

COMMONWEALTH OF PENNSYLVANIA



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December 10, 2012

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17101

RE: Investigation of Pennsylvania's Retail  
Electricity Market: End State of Default  
Service  
Docket No. I-2011-2237952

Dear Secretary Chiavetta:

Enclosed for filing please find the Office of Consumer Advocate's Comments in Response to the Commission's November 8, 2012 Tentative Order on the End State of Default Electric Service in the above-referenced proceeding.

If you have any questions, please feel free to contact me at the number listed above.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Aron J. Beatty'.

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

Enclosure

cc: Office of Competitive Market Oversight  
Retail Markets Investigation (E-Mail only)

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation of Pennsylvania's : Docket No. I-2011-2237952  
Retail Electricity Market: :  
End State of Default Service :

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COMMENTS OF THE OFFICE OF CONSUMER  
ADVOCATE IN RESPONSE TO THE  
COMMISSION'S NOVEMBER 8, 2012 TENTATIVE  
ORDER ON THE END STATE OF  
DEFAULT ELECTRIC SERVICE

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Dated: December 10, 2012

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## I. INTRODUCTION.

On November 8, 2012, the Pennsylvania Public Utility Commission issued a Tentative Order, in which the Commission detailed a proposed “end state” for the provision of default electric generation service. The Commission issued this Tentative Order based on the input of its Office of Competitive Market Oversight (OCMO). The End State Proposal has been developed by OCMO as part of the Commission’s Investigation of Pennsylvania’s Retail Electricity Market (RMI).

The Office of Consumer Advocate (OCA) files these Comments regarding the End State Proposal as contained in the Tentative Order. The OCA appreciates the opportunity to provide Comments as the Commission works through the next steps of its efforts to improve the competitive retail electric marketplace. The OCA has actively participated in the RMI process, filing multiple rounds of written comments and providing direct testimony through the *en banc* proceedings. The OCA continues to support the Commission’s efforts to improve the competitive retail electric market in Pennsylvania as established by the General Assembly in the 1996 Electricity Generation Customer Choice and Competition Act, (1996 P.L. 802, No. 138) and the 2008 amendments set forth in Act 129 of 2008 (2008, P.L. 1592, No. 129). The OCA submits that these statutory requirements provide for a balanced approach to default service that allows retail competition to develop to meet the needs of customers, while at the same time ensuring safe, adequate, reliable, stable and affordable electric generation service for all Pennsylvania consumers. Within this framework, the OCA continues to support retail market enhancements and consumer education designed to increase awareness and avenues for residential consumers to take advantage of the services that best meet their individual needs.

As part of this effort and this proceeding, the OCA supports the continued availability of a reasonably priced, stable, default electric service procured from competitive wholesale markets. This service should be available to customers that do not, or cannot, switch electric suppliers. A reasonable, stable, default service has been the hallmark of Pennsylvania's successful transition from a traditional regulated electric utility system, to a restructured, competitive electric market with retail access. This approach has led to substantial benefits for all of Pennsylvania's consumers and has allowed for a robust retail market to develop.

As of this writing, the Commission's PaPowerswitch website shows that over 1.6 million of Pennsylvania's 4.9 million residential customers have switched to a competitive supplier. It is worth noting that at the time the first RMI Comments were filed, approximately 900,000 residential customers had switched to competitive suppliers. See, OCA June 3, 2011 RMI Comments at 3. Growth in switching to an alternative supplier continues and the number of EGSs and the number of offers continues to grow. Many customers are obtaining generation service with renewable attributes that were not available prior to restructuring. Many other customers have reviewed their shopping opportunities, but have decided that default service based on competitive wholesale procurements is best for them at this time. Taken together, the approach taken in Pennsylvania has produced tangible results and benefits while adjusting to the challenges that have arisen over the transition particularly in light of the evolving wholesale energy markets.

In the Tentative Order, the Commission outlines a plan for the end state of default service that contains many positive elements that the OCA supports as the foundation of a reasonable default service model. The Commission's proposal would continue to require each Electric Distribution Company (EDC) to maintain its role as the default service provider. The

OCA agrees with the Commission's choice to maintain EDCs as default service providers given the nature of each EDC's service and their operation as the ultimate backstop for reliable electric service. In the OCA's view, the EDC is the best positioned to serve as the default service provider. The EDC always retains the obligation to connect all customers and must continually stand ready to ensure a safe, adequate and reliable system is maintained. Ultimately, it is the EDC that has the responsibility of ensuring that energy is delivered to its system in a manner that preserves the reliability and integrity of the system. 66 Pa. C.S. §2807(a) to (d). Section 2806 of the Public Utility Code also establishes that the EDC retains the obligation to provide all billing, collection and customer service functions associated with the provision of electric service.

The Tentative Order also proposes a statewide consumer education campaign with a primary focus on educating customers about the benefits of electric shopping and the Commission's online shopping and comparison tool, PaPowerSwitch. The OCA supports a cost effective statewide consumer education campaign as envisioned in the Tentative Order. Retail activity has steadily increased since the expiration of rate caps. A statewide consumer education campaign is particularly timely given the momentum developed from past consumer education efforts, and the new retail competitive enhancement programs approved in the most recent round of default service plan filings.

