

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048  
800-684-6560 (in PA only)

FAX (717) 783-7152  
consumer@paoca.org

IRWINA. POPOWSKY  
Consumer Advocate

September 10, 2012

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

RE: Joint Petition of Metropolitan Edison  
Company, Pennsylvania Electric Company,  
Pennsylvania Power Company and West  
Penn Power Company for Approval of Their  
Default Service Programs  
Docket Nos. P-2011-2273650; P-2011-  
2273668, P-2011-2273669, P-2011-2273670

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Answer to Petitions for Clarification and/or Reconsideration in the above referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Aron J. Beatty".

Aron J. Beatty  
Assistant Consumer Advocate  
PA Attorney I.D. # 86625

Enclosures

cc: Hon. Elizabeth H. Barnes  
Certificate of Service

151293

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Petition of Metropolitan Edison	:	
Company, Pennsylvania Electric Company,	:	Docket Nos. P-2011-2273650
Pennsylvania Power Company and West	:	P-2011-2273668
Penn Power Company For Approval of	:	P-2011-2273669
Their Default Service Programs	:	P-2011-2273670

---

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE  
TO PETITIONS FOR  
CLARIFICATION AND/OR RECONSIDERATION

---

The Office of Consumer Advocate (OCA) hereby submits this Answer pursuant to Sections 5.572 and 5.41 of the Public Utility Commission's (PUC or Commission) regulations to the petitions of the Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), and West Penn Power Company (West Penn)(Collectively, the Companies), the Office of Small Business Advocate (OSBA), Exelon Generation Company, LLC, Exelon Energy Company, Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (Exelon/Constellation), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), and the Retail Energy Supply Association (RESA). See, 52 Pa. Code §§ 5.572, 5.41. The OCA has previously requested that the Commission clarify its Order entered August 16, 2012 in the above-captioned case regarding certain aspects of the implementation of the Retail Opt-In Aggregation Program as detailed in the OCA's Petition for Clarification, submitted August 31, 2012. The OCA files

this Answer to the various other parties' Petitions seeking clarification and/or reconsideration of the August 16, 2012 Order for the Commission's consideration.

## I. INTRODUCTION

On August 16, 2012, the Commission entered an Opinion and Order (August 16 Order) in the above-captioned consolidated proceeding involving the Default Service Plans of the Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), and West Penn Power Company (West Penn)(Collectively, the Companies).

On August 31, 2012, the OCA filed a Petition for Clarification concerning the Retail Opt-In Aggregation Program. As detailed in its August 31 Petition, the OCA submits that clarification is necessary where the Commission's Order may have been unclear as to certain aspects of its ruling regarding the Retail Opt-In Aggregation Program.

In addition to the OCA, several parties sought reconsideration and/or clarification of the August 16 Order. The Companies filed a petition seeking clarification that the August 16 Order was final, as far as it addressed issues regarding default procurement and rate recovery as required under the Public Utility Code. Companies' Petition at 9-12. The OSBA filed a petition seeking reconsideration of the August 16 Order, to the extent it concerned small commercial customer participation in retail market enhancement programs. OSBA Petition at 9. Exelon and Constellation filed a petition seeking rehearing and reconsideration of the August 16 Order with regard to the collection and treatment of PJM imposed "Generation Deactivation Charges." Exelon/Constellation Petition at 3-4. CAUSE-PA filed a petition seeking reconsideration and/or clarification of CAP customer participation in the opt-in aggregation program and customer referral program that is required under the August 16 Order. CAUSE-PA Petition at 12. Finally,

RESA filed a petition seeking reconsideration of issues pertaining to the retail market enhancements approved in the August 16 Order. RESA Petition at 5-13.

