

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held December 15, 2011

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner
James H. Cawley, Statement
Pamela A. Witmer

Investigation of Pennsylvania's
Retail Electricity Market:
Intermediate Work Plan

I-2011-2237952

TENTATIVE ORDER

BY THE COMMISSION:

Before the Commission is a proposed intermediate work plan from the Pennsylvania Public Utility Commission's (Commission) Office of Competitive Market Oversight (OCMO). This proposed work plan was developed based on input from stakeholders participating in the Commission's pending Investigation of Pennsylvania's Retail Electricity Market. The purpose of the plan is to improve the current retail electricity market. In designating this work plan as intermediate, OCMO proposes that most of the issues, tasks and goals included herein be resolved and implemented prior to the expiration of the electric

distribution companies' (EDCs') next round of default service plans. Two programs, the Retail Opt-in Auction and Standard Offer Customer Referral Programs, are specifically proposed for inclusion in the EDCs' upcoming default service plans.

The topics listed in this proposed work plan include the following: consumer education, accelerated customer switching timeframes, customer referral programs, retail opt-in auction programs, placement of the default service Price To Compare (PTC) on customer bills and mechanisms for increased EDC and electric generation supplier (EGS) coordination. With this Tentative Order, the Commission adopts OCMO's proposed intermediate work plan and issues the plan for public comment.

DISCUSSION

History of the Proceeding

In its Order entered April 29, 2011, the Commission initiated an investigation into Pennsylvania's retail electricity market. *Investigation of Pennsylvania's Retail Electricity Market*, order entered at Docket No. I-2011-2237952 (April 29 Order).¹ The April 29 Order tasked OCMO, with the input of stakeholders, to study how to best address and resolve issues identified by the Commission as being most relevant to improving the current retail electricity market.

Initial stakeholder input was solicited via specific questions included in the April 29 Order. Thirty-nine parties filed comments² in response to the questions, which are

¹ For ease of reference, the actual Investigation will be referred to as either the Investigation or RMI.

² AARP, American Public Power Association, BlueStar Energy Services, Brighten Energy, Citizen Power, Citizens' Electric and Wellsboro Electric, City of Philadelphia, Community Legal Services of Philadelphia, Consolidated Edison Solutions, Constellation NewEnergy and Constellation Energy Commodities Group, Direct Energy Services, Dominion Retail, Duquesne Light, Energy Association of PA, Exelon, FirstEnergy Solutions, Future Times Energy Aggregation Group, Hess Corporation, IECPA

available on the Commission's website.³ Additionally, these topics and comments were further discussed at the June 8, 2011 *en banc* hearing, where representatives of consumer interests, EDCs, EGSs, subject matter experts, and regulators were invited to testify.

After review of both the written comments and the comments conveyed during the *en banc* hearing, the Commission issued an Order initiating the second phase of its Investigation. *Investigation of Pennsylvania's Retail Electricity Market*, order entered July 28, 2011 at Docket No. I-2011-2237952 (July 28 Order). In the July 28 Order, the Commission concluded that:

Pennsylvania's current retail market requires changes in order to bring about the robust competitive market envisioned by the General Assembly when it passed the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801, *et seq.*, in 1996.

July 28 Order at 7.

Consequently, the Commission directed OCMO to hold technical conferences to address intermediate and long-term issues pertaining to the competitive market. The Commission also directed OCMO to present specific proposals for changes to the existing retail electricity market and default service model.

OCMO held technical conferences on the following dates: August 10, August 31, September 14, September 21, September 28, October 6, October 27, November 8, November 17, and December 2, 2011. Interested stakeholders participated in these

and Other Industrial User Groups, Liberty Power, Met-Ed, Penelec, West Penn Power and Penn Power - the FirstEnergy Companies, Mid-Atlantic Renewable Energy Association, National Energy Marketers Association, NRG Energy, Office of Consumer Advocate, Office of Small Business Advocate, PA Coalition Against Domestic Violence, PA Energy Marketers Coalition, PA Utility Law Project, PennFuture, PPL Electric Utilities and PPL EnergyPlus, ResCom Energy, Retail Energy Supply Association, State Representative C. George, Stream Energy PA, Washington Gas Energy Services, and York Solid Waste & Refuse Authority.