Also, the Tentative Order identifies the Commission's efforts to improve the default service reconciliation mechanisms employed throughout the various service territories. The reconciliation process has, on some occasions, produced widely disparate results and confounding price swings. The OCA submits that the retail default service rate should change periodically (no more frequently than quarterly) and be subject to dollar for dollar reconciliation on a 12-month rolling average basis. The OCA supports the Commission's efforts to improve the

reconciliation component of default service so that default service rates are more predictable and easier to compare to alternative competitive prices.

The OCA further supports the Commission's emphasis on maintaining important consumer protections as the retail electric market continues its development. The General Assembly was clear that competition must not diminish key consumer protections for this essential utility service. 66 Pa. C.S. §2803 (9) to (10). Electric service is critical to health, the economy, and public safety. Consumer protections must be maintained to ensure that access to this essential service is maintained.

The OCA further agrees with the Commission on aspects of its Order concerning the ability of consumers to switch to competitive suppliers on a more accelerated basis, the provision of metering services, and the continued provision of energy efficiency and conservation programs by EDCs as mandated in Act 129.

The OCA also supports efforts to allow Customer Assistance Program customers to realize benefits from the competitive retail markets. The OCA remains committed to addressing issues of portability of CAP benefits in a manner that does not compromise affordability of the electric bill for the CAP customer or result in an increased cost of CAP programs borne by other non-CAP residential customers. In the OCA's view, the top priority for CAP customers should be to remain on CAP, meet the payment obligations under CAP, and receive the benefits of the CAP such as arrearage forgiveness. If CAP customers are going to be permitted to switch to alternative suppliers, a model must be developed that allows the customer to remain in CAP and continue to receive the benefits of CAP without incurring additional costs that must be borne by the CAP customers or other residential customers who pay the costs of the CAP programs.

While much of the framework put forth by the Commission will build upon the efforts that have been undertaken, the OCA respectfully submits that the Commission's proposal to mandate a single product – *i.e.*, short term products of three months duration for all residential default service – should not be adopted. The Commission's proposal would expose residential customers to volatile default service prices that leave customers vulnerable to market perturbations and spikes. Contrary to the directives set out by the General Assembly for reliable, affordable and stable default service, this proposal is a return to the prevailing market standard that was repealed by Act 129. The OCA submits that this approach is not only unreasonable for residential customers, but it does not support a robust and sustainable retail competitive market.

The OCA is concerned that an “end state” proposal that relies on 100% replacement of default supplies every three months will result in volatile and unaffordable rates for consumers. While consumers have benefited from relative electric price stability in recent years, such conditions cannot be counted on to continue. As the economy improves and announced coal plant retirements begin to occur, there will be an upward pressure on energy prices. Sound energy portfolio management – whether by an EDC or an EGS – recognizes such uncertainty. The ability to diversify purchases over time through a laddered approach and the ability to use a variety of overlapping contracts with different terms will help minimize energy market price swings that can prove harmful to residential consumers and to the retail competitive market.

The Commission appears to suggest that its proposed change is necessary because the current procurement method for default service “does not reflect current market conditions.” Tentative Order at 10. The OCA submits, however, that a search for “current” market conditions may be elusive. All generation for default service is procured from the competitive wholesale

markets that serve both EDCs and EGSs in Pennsylvania and reflects market conditions at the time of procurement. The fact that the wholesale products procured for default service include varying terms or lengths does not make them “uncompetitive” or unreflective of “current” market conditions. The procurements reflect market conditions and represent the price for a reliable, adequate, efficient, and stable default service that seeks to ensure the least cost to customers over time for the service. The Commission should continue the use of layering and laddering purchases of a mix of resources and products to achieve the least cost default service over time for default service. This approach is now used for default service in the majority of states that have restructured and should continue in Pennsylvania.

The OCA appreciates the opportunity to comment on these important issues.

## II. OCA RESPONSES TO SPECIFIC SECTIONS

In the Tentative Order, the Commission requested comments from parties on a specific set of issues. Tentative Order at 7-8. In this section of its Comments, the OCA responds to those specific issues in the order they were addressed by the Commission in the Tentative Order.

### A. Guiding Principles.

In this Section of the Tentative Order, the Commission identifies its guiding principles. The OCA wishes to set forth its vision of how default service should evolve for residential customers in Pennsylvania. The OCA envisions residential default service as a reliable, adequate, efficient, and stable service that will be available to all residential customers who do not choose an alternative electric generation supplier or whose chosen supplier fails to provide them with service. The default service provider should continue to provide residential default service by procuring a mix of generation resources on a least cost basis over time from

the competitive wholesale electricity markets for the service that is being provided. The retail rate for default service should reflect the competitive wholesale market prices at which the generation was acquired. The default service provider should not promote default service and should present all information about this service in a neutral manner. The default service rate should be a plain vanilla, flat cents/kwh rate that reflects no mark up or profit. The retail rate for default service will reflect the competitive wholesale market prices at which the generation products are acquired. The retail default service rate should change periodically (no more frequently than quarterly) and be subject to dollar for dollar reconciliation on a 12-month rolling average basis.

Within this default service model, the OCA submits that additional competitive enhancements consistent with those proposed in the Tentative Order can be implemented to inform, educate and facilitate a customer's choice of supplier. Seamless processes should be developed so that residential customers can select an alternative supplier at the time they initiate service and can retain their alternative supplier if they move within the service territory. Additional education can and should be provided so that customers can choose the option that best serves their needs.