The OCA files this Answer concerning the issues raised in the above-mentioned petitions. As discussed in its Petition for Clarification filed on August 31, the OCA respectfully submits that the Commission should clarify certain aspects of the retail opt-in aggregation programs. First, the OCA requests that the Commission clarify that the 5% discount for the first four months of the twelve month program is intended to provide customers a 5% discount off of the price to compare of June 1, 2013. Second, the OCA seeks clarification of whether all participants in the twelve month retail opt-in aggregation program are to receive service under the same price terms for the eight month component of the program. If this is not the case, the OCA respectfully requests that the Commission clarify how prices will be set, what criteria will be used to determine reasonable terms, and how the commission will assign customers based on different offers. Third, the OCA seeks clarification as to the ability of the OCA and other parties to participate in the consultative process to be conducted by the Companies regarding implementation details for the Retail Opt-In Aggregation Program.

## II. OCA ANSWER TO THE PETITIONS FOR CLARIFICATION AND/OR RECONSIDERATION

### A. OCA Answer To The Companies' Petition.

The OCA agrees with the Companies to the extent they have argued that they need certainty regarding the procurement portions of the August 16 Order. Companies' Petition at 2. The Companies argue that the 9 month timeframe for a final decision, as required under Section 2807(e)(3.6) of the Public Utility Code, expired on August 17, 2012. Companies' Petition at 9. The Companies further argue that they need to move forward with procurements

for residential customers in order to ensure an orderly process for obtaining competitive default service supplies. Companies' Petition at 10.

The OCA agrees that the Companies' concerns warrant clarification. While the OCA did not support all aspects of the residential supply mix approved by the Commission, it would not be reasonable to add unnecessary delay to the procurement process. Given the Companies' need to move forward with the default supply procurement for service beginning June 1, 2013, the OCA submits that the Companies' request for certainty on this important issue is reasonable.

B. OCA Answer To Exelon/Constellation.

Exelon/Constellation has filed a petition seeking Commission reconsideration of the treatment of Generation Deactivation Charges. Exelon/Constellation Petition at 1-4. Exelon/Constellation submits that recent data suggest that the magnitude of such charges may be much larger than initially thought. Exelon/Constellation Petition at 11-15. Exelon/Constellation submits that it is not possible to project what impact these charges will have, and as a result these costs should be passed through to customers as a non-market based charge. Exelon/Constellation Petition at 8-9.

The OCA did not take a position on this issue in the underlying proceeding. While the OCA submits that Exelon/Constellation appear to raise serious concerns, the OCA does not take a position on this issue at this time.

C. OCA Answer To OSBA.

The OSBA seeks reconsideration of the Commission's determination regarding small commercial customer participation in the market enhancements approved in the August 16

Order. The OCA took no position on this issue throughout the underlying proceeding and does not take a position on this issue.

D. OCA Answer To CAUSE-PA.

CAUSE-PA has filed for reconsideration of the Commission's determination concerning CAP customer participation in the market enhancement programs approved in the August 16 Order. CAUSE-PA Petition at 12. The OCA has maintained throughout the RMI proceeding that CAP customers, and other customers who pay the CAP shortfall, must be held harmless if CAP customers are allowed to participate in any of the retail market enhancements as proposed by EDCs in their default service procurement plans. Accordingly, the OCA supports CAUSE-PA on this issue – CAP customers should not be allowed to participate in either the Opt-In Auction or the Referral Program. The OCA urges the Commission to reconsider its determination in this regard as requested by CAUSE-PA.

E. OCA Answer To RESA.

RESA seeks clarification on several issues which concern the retail market enhancements approved by the Commission in its August 16 Order. In addressing the Retail Opt-In Aggregation Program, RESA sought clarification as to how customers would be allocated to participating EGSs. RESA Petition at 12. In addition, RESA sought clarification from the Commission that the rates offered by participating EGSs for months five through twelve of the program should be determined exclusively by each EGS. RESA Petition at 13-14. With regard to the referral programs, RESA sought clarification regarding the new/moving customer referral program. RESA Petition at 8. Lastly, RESA requested clarification with regard to the application of the 7% discount required under the Standard Offer Customer Referral Program. RESA Petition at 9-11.

1. Allocation of Opt-In Aggregation Program Customers To EGSs.

In its Petition, RESA seeks “clarification that participating customers will be equally allocated to participating EGSs in the Retail Opt-In Aggregation Program.” RESA Petition at 12. The OCA submits that the RESA’s request for clarification on this issue is reasonable and should be granted.

