

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Retail Markets Working Group

:

Docket No. M-00072009

**POSITION PAPER ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

The Pennsylvania Public Utility Commission (“Commission”) issued a policy statement at *Default Service and Retail Electric Market*, Docket No. M-00072009 (Order entered May 10, 2007) (“Policy Statement Order”). In Sections 69.1812 – 69.1818 of the Commission’s Policy Statement Order, the Commission provided guidelines on the integration of default service with the competitive retail market. In ordering Paragraph 7 of the Policy Statement Order, the Commission directed the Commission staff to convene a Retail Markets Working Group.

By Notice dated April 26, 2008, the Commission announced that the Commission staff will be convening a Retail Markets Working Group (“RMWG”). The Notice invited interested parties to submit a position paper on the following topic areas: information and data access, rate and bill ready billing, purchase of receivables, customer referral program, supplier tariffs, and retail choice ombudsman. According to the Notice, the position papers should include a contact person for each issue addressed and a concise summary of the party’s position on each issue.

In response to the Notice, the Office of Small Business Advocate (“OSBA”) submits the following:

I. CONTACT PERSON

The OSBA will not be able to determine the specific issues it will need to address in the RMWG until the OSBA receives the other interested parties' position papers. Therefore, the OSBA would like to be notified of all meetings with regard to all the topics being addressed in the RMWG.

Representing the OSBA in this matter is Assistant Small Business Advocate Lauren M. Lepkoski. Please address all correspondence as follows:

Lauren M. Lepkoski
Assistant Small Business Advocate
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831 (fax)
llepkoski@state.pa.us

II. THE OSBA'S POSITION

A. Information and Data Access

The Commission issued its final form default service regulations at *Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa. C.S. §2807(e)(2)*, Docket No. L-00040169 (Order entered May 10, 2007) (“Final Rulemaking Order”). The Commission also issued a Policy Statement Order.

According to the Commission’s discussion in its Final Rulemaking Order and in its Policy Statement Order, the Commission intends the default service regulations to be applied strictly with regard to the areas the regulations cover. However, the Commission also wants to

give Electric Distribution Companies (“EDCs”) some flexibility; therefore, the Commission issued a separate Policy Statement that contains guidelines for EDCs to follow. Specifically, the Commission stated in the discussion section of the Policy Statement Order:

In reviewing the comments and considering the revisions to the proposed default service rules, the Commission recognized that there were practical limits to its regulation of large, complex energy markets. Requirements that might seem very appropriate today could be rendered obsolete by changes in markets, applicable law, or advances in technology. *Accordingly, the Commission determined that some elements of the default service regulatory framework would be best addressed in the context of a policy statement that provides guidance to the industry as opposed to strict rules. A policy statement is more readily subject to change, and can provide needed flexibility to the Commission and market participants in the context of default service as energy markets continue to develop.* The Commission anticipates that the initial guidelines will be applied to the first set of default service programs following the expiration of the generation rate caps, and these guidelines will be reevaluated prior to the filing of subsequent default service plans.¹

Section 69.1812 of the Commission’s Policy Statement, 52 Pa. Code §69.1812, sets forth the Commission’s guidelines with regard to what information should be accessible to Electric Generation Suppliers (“EGSs”) to help facilitate competition in the retail electric market. Specifically, Section 69.1812 states:

The public interest would be served by common standards and processes for access to retail electric customer information and data. This includes customer names and addresses, customer rate schedule and profile information, historical billing data, and real time metered data. Retail choice, demand side response and energy conservation initiatives can be facilitated if EGSs, curtailment service

¹ Policy Statement at 2. (emphasis added)

providers and other appropriate parties can obtain this information and data under reasonable terms and conditions common to all service territories, *that give due consideration to customer privacy, provide security of information and provide a customer an opportunity to restrict access to nonpublic customer information.*²

It is the OSBA's position that any common standards and processes for access to retail electric customer information and data must be consistent with Section 54.8 of the Commission's regulations, 52 Pa. Code §54.8. Specifically, Section 54.8 of the Commission's regulations requires that:

(a) An EDC or EGS may not release private customer information to a third party unless the customer has been notified of the intent and has been given a convenient method of notifying the entity of the customer's desire to restrict the release of the private information. Specifically, a customer may restrict the release of either the following:

- (1) The customer's telephone number.
- (2) The customer's historical billing data.