B. Provision of Default Service.

The OCA agrees with the Commission's proposal to continue the role of the electric distribution company as the default service provider (DSP). Tentative Order at 13. It is the OCA's view that the EDC is best positioned to provide default service in the most cost-effective manner. The EDC must stand ready to "keep the lights on" at all times no matter which entity serves as the default service provider. Each EDC has an obligation to maintain its distribution system in accordance with good utility practice and in accordance with the

requirements of PJM and NERC. As a result, each EDC is in the best position to ensure that electricity flows to all customers at all times, regardless of the performance of any generation supplier. The Commission's proposal to maintain each EDC as the DSP recognizes the EDC's obligations to maintain a reliable electric distribution network.

C. Applicability of Proposed End State.

As detailed throughout these Comments, the OCA does not support the Commission's proposed use of a single product (three month full requirements contracts), with 100% supply purchased at the same time, for residential default service supply. As a result, the OCA does not support the Commission's position that the same default service procurement plan should be required of all EDCs. Tentative Order at 14. The OCA would also note that given the different sizes of Pennsylvania's EDC's, especially the small EDCs, a one size fits all approach is particularly unworkable.

D. The Default Service Product – Residential Class.

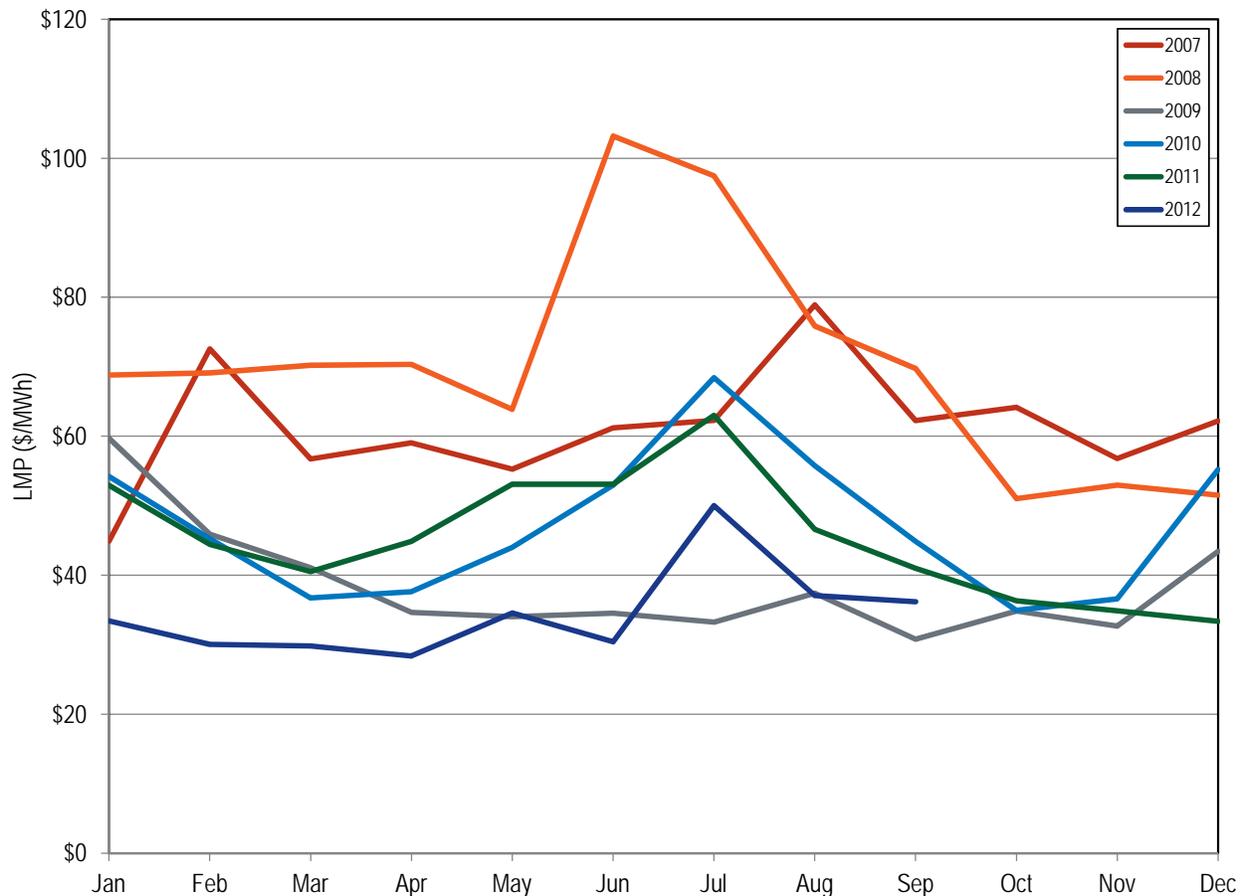
In the Tentative Order, the Commission proposes to have default service providers offer a fixed price, quarterly price to compare (PTC) for the Residential class based on three month contracts. Tentative Order at 17. The Commission proposes to establish standard procurements of these three month, load following contracts through an auction process held one to two months in advance of the quarter. Tentative Order at 17. As the OCA reads the Tentative Order, each default service provider will procure 100% of its upcoming quarter's default service energy through these quarterly auctions. It is the OCA's understanding of the Tentative Order that there would be no layering or laddering of contracts so that all default supply will be procured at a single point in time, reflecting the market conditions on that date. The Commission acknowledges in its Tentative Order that implementation of this procurement approach would

require a statutory change. Tentative Order at 12, 18. As the OCA reads the Tentative Order, this procurement methodology and product would be a return to the “prevailing market price” standard that was repealed by the General Assembly in 2008.