³ http://www.puc.state.pa.us/electric/Retail_Electricity_Market.aspx

conferences and provided OCMO with information relevant to the topics that were addressed on each date.⁴

On November 10, 2011, the Commission held an *en banc* hearing where representatives of EDCs, EGSs and consumer interests discussed intermediate issues that may be implemented to enhance the competitive market on a shorter-term basis. The topics that were presented include the following: consumer education, accelerated switching timeframes, customer referral programs, retail opt-in auction programs and default service plans beyond May 2013. Ten parties⁵ filed informal comments following the *en banc* hearing.

PROPOSED INTERMEDIATE WORK PLAN

Introduction

In the July 28 Order, the Commission directed OCMO to identify intermediate steps involving changes to the existing market model and to present an intermediate work plan in December of 2011.⁶ This Tentative Order represents an intermediate work plan proposed by OCMO, with the input of those stakeholders participating in the Investigation.

⁴ A recap of these conferences is also available on the Commission's website at: http://www.puc.state.pa.us/electric/Retail_Electricity_Market.aspx

⁵ Direct Energy Services, LLC, Duquesne Light Company, Energy Association of Pennsylvania, Pennsylvania Energy Marketers Coalition, Office of Consumer Advocate, FirstEnergy Solutions Corp., Dominion Retail, Inc. and Interstate Gas Supply, Inc., PECO Energy Company, Met-Ed, Penelec, West Penn Power and Penn Power - the FirstEnergy Companies, and IECPA and Other Industrial User Groups.

⁶ The Commission also directed OCMO to present a long-range work plan in the first quarter of 2012, which will recommend how to structurally change the existing default service model. July 28 Order at 10.

This proposed intermediate work plan provides recommendations regarding the following topics: (1) the expansion of consumer education; (2) the acceleration of the switching timeframe when a customer shops for an alternative supplier; (3) the initiation of a customer referral program; (4) the initiation of a retail opt-in auction program; (5) the inclusion of the default service PTC on customer bills; and (6) the increase in coordination between EDCs and EGSs.

As these issues have been discussed at length in a number of technical conferences, the Commission believes the recommendations OCMO has proposed in this work plan strike a balance between the needs of all parties and can be accomplished in the timeframes proposed.

A. Consumer Education

In the July 28 Order, the Commission directed its Office of Communications (Communications) to work with OCMO in developing a revised and enhanced consumer education program that seeks to increase consumers' knowledge of the retail electricity market in order to improve their willingness to explore competitive options. Consistent with the Commission's July 28 Order, OCMO is leading the participants of the Investigation in the development of a comprehensive statewide plan for consumer education, which will be finalized in the first quarter of 2012. In the interim, we present several intermediate steps to educate consumers about the process and benefits of switching to a competitive supplier for their electric generation.

OCMO initiated the first step of the consumer education campaign through a Secretarial Letter, which is pending at the time of this Tentative Order. The Secretarial Letter directs specified EDCs to produce and mail a Commission-endorsed postcard that encourages consumers to shop for a competitive supplier and promotes the Commission's website for electric shopping, www.PAPowerSwitch.com (PAPowerSwitch.com). The

postcard will include the signatures of all five Commissioners, and will be mailed to all residential and small business customers in the service territories of the specified EDCs. OCMO intends that the mailing will be completed no later than February 29, 2012. The Commission anticipates that the affected EDCs will seek cost recovery in a future filing.

The postcard represents the first of three coordinated consumer education mailings to residential and small business electric customers in 2012. Along with the postcard, we have worked with RMI participants in creating two additional consumer education documents that will be mailed by the EDCs over the next 12 months.

First, OCMO and RMI participants have created a large PAPowerSwitch.com tri-fold flyer that will be mailed in May 2012. The tri-fold flyer places a strong emphasis on PAPowerSwitch.com and provides consumers with a detailed walk-through of the steps involved in shopping for a competitive EGS. It also includes a highlight of savings that can be achieved by the consumer when simply saving just a half cent per kilowatt hour (kWh).

Consistent with information contained in the tri-fold flyer, the Commission and the EDCs will undertake a second mailing in early fall of 2012. This mailing will consist of a letter from the EDC that will encourage consumers to shop for a competitive supplier, direct customers to PAPowerSwitch.com and reinforce the notion that all consumers, regardless of who supplies their electricity, will continue to receive safe and reliable electric service from their EDC. The letter will also include a list of Frequently Asked Questions (FAQs).