In general, the OCA supports an equal allocation of customers to the various participating EGSs that satisfy the Commission’s review and approval process. See August 16 Order at 118. Ideally, multiple EGSs will participate in the program. The OCA submits, however, that it is important that participating EGSs be permitted to provide the Commission with a cap on the number of customers that the EGS is willing to serve. The OCA submits that it is important to allow smaller EGSs the opportunity to participate without requiring them to take on more customers than they can reasonably handle. This is particularly the case where the participating EGSs are asked to provide a \$50 bonus to each assigned customer that remains with the EGS for four billing cycles. Smaller EGSs, if not allowed to establish a cap, may be reluctant to take on this financial responsibility.

The OCA submits that the following is an example of a reasonable, equitable allocation. Assume that 100,000 customers opt in to the aggregation program. If four EGSs elect to participate in the program, and all four EGSs indicated that they can serve as many customers as possible under the program, then each EGS would be allocated 25,000 customers under the opt-in aggregation program. If, however, one of those EGSs wanted to participate, but only up to a 10,000 customer limit, then that EGS would receive an equal allocation up to its 10,000 customer limit. In this example, all four EGSs would receive 10,000 customers equally, for the first 40,000 customers. The remaining 60,000 customers would then be allocated equally

among the three remaining EGSs that did not cap their participation, resulting in a total of 30,000 customers to each of the larger participants.

The OCA submits that an equal allocation as proposed by RESA is a reasonable approach, provided that EGSs have the opportunity to limit their maximum participation under the program. The OCA supports RESA's request for clarification of this issue at this time.

2. Pricing For Months Five Through Twelve Of The Aggregation Program.

In its Petition, RESA seeks clarification of the Commission's pricing requirements for EGSs during months five through twelve of the Opt-In Aggregation Program. RESA Petition at 13-14. RESA argues that EGSs are legally entitled to have the flexibility to individually determine the price paid by participating customers in months five through twelve of the program. RESA Petition at 13-14. The OCA remains concerned about this aspect of the Commission's Order and also sought clarification. The OCA disagrees, however, that each EGS should be able to set its own rate for the last eight months of the program without Commission review.

In its August 16 Order, the Commission clearly established that the Retail Opt-In Aggregation Program will be a "twelve-month ROI product." August 16 Order at 117. During the first four months, all EGSs will provide a five percent discount off of the utility's price to compare and will pay a \$50 bonus to customers who remain enrolled at the end of the four month period. August 16 Order at 117-118. With regard to the treatment of prices during the last eight months of the twelve month aggregation program, the Commission found as follows:

So that we can fully evaluate the terms of this program, we will require that participating EGSs provide to the Commission for review and approval, the terms and conditions of the eight-month ROI fixed-price offering. With these improvements, we believe

this product offering will be attractive enough to garner EGS support and, more importantly, customer participation in the ROI Program.

August 16 Order at 118. While it is not clear to the OCA what level of scrutiny the Commission review would entail, and whether it is intended to ensure that the terms and conditions of the 8-month component of the aggregation program are uniform across all participating EGSs, it is clear that the Commission has determined that this is a twelve month program, and the Commission will maintain oversight of the program for the full twelve month term.

RESA argues that the Commission is legally precluded from reviewing the prices charged by participating EGSs from months five through twelve of the opt-in program. RESA Petition at 14. The OCA submits, however, that RESA's legal analysis is inapposite to this program. Through the retail opt-in aggregation program, consumers are being provided enhanced access to the retail market under a Commission-approved and utility promoted program. No EGS is required to participate, and no EGS is required to serve any customers at a specified price. The program does, however, require Commission oversight of three price terms: 1) the 5% discount, 2) the \$50 bonus and 3) the fixed price to be charged for months five through twelve. August 16 Order at 117. If RESA were correct that Commission review of the price terms for months five through twelve violates the Public Utility Code, then the mandated 5% discount for months one through four and the \$50 bonus would fail as well.