The OCA respectfully submits that the Commission’s proposal for a 3-month default service product would not improve competitive retail markets and it would not be in the best interests of residential consumers. Importantly, the Commission’s proposal introduces significant volatility into the default service rate, particularly for the summer period. Rate volatility not only makes it difficult for customers to understand, manage and budget for their electric service, such volatility may have consequences for the affordability of essential electric service.

Pricing on a quarterly basis synchronized to the PJM year will undoubtedly cause customers to experience seasonally high bills. In PJM, prices are higher in the summer months when demand for such things as air conditioning drives the system peak. A dramatically higher summer rate may result in an unaffordable summer bill for many residential customers. The chart below, contained in the PJM Market Monitor’s most recent quarterly state of the market report, shows the average PJM locational marginal price (LMP) in PJM from January 2007 to September 2012. As the chart demonstrates, the June-August quarter is generally more expensive than the rest of the year.

**Figure 2-17 PJM real-time, monthly, load-weighted, average LMP: 2007 through September of 2012 (See 2011 SOM, Figure 2-16)**



Source: 2012 Q3 State of The Market Report for PJM, Monitoring Analytics, LLC (issued November 15, 2012).

The OCA submits that residential customers may experience considerable hardship if they are fully exposed to high summer prices. As higher bills arrive in summer months, customers' ability to pay that bill on a timely basis is compromised. While payment arrangements are available to assist with payment problems that develop in these high price summer months, customers are limited to one such arrangement under the Public Utility Code. 66 Pa. C.S. §1405(d). When the next summer arrives, and summer prices increase, the same situation would potentially repeat itself without the benefit of a payment arrangement.

The OCA further submits that budget billing may be compromised by a short term approach that replaces 100% of generation supply on a quarterly basis. To effectively implement budget billing there needs to be a reasonable assessment of both annual price and annual usage since the bill is being spread out over the course of the year. Budget billing may not be a viable option because of the difficulty in estimating the annual generation costs of each customer if supply is re-bid every three months. If the estimates of quarterly purchase prices in the future are inaccurate, there could be large true-ups needed in the budget bill process, making it not useful for customers.<sup>1</sup>

In addition, the OCA submits that many residential customers will see increased overall generation bills as a result of a move to quarterly contracts. This may be particularly true of customers who require air conditioning for health reasons that would not have enough usage in the remaining lower priced months to offset the added summer expense. Customers such as these who have weather sensitive usage benefit from contracts, such as 12 month contracts, that are spread out over all seasons. The proposal for short term pricing may significantly impact vulnerable customers who have little time to shop on a quarterly basis, or who may have load shapes that make them undesirable from a retail market perspective.

The OCA further submits that the proposed procurement plan and short term product will introduce significant volatility into the default service prices to the detriment of electric choice. While the Commission reasons that its proposal will allow for prices to reflect “current” market conditions in which EGSs operate and thus enable EGSs to beat the price to

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<sup>1</sup> Estimating future prices when 100% of supply is replaced on a single day can prove particularly difficult as it is not possible to predict market perturbations. An ill-timed purchase during hurricane season can result in market prices higher than expected due to the market disruption from such an event. A layering and laddering approach, with different contract terms such as is currently utilized in Pennsylvania, mitigates these impacts and provides more predictability and stability in the default service rate over time.

compare, the proposal may deter customer switching rather than enable customer switching. The volatility and unpredictability introduced by the proposal will make it difficult for customers to determine whether the offer will be in their best interest for more than a few months. Volatility and the concern for entering a deal that may quickly turn bad for the consumer may depress, rather than foster, customer switching.

In addition, the volatile price will make it more difficult for EGSs to plan their pricing and purchasing as their own customer loads may become less predictable as the PTC swings. To the extent that EGSs buy physical generation or hedging products that capture pricing in both summer and non-summer months, the Commission's proposal may make it more difficult for them to compete against the low default service rates in the non-summer months to retail customers. An EGS fixed price offer may look good compared to the summer quarterly PTC, but may look bad to customers nine months of the year because they are competing against low quarterly PTCs. Additionally, for those customers who do switch and have time to monitor quarterly pricing, they may see the benefit of only switching in the higher priced periods with a return to default service in lower priced periods.<sup>2</sup> The sole reliance on volatile quarterly procurements and price changes might thus result in the very type of boom/bust cycles that the Commission is seeking to avoid.<sup>3</sup>

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<sup>2</sup> While an EGS may impose early termination fees, such fees are not generally favored by consumers.