In addition, OCMO, as part of this Intermediate Work Plan, seeks to enhance the shopping experience for small business customers, in particular those with a peak demand of 25 kilowatts (kW) or less. This plan includes a concerted effort to work with the Office of Small Business Advocate (OSBA) and other business-related organizations

in spearheading outreach to thousands of small business owners across the Commonwealth. OSBA has provided OCMO with organizational contact information that will be the basis for this outreach.

The small business outreach plan also includes steps to enhance the shopping experience on PAPowerSwitch.com for small business owners. Currently, small business owners receive a list of competitive suppliers that are currently providing offers in their service territories. With the input of OSBA and other participants of the Investigation, we are pursuing a process whereby small business owners, up to the usage threshold of 25 kW, will be able to obtain comparative pricing data along with other terms and conditions from various suppliers in their service territories via PAPowerSwitch.com. We have worked with Communications to explore this option and anticipate that it can be completed in early 2012 in the price range of \$25,000 to \$30,000, an expenditure which will require the Commission's approval.

B. Acceleration of Supplier Switching Timeframes

Due to customer complaints and EGS concerns, OCMO explored options to shorten the timeframe for switching to an EGS. Presently, a change in supplier can take from 16 to 45 days. This timeframe is a result of a variety of Commission regulations, and EGS and EDC procedures that were established, in large part, to guard against "slamming" - the unauthorized change of a supplier. The delay in transferring a customer's account has been perceived by consumers to be a lost "savings opportunity" that, in turn, results in customer frustration and disappointment and a less than favorable opinion of the competitive retail market.

In exploring this issue, we had informal discussions with some EDCs and also consulted with regulators from Texas and Maryland to learn about their enrollment timeframes and any steps they have taken to accelerate the switching process. Finally,

we presented this topic to the Committee Handling Activities for Retail Growth in Electricity (CHARGE) on March 24, 2011, in order to obtain the perspectives of the EGSs, OCA, and any other interested parties. CHARGE discussed this topic further on April 21, May 12, June 23 and July 21, 2011. With the initiation of the RMI, it was decided that this issue would be discussed in this forum, as well, in order for RMI participants to present their perspectives and concerns. Consequently, issues relating to switching procedures were discussed during RMI Technical Conferences on August 10, August 31 and September 14, 2011. Finally, this topic was discussed at the November 10, 2011 *en banc* hearing where parties had the opportunity to present their perspectives directly to the Commission. Subsequently, a few parties filed informal comments responding to *en banc* testimony.

On November 14, 2011, the Commission issued for comment proposed Interim Guidelines intended to accelerate the switching process. *See Interim Guidelines Regarding Standards for Changing a Customer's Electricity Generation Supplier*, order entered November 14, 2011 at Docket No. M-2011-2270442. Comments were due thirty days after the entry date of the order.

The proposed Interim Guidelines are intended to streamline the switching process while providing necessary customer protections. The primary changes that are proposed include: (1) the elimination of the ten-day waiting period that is currently initiated when the EDC sends a letter to a customer to confirm a change in that customer's supplier; and (2) the substitution of a standard, statewide account transfer letter for the current confirmation letter. Parties were specifically invited to provide data about the costs and the savings, if any, that could result from implementing these proposals and to comment on the new transfer letter. Additionally, parties were invited to comment on other possible mechanisms that may accelerate the switching process, such as the use of off-cycle meter readings to initiate supplier service and, in the longer-term, the use of smart-metering to facilitate near-instantaneous switching. The Interim Guidelines also

contained a proposal to waive Sections 57.173 and 57.174 of the Commission's regulations at Title 52 of the Pennsylvania Code, to the extent needed, as to not conflict with the proposed guidelines.

After careful review of the comments submitted, the Commission will adopt final interim guidelines in the near future. It is also expected that the Commission will initiate a rulemaking to review and revise the switching regulations at 52 Pa. Code §§ 57.171 – 179 no later than six months after the Interim Guidelines are finalized.

C. Customer Referral Programs

Customer referral programs are intended to facilitate customer participation in the competitive market by having the EDC actively promote, and possibly even implement, the switching of customers to alternative suppliers. There are several different customer referral models with varying features, ranging from simply providing consumers with information about the competitive market to actually assigning and enrolling customers with competitive suppliers, with many possible variations between these two extremes. The customer participant pool can also vary considerably depending on the model; from small, selected groups of customers to possibly the entire customer base of the EDC.