The OCA submits that this is not a case of the Commission trying to regulate the rates of an EGS operating in the open competitive market. Rather, this is a case of the Commission setting the rules of the road for a Commission-approved, utility-sponsored program that is intended to encourage consumers to ultimately enter that market. The OCA submits that the Commission has authorized a twelve-month program. As such, it is entirely reasonable and

consistent with the Commission's obligations to ensure that reasonable terms and conditions attach to this offering. RESA's position on this issue must be rejected.

The OCA submits that, if the customers in the retail opt-in aggregation program are to be randomly assigned to EGSs for a twelve month period, the Commission should ensure that all participants receive reasonable price terms for all twelve months of the program. If customers do not choose which participating EGS they are assigned to, then it is important that customers participating in this program receive reasonable treatment through the entire twelve month program length. If the price terms are not intended to be uniform for all participants throughout the term of the program, then customers must be fully informed of that fact prior to enrollment.

3. Clarification Of The Referral Program's Pricing Terms.

With regard to the referral programs, RESA seeks clarification regarding the new/moving customer referral program. RESA Petition at 8. RESA further requests clarification with regard to the application of the 7% discount required under the Standard Offer Customer Referral Program. RESA Petition at 9-11.

The OCA submits that RESA's request for clarification on the application of the 7% discount required under the Standard Offer Customer Referral Program should be granted. RESA Petition at 9-11. In its Petition, RESA notes a possible inconsistency regarding the timing of the Commission approved 7% discount below the price to compare. The issue is whether the discount is applied only "at the time the offer is made," or throughout the term of the contract. The OCA submits that this is an important detail that should be clarified at this time.

#### IV. CONCLUSION

As detailed in the OCA's August 31 Petition for Clarification, the OCA respectfully requests that the Commission clarify its August 16 Order to ensure a successful opt-in program. The OCA further submits that, as explained above, the Commission should consider the OCA's Answer to the petitions for clarification and/or reconsideration submitted by the other parties in this proceeding.

Respectfully Submitted,



Aron J. Beatty

PA Attorney I.D. # 86625

E-Mail: ABeatty@paoca.org

Darryl Lawrence

PA Attorney I.D. # 93682

E-Mail: DLawrence@paoca.org

Assistant Consumer Advocates

Tanya J. McCloskey

Senior Assistant Consumer Advocate

PA Attorney I.D. # 50044

E-Mail: TMcCloskey@paoca.org

Counsel for:

Irwin A. Popowsky

Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152  
Dated: September 10, 2012  
00160363.doc

CERTIFICATE OF SERVICE

Joint Petition of Metropolitan Edison Company, : Docket Nos.  
Pennsylvania Electric Company, Pennsylvania : P-2011-2273650  
Power Company, and West Penn Power : P-2011-2273668  
Company for Approval of Their Default Service : P-2011-2273669  
Programs : P-2011-2273670

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Answer to Petitions for Clarification and/or Reconsideration, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 10th day of September 2012.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Charles D. Shields, Senior Prosecutor  
Bureau of Investigation and Enforcement  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105  
[chshields@pa.gov](mailto:chshields@pa.gov)

SERVICE BY E-MAIL & FIRST CLASS MAIL, POSTAGE PREPAID

Thomas P. Gadsden, Esq.  
Kenneth M. Kulak, Esq.  
Anthony C. DeCusatis, Esq.  
Catherine G. Vasudevan, Esq.  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
[tgadsden@morganlewis.com](mailto:tgadsden@morganlewis.com)  
[kkulak@morganlewis.com](mailto:kkulak@morganlewis.com)  
[adecusatis@morganlewis.com](mailto:adecusatis@morganlewis.com)  
[cvasudevan@morganlewis.com](mailto:cvasudevan@morganlewis.com)

Bradley A. Bingaman, Esq.  
Tori L. Giesler, Esq.  
First Energy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612-6001  
[bbingaman@firstenergycorp.com](mailto:bbingaman@firstenergycorp.com)  
[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)

Daniel G. Asmus, Esq.  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
[dasmus@pa.gov](mailto:dasmus@pa.gov)

