSs from participating by significantly increasing uncertainty and risk for the EGS. Without knowing how many customers the EGS may be serving, or at least how many may be interested, an EGS will have difficulty calculating an offer price. Also, if the timing is spaced too far apart before these events, the risk of a significant market change could impact the variables that an EGS has to consider in determining an offer price. The Commission

¹⁶ Tentative Order at 29.

¹⁷ *Id.* at 32.

should allow for flexibility on this issue and implementing retail auction pilot programs may provide useful experience on issues such as timing of the solicitation.

6. Customer and Supplier Participation Caps

The Commission proposes to limit the number of customers who can participate to 50% of an EDC's default service customer base.¹⁸ The Commission also proposes to limit the number of customers an EGS can serve through the retail opt-in auction to 50% of the customers participating in the auction.¹⁹ RESA supports these recommendations as reasonable ways to promote more participation among a variety of suppliers. RESA also suggests that the Commission require a minimum number of winning bidders and recommends four.²⁰ By encouraging a variety of EGSs to participate and creating a situation whereby multiple EGSs are able to successfully win a portion of the retail opt-in auction, the Commission will be helping to promote robust interest in the auction which will be a benefit to all involved in the long term.

7. Composition of Customer Offer – Product

The Commission proposes two possible models for the retail opt-in auction product: (a) a fixed rate product with a bonus; and, (b) a percent-off rate, no bonus.²¹ While a percent-off the default service rate may appear attractive because it provides the customer certainty that he or she will not be paying more than an EDC's default service rate, such approach is only feasible where the default service rate is a true market rate that the competitor can reasonably predict and, therefore, plan accordingly. Requiring a competitor to guarantee a price lower than a rate that

¹⁸ Tentative Order at 34.

¹⁹ *Id.* at 35.

²⁰ The Commission, however, should maintain flexibility to permit less than four bidders for a particular auction if there are valid reasons specific to the particular auction for doing so.

²¹ Tentative Order at 38.

does not bear a rational relationship to the market will hamstring the ability of the competitor to participate in the program because it will not have a rational basis upon which to plan.

There are two fundamental reasons why the default service rates in place today are not true market reflective rates. First, most of the EDC default service rates include reconciliation mechanisms which are intended to ensure that the EDC receives full recovery of all costs of providing default service. Generally, an EDC will project its costs of providing default service for the next quarter and factor that amount into the default service rate. At the end of the quarter, the EDC will reconcile the difference between its projections and actual costs and factor that into the default service rate while also including the future quarter's projections into the same rate. The ability of the EDC to utilize these reconciliations to ensure full cost recovery is unique to the EDC as the default service provider and it presents a significant "unknown" in the calculations used by the EDC to set the default rate. The variations on how the reconciliation mechanism is calculated and applied creates difficulty for competitors to reasonably plan for the next default service rate that will be set. A retail opt-in auction that requires competitors to price their product based on such a rate may discourage many suppliers from choosing to participate.

Second, today's default service rates have never been fully examined in order to properly unbundle and reflect all default service related costs in default service rates. To date, there has been no cost allocation study of any of the EDCs to ascertain the extent of their economic advantage due to a lack of unbundling and to ensure that all costs of default service are being properly recovered in default service rates.

The combination of these factors means that the default service rate in place today is not a truly market reflective, market responsive rate. Because of that, a requirement that EGSs offer

a competing service that is firmly benchmarked off of the default service rate for the entire time period of the retail opt-in auction is not reasonable.

For these reasons, a fixed rate model for a specified term would be preferable to a guaranteed discount off of the PTC which would require suppliers to maintain the specified discount level even in periods where the PTC is significantly influenced by factors such as the EDC reconciliation mechanism. The Commission, however, should allow for flexibility on this issue and implementing retail auction pilot programs may provide useful experience on this issue.

8. Customer Options Upon Program Expiration

The Commission tentatively concludes that customers of the retail opt-in auction should not be treated any differently than any other shopping customer when the customer's contract term ends.²² RESA supports this recommendation.

9. Creditworthiness and Security

The Commission seeks further input on the need for EGSs participating in the retail opt-in auction to prove creditworthiness and security.²³ EGSs should be required to demonstrate their operational and financial fitness to serve and ability to comply with Commission regulations, orders and applicable laws consistent with the requirements of 52 Pa. Code § 54.183(d). Consistent with the discussion below in Section 9, any additional credit and/or security requirements the Commission may choose to implement must be based on unambiguous, transparent credit analysis that identifies definable credit risks that may be incurred if the winning EGS fails to perform. Thus, before placing any such additional

²² Tentative Order at 40.