For an example of a robust customer referral program, many refer to a program operated by Orange & Rockland Utilities, Inc. (O&R) in New York. Under this type of robust model, consumers can contact the utility (via telephone, internet, etc.) and request to be referred to a specific supplier or to have the utility choose one for them. The utility can perform the switching transaction to a new supplier for the customer, as well. The utility uses almost all types of customer contacts to its call center to promote the program and encourage the use of alternative suppliers. To participate in the program, the supplier agrees to take all customers referred to it and must offer a standard introductory period with a set, guaranteed discount, determined by the New York Public Service

Commission. After the introductory period, three scenarios can occur: (1) the supplier and customer agree to new terms; (2) the consumer can switch to another supplier; or (3) the customer can return to the utility for default service.

There are also other less-robust models that may include only some of the features mentioned above. For example, under a less-robust model, the EDC may simply provide information on alternative suppliers in its territory, but the burden to enroll remains with the customer. Other programs may only target customers who call the EDC specifically about competition issues or questions.

The Commission has previously explored customer referral programs in other forums. In the context of the natural gas industry, the working group Stakeholders Exploring Avenues for Reducing Competitive Hurdles (SEARCH) held extensive discussions of this issue. See the Final Order Re: *Investigation into the Natural Gas Supply Market: Report on Stakeholders' Working Group (SEARCH); Action Plan for Increasing Effective Competition in Pennsylvania's Retail Natural Gas Supply Services Market*, order entered September 11, 2008 at Docket No. I-00040103F0002, and its accompanying report at pages 39-44.

In the context of the electric industry, the Commission issued a Policy Statement⁷ at its May 10, 2007 Public Meeting that contained a provision that consideration of customer referral program as being consistent with the public interest. This policy is codified at 52 Pa. Code § 69.1815 and became effective on September 15, 2007:

§ 69.1815. Customer referral program.

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

⁷ See *Final Policy Statement re: Default Service and Retail Electric Markets*, order entered May 10, 2007 at Docket No. M-00072009, pp. 13-14.

Consistent with the Commission's *Final Policy Statement on Default Service and Retail Markets*, Commission Staff issued a discussion draft of a customer referral program to the Retail Markets Working Group (RMWG) on January 5, 2010. Informal comments to that Staff discussion draft were received on January 26, 2010, and are available on the Commission's website (http://www.puc.state.pa.us/electric/Retail_Markets_WG.aspx).

The RMI stakeholders commenced discussion of this issue at the September 28, 2011 Technical Conference. The above-mentioned RMWG staff document was used to initiate the discussion and parties were invited to submit their own discussion documents as well. This initial discussion was general in nature, with consumer groups emphasizing disclosure of prices and terms; EDCs concerned with the responsibilities to be placed upon them; and EGSs expressing varying opinions as to the mechanics of the program and the rates to be offered. The discussion continued at the October 6, 2011 Technical Conference, where the topic was bifurcated into two differing but related concepts; (1) a program targeted to new customers and customers who move and transfer service within an EDC service territory; and (2) a larger, more comprehensive program aimed at the entire customer base. This was followed by a brief discussion at the October 27, 2011 Technical Conference and a more in-depth discussion at the November 8, 2011 Technical Conference (where these programs were the sole topic on the agenda). Finally, parties had the opportunity to present their perspectives directly to the Commission at the November 10 *en banc* hearing. Representatives from the Retail Electric Suppliers Association (RESA), various EGSs, consumer groups including the Office of Consumer Advocate (OCA), Pennsylvania Utility Law Project (PULP), and AARP, and one EDC testified. Several of these parties subsequently filed informal comments with Commission Staff.

During these discussions, consumer representatives, in general, expressed their concerns with the disclosure of rates and terms. While they believed that customer referral programs may have some use in facilitating consumer participation in the competitive market, they emphasized the need for this to be entirely voluntary and for customers to have complete information up-front about program terms and conditions, both during the introductory period and beyond. OCA stated that affirmative customer consent should be required both to enroll in the program and to continue on beyond the initial introductory period. OCA also believed that the introductory period should be at least four months, after which affirmative customer consent would be required to continue service. OCA believed the referral program should only be addressed during certain categories of customer contacts to the EDC call centers, and that EDC call center metrics (e.g. call-handling times) should not be compromised to accommodate the referral program. Finally, OCA stated that the costs of these programs should not be fully recovered from ratepayers.