(b) Customers shall be permitted to restrict information as specified in subsection (a) by returning a signed form, orally or electronically.

(c) Nothing in this section prohibits the EGS and EDC from performing their mandatory obligations to provide electricity service as specified in the disclosure statement and in the code.

Furthermore, the Commission addressed this exact issue in *Procedures Applicable to Electric Distribution Companies and Electric Generation Suppliers During the Transition To Full Rate Retail Choice*, Docket No. M-00991230 (Order entered March 18, 1999). In that proceeding, the Commission concluded that all EDCs should release to licensed EGSSs the name,

² 52 Pa. Code §69.1812. (emphasis added)

billing address, service address, rate class, rate sub-class, account number and load data for all eligible customers if those customers did not restrict the release of that information. Customers would be able to prevent the disclosure of just their load data or of a range of information (*i.e.*, name, billing address, service address, rate class, rate sub-class, account number and load data) by placing a notation in the correct check-off box that indicated what information was being restricted. Moreover, the Commission concluded that telephone numbers would not be included on the list of items that had to be furnished to the EGSs. Specifically, the Commission stated:

Due to concerns related to customer convenience, as well as unwelcome or untimely telephonic solicitation by marketers, we will not include telephone numbers on the list of items that must be furnished to EGSs by EDCs. While our customer information disclosure regulations at 52 Pa. Code §54.8 provide that customers may restrict the release of their telephone numbers to third parties, we are taking the additional step by this Order of protecting consumers' privacy by concluding the telephone numbers will not be included on the eligibility lists furnished by EDCs to EGSs.

It is the position of the OSBA that the standards laid out in *Procedures Applicable to Electric Distribution Companies and Electric Generation Suppliers During the Transition To Full Rate Retail Choice*, Docket No. M-00991230 (Order entered March 18, 1999), appropriately take into consideration the need of EGSs to have certain information to help facilitate competition while at the same time protect customers' privacy needs.

B. Rate and Bill Ready Billing

Section 69.1813 of the Commission's Policy Statement, 52 Pa. Code §69.1813, sets forth the Commission's guidelines with regard to rate and bill ready billing. Specifically, Section 69.1813 states:

The public interest would be served by *the consideration* of the availability of rate and bill ready billing in each service territory.³

Under the rate-ready format, the EDC computes the EGS's charges (based upon the EGS's rate schedule and the customer's meter data) and sends a single bill to the customer. In the bill-ready format, the EDC sends meter reading data to the EGS, and the EGS calculates the unregulated charges using whatever rate structure the EGS has offered the customer.

The position of the OSBA with regards to rate and bill ready billing formats is that either billing format must be able to lay out in a clear manner what charges the customer is receiving from the EDC and what charges the customer is receiving from the EGS. The Commission should also make clear how customer problems and complaints will be handled under both billing approaches. The OSBA has received phone calls from Small Commercial & Industrial (“Small C&I”) customers who did not understand how their bills were laid out (*i.e.*, what charges they were receiving from the EGS and what charges they were receiving from the EDC). The OSBA has also received phone calls from Small C&I customers who were having problems with an EGS but, because they were receiving their bills from their EDC, did not understand that they needed to contact the EGS.

Furthermore, it is the OSBA’s position (with regard to the cost of implementing rate ready and bill ready billing) that the incremental cost of either billing format should be borne by the EGS and the customers of the EGS.

³ 52 Pa Code § 69.1813. (emphasis added)

C. Purchase of Receivables

Section 69.1814 of the Commission’s Policy Statement, 52 Pa. Code §69.1814, sets forth the Commission’s guidelines with regard to a Purchase of Receivables (“POR”) program. Specifically, Section 69.1814 states:

The public interest would be served by *the consideration of* an EGS receivables purchase program in each service territory.⁴

A POR is a program whereby the EDC pays the EGS for the unregulated charges billed to the EGS customers (typically at a discount), and collects the bill from the customer. In some POR programs, the EDC can use its regulated power to terminate service in order to collect these unregulated charges. The OSBA does not object to EDCs’ adopting a POR program. However, a POR program can have significant consequences for all customers, including Small C&I customers. Therefore, the OSBA proposes that any POR program must have significant consumer protections.