Charis Mincavage, Esq.  
Susan E. Bruce, Esq.  
McNees, Wallace & Nurick, LLC  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)  
[sbruce@mwn.com](mailto:sbruce@mwn.com)

Daniel Clearfield, Esq.  
Deanne M. O'Dell, Esq.  
Carl R. Shultz, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
213 Market St., 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
[dclearfield@eckertseamans.com](mailto:dclearfield@eckertseamans.com)  
[dodell@eckertseamans.com](mailto:dodell@eckertseamans.com)  
[cshultz@eckertseamans.com](mailto:cshultz@eckertseamans.com)

Trevor D. Stiles, Esq.  
Foley & Lardner LLP  
777 E. Wisconsin Ave.  
Milwaukee, WI 53202  
[tstiles@foley.com](mailto:tstiles@foley.com)

Thomas J. Sniscak, Esq.  
William E. Lehman, Esq.  
Hawke Mckee & Sniscak, LLP  
100 North 10<sup>th</sup> Street  
P.O. Box 1778  
Harrisburg, PA 17105  
[tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)  
[welehman@hmslegal.com](mailto:welehman@hmslegal.com)

Thomas T. Niesen, Esq.  
Charles E. Thomas, III, Esq.  
Thomas, Long, Niesen & Kennard  
212 Locust Street  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
[tniesen@thomaslonglaw.com](mailto:tniesen@thomaslonglaw.com)  
[cet3@thomaslonglaw.com](mailto:cet3@thomaslonglaw.com)

Brian J. Knipe, Esq.  
Buchanan Ingersoll & Rooney, PC  
17 North Second Street, 15<sup>th</sup> Floor  
Harrisburg, PA 17101  
[Brian.knipe@bipc.com](mailto:Brian.knipe@bipc.com)

Divesh Gupta, Esq.  
Managing Counsel-Regulatory  
Constellation Energy  
100 Constellation Way, Suite 500C  
Baltimore, MD 21202  
[divesh.gupta@constellation.com](mailto:divesh.gupta@constellation.com)

Patrick M. Cicero, Esq.  
Harry S. Geller, Esq.  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
[pciceroPULP@palegalaid.net](mailto:pciceroPULP@palegalaid.net)  
[HGellerPULP@palegalaid.net](mailto:HGellerPULP@palegalaid.net)

Amy M. Klodowski, Esq.  
FirstEnergy Solutions Corp.  
800 Cabin Hill Drive  
Greensburg, PA 15601  
[aklodow@firstenergycorp.com](mailto:aklodow@firstenergycorp.com)

Michael A. Gruin, Esq.  
Stevens & Lee  
17 North Second Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101  
[mag@stevenslee.com](mailto:mag@stevenslee.com)

Benjamin L. Willey, Esq.  
Law Offices of Benjamin L. Willey  
7272 Wisconsin Ave.  
Suite 300  
Bethesda, MD 20814  
[blw@bwilleylaw.com](mailto:blw@bwilleylaw.com)

Todd S. Stewart, Esq.  
Hawke McKeon & Sniscak LLP  
P.O. Box 1778  
100 N. Tenth Street  
Harrisburg, PA 17105-1778  
[tsstewart@hmslegal.com](mailto:tsstewart@hmslegal.com)

Gary Jeffries, Esq.  
Dominion Retail, Inc.  
501 Martindale St., Suite 400  
Pittsburgh, PA 15212-5817  
[gjeffries@dom.com](mailto:gjeffries@dom.com)



---

Darryl A. Lawrence  
Assistant Consumer Advocate  
PA Attorney I.D. # 93682  
Email: [DLawrence@paoca.org](mailto:DLawrence@paoca.org)

Aron J. Beatty  
Assistant Consumer Advocate  
PA Attorney I.D. # 86625  
Email: [ABeatty@paoca.org](mailto:ABeatty@paoca.org)

Tanya J. McCloskey  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 50044  
Email: [TMcCloskey@paoca.org](mailto:TMcCloskey@paoca.org)

Counsel for  
Office of Consumer Advocate  
555 Walnut Street 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152  
151034