<sup>3</sup> The Commission is concerned with "boom/bust" cycles, during which the PTC is higher than, or lower than, "market price indicators at the time." Tentative Order at 15. The Commission supports quarterly purchasing to alleviate this concern. The OCA submits that the discrepancy between market prices and the EDC Price to Compare was a major concern during the rate cap era, but the expiration of all of Pennsylvania's rate caps has gone a long way to alleviate the problem of PTCs being out of line with market prices. The PTC fully reflects market based auctions and RFPs that occur throughout the default service period. The Commission's proposal, on the other hand, ensures that customers are exposed to a boom/bust cycle for customers tied to quarterly procuring 100% of supply on one day. By replacing 100% of default supply every three months, residential customers will be exposed to the market for 100% of their supply on a single day, four times a year and be fully exposed to any disruptions, booms or busts, on that day.

The Commission's attempt to reflect "current" market conditions may prove elusive. Energy markets are made up of a large number of products and are comprised of rapidly changing prices for every product. Procurement approaches used by both EDCs and EGSs that acquire a variety of products with different terms, including the use of hedging products, are needed in these markets.

The current procurement approach utilized by the majority of Pennsylvania's EDCs of full requirements contracts of varying durations procured throughout the default service period keeps the default service rate "current" through the wholesale market auctions and RFPs. In addition, this type of default service procurement plan provides a more stable price to compare that can be used by EGSs to develop offers and by customers to compare offers.

The OCA is concerned that the Commission's proposal is for one short term product and does not allow for layering and laddering of contract purchases. Under the current practice utilized by most EDC's, by procuring products of varying durations at various times throughout the year, each default service provider is able to provide a stable and reasonable, market based service. The OCA does not agree with the Commission that contracts longer than three months are somehow not reflective of market conditions, and that quarterly contracts will "bear a closer resemblance to market conditions." Tentative Order at 10. Quarterly contracts and spot market contracts do not reflect "market conditions" any more than longer term contracts. When financing the purchase of a house, variable rate mortgages are no more "market based" than are long term fixed-rate mortgages. Both are market products, priced to reflect the attributes of the product. The OCA submits that a portfolio of products of various lengths that

are procured through competitive solicitations will be reflective of the same market conditions in which all retail suppliers operate.<sup>4</sup>

The OCA submits that the default service product should be designed to be a stable product acquired through a mix of resources, with different contract delivery periods, from the competitive wholesale markets. Limiting default service to a single short term product is not in the best interests of customers and will not support sustained, robust competition.

E. Transition Timeline.

The Commission has proposed that the changes to the default service product contained in its Tentative Order should be implemented for service beginning June 1, 2015. Tentative Order at 18. As the Commission recognizes, the current round of default service plans expire on May 31, 2015. The Commission also proposes to shorten the current nine month statutory timeframe for the review of the next round of default service proceedings from the nine months allowed for in the current law, to six months. Tentative Order at 18.

The OCA agrees that no changes to default service, if any are found necessary, should be implemented before June 1, 2015. As noted, all of Pennsylvania's major EDCs have designed their upcoming default service plans through June 1, 2015. The Commission also recognizes that legislative changes are needed to implement its vision for default service. In the OCA's view, a time frame for changes should not be considered until the General Assembly determines whether it will enact any changes.

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<sup>4</sup> The OCA also does not agree with the suggestion that spot market prices always leads to the lowest cost to consumers. In the joint 2012 Default Service Plan filing, Citizens' Electric Company and Wellsboro Electric Company both provided benchmarking studies comparing their preferred portfolio procurement approach to a pure spot market purchasing plan. These companies conducted the benchmark studies for both 2010 and 2011. In both years, the portfolio approach produced lower procurement costs than the spot market approach for both companies. Savings ranged from \$2.15/MWH to \$4.20/MWH. Citizens'/Wellsboro St. 3, Exhibit CB-4 & CB-5.

The OCA further submits that a nine month timeframe for the review of each default service plan filing is reasonable and should be maintained. The Commission's proposal to move to a six month review would make it increasingly difficult to fully examine each Company's plan. In addition, a six month review could make it difficult to make any plan corrections in time for any auctions or RFPs that need to be conducted to ensure power flows on June 1 of each new plan year. The OCA submits that providing sufficient lead time for auctions and RFPs has been difficult under a nine month review and, as a result, does not support the shortening of the statutory review period.

F. Consumer Protections.

In the Tentative Order, the Commission highlights several key consumer protections that are currently in place. Tentative Order at 19-20. The Commission notes that these protections are in place to ensure that quality of service does not suffer as a result of retail choice. Tentative Order at 19. The Commission concludes that the changes in the end state service proposed in its Tentative Order do not require any changes to existing consumer protections. Tentative Order at 20.

The OCA supports the continuation of consumer protections. The OCA strongly supports the Commission where it states, "the protections that electric consumers have come to expect will remain intact and fully in effect." Tentative Order at 20.

The Commission further notes that, because it has proposed that the EDC will remain the DSP, "the same entity that has traditionally been charged with complying with most of these regulations" will be fully able to meet these important consumer protections. Tentative Order at 20. The OCA strongly agrees with the Commission that the EDC is well positioned to maintain consumer protections in its role as DSP. The OCA submits that the EDCs' expertise in

this regard is a factor that strongly weighs in favor of the EDC continuing its role as DSP. The OCA supports the Commission's dedication to maintaining consumer protections as it works to further improve the retail electric market.