Likewise, AARP testified that the cost of these programs should be borne by EGSs because they are the prime beneficiaries, in that they are obtaining customers with minimal acquisition costs. AARP also echoed OCA in its advocacy for full and complete disclosure of all program rates and terms prior to enrollment and warned of the dangers of “teaser rates” that could irritate customers and damage the reputation of the competitive market.

PULP echoed the concerns of OCA and AARP and added that additional accommodations must be made for low-income customers who receive discounted service in Customer Assistance Programs (CAPs). The promise of discounts and incentives may attract CAP customers and referral program rules and procedures will have to take CAP customers into account. These rules will also need to be effectively communicated to CAP customers.

Industrial consumer groups recommended that the Commission carefully evaluate and specify which commercial customers are to be eligible for referral programs and state that basing eligibility on peak load limits may not be ideal since these limits do not necessarily align with EDC rate classes. They also pointed out that these programs will not benefit large commercial and industrial (C&I) customers, so the costs of these programs should not be recovered from them. They suggested that the EGSs bear these costs as they are the entities benefiting from reduced customer acquisition costs.

In general, the EDCs voiced some of the same concerns as the consumer advocates regarding program rules and procedures and requested that these be clearly communicated to customers and EDCs. However, their primary concern is the impact that these programs could have on their call centers. The EDCs pointed out that any increases in call-handling times, even small incremental ones, can accumulate into significant impacts on call-handling times and cause delays. This could require additional staffing and/or adversely affect the quality of service reporting that is required per 52 Pa. Code § 54.153. While this regulation is only a reporting requirement, and does not contain actual call center standards, the EDCs pointed out that some EDCs may have agreed to service quality commitments in various other proceedings. As a way of addressing these concerns, some of the EDCs mentioned the possibility of outsourcing the customer referral functions to an outside call center or even a common statewide call center.

The extent of call center impacts depends on the types of calls selected for the referral process. There was general agreement among all parties that calls of an urgent nature, such as those reporting outages and other emergencies, are not appropriate for discussions of referral programs. There was also general consensus that customers calling to initiate new service or to transfer existing service are good candidates for referral. However, opinions varied as to the appropriateness of referral program discussions during calls regarding general billing inquiries and termination/collection-

related calls. Finally, the EDCs expressed concern regarding the recovery of any costs associated with these programs and request that this be clearly addressed by the Commission.

Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (PennPower), West Penn Power Company (West Penn Power) (collectively, FirstEnergy) submitted comments urging that EDCs be provided flexibility in designing their referral programs and that they should not be required to necessarily provide all aspects of a specified referral program format. FirstEnergy opposed the use of introductory rates that may be perceived as “teaser” or “gimmicks” which could irritate customers, especially if subsequent rates exceed the EDC’s default service rate. Likewise, the imposition of early termination fees should also be forbidden. Concerning the impact on call center metrics, FirstEnergy suggested that referral-related calls be exempt from the benchmarks against which EDCs are measured. Finally, FirstEnergy averred that all non-shopping residential customers be eligible to participate, and that interested customers should be connected with the EGS directly for enrollment.

Duquesne Light Company (DLC) likewise requested that EDCs be permitted to customize referral programs to reflect the retail market conditions in their respective service territory, since different service territories in Pennsylvania have differing levels of customer understanding and different levels of shopping. DLC also expressed concern regarding “bait-and-switch” offers and believed that customers should be fully informed and provide affirmative consent to any changes in rates. To address the impact on call center metrics, DLC suggested the consideration of an outsourced call center.

The EGSs were generally enthusiastic about the potential of simple, easy-to-explain customer referral programs in introducing otherwise-reluctant consumers to the competitive market. EGSs pointed to their experiences in the New York market to

support their contention that these programs can significantly increase the number of customers participating in the market. RESA submitted an informal proposal that calls for an introductory period of three months, which would allow enough time for the EGSs to send the required two renewal notices, arguing that anything longer could raise risk premiums. RESA believed only default service customers should participate, but this would include small commercial default service customers (while admitting that there is not a single statewide small-commercial rate class at this time). Also, under the RESA proposal, customers could pick an EGS or have one randomly assigned by the EDC, and participating customers could terminate their contracts with the EGS without the imposition of an early termination fee. Finally, RESA recommended that these programs become active in 2012, with the requirement that EDCs file plans with the Commission by March 1 following a stakeholder process.

