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February 1, 2012

Via Electronic FilingRosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265Re: 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 Reply 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.

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Daniel Mumford (via email only) w/enc.
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

:
: Docket No. I-2011-2237952
:
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**REPLY COMMENTS
IN RESPONSE TO THE TO THE DECEMBER 16, 2011 TENTATIVE ORDER**

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I. INTRODUCTION

On January 17, 2012, the Retail Energy Supply Association (“RESA”)¹ and numerous other parties filed comments in response to the Commission’s December 16, 2011 Tentative Order wherein the Commission sought public comment on the proposed intermediate work plan developed by its Office of Competitive Market Oversight (“OCMO”). RESA is 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. As set forth more fully in its comments, RESA supports the Commission’s stated goal of moving default service customers into the competitive market and offered specific recommendations of how to accomplish that goal in the context of this proceeding.

While there may be many ways to achieve a mutually desirable outcome and RESA welcomes constructive dialogue on these issues, some of the suggestions offered by various parties are not reasonably calculated to reach the same end result and should not be adopted. More specifically, permitting or actively soliciting shopping customers to participate in a retail market program— whether it is a customer referral program or a retail opt-in auction program – is not consistent with the purpose of these programs which is to encourage default service customers to shop. Likewise, requiring customers who do participate in these programs to be automatically returned to default service at the end of the program’s term or dictating a specific product that must be offered at the end of the program undermines the intent of the programs and

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.

the competitive market. Because these results are not consistent with the goals the Commission has set forth here, they should not be adopted.

Finally, roadblocks must not be created between the ability of a competitive supplier to get information about its customer from the electric distribution company (“EDC”). To that end, a customer’s authorization to receive service from a competitive supplier must be deemed sufficient to permit the supplier access to all information necessary – including a copy of the customer’s bill.

II. REPLY COMMENTS

In this proceeding, a total of twenty parties filed comments. For the most part, the comments of the various parties are consistent with advocacy that they have shared during the stakeholder process or in the context of other comments filed throughout this investigation. RESA does not support those proposals which advocate doing nothing or offer such substantial and obvious roadblocks to implementation that they would thwart any progress forward. The reasons for RESA’s disagreement with these positions have been well stated through the stakeholder process and in its comments and they will not be repeated here. In fact, nothing set forth in the comments of other parties alters RESA’s recommendation that the Commission’s final order direct implementation of a robust customer referral program in 2012 and consider implementation of properly structured retail opt-in auction pilots in selected EDC service territories with below-average shopping as soon as practicable. For the reasons set forth more fully in its comments, RESA believes implementation of these programs are achievable in 2012 and that the results of doing so will be a win-win for all stakeholders involved as well as Pennsylvania consumers.

RESA's reply comments are limited to addressing those suggestions set forth in other parties' comments which may not immediately appear to be as detrimental to achieving the overall goal of this proceeding. For the reasons explained more fully below, these suggestions should not be adopted because doing so will not advance the goal of this investigation.

A. EDCs And EGSs Are Not On A Level Playing Field

A core concept that must not be forgotten in this proceeding is that EDCs and EGSs are not on a level playing field. EDCs are the historical monopoly provider of electricity services and, prior to the passage of the Electricity Generation Customer Choice and Competition Act in 1997, the Commonwealth's residents and businesses were forced to rely exclusively on them for their electricity generation service.² Today in Pennsylvania, the EDC provides both regulated distribution service and generation supply service to customers remaining on default service. Many EDC assets, such as employees, facilities, systems and other infrastructure are used both in the provision of default service and distribution service. When a customer calls to inquire about his or her bill, the customer is receiving simultaneously a generation and distribution service. However, all of the costs related to the customer care function are recovered through nonbypassable distribution rates. Similarly, the EDC's general overhead expense, such as salaries, facility costs, etc., are all reflected in distribution rates. Thus, some of the systems used by EDCs to provide default service have been funded by ratepayers over decades and, for the default service they provide, EDCs have a statutory right to cost recovery.

Because EDCs have the historical relationship with the customer, they maintain control over the customer's necessary data, information and infrastructure. EGSs are dependent upon EDC managed systems and processes in prospecting, enrolling and servicing customers. If an EGS has an operational need for additional data, or a more streamlined process for interacting

² 66 Pa. C.S. § 2801.

with customers, the EGS must pursue these changes through lengthy collaborative processes and, if those fail, through lengthy regulatory approval processes. These operational difficulties do not exist for EDCs because they are using their own (legacy) systems and have access to the customer's information that is needed to provide service. They are not required to work with any other entity or system to gather needed information or to ensure that the appropriate systems are in place to effectuate service. This lack of equal access and control over data necessary to provide generation supply presents significant barriers to entry and efficient operation.