²³ *Id.* at 41.

requirements, they should be carefully and narrowly tailored to serve their purpose while not discouraging qualified EGSs from participating.

E. Default Service Price to Compare on Bills

The Commission tentatively concludes that EDCs should be required to place current PTCs on customer bills and state when this PTC will be in effect.²⁴ The Commission also proposes specific requirements that would be included to assist the customer in understanding the PTC.

RESA recognizes the purpose of this tentative recommendation is to provide customers with full information and RESA fully supports that goal. Even though default service is supposed to be a backstop to the competitive market rather than a “competitive” offering,²⁵ the reality in Pennsylvania today is that default service acts as a competitive offering relative to offers from EGS. The designation of the EDC’s default service rate as the “price to compare” reinforces this current reality as consumers are encouraged to use the default service rate as the benchmark by which to assess the prices offered by EGSs. For these reasons, RESA understands the Commission’s tentative conclusion to require the PTC on the customer bills and, to that end, fully supports the proposed language to be included describing the PTC. However, RESA recommends that the Commission continue to reevaluate this position as the market matures. As long as the PTC is functioning as a competitive offering, including it on bills to customers who are paying a competitive carrier gives an unfair advantage to the EDC because customers are constantly made aware of the price for that particular product. Moreover, a customer who has

²⁴ *Id.* at 44.

²⁵ 66 Pa. C.S. 2807(e)(3.1)(“Following the expiration of an electric distribution company’s obligation to provide electric generation service to retail customers at capped rates, if a customer contracts for electric generation supply service and the chosen electric generation supplier does not provide the service or if a customer does not choose an alternative electric generation supplier, the default service provider shall provide electric generation supply service to that customer pursuant to a commission-approved competitive procurement plan.”)

chosen to receive competitive service and has entered into a contract for that service has already weighed the pros and cons of that selection and continuing to show the EDC's rate does not provide any additional value though, as previously discussed, it does provide a competitive advantage to the EDC.

F. Coordination between EDCs and EGSs

1. EDC Supplier Charges

The Commission tentatively concludes that current EDC supplier charges are not a significant concern but invites stakeholders who may disagree with that determination to provide additional information.²⁶ An issue, however, was raised regarding the assessment of a charge on EGSs requesting IDR data.²⁷ While none of the other major EDCs charge EGSs for this information (unless a manual process is needed), DLC provides only the first request free per calendar year and charges \$60 per account for subsequent requests.²⁸ The EGSs need timely access to information about prospective customers so that they can provide competitive offers and the imposition of this charge appears unnecessary and unwarranted. Therefore, RESA recommends that no charges be assessed by any EDC for standard IDR requests. To RESA's knowledge, all other major EDCs make IDR data available through either EDI or via a data transfer website at no charge to EGSs. Duquesne should similarly adopt this model.

2. Sample Bills

The Commission seeks comments as to whether an EGS's authorization from a customer to switch his or her account is sufficient to permit the EGS to receive a copy of the customer's

²⁶ Tentative Order at 46.

²⁷ See http://www.puc.state.pa.us/electric/PDF/RetailMI/DD-Subgroup-Supplier_First_Resort_093011.pdf

²⁸ See http://www.puc.state.pa.us/electric/PDF/RetailMI/DD-Subgroup-Supplier_First_Resort_093011.pdf

bill to trouble-shoot a billing problem with the customer.²⁹ As explained by the Commission, an EGS does not, as matter of course, require a copy of a customer's bills but there are situations where such access is useful to addressing a problem with the customer. Since the customer has authorized an EGS to provide his or her service and ensuring that the service is functional and working properly is a part of the process of fulfilling the customer's desires, RESA submits that the Commission should conclude that the customer authorization is sufficient to enable an EGS to receive the customer's specific bill upon request. Moreover, EGSs are the entities legally required to have proper permission from the prospective customer and their ability to access relevant information should not be delayed while an EDC "checks" an EGS's claimed LOA or requires the customer to separately communicate his or her permission to the EDC. In short, the EDC should not act as a gatekeeper for customer data. EGSs requesting data should be assumed to have the proper authorization from the customer. An EGS's authorization records and processes should be subject to Commission audit, but EGSs should not be required to transmit an LOA to the EDC as a prerequisite to receiving a copy of the customer's bill.