G. Portability of Benefits for Low-Income Customers.

In the Tentative Order, the Commission addresses the portability of Customer Assistance Program (CAP) benefits. Under existing EDC policies, some CAP programs allow customers to switch to an EGS, while other EDCs do not. In the Tentative Order, the Commission recognizes these differences and proposes to require each EDC to allow for the portability of low income benefits. The Commission proposes that each EDC must file a plan to allow for low income customers receiving CAP benefits to be able to shop for electric service by January 1, 2015. Tentative Order at 23.

The OCA has expressed concerns with CAP customer shopping in prior proceedings. Recent information provided by PPL in its default service proceeding has heightened these concerns. Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 Through May 31, 2015, Docket No. P-2012-2302074. In PPL, where CAP customers can switch, approximately 47% of CAP customers had chosen an alternative provider. Of those CAP customers that switched, fully 73% were paying more than if they had remained with PPL. Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 Through May 31, 2015, Docket No. P-2012-2302074 (Recommended Decision of Administrative Law Judge Susan D. Colwell) (November 9, 2012)

(RD at 20). For already payment troubled customers to pay more raises significant concerns for the affordability of the service and the ability of the customers to maintain service.<sup>5</sup>

In the OCA's view, the top priority for CAP customers should be to remain on CAP, meet the payment obligations under CAP, and receive the benefits of the CAP such as arrearage forgiveness. If CAP customers are going to be permitted to switch to alternative suppliers, a model must be developed that allows the customer to remain in CAP and continue to receive the benefits of CAP without increasing costs to the CAP customer or to the customers who must bear the costs of the program.

The OCA submits that the goal of allowing CAP customers to switch to an alternative supplier should be to bring benefits to both the CAP customer and the overall program through reduced costs. As such, the OCA submits that CAP customers should have the ability to select an alternative provider only if a model can be developed that would not compromise affordability of the electric bill for the CAP customers and would not increase the costs (administrative, CAP credits or uncollectible expense) borne by other customers for the CAP program.

The OCA submits that it would be beneficial for the Commission to allow interested parties the opportunity to participate in the development of, and comment on, the EDC CAP portability filings proposed in the Tentative Order so that solutions to these issues can be developed. The OCA submits that efforts must be made to ensure that CAP customers are not financially harmed through the shopping process, and that CAP program costs are not increased for other, non-CAP residential customers as a result of these changes.

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<sup>5</sup> Under PPL's structure, other non-CAP residential customers were also paying more to support the program due to the higher bills of customers served by EGSs as the increased costs were not fully borne by the CAP customer.

#### H. Supplier Consolidated Billing.

As defined in the Tentative Order, Supplier Consolidated Billing (SCB) is a billing option where the EGS bills the customer for both generation and EDC distribution charges. The Commission proposes to require a SCB option be available to all EGSs that choose to offer such an option, in order to promote the EGS-customer relationship. Tentative Order at 27-28. The Commission proposes that SCB should be an option that does not replace existing billing options. Tentative Order at 28.

The OCA submits that it is premature to require SCB at this time. This issue was raised previously and Staff determined there was limited interest from EGSs in this billing option. There has been no determination of the costs of this effort and whether the benefits would justify such costs. In addition, there has been no assessment of the impact on consumer protection from such an initiative.

If supplier consolidated billing is pursued, the OCA submits that all consumer protections in the Public Utility Code and the Commission's regulations must be maintained under the SCB structure. In addition, the OCA submits that the costs for allowing SCB should be borne by EGSs. As the Commission stated, SCB is intended to "help EGSs establish a more robust, familiar relationship with a customer." Tentative Order at 27. The cost of developing this relationship is akin to a marketing cost for an EGS. The OCA submits that such costs should be borne by the EGS just as other EGS marketing costs are borne by the EGS.

#### I. Accelerated Switching.

In the Tentative Order, the Commission identifies the efforts it has undertaken to improve the efficiency and timing of switching electric suppliers. As the Commission notes, the time it takes to change suppliers can run from 16 to 45 days. Tentative Order at 28-29. The

Commission has studied this issue and approved Interim Guidelines to address this problem. Tentative Order at 30. Additionally, the Commission has directed its Staff to initiate a rulemaking on this issue.

The OCA supports the Commission's efforts to improve the efficiency of customer switching. The OCA submits that, provided customers remain properly protected from unauthorized switches, switching should be accelerated to the extent practical. The OCA agrees that lengthy switching delays can result in some customer frustration and a reduction in attained savings. This loss of savings comes both when customers are motivated to move "to" a better price, and when informed customers are looking to move "off" a price they view as being too high.

The Commission also requests comments on the "seamless move" issue. Tentative Order at 31. Currently, customers that change locations within the service territory cannot maintain their EGS through the process. The OCA submits that customers should be able to maintain their EGS service through a change of location in the service territory, provided such a process can be implemented in a cost effective manner.

Finally, the Commission requests comments on "day one switching" or "instant connect" proposals, where EGS service could begin on the first day a customer signs up for electric service with the distribution company. The OCA does not object to exploring the development of a day one switch as it could facilitate customer choice. Customers who choose this option, though, must be afforded appropriate customer protections. It will also be critical to determine the costs of any necessary system and process changes before proceeding to properly assess the benefits of this approach.