As a result of a base rate case settlement in 2007, the Duquesne Light Company (“Duquesne”) and the other parties negotiated a three-year pilot POR program. This program was implemented January 1, 2008, and will terminate December 31, 2010. The OSBA would be willing to support a generic POR program that had similar consumer protections as the Duquesne settlement provided. The following are notable provisions of the Duquesne agreement which should be included in any POR program:

- Duquesne will purchase the accounts receivable, without recourse, associated with EGS sales of retail electric commodity services to residential and small commercial and industrial customers within Duquesne’s service territory. A small discount will be applied to the purchase price.

⁴ 52 Pa Code § 69.1814. (emphasis added)

- EGSs participating in this POR program will “agree not to reject for enrollment” a new customer covered by the program based on credit-related issues.
- Duquesne will not be permitted to recover retroactively from distribution ratepayers any difference between the discounts applied to EGS receivables and uncollected amounts resulting from the purchase of EGSs.⁵

D. Customer Referral Program

Section 69.1815 of the Commission’s Policy Statement, 52 Pa. Code § 69.1815, sets forth the Commission’s guidelines with regard to customer referral programs. Specifically, Section 69.1814 states:

The public interest would be served by *consideration* of customer referral programs in which retail customers are referred to EGSs.⁶

The OSBA will not support a Market Share Threshold Program in which customers are assigned to different EGSs. With regard to PECO’s Market Share Threshold Program, it has been alleged to the OSBA that many of the Small C&I customers assigned to an EGS would actually save money if they were returned to default service. Moreover, the OSBA has received consumer phone calls from Small C&I customers who were confused as to why they were automatically assigned to an EGS and who wanted to be returned to their default service provider immediately. It is the OSBA’s position that it should be the business customer’s choice to determine if the customer will, or will not, shop. In other words, a Small C&I customer should be on default service unless the customer takes affirmative action to be included in a MST program.

⁵ Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2008 through December 21, 2010, Direct Testimony of Nancy J. Krajovic, Duquesne Statement No. 5 and Exhibit NJDK-1, Docket No. P-00072247.

⁶ 52 Pa Code § 69.1815. (emphasis added)

However, the OSBA would support making information more readily available to Small C&I customers to identify the EGSS which would be willing to serve Small C&I customers in the customers' service territory and the prices that the EGSS would offer Small C&I customers compared to the EDC's default service rate.

E. Supplier Tariffs

Section 69.1816 of the Commission's Policy Statement, 52 Pa. Code § 69.1816, sets forth the Commission's guidelines with regard to supplier tariffs. Specifically, Section 69.1816 states:

The public interest would be served by the adoption of supplier tariffs that are uniform as to both form and content. Uniform supplier tariffs may facilitate the participation of EGSS in the retail market of this Commonwealth and reduce the potential for mistakes or misunderstandings between EGSS and EDCs.⁷

The OSBA agrees that uniformity of many supplier tariff procedures across Pennsylvania would reduce the potential for mistakes and misunderstandings and could increase the number of EGSS competing in the respective service territories.

F. Retail Choice Ombudsman

Section 69.1817 of the Commission's Policy Statement, 52 Pa. Code § 69.187, sets forth the Commission's guidelines with regard to a retail choice ombudsman. Specifically, Section 69.1817 states:

The public interest would be served by the designation of an employee as a retail choice ombudsman at each EDC and the Commission. The ombudsman would be responsible for responding to questions from EGSS, monitoring competitive market complaints and facilitating informal dispute resolution between the DSP and EGSS.⁸

⁷ 52 Pa Code § 69.1816.

⁸ 52 Pa Code § 69.1817.

The OSBA agrees that it will be important for each EDC and the Commission to identify staff members who can be contacted by customers about retail choice programs. It will also be important for customers to be able to contact a clearly identified person who is responsible for addressing customers' complaints and specific concerns regarding retail choice.

Respectfully submitted,

Lauren M. Lepkoski, Esquire
Assistant Small Business Advocate
Attorney I.D. No. 94800

For:

William R. Lloyd, Jr.
Small Business Advocate
Attorney I.D. No. 16452

Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
(717) 783-2525

Dated: June 10, 2008