In its written comments, FirstEnergy Solutions (FES) differed from some of the positions developed by other EGSs. For example, FES submitted that short-term introductory prices are unnecessary and counterproductive and that the month-to-month pricing that would follow could result in customer confusion and dissatisfaction. FES believed that the referral product should be a standard fixed-price or percentage-off product that guarantees that the customer will save money, and should be for a contract term of 24 months. Introductory prices are part of a New York model that FES rejected as an appropriate model because, in New York, default rates adjust monthly, and that “even after several years with New York customer referral programs in place, residential shopping in New York is lower than current residential customer shopping levels in Pennsylvania.” Finally, FES believed that EGSs should continue to be responsible for customer enrollment and that this burden should not be placed on EDCs because of the resulting call center and cost burdens.

Resolution

In the Commission's Final Order in *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, (Order adopted December 15, 2011 at Docket No. I-2011-2237952) (Default Service Plans Order), we reviewed in some detail the comments filed by various parties participating in the RMI. As stated in the Default Service Plans Order, we will use this Tentative Order to present a recommended design for customer referral programs.

Initially, we note that one of our concerns at the outset of the RMI was that the current structure of Pennsylvania's default service unavoidably positions EDC-provided default service as the very first choice presented to Pennsylvania consumers. Assignment of customers to default service in the first instance has become automatic. This design flaw has led some to refer to our structure as a "supplier of first resort" model, not supplier of last resort as intended by Chapter 28 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 2801 - 2815.

Many commenting parties have strongly recommended that a customer referral program be implemented to help to change Pennsylvania's existing structure so that customer choice options are presented to customers on an equal, or more prominent, footing as EDC-provided default service. Many commenting parties have also recommended a type of program in which EGSs may voluntarily participate in a customer referral program in which a standard offer is presented within a service territory. In this type of program, customers may voluntarily sign up for that standard offer either with a specific EGS or by random assignment. Various options have been presented regarding customer options at the end of the initial standard offer period.

Based upon our review of the comments and testimony presented during the RMI, we tentatively find that both types of customer referral programs will benefit our retail

electric market. The first type of program, commonly referred to as the “new/moving customer program,” envisions that any time a new customer or customer moving within a service territory contacts an EDC’s call center, that customer will be advised of competitive EGS alternatives and market information. Depending on timing and meter-read dates, the customer may have the option to be immediately transferred to an EGS for enrollment, with the potential that the customer may receive service from the selected EGS without the need to enroll in the EDC default service program for any period of time. The second type of program is the standard offer customer referral program. We have discussed these two programs separately below.

1. New/Moving Customer Referral Program

In our view, the implementation of this type of customer referral program is possible in 2012. Although we have referred to this program as the “New/Moving Customer” Referral Program, we think this type of program can be applied to new and moving customers, as well as any current default service customer who contacts an EDC call center for any reason, other than emergencies, such as service outages or termination of service issues. As we stated above, the objective is to present the consumer with information about competitive alternatives every time they contact the EDC.

Several issues surrounding this type of program were raised during the RMI discussions devoted to this issue. While most commenters favor this type of program, there was a lack of agreement regarding the types of calls which would be appropriate for customer referral scripts, the call center logistics (i.e., use of existing EDC call centers, outsourcing the function, or utilizing one statewide call center with EDC-specific information), cost recovery and the actual enrollment process if the customer decides to act at the time of the call. We invite comments on all of these issues; however, in this Tentative Order, we will provide some specific direction, for a “New/Moving Customer” Referral Program, subject to comments.

As we stated above, we believe this type of a customer referral program can, and should, be implemented as soon as possible in 2012. We also believe that this type of program should be used for new and moving customers, as well as existing default service customers during certain types of contact with EDC call centers. We request that parties who comment on this issue address whether this program should be managed by existing EDC call centers, a contracted call center, a statewide call center or a combination of any or all of the foregoing. In this context, we strongly agree with the OCA that call center management of a “New/Moving Customer” Referral Program should not result in diminished customer service. We also invite comments on the types of calls which should and should not be used for the referral program.

Tentatively, we believe that the “New/Moving Customer” Referral Program should be open to both residential and small business/commercial customers. The definition of small business customer would be the smallest general service business rate class as set forth in the relevant EDC’s tariff. We invite comments on this topic, noting that the Standard Offer Customer Referral Program discussed below will be tentatively restricted to residential customers. We also invite comments on the issues specific to CAP customers.

