BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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**

COMMENTS OF THE OFFICE OF SMALL BUSINESS ADVOCATE ON THE REVISED DEFAULT SERVICE PLAN RETAIL MARKET ENHANCEMENT PROGRAMS

I. INTRODUCTION

On August 16, 2012, the Commissioned entered an Opinion and Order ("August 16 Order") regarding the 2013 to 2015 default service plans of Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power") and West Penn Power Company ("West Penn") (collectively, "the Companies"). In part, the August 16 Order:

- Deferred certain aspects of the residential time-of-use ("TOU") rate programs for Penn Power and West Penn to a consultative process involving all parties to the proceeding;
- Established specific parameters for certain retail market enhancement ("RME") programs, including a retail opt-in aggregation program ("ROIP") and a standard offer customer referral program ("CRP").

- Directed that the Companies and competitive electric generation suppliers ("EGSs") collaborate in developing customer notification and opt-in enrollment procedures to implement the Commission's ROIP;
- Directed that the Companies and the EGSs collaborate on determining how participating EGSs would pay the costs incurred by the Companies associated with the ROIP and the CRP.

The Commission subsequently entered an Amended Opinion and Order on October 11, 2012 ("October 11 Order"), which variously affirmed, amended and clarified the August 16 Order. In particular, the October 11 Order expanded the consultative process for the RME issues to include the Pennsylvania Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate "OSBA"), and other stakeholders. October 11 Order at 21.

Pursuant to those orders, the Companies engaged in collaborative discussions with interested stakeholders, a process in which OSBA was an active participant. Consensus among the parties was generally achieved regarding the TOU programs, but was not achieved regarding the RME issues specified by the Commission.

On November 14, the Companies submitted their Revised Default Service Plan Retail Market Enhancement Programs ("Revised RME Plan") which presented the Companies' proposals for resolving the matters deferred by the Commission to the collaborative procedures. The Revised RME Plan also proposed certain minor technical modifications to the CRP.

In response to a request from the Retail Energy Supply Association ("RESA") and Direct Energy Services, LLC ("Direct"), the Commission established a comment procedure for the Revised RME Plan by Secretarial Letter dated November 30, 2012. Pursuant to the terms of that letter, OSBA submits the following comments.

II. COMMENTS

1. The OSBA neither opposes nor supports the revised TOU programs for Penn Power and West Penn, because these programs apply only to residential customers.

2. With respect to the ROIP, the OSBA observes that the Commission specifically directed that it include the following features:

   a. The ROIP (and CRP) will apply to residential and "small commercial" customers "as defined by RESA," which the Commission characterized as "small business customers, those with loads of up to 25 kW or, in the alternative, customers in the smallest commercial rate class." August 16 Order at 101 and 103-104. The Commission clarified this initial finding by ruling that all customers in Penn Power's GS Small class and West Penn's Rate 20 class are eligible.[1] October 11 Order at 13. Retail market initiatives that are tailored to the specific needs of "C&I customers" are deferred to the future. October 11 Order at 13.

   b. RME program eligibility will include both shopping and non-shopping customers. August 16 Order at 107.

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[1] The Revised RME Plan specifies that eligible non-residential customers are those in Met-Ed Rate GS-Small, Penelec Rate GS-Small, Penn Power Rate Schedule GS and West Penn Rate Schedule 20. The OSBA notes that the Met-Ed and Penelec GS-Small rate classes include customers with electricity consumption only up to 1500 kWh per month, generally implying maximum demands of less than 10 kW. In contrast, the upper limit for Penn Power GS is 50 kW, and the upper limit for West Penn Schedule 20 is generally 100 kW.

c. Customer participation will be limited to 50 percent of the default service customer base. August 16 Order at 112. The Commission did not specify whether or how shopping customer participation would be limited or would factor into the cap.