3. Creditworthiness Standards

The Commission tentatively concludes that RESA's proposals regarding creditworthiness are a reasonable way to address the Commission's concern that EGSs providing service in the Commonwealth are credit worthy or have credit instruments in place sufficient so support their operations in Pennsylvania.³⁰ RESA supports this recommendation.

The Commission invites comments on how to calculate the nature and amount of risk to establish the amount of credit/collateral which must be provided by the EGSs.³¹ RESA

²⁹ Tentative Order at 47.

³⁰ Tentative Order at 49.

³¹ *Id.* at 50.

welcomes this review. Standardized credit practices that are based on unambiguous, transparent credit analysis that identifies definable credit risks that are directly incurred by the EDC as a result of EGS activity are the key to assuring that credit requirements do not become an obstacle to EGS entry and participation in the competitive retail market in Pennsylvania. To that end, the credit requirements imposed on EGSs need to be based on real risk that is easily identifiable and not already addressed through other means. As the entities seeking the credit assurances, RESA believes that the EDCs are in a better position to explain and justify the nature of the risk that they are seeking to cover and looks forward to working cooperatively with them and other stakeholders on this issue.

One risk that is often discussed is the risk of nonpayment of the Gross Receipts Taxes (“GRT”). A part of the bonding requirement set forth in 52 Pa. Code § 54.40 is ensure the payment of the GRT and to ensure that the EDCs have the ability to be reimbursed if the EGS does not pay.³² Because the GRT obligation is covered through an EGS’s bonding requirement, EDCs should not be requiring any additional security from EGSs to cover this risk.

In fact, RESA believes that the existing bonding requirement of 10% of reported annual gross receipts is likely to over-secure the Commonwealth thereby creating further unnecessary financial requirements on EGSs that should be addressed during this review process. As explained in comments filed on March 5, 2003 at docket number L-00020158,³³ an EGS is

³² 52 Pa. Code § 54.40(f)(2).

³³ See Comments of Mid-Atlantic Power Supply Association filed at docket number L-00020159 dated March 5, 2003 at 4-6. The Commission adopted an advance notice of proposed rulemaking order regarding 52 Pa. Code § 54.40 on December 19, 2002 and comments were filed in the spring of 2003. *Advance Notice of Proposed Rulemaking for Revision of Chapter 54 of the Pennsylvania Code Pertaining to Electric Generation Supplier Licensing*, Docket No. L-00020158, Advance Notice of Proposed Rulemaking Order adopted December 19, 2009, 33 Pa.B. 31. In lieu of entering an order, the Commission ultimately concluded that the issues could best be determined through a collaborative process of industry stakeholders and the issue was assigned to the Retail Markets Working Group at Docket No. M-00072009. *In Re: Advance Notice of Proposed Rulemaking For Revision of Chapter 54 of Title 52 of the Pennsylvania Code*

required to make two GRT payments every March 15th – the balance due, if any, for its GRT liability for the previous calendar year and a prepayment towards its current year’s GRT liability. The prepayments required to avoid any underpayment penalties and additional interest are substantial – 90% of the reported tax due and 100% of the reported liability for the second prior calendar year (“safe harbor”).³⁴ These prepayment provisions ensure that after March 15th of every year the risk of the Commonwealth not collecting an EGS’s gross receipts tax is significantly reduced – enough so that a reduction in the bond amount after March 15th may be warranted in many cases.

Accordingly, RESA recommends that the Commission reconsider this proposal in the context of this investigation as this is one example of how one of the identified risks can be more reasonably addressed to ensure that EGSs are not being required to expend additional, and unnecessary, financial resources to address credit concerns.

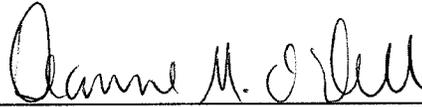
Pertaining to Electric Generation Supplier Licensing; Retail Markets Working Group, Docket Nos. L-00020158 and M-00072009, Secretarial Letter January 5, 2009.

³⁴ The underpayment is measured against 90% of the reported tax liability unless the settled liability exceeds the reported liability by 10% or more, in which case the underpayment is measured against the settled liability. The underpayment period is from March 15th until either the date the underpayment is paid or the “safe harbor” is satisfied. Additional interest is avoided if the safe harbor is satisfied (the safe harbor is adjusted to reflect the settled liability for second prior year if it exceeds the reported liability by 10% or more). In their second year, start-up companies may use the immediate prior year as the safe harbor base year (annualized, if it is a short year).

III. CONCLUSION

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

Respectfully submitted,



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Date: January 17, 2012

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