We also firmly believe that, if a customer is prepared to exercise his or her option to select an EGS at the time of the call, there should be the opportunity for a “hot transfer” from the EDC call center to the EGS to facilitate the customer’s choice.⁸ Current Commission regulations at 52 Pa. Code §§ 57.172 and 57.173 (relating to customer contacts with EDCs and EGSs) require the enrollment of a customer to be initiated by the selected EGS. As a result, the current enrollment process and the EDC

⁸ A “hot transfer” is the capability of the EDC call center representative to immediately transfer the customer’s call to the selected EGS without any delay or other action required of the customer.

systems which support it generally require that the selected EGS initiate the enrollment process. That is one reason for our interest in the “hot transfer” capability.

This Tentative Order also presents a proposal to streamline the customer enrollment process so as to enable switching as quickly as possible. We invite comments regarding the “New/Moving Customer” Referral Program which provide design features like the “hot transfer” element, so that an interested customer can not only exercise his or her choice quickly through the referral process, but also spend the minimum amount of time on default service once that choice is made. We also request comments on how the “hot transfer” process might be incorporated in the proposed Interim Guidelines set forth for comment in the Commission’s Tentative Order on *Interim Guidelines Regarding Standards for Changing a Customer's Electricity Generation Supplier*, order entered November 14, 2011 at Docket M-2011-2270442.

Another issue which was extensively discussed was whether EDCs should be expected to provide information regarding existing EGS product offerings during a customer referral call. Subject to comments, we are reluctant to place the EDCs in that position. The better alternative is for EDC scripts to refer customers to PAPowerSwitch.com, where current offers are displayed.

Finally, a key element of this program is our tentative finding that one of the purposes of the customer referral part of the contact is to highlight competitive alternatives. As scripts are developed to implement this program, we would expect that the competitive market alternatives take a prominent place in the discussion so that default service is truly styled as last resort service, not the expected starting point for retail electric customers in Pennsylvania.

2. Standard Offer Customer Referral Program

As briefly described above, the Standard Offer Customer Referral Program is more robust than the “New/Moving Customer” Referral Program. This type of program involves voluntary participation by EGSs who agree to provide a standard offer to participating customers. The standard offer typically provides for a percentage off an EDC’s PTC for a stated period of time. At the conclusion of the introductory offer, with proper notice to the customer, the EGS can offer new terms or continue with the initial standard product. The customer can accept new terms, switch to an alternative supplier or move to default service. There is no early termination penalty and the customer is free to switch away from the EGS at any time, unless the customer affirmatively agrees to a new arrangement at the conclusion of the introductory period.

In our Default Service Plans Order, we have stated that EDCs should include a Customer Referral Program in their upcoming default service plans. The Customer Referral Program envisioned for inclusion in the upcoming default service plans is the Standard Offer Customer Referral Program discussed here. We will provide several broad guidelines for this type of program. To the extent that an EDC chooses to deviate from these guidelines, we expect the differences to be justified by operational constraints, supported by evidence produced during the default service plan proceedings.

The Standard Offer Customer Referral Program should be voluntary for customers (*i.e.*, “opt-in”), as well as participating EGSs. The standard offer should be comprised of a percentage reduction from the effective EDC PTC and should be provided for a minimum of three months. The standard offer and its term should be uniform within an EDC’s service territory. Customers may be assigned to an EGS of their choice or may choose random assignment. The terms and conditions of the standard offer must be presented to customers before they decide to enter the program. The Standard Offer Customer Referral Program should be presented during customer contacts to the EDC

call centers, other than calls for emergencies, terminations and the like. The eligible customer base for the Standard Offer Customer Referral Program is recommended to be residential customers on default service at the time of the contact. We anticipate that issues involving CAP customer participation will be addressed in the individual default service plan proceedings.

Once a customer enrolls in the Standard Offer Customer Referral Program, the enrollment will be forwarded to the EGS for EDI processing. At the time of the first contact between the EGS and the customer, the customer will be reminded of the terms and conditions of the standard offer, including the date by which the customer must take action to exercise his or her options at the end of the term. There will be no termination penalty or fee imposed at any time during the effective period of the standard offer. All existing customer notification requirements apply, including notices and the timing of those notices relating to proposed changes in the terms and conditions of the EGS-customer relationship. At the conclusion of the standard offer period, absent affirmative customer action to enter into a new contract with the EGS, the customer's enrollment with a competitive EGS or the customer's return to default service, it is expected that the customer would remain with the EGS on a month-to-month basis without the imposition of early termination fees. We emphasize that all requirements for notices relating to price and term changes would apply. A more complete discussion of the required notices and customer options appears in our discussion of Retail Opt-in Auctions at pages 38-40.