Unlike the EDCs, EGSs are new market entrants. They do not have the same name recognition with customers as enjoyed by the EDC. They also do not have the infrastructure and customer care centers funded over the decades by customers and they also have no statutory right to cost recovery for the provision of their generation service. An EGS must expend significant resources in sales and marketing activities to acquire customers and must reflect these costs in the pricing for generation service. Thus, by virtue of the fact that the EDC is the incumbent provider of the service, it gains an automatic competitive advantage in pricing default service relative to new entrants.

Many commenting parties ignore this realistic inequality between EDCs and EGSs and, with their proposals, attempt to be trying to "equalize" the generation service product offerings. The positions that: (1) the retail market programs should be open to shopping customers; (2) any participating customers be automatically returned to default service at the end of the program term; and, (3) the EGSs be required to offer a fixed price product at the end of the program are examples of this. Default service as provided by the EDC in Pennsylvania today has a competitive advantage over the generation service offered by competitive EGSs. Adopting any of these proposals would ignore this fact and, on the contrary, give even more advantages to the

EDCs as the default service provider while undermining the entire of the purpose of retail market programs to encourage customers to participate in the competitive market.

1. Customers Receiving Service From A Competitive Supplier Should Not Be Eligible To Participate In The Retail Market Programs

RESA’s position is that the retail market programs under consideration here including the customer referral programs and retail opt-in auction programs should be available only to default service customers.³ OCA states that “fairness requires that if a customer calls the EDC and requests to be put into the standard offer referral program, such customer should not be denied that opportunity, even if they are already shopping with another EGS.”⁴ While accommodating a customer calling an EDC and asking to be placed on the standard offer referral program may be reasonable, RESA cautions that great care be taken to ensure that the standard offer referral program is only targeted to those customers remaining on default service supplied by the EDC. This is because many customers who are already served by an EGS could be subjected to early cancellation penalties or other contractual requirements if they chose to cancel their existing supply contract early by enrolling in the standard offer referral program. Customer confusion and dissatisfaction can be minimized by ensuring that messaging about the program is only targeted to default service customers.

When a customer first contacts an EDC’s customer service call center, they are typically asked to provide account identifying information such as a telephone number or utility account number. The EDC’s customer service representative (“CSR”) can easily use this information to discern whether the customer is a default service or a shopping customer. If the customer is a default service customer, the CSR would follow the approved script informing the customer about the standard offer referral program. If the customer is a shopping customer, the CSR

³ RESA Comments at 9-11.

⁴ OCA Comments at 11-12.

would avoid this discussion. If a customer specifically inquires about the standard offer referral program, the CSR could inform the customer about the program details. However, as part of any script used for existing shopping customers, the CSR should inform the customer that enrollment in the standard offer referral program may result in penalties or fees and direct the customer to discuss these issues with his or her EGS.

2. Customers Receiving Service From A Competitive Supplier At The End of A Retail Market Program Should Not Be Automatically Returned To Default Service

RESA supports permitting customers who are being served by a competitive supplier whether through the customer referral programs or the retail opt-in auctions to remain with the competitive supplier at the end of the program on terms and conditions that have been established prior to enrollment and shared with the customer consistent with Commission requirements. AARP, PULP, CLS and OCA recommend that customers participating in the customer referral program be returned to default service at the end of the program unless they affirmatively choose to stay.⁵ This position ignores some very important points.

First, the purpose of the referral program is to introduce default service customers to the competitive market. This is necessary for the reasons discussed above regarding the inherent competitive advantage EDCs have today in Pennsylvania as default service providers. Automatically returning customers to default service at the end of the retail market program term would negate any forward movement toward introducing these customers to the competitive market. It also gives the misimpression that the EDC's default service is somehow better or more desirable.

Second, the retail market programs under consideration here would be completely voluntary. Customers are not being "forced" to participate but are choosing to do so. On the

⁵ OCA Comments at 12, AARP, PULP, CLS Comments at 11.

contrary, automatically returning customers to default service at the end of the program is “forcing” them back to default service. Such a result again runs counter to the purposes and intent of the retail market programs.

Finally, the Commission has already concluded that customers participating in an opt-out aggregation program cannot be automatically returned to default service at the end of the program.⁶ In contrast to the opt-out aggregation programs previously addressed by the Commission, here customers would be affirmatively choosing to participate in the retail market programs. They would also be permitted to exit the program without any fee or penalty at any time. As the Commission has already rightly concluded that customers entering a retail market program on an “opt out” basis cannot be forcibly returned to default service, there is simply no reason to require such action at the end of the voluntary retail market programs under discussion here.

