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

April 26, 2013

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 Comments on the Second Revised Default Service Plan – Retail Market Enhancement Programs Compliance Filing of the FirstEnergy Companies in the above referenced proceeding.

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

Respectfully Submitted,

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, 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 CONSUMER ADVOCATE
ON THE SECOND REVISED DEFAULT SERVICE
PLAN – RETAIL MARKET ENHANCEMENT PROGRAMS COMPLIANCE
FILING OF THE FIRSTENERGY COMPANIES

I. INTRODUCTION

On August 16, 2012, the Pennsylvania Public Utility Commission (Commission) entered an Opinion and Order (August 16 Order) in the above-captioned consolidated proceeding involving the 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 the August 16 Order, the Commission directed FirstEnergy to submit new proposals for various aspects of its default service plan. August 16 Order at 161-162. Specifically, the Commission directed FirstEnergy to submit new proposals for the Companies' Retail Market Enhancement (RME) Programs as to the Time of Use (TOU) rates for West Penn and Penn Power, the Retail Opt-In Program (Opt-In Program), the Customer Referral Program (Referral Program) and a revised Cost Recovery

Mechanism for the Opt-In and Referral Programs. Id. FirstEnergy was directed to create these new proposals after discussion and consultation with the other parties and stakeholders. Id.

After the stakeholder meetings, on November 14, 2012, FirstEnergy submitted its Revised Default Service Plan Retail Market Enhancements Program (Revised Plan). The parties were provided an opportunity to submit Comments and Reply Comments for Commission consideration. On February 15, 2013, the Commission entered an Order (February 15 Order) approving the Companies' Revised Plan, with modifications. Importantly, the Commission provided specific guidance regarding the cost recovery of RME programs. With regard to the Standard Offer Referral Program, the Commission stated:

> As to the CRP, we agree with RESA that a fee of the lesser of thirty dollars per customer or actual costs per referred customer is appropriate. Any remaining costs should be recovered in either one of two ways: (1) through a non-bypassable surcharge, as proposed by RESA; or (2) shared with fifty percent from the POR discount and fifty percent from residential and small commercial default service customers.

February 15 Order at 14. The Commission ordered the Companies to file a Second Revised Plan within sixty days. Id. at Ordering ¶ 2.

During the intervening period, on March 14, 2013, the Commission issued its Tentative Order on Reconsideration (Tentative Order) regarding the proposed Retail Opt-In (ROI) Program implementation schedule for the FirstEnergy Companies, PECO, PPL Electric Utilities Corporation (PPL) and Duquesne Light Company (Duquesne). In its Tentative Order for Reconsideration (Tentative Order), the Commission stated:

> We tentatively plan to postpone implementation of the ROI Program in each of the affected EDC service territories in order to permit the Standard Offer Customer Referral Program to move forward on its own. The Commission will revisit the ROI Program

> after we have had the opportunity to consider the ongoing of the Standard Offer Referral Program.

Tentative Order at 3. The Commission additionally stated that "[w]e are concerned that the implementation of the ROI Program so close in time to the implementation of the Standard Offer Referral Program may result in confusion for customers." Tentative Order at 3.

The OCA filed Comments in support of the proposal to postpone the ROI program and to revisit it at a later date. The OCA also stated that it remained concerned that the final costs of the Standard Offer Program have yet to be identified by the EDCs because without a final cost identified, ratepayers could potentially be exposed to an unknown level of program costs that could far exceed any benefits to customers of the program. The OCA requested that all efforts be directed at designing and implementing a Standard Offer Referral Program that remains within the capped Electric Generation Supplier (EGS) charge of $30 per customer.

On April 4, 2013, the Commission issued a Final Order (April 4 Final Order) which directed the Companies to postpone the implementation of the ROI Program and submit conforming revisions to their Default Service Plans within thirty days.

On April 16, 2013, as directed by the Commission in its February 15 Order, the Companies filed its Second Revised Default Service Plan – Retail Market Enhancement Programs Compliance Filing (Second Revised Plan). In its Second Revised Plan, the Companies state that they have incorporated all Commission directives concerning the upcoming default service plan and associated retail market enhancements that have been issued to date. These include the modifications required by the February 15 Order on Compliance, the April 4 Final Order suspending the ROI Program, and a separate Commission April 4 Order that clarified cost recovery allocation issues. Second Revised Plan at ¶¶ 4-7. The Second Revised Plan addressed four Plan issues:

- Revisions to West Penn and Penn Power TOU programs to allow participating customers to select a specific EGS for Time of Use service.
- Suspension of the ROI Aggregation Program.
- Revisions to the cost recovery and start date of the Companies' Customer Referral Programs.
- Revisions to the Customer Referral Programs regarding the procedures for customer referral and early termination provisions of the Customer Referral Program Agreement.

Second Revised Plan at ¶¶ 8-17.

The OCA files these Comments in response to the ROI and Customer Referral Program (CRP) cost recovery issues addressed in the Second Revised Plan.