d. The ROIP product must be "a twelve-month ROI product, comprised of [*sic*] a fifty-dollar bonus . . . ; a four-month guaranteed five percent discount off of the PTC at the time of enrollment, and an EGS-provided fixed-price product for the remaining eight months." While participating customers may return to default service or switch to a different EGS at any time, customer receipt of the bonus is contingent upon remaining in the program for the initial four-month period. The eight-month fixed price product will be reviewed by the Commission, but there is no guarantee that the fixed price product will provide any savings to customers relative to default service rates. August 16 Order at 117-118.

e. At the conclusion of the 12-month period, participating customers who do not affirmatively choose to switch to default service or to an alternative EGS will remain with the EGS to which they were assigned in the ROIP. No regulatory constraints will apply to EGS pricing to those customers beyond the 12-month program period, allowing customer inertia and competitive forces to be the key factors affecting the prices paid by each customer. August 16 Order at 127-129.

3. Because the Commission modified the Companies' proposed opt-in program from an auction to an aggregation program, the Commission recognized that certain

technical details regarding program timing and customer notification needed to be resolved:

> Because the ROI Auction, as proposed by the Companies has been rejected, the corresponding customer notification and opt-in enrollment procedures will have to be modified. Therefore, within sixty days of the entry of this Opinion and Order, the Companies, in consultation with the EGSs, shall update their proposals for customer notification, opt-in enrollment and customer assignment to coordinate with this revised ROI Program design, *infra*.

August 16 Order at 108.

4. In the OSBA's view, the Companies' ROIP as presented in the Revised RME Plan is generally consistent with the specific parameters for the ROIP required by the Commission's August 16 and October 11 Orders, with one exception addressed in paragraph six, *infra*. Furthermore, the OSBA concludes that the Companies' proposals regarding customer notification and timing are generally reasonable. Based on the OSBA's involvement in the collaborative sessions, the OSBA concludes that the parties' failure to achieve consensus on the details for implementing the ROIP is not related to the specifics of customer notification and timing, but rather to certain parties' desire to re-negotiate a substantially different ROIP design from that explicitly specified by the Commission.

5. The OSBA submits that a re-design of the ROIP is wholly inappropriate at this stage of the proceeding. The Commission directed the parties to develop a narrow set of procedures that are needed to implement the specific program developed by the Commission. This collaborative should not be an opportunity to re-negotiate key aspects of the entire program, which was approved by the Commission based

on its review of all record evidence.[2] The ROIP (at least as it would apply to the residential class) was subject to extensive review during this particular proceeding, and was the subject of an extensive Commission-sponsored retail market investigation stretching back to at least mid-2011. Numerous alternatives to opt-in (and opt-out) auctions and aggregation programs were developed and debated in the Commission-sponsored investigation. The Commission issued interim guidelines regarding these programs at Docket No. I-2011-2237952 in its Tentative Order entered December 16, 2011 ("Tentative RME Order"), and final guidelines in its Final Order entered March 2, 2012 ("Final RME Order"). The Commission has now issued orders in default service proceedings involving the First Energy Companies and PECO. In the OSBA's view, the time has come to stop *designing* the RME programs and to start *implementing* them. If every discussion of a technical detail leads to a full-blown review of the program, the RME programs will never get implemented. Moreover, from a legal perspective, the OSBA has significant due process concerns about Commission approval of any re-designed RME programs that are developed outside the record without an adequate opportunity for discovery and cross-examination regarding any supporting evidence. The OSBA respectfully submits that any modifications to

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[2] The OSBA respectfully disagrees with the Commission that (a) more shopping will somehow lower both wholesale and retail generation costs, (b) that retail enhancement programs will not increase risks and prices for wholesale suppliers bidding on default service contracts, and (c) that RME programs designed for residential customers are necessarily appropriate for Small C&I customers, which exhibit a much wider range of sizes, load shapes and shopping patterns. For example, because no stratification of customers is proposed, EGSs participating in the West Penn ROIP could be randomly assigned customers ranging in size from 0 to 100 kW, and with widely varying load shapes. There is no guarantee that every participating EGS will get a similar mix of customers. Nevertheless, the OSBA is not contesting these conclusions at this stage of this proceeding.

the Commission-approved RME plans in general and the ROIP in particular should be limited to those that are responsive to the Commission's August 16 Order and that are necessary for the implementation of the programs specified by the Commission.