J. Provision of Metering Services.

The Commission proposes that the EDC should retain all metering services for retail customers. Tentative Order at 32. The Commission notes that these services include the provision of meters, activities associated with reading meter data, processing meter data for billing purposes, and PJM settlement. Tentative Order at 31.

The OCA supports the Commission's position on this issue. The EDCs have the requisite expertise to handle metering issues and, as the Commission notes, each EDC has a relationship with all customers. The OCA submits that EDCs must continue to maintain responsibility for all metering data.

K. Provision of Energy Efficiency and Conservation Programs.

The Commission proposes that each EDC serving over 100,000 customers continue to operate an Energy Efficiency and Conservation Program. The Commission states that it believes the "provision of energy efficiency programs to Pennsylvania's electric ratepayers is sound public policy." Tentative Order at 33. The OCA agrees that the EDC should retain the obligation to provide energy efficiency and conservation programs.

The OCA submits that the EDC is best situated to provide the mandated energy efficiency programs under Act 129. The EDC provides the programs to all customers, no matter the customer's generation service provider, in a non-discriminatory manner. All customers, and the system, benefit from the programs regardless of their generation service provider. The EDC is able to recover its costs from all customers which properly reflects these benefits.

Commissioner Witmer, in her Statement of November 8, 2012, poses several questions about the role that EGSs can play in providing EE&C services. Investigation of Pennsylvania's Retail Electricity Market, Docket No. I-2011-2237952 (2237952-DIR)

(Statement of Commissioner Pamela A. Witmer issued November 8, 2012).<sup>6</sup> In the OCA’s view, EGSs can play a complementary role in the provision of EE&C services but should not supplant the EDC role in providing these programs. EGSs can distinguish themselves, and their products, in the market by offering additional benefits to consumers associated with energy efficiency services. These programs, and customers’ familiarity with them from the mandated EDC efforts, can provide an opportunity for EGSs that wish to pursue that type of business model.

The Commission also states that it “does not believe that the retention of EE&C obligations with large EDCs will hinder retail electric competition.” Tentative Order at 33. The OCA agrees with this statement. The existence of EE&C plans does not hinder the development of retail choice as it is conducted on the regulated distribution side of the business in a non-discriminatory manner. The OCA submits that, if anything, the increased awareness that EE&C plans has raised with regard to electric usage and service may provide a benefit to shopping by making consumers more conscious of all of their energy choices.

L. Existing Long Term Contracts.

1. Long Term Alternative Energy Credits Contracts.

The Commission addresses the treatment of existing long term alternative energy credits (solar and non-solar) by proposing to hold all presently effective alternative energy credit contracts harmless from any changes that result from this proceeding. Tentative Order at 35. The Commission proposes that cost recovery of these contracts be addressed on a case by case basis, and that each EDC provide a proposal for managing these contracts in their next default service filing. Tentative Order at 35. The OCA agrees with the Commission’s approach on this issue.

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<sup>6</sup> Several of the questions are directed to the EGSs regarding the provision of EE&C services. The OCA looks forward to reviewing these responses.

## 2. Other Long-Term Contracts.

The Commission addresses the treatment of existing long term (non AECS) contracts as part of its proposed changes to default service procurement. Tentative Order at 34-36. The Commission has proposed to hold harmless all energy contracts extending beyond May 31, 2015. Tentative Order at 35. The Commission proposes to address how the costs of such contracts should be recovered on a case by case basis in each EDC's next default service filing. Tentative Order at 35. The Commission also notes that contracts that exist pursuant to the Public Utility Regulatory Policies Act (PURPA) should be held harmless. The Commission also proposes to address the costs of these contracts in the next default service plan filings.

The OCA agrees with the Commission that existing long term contracts must be honored and that the method of cost recovery can be addressed in the next DSP filing. The OCA, however, still sees a continued role for some long term contracts in providing safe, adequate, reliable, stable affordable default service at the least cost over time.

### M. Future Long-Term Alternative Energy Credits Contracts.

The OCA supports the implementation of a procurement structure that fosters the successful development of alternative energy resources. The short term procurement approach proposed by the Commission for default service is not likely to achieve this result. Alternative energy resources often require a longer term commitment to allow for development financing.

The Commission requests comments on whether DSPs (or EDCs not acting as DSPs) should file procurement plans for alternative energy credits and solar credits. Tentative Order at 36. The Commission further requests comments on the appropriate make-up of the credit "portfolio," the length of AEC contracts, and whether up to 50% of the service territory AEC load should be procured through such a portfolio. Tentative Order at 36-37. Several

different procurement approaches are being pursued by the EDCs for the upcoming default service period. These experiences will allow for a more fully informed discussion of the best method for meeting the AEC obligations.