II. COMMENTS

A. Overview

In its Second Revised Plan, the Companies have proposed to suspend the implementation of the Retail Opt-In Program pursuant to the Commission's April 4 Final Order. The Company also proposed revising the start date for the Customer Referral Program for both residential and small commercial customers from June 1, 2013 until August 1, 2013. The OCA supports the suspension of the ROI Program until a later date and the revision to the start date for the CRP. The Companies have further estimated their CRP costs to total $38.58 per customer. The Companies' propose to collect $30 for each referred customer from the participating EGS, while collecting 100% of the excess $8.58 from customers through each Company's non-bypassable Default Service Support Charge Rider. The OCA continues to submit, however, that steps must be taken to minimize the costs of the Customer Referral Program so that the costs remain within the cap of $30 per referred customers assessed to EGSs. If there are any costs over \$30, the OCA submits that the least harmful method for customers is to split these costs evenly (50/50) between default service customers and the POR discount.

B. Suspension of the ROI Program

The Second Revised Plan includes the suspension of the ROI Program as the Commission directed in its April 4 Final Order. Second Revised Plan at ¶ 12. The OCA supported the Commission's Tentative Order and shared the Commission's concern that the implementation of the ROI Program close in time to the CRP would cause customer confusion and may compromise the success of both programs. Both of the programs had similar intent and terms that were similar. The OCA agrees with the Companies' proposal to suspend the ROI Program as directed by the Commission's April 4 Final Order.

C. Revised Start Date for Customer Referral Program

In its Second Revised Plan, the Companies propose to revise the start date for the CRP for residential customers from June 1, 2013 to August 1, 2013. The Companies propose to revise the start date, "In light of the additional time required for Commission approval of the CRP and associated cost recovery, as well as the CRP's provision of a sixty-day period for EGSs to notify the Companies of their intent to participate in the CRP prior to the effective date of the program." Second Revised Plan at ¶¶ 16.

The OCA supports the Companies' proposal to revise the start date to August 1, 2013 for residential customers. Given the timeframes currently in place for the approval of the Second Revised Plan, it is not possible to implement the program on June 1 while still ensuring adequate time for EGSs to participate in the program. The OCA submits that a start date of August 1 should allow sufficient time for market participants to evaluate the final program terms and conditions, thus increasing the likelihood of a successful program. The OCA also submits that during this time, all efforts should be directed toward designing a program that can be implemented within the $30 per customer referred cap established by the Commission.

D. Costs of the CRP

In the Commission's February 15 Order, the Commission proposed a new cost recovery mechanism for the CRP. The Commission established a $30 per customer referred cap for the program costs that were to be paid by participating EGSs. The Commission then allowed for any costs in excess of the participating EGS cap to be paid one of two ways. The first option was to pass all costs over $30 on to customers through a non-bypassable surcharge on all participating customer classes. The second option was to share those costs over $30 on an equal basis with 50% from default service customers and 50% from the Purchase of Receivables (POR) discount. February 15 Order at 14. In its Second Revised Plan, the Companies selected the approach that calls for any excess costs not recovered through the direct payments by participating EGSs to be recovered from customers through each Company's Default Service Support (DSS) Charge Riders included in the revised RME proposals. Second Revised Plan at ¶ 14. The Companies' DSS Riders apply to all delivery, *i.e.*, all customers, regardless of shopping status. The OCA disagrees with the Companies' proposal in two respects.

First, the OCA submits that the program should be designed to remain within the capped amounts identified by the Commission for payment by participating suppliers without resorting to customers to pay the difference. The Companies have provided an updated projection of CRP costs and included it in Exhibit D of their filing. Exhibit D states a "Contractor Price per Enrollment" of $38. There is no supporting documentation that would allow the Commission the ability to determine the reasonableness of this figure and there were no further stakeholder meetings to consider design elements that would minimize the costs of the program. The Companies' proposal will require customers to pay the excess costs to support this retail marketing program. As these programs are designed to increase market share for participating EGSs without incurring substantial one-on-one acquisition costs, the OCA continues to disagree with assessing any of these costs to customers. As a replacement for acquisition costs, the programs should move forward only to the extent that the program costs are absorbed by the EGSs and are less than what the EGS would incur to acquire customers.

Moreover, in its February 15 Order, the Commission specifically stated:

> It is the opinion of this Commission that participant costs must be capped in order to attract participation in these programs, and also to provide proper cost incentives for EDCs to minimize implementation costs.

February 15 Order at 14 (emphasis added). The FirstEnergy Companies have made no showing that the costs have been minimized or are reasonable.

Given the proposed delay in the start of the program, the Companies should be directed to develop a program that can be offered within the $30 per customer enrolled cap. The OCA notes that, in PPL's recent Reply Comments regarding its Revised Retail Opt-In and Standard Offer Programs at Docket No. P-2012-2302074, PPL stated that it anticipated being able to implement this program for less than the cap of $30 per enrolled customer. PPL Reply Comments at 8.