3. Competitive Supplier Should Have Full Flexibility Regarding The Product Offered To Customer At End of A Retail Market Program

RESA recognizes that a reason given by those parties seeking to automatically return customers to default service at the end of a retail market program is due to concerns about the price the customers would receive from the EGS after the program ends. AARP, PULP and CLS specifically comment that customers obtained through the customer referral program could be put on a “potentially volatile month-to-month rate structure” which “is likely to result in adverse impacts on such customers without full understanding or agreement to accept such a rate offer.”⁷

⁶ *Petition of Pike County Light & Power Company for Expedited Approval of Its Default Service Implementation Plan*, Docket No. P-2008-2044561, Opinion and Order entered July 26, 2010 at 13. See also *In Rulemaking Re Electric Distribution Companies’ Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa. C.S. § 2807(e)(2)*, Docket No. L-00040169 (Order entered May 10, 2007) at 44, n. 23 (“These [PECO Market Share Threshold] customers have the right to change their generation service provider at any time. However, the Commission will not, and PECO should not, automatically reassign these customers to default service upon the expiration of the rate cap.”)

⁷ AARP, PULP, and CLS comments at 12.

OCA recommends that customers at the end of a retail opt-in auction be provided a “fixed rate product” because variable rates have “the potential to create confusion, misunderstanding, mistrust and lack of incentive for customers to shop in the aftermath of such a situation.”⁸

These concerns and preference for a fixed price over a variable price, however, are not sufficient justifications for forcibly returning EGS customers to the default service provided by the monopoly EDC which already enjoys a competitive advantage in the marketplace. Concerns about the products to be offered after the end of the retail market program are better addressed in the structure of the program and by educating customers regarding what they can expect at the end of the program. In fact, the Commission has significant customer disclosure requirements that EGSs are required to follow in serving residential and small business customers. These requirements dictate the notice and information that must be given to customers regarding the expiration of their initial contracts. In establishing these requirements, the Commission has concluded that they give customers adequate information and notice regarding the generation services offered in the competitive market. The fact that the customer has entered the competitive market through a voluntary retail market program presents no reason to impose additional regulatory restrictions on EGSs who desire to continue to serve those customers after the end of the retail market program.

B. A Customer’s Authorization To Switch To A Competitive Supplier Should Be Enough To Give Supplier Access To Customer’s Bill

As discussed above, the EDC enjoys a significant advantage because of its historical relationship with the customer and the continuing reality that it controls access to the customer’s information which is needed by competitors to provide alternative service. While an EGS does not, as a matter of course, require a copy of a customer’s bill to provide service, there are

⁸ OCA Comments at 22-23.

situations where such access is useful to addressing a problem with the customer.⁹ Permitting an EGS easy access to this information is critical to enabling the EGS to provide reasonable service.

Some parties believe that the current Letter of Authorization (“LOA”) is not adequate to serve as permission for the release of the customer bill to an EGS.¹⁰ While an LOA does enable EGSs to access some customer specific information, the contract between an EGS and its customer may provide additional authorization for the EGS to access further customer information such as usage and billing. Thus, a contractual relationship with the customer wherein the customer agrees that an EGS may have access to account information should be deemed sufficient to permit access to the customer’s bill. With this access, an EGS can troubleshoot and resolve a significant number of customer service issues timely and efficiently – just as an EDC does when its customer seeks assistance regarding the EDC’s service.

OCA expresses concerns about giving EGSs access to information that the customer may not want to share with a third party such as “past due amounts accrued prior to developing an EGS relationship” or “the receipt of LIHEAP Grants and Dollar Energy grants not relevant to an EGS relationship going forward.”¹¹ RESA cautions the Commission against creating any further roadblocks against the ability of a competitive supplier to get information about its customer from the EDC. While RESA believes that a customer’s authorization to receive service from a competitive supplier must be deemed sufficient to permit the supplier access to all information necessary, RESA is willing to work with interested stakeholders as may be appropriate to revise the authorizing language used in the LOAs and/or the customer contracts to address any legitimate concerns.

⁹ Tentative Order at 47.

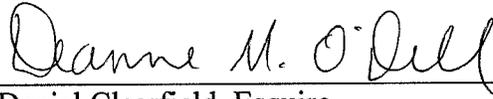
¹⁰ FirstEnergy EDCs at 31, OCA Comments at 26-27.

¹¹ *Id.* at 17.

III. CONCLUSION

RESA appreciates the Commission's efforts in this very important proceeding and looks forward to continuing to work cooperatively with all interested stakeholders in achieving the goal of moving default service customers into the competitive market.

Respectfully submitted,



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