6. In one respect, however, the Companies' proposed ROIP does not appear to be consistent with the August 16 Order. The procedure and timetable detailed in Exhibit A of the Revised RME Plan does not explain or address how a shopping customer can participate in the ROIP. The Revised RME Plan improperly limits "Eligible Customers" to default service customers, in contravention of the explicit Commission directive that shopping customers be eligible to participate. August 16 Order at 107. The OSBA submits that it is particularly important that shopping *non-residential* customers be permitted to participate in the ROIP, in light of the relatively high level of shopping that currently exists among those customers. Excluding those customers from eligibility for the program would effectively disenfranchise a large percentage of non-residential customers from this Commission-sponsored program. The Revised RME Plan should therefore include explicit notification and enrollment rules for shopping customers.

7. To address this shortcoming in the Revised RME Plan, the OSBA recommends that the Companies' proposed notification procedure be modified as follows. The bill insert announcing the ROIP (which the Companies intend to distribute in the March 2013 billing cycles) should be included in bills for all customers in the residential and eligible Small C&I rate classes. (This may already be the Companies' intent, although it is not entirely clear in the Revised RME Plan.) In

addition to the information listed by the Companies, this bill insert should explain how shopping customers can participate in the ROIP. The OSBA suggests that the bill insert include language directed at shopping customers to the effect that (a) the emphasis for the program is on non-shopping customers, but that all customers are eligible to participate, (b) shopping customers can request additional information regarding this option by either calling, contacting their EDC by e-mail, or responding through the Company's website prior to April 10, 2013, (c) requesting additional information regarding the ROIP does not, at this stage, require shopping customers to participate because they will receive a specific offer in the mail, and (d) shopping customers interested in participating should check with their EGSs to determine whether they would be subject to penalties associated with switching to the ROIP. Similar information should also appear on the Companies' website pages which address the ROIP. Shopping customers who request additional information would then be included the overall customer list that is allocated to specific participating EGSs, and also would be included in the mailings slated for the April 11 to May 1, 2013 timeframe.

8. In addition to the scheduling and notification issues for the ROIP, the Commission directed the parties to develop a proposal regarding the recovery of RME program costs from participating EGSs. The Commission stated:

> Upon review of the Recommended Decision and the record in this proceeding, we find that we do not have sufficient information to adopt the proposal for the cost recovery of the ROI Aggregation Program and Standard Offer Customer Referral Program as recommended by the ALJ. At this time, we have significant concerns that the $100,000 required up-front cost for EGS participation may be a significant barrier to entry. Likewise, the costs for the newly designed ROI Aggregation Program have not

been discussed during the course of this proceeding. **Accordingly, the Companies, with the cooperation of the EGSs, are directed to resubmit a plan or proposal within sixty days for Commission review regarding how EGSs will pay for the Standard Offer Customer Referral Program and the redesigned ROI Aggregation Program.**

We believe that the resolution of this issue is particularly important, as it is the cornerstone to the success of these programs. The thrust of the IWPF Order was to suggest programs that would be implemented during this round of DSPs in order to bolster customer participation in the retail electric market. However, these steps can only jumpstart the market if they are effectively implemented. We urge the EGSs and Companies to come to an agreement on how to minimize these costs and allocate these costs in order to carry out these programs in a cost-effective manner and bring more retail customers to the competitive electric market. (Footnote 30: If an agreement on the allocation of these costs is not reached within the allotted time period, the Commission may order an allocation of costs that comes from one of the proposals submitted by the stakeholders.)

August 16 Order at 136-137, emphasis added.