N. Statewide Consumer Education Campaign.

The Commission has proposed the development and implementation of a statewide consumer education campaign based in part on the input of RMI participants. Tentative Order at 37. The Commission's plan will focus on educating consumers about the benefits of electric shopping, with a focus on utilizing the PAPowerSwitch website. The primary audience will be residential and small business customers. The Commission anticipates that this campaign will cost approximately \$5 million annually, for a minimum of three years. Tentative Order at 38. The Commission proposes that EGSs would pay a percentage of the costs of this program tied to the number of customers who remain on default service. Under the Commission's example, the supplier community would pay 66.3% (the percentage of customers that have not switched) of the program costs the first year. In each subsequent year, the percentage paid by EGSs will be adjusted based on the number of customers who switch to an EGS. The remainder of costs would be recovered by the EDC from ratepayers through existing riders, although the Commission does not state whether or not this charge will be non-bypassable. The Commission also states that the EDC's existing consumer education plans, filed pursuant to its Final Order in its Policies to Mitigate Potential Electricity Price Increases proceeding at Docket No. M-00061957, will not be renewed. Tentative Order at 38. The Commission notes that EDCs should coordinate any remaining obligations under those plans with the upcoming consumer education campaign.

The OCA submits that additional consumer education will be helpful in ensuring that customers fully understand their choices. The OCA supports the Commission's efforts in this regard and its approach to stakeholder input. In particular, the proposed "Steering Committee of interested stakeholders to provide input related to the campaign" should be beneficial in developing this campaign. Tentative Order at 39. The OCA submits that the continued collaboration of stakeholders is invaluable as the parties assess what is working well, and what needs to be refined, so that the dollars devoted to the process are well spent.

With regard to measuring the success of the campaign, the Commission proposes to rely on the volume of traffic to its PaPowerSwitch website and how that traffic correlates into customer switching. In addition, the Commission would conduct a targeted survey of electric customers about their knowledge of PaPowerSwitch and the competitive market in general. Tentative Order at 39.

The OCA submits that both web traffic and survey data will provide valuable information as to the effectiveness of the consumer education campaign. The OCA urges caution, however, with efforts to view increased switching as the primary indicator of the campaign's success or failure. The primary purpose of the consumer education campaign is to inform customers of their options and to educate them about how to shop. While it can reasonably be assumed that increased awareness and understanding achieved through the campaign will result in an increase in shopping activity, not all shopping will, or should, result in switching suppliers. The goal of the consumer education campaign should not be to figure out how to get customers to switch, but rather to make sure customers have the requisite understanding to make an informed choice.

With respect to the costs of the campaign, the OCA submits that the program budget should be clearly established. It is not clear to the OCA whether the campaign could cost more than \$5 Million per year. Additionally, an end date for the campaign should be established. The OCA submits that the Commission should provide certainty as to the funding so that stakeholders asked to support these costs can have confidence in the amount they will be asked to pay and on the benefits they expect to receive. Finally, the cost recovery portion assigned to the EDC and recovered through riders should be non-bypassable. The consumer education campaign will be a broad based program designed to benefit all customers. Those customers that switch to an EGS as a result of the campaign should not avoid the costs of the education campaign that helped them make an informed choice.

O. Regulatory Costs and Assessments.

1. Annual EGS Licensing Fee.

The Commission has proposed to increase the amount of the current EGS licensing fee from its current, one-time level of \$350. The Commission proposes to make the licensing fee annual, and to increase the amount of the fee. Tentative Order at 40-41.

As part of its proposal, the Commission offers that it could set the annual fee at \$1,000 or 0.1% of EGS intrastate revenues, “whichever is lower.” With the inclusion of the phrase “whichever is lower,” the OCA reads this proposal to say that an EGS would pay \$0 if it had no sales in a given year. The OCA submits that, to the extent there is an annual fee, no EGS should be excluded from that fee. To that end, it may be appropriate to match the \$1,000 maximum EGS annual fee with a minimum fee to account for the Commission’s administrative costs. If the Commission believes that it is necessary to increase the cost of the licensing fee to

address recurring costs, then all licensed EGSs should pay an annual fee of at least a minimum specified amount.

2. Recovery of Electric Industry Assessments through an Automatic Adjustment Clause.

The Commission has further proposed to permit EDCs to use an automatic surcharge mechanism to recover electric industry assessments paid to the Commission on a dollar for dollar basis. Tentative Order at 42. The Commission states that it will pursue legislative changes to allow for this recovery mechanism.

The OCA submits that such a change is unnecessary and wholly unrelated to retail choice. Regulatory assessments are a cost of doing business for Pennsylvania utilities. As the Commission correctly notes, the utilities recover these expenses through their fully regulated distribution charges as part of a base rate case. Tentative Order at 42. This has been the method of recovery for these expenses for decades. The regulatory assessment is not a cost that EGSs must bear and has no impact on EGS activity in the Commonwealth.

Moreover, the OCA submits that these regulatory costs are not large or volatile expenses that require special ratemaking treatment. Regulatory assessments are a normal, recurring operating expense that is appropriately included in distribution base rates. There is no legal or policy justification for singling out this one minor cost item for separate surcharge treatment. See, Philadelphia Electric Co. v. Pa. PUC, 502 A.2d 722, 727-28 (Pa. Commw. Ct. 1985); see also, National Fuel Gas Dist. Corp. v. Pa. PUC, 464 A.2d 546, 567 (Pa. Commw. Ct. 1983) (NFG 1983).

### III. CONCLUSION

The Commission has overseen a vibrant and growing competitive retail electric market. The OCA commends the Commission for its vigilance in moving Pennsylvania's markets forward through its investigation of the retail electric market. The OCA appreciates the opportunity to provide these Comments regarding the future of default service in the Commonwealth.

Respectfully Submitted,



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