Additionally, Duquesne has proposed a program that can be implemented and operated within the $30 per referred customer capped charge that the Commission recommended. Petition of Duquesne Light Company, Docket No. P-2012-2301664, Revised Plan at page 16. Under Duquesne's revised program, the customer service representative would provide an overview of the program and then transfer interested customers to the participating EGSs for further explanation of the program and enrollment. Duquesne Revised Plan at 11, Att.

D. This approach provides a direct interaction between the customer and the assigned EGS, allows the customer to experience the process of enrolling for service with the EGS, and avoids the inefficiency of having an additional call center to explain the program and take an enrollment. Duquesne estimated the costs for this approach to range from $300,000 to $500,000 total program cost as set forth at Paragraph 61 in its March 11, 2013 Revised Retail Market Enhancement Program Design and Cost-Recovery Proposal at Docket No. P-2013-2301664. The OCA strongly urges the Companies, the Commission and all parties to give further consideration to this model which will greatly reduce the expense of the program and will result in more efficient processes that may better accustom the customers to the competitive retail market experience.

The Commission should not approve the Second Revised Plan until further efforts to design a program within the $30 per enrolled customer cap for participating EGSs can occur. Other EDCs have provided lower cost estimates that allow for CRP implementation below $30 and without resort to customers to pay these EGS acquisition costs. The OCA submits that it remains incumbent upon the Companies to further revisit the program design and to seek to implement the program within the cost cap established by the Commission. The delayed start provides the time to develop a reasonable implementation plan within the cost parameter established by the Commission.

The OCA's second area of disagreement with the Second Revised Plan concerns the collection of costs over the $30 threshold established by the Commission. If the costs of the CRP program do exceed $30 a 50/50 split of those excess costs, a methodology approved of by the Commission, should be utilized. See, February 15 Order at 14. The OCA submits that the

50/50 approach is more reasonable and less harmful to customers. For these reasons, the Companies should recover all costs, if any, that exceed $30 through a 50/50 split.

III. CONCLUSION

WHEREFORE, the Office of Consumer Advocate respectfully requests that FirstEnergy Companies' Second Revised Plan be approved, in part, and denied, in part. The OCA requests that the proposals to revise the start date for the Standard Offer Referral Program to August 1, 2013 and to suspend the implementation of the ROI Program be approved. The OCA respectfully requests that the cost recovery included within the Second Revised Plan, as detailed in Exhibit D of the Companies' filing, should not be approved until further information on the Standard Offer Program costs is provided and addressed.

Respectfully Submitted,

Aron J. Beatty
Assistant Consumer Advocate
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org
Darryl Lawrence
Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Counsel for:
Tanya J. McCloskey
Acting 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

April 26, 2013
00168503.doc

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Comments on the Second Revised Default Service Plan – Retail Market Enhancement Programs Compliance Filing of the FirstEnergy Companies, 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 26th day of April 2013.

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

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
kkulak@morganlewis.com
adecusatis@morganlewis.com
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
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

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

Daniel Clearfield, Esq.
Deanne M. O'Dell, Esq.
Carl R. Shultz, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com
dodell@eckertseamans.com
cshultz@eckertseamans.com

Trevor D. Stiles, Esq.
Foley & Lardner LLP
777 E. Wisconsin Ave.
Milwaukee, WI 53202
tstiles@foley.com

Thomas J. Sniscak, Esq.
William E. Lehman, Esq.
Hawke Mckeon & Sniscak, LLP
100 North 10th Street
P.O. Box 1778
Harrisburg, PA 17105
tjsniscak@hmslegal.com
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
cet3@thomaslonglaw.com

Brian J. Knipe, Esq.
Buchanan Ingersoll & Rooney, PC
17 North Second Street, 15th Floor
Harrisburg, PA 17101
Brian.knipe@bipc.com

Divesh Gupta, Esq.
Managing Counsel-Regulatory
Constellation Energy
100 Constellation Way, Suite 500C
Baltimore, MD 21202
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
HGellerPULP@palegalaid.net

Amy M. Klodowski, Esq.
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601
aklodow@firstenergycorp.com

Michael A. Gruin, Esq.
Stevens & Lee
17 North Second Street, 16th Floor
Harrisburg, PA 17101
mag@stevenslee.com

Benjamin L. Willey, Esq.
Law Offices of Benjamin L. Willey
7272 Wisconsin Ave.
Suite 300
Bethesda, MD 20814
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

Gary Jeffries, Esq.
Dominion Retail, Inc.
501 Martindale St., Suite 400
Pittsburgh, PA 15212-5817
gjeffries@dom.com

A. J. Beatty

Darryl A. Lawrence
Assistant Consumer Advocate
PA Attorney I.D. # 93682
Email: DLawrence@paoca.org
Aron J. Beatty
Assistant Consumer Advocate
PA Attorney I.D. # 86625
Email: ABeatty@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