9. As the Revised RME Plan indicates, the parties were not able to come to consensus regarding this directive. However, the OSBA observes that the failure to reach agreement among the parties lies not with the Commission's directive for determining *how* EGSs will pay for the programs, but rather a debate as to *how much* (or how little) the EGSs are willing to pay for the programs. Once again, the OSBA submits that the issue of whether EGSs should be required to pay for RME programs has been resolved by the Commission and is not a proper subject for this phase of the proceeding. The OSBA submits that the Commission should limit its consideration of this issue to determining how costs should be recovered

from EGSs. Nevertheless, the OSBA will reiterate its arguments (in summary format) in favor of requiring EGSs to pay for these programs:

a. The Commission has already determined in the Final RME Order (at 32 and 78) that EGSs should pay for the RME programs, and it affirmed that finding in the August 16 Order.

b. Unlike smart meter, EE&C, default service, or even universal service programs, the RME programs are not required by law, and they are not necessary for the provision of safe and reliable utility service. These programs are creatures of the Commission. The OSBA respectfully submits that the Commission should recognize that cost assignment for these programs should comply with the principle of cost causation, and it should be conceptually consistent with the Commission's treatment of similar administrative costs.

c. Requiring default service customers to contribute in any way to RME program costs would be inconsistent with cost causation and the Commission's philosophy of default service cost assignment. The availability of default service to all customers benefits all customers, and it can therefore be argued that program costs related to default service procurement should be recovered from all customers. Nevertheless, the Commission, with the active support of the EGSs, has consistently concluded that default service costs should be borne by default service customers alone. Since that is the Commission's cost philosophy, costs incurred related to shopping activities should be borne by shopping customers or their suppliers. Doing otherwise would be inequitable and constitute undue discrimination. OSBA Statement No. 3 at 19-21.

d. By replacing a complicated auction process with a similar aggregation program, the Commission has likely reduced the overall costs of the ROIP. As proposed in the Revised RME Plan, the major cost for the ROIP will likely be the mailing directed to eligible non-shopping and interested shopping customers. The OSBA observes that the cost of such a mailing is unlikely to be more than a few dollars per account. Contrast that cost with the benefit earned by the EGSs of new accounts, which Direct Energy witness Dr. Mathew J. Morey put at $150 to $500 per new account in the First Energy/Allegheny Power merger proceedings. (Direct Energy Statement No. 1 at 52, Docket Nos. A-2010-2176520 and A-2010-2176732.) An EGS would need a success rate of only a few percent to come out ahead. From that perspective, and recognizing the strong support that the ROIP has from the EGS community, it would seem clear that the cost of the program should not be prohibitive for EGSs.

e. Additional policy reversals by the Commission with respect to RME programs will further encourage parties to engage in endless litigation. Both the Commission and the parties should respect Commission precedent.

10. With respect to the Companies' proposal for recovery of ROIP costs from the EGSs, the OSBA submits that the proposal is reasonable. EGSs who are interested in participating will have a very clear idea of the cost of the program

before they are unalterably committed to participate. Moreover, the Companies proposed cost recovery mechanism is based on the number customers who receive an offer from the EGS. This approach has the advantage of matching cost recovery with cost causation, given that the program costs are primarily related to the mailing.

11. With respect to the Companies' proposal for recovery of CRP costs, the OSBA submits that the proposal is reasonable. In the case of CRP costs, it is difficult to match cost causation with cost recovery, because the costs are substantially fixed and do not vary with either the number of eligible or enrolled customers. Thus, the Companies have reasonably proposed to recover the costs of the programs from the EGSs who directly benefit from the program, by imposing a charge based upon the customers successfully enrolled by an EGS. While there will obviously be some uncertainty as to the magnitude of the charge and any subsequent reconciliations, the EGS representations regarding the value and attractiveness of the CRP imply that the per customer cost of participating customers should be well below the $150 to $500 value of the new customer to the EGS, as established by Dr. Morey.

III. CONCLUSION

In view of the foregoing, the OSBA respectfully requests that the Commission approved the Revised RME Plan subject to the modifications to the ROIP recommended herein.

Respectfully submitted,

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