It is expected that detailed implementation/logistical elements will be determined during the default service plan proceeding for each EDC.

D. Retail Opt-in Auction Programs

In a retail opt-in auction program (opt-in auction), an EGS or EGSs bid to provide competitive retail service to a group of customers within a specific EDC's service territory. These customers have affirmatively chosen to have their accounts included in the group, *i.e.*, "opt-in." Opt-in auctions pose a possible safe and easy mechanism to increase customer participation in the competitive market, and to decrease EGS customer acquisition costs. A subgroup was developed within the RMI, consisting of EGS, EDC and consumer advocacy representatives actively participating, while other interested stakeholders monitored its activities. The subgroup submitted an initial report on September 30, 2011, to the entire RMI stakeholder group which was followed by a final report on November 30, 2011. We want to recognize and thank the subgroup for its efforts in bringing this matter to the attention of the RMI. This was also a topic at the November 17, 2011 technical conference and was the sole agenda item at the December 2, 2011 technical conference. Additionally, this was a topic at the November 10, 2011 *en banc* hearing, where one EDC, three EGS, and four consumer advocacy representatives were able to present their perspectives directly to the Commission.

In addition to the above-noted activities, the previously discussed Default Service Plans Order sought comment on a variety of default service issues including the inclusion of opt-in auctions in future EDC default service plans. In this order, the Commission proposed:

that EDCs incorporate an opt-in auction program within their default service plans. The Commission will not propose a specific format for opt-in auctions in this Tentative Order. Rather, the Commission recommends that EDCs use, as a starting point for prospective opt-in auctions, the format being discussed by a stakeholder sub-group in this Investigation when it is finalized. Doing so should provide benefits to customers, as described above, while providing all interested stakeholders the utmost of transparency for each EDC's default service plan.

Default Service Plans Order, p. 6.

Twenty parties filed comments in response to this order, with many addressing the proposal to include retail auctions in the default plans. After carefully reviewing and considering these comments, the Commission, in its Default Service Plans Order, declared that default service plans should include opt-in auctions. However, the Commission declined to address the details and mechanics involved and instead deferred those matters to the instant proceeding. We will now address the details involved in setting up and implementing these opt-in auctions, as well as the positions and concerns of the parties. Finally, we will offer specific proposals upon which we invite parties to comment.

1. Customer Eligibility

The discussion of customer eligibility encompasses many different levels; starting at the highest with the distinctions between residential, commercial and industrial. From there, we have to consider customer groups within these broad rate classes. For residential, distinctions may, or may not, need to be made between shopping and non-shopping customers, customers on Customer Assistance Programs (CAP), or small, exotic rate classes, like off-peak or time-of-use. A similar distinction between shopping and non-shopping customers may need to be made within the commercial sector, as well. Additionally, it may be necessary to define small C&I, medium C&I and large C&I customers. These determinations may prove to be difficult due to the lack of consistency in rate class definitions between EDCs within Pennsylvania.

Generally, residential consumer representatives believe that consumers who are currently receiving default service should be the target audience. However, they are also

concerned with avoiding the appearance of discrimination⁹ and thus believe that any customer should be able to participate. As a practical matter, they believe that if one targets only the default service customers, it is inevitable that shopping customers will be made aware of such a program through various media outlets, from participating default service customers, etc. Additionally, CAP customer shopping is still an issue to be discussed in the RMI and, thus, the merits of opt-in auctions for these customers are not clear. Consequently, their eligibility must be carefully considered. Opt-in auction pools, especially if they include incentives or bonuses, may appear very attractive to CAP customers, but may harm the customer in the long-run if participation in the auction pool results in their removal from CAP.

Commercial consumer representatives were much more skeptical about the need and appropriateness of opt-in auctions. Some claimed that it might be unlawful for the Commission to approve an opt-in auction for small C&I customers because they would create substantial uncertainty regarding the size and profile of the small C&I default service load on which wholesale suppliers would be bidding to serve. They believed this could adversely impact default service rates as wholesale suppliers incorporate higher risk premiums into their bids. These advocates also pointed out that over half of the small C&I load is already being served by EGSs and that, even if the Commission decides that some version of the opt-in auction proposal is necessary and appropriate for residential customers, there is no basis for making the same conclusion regarding the small C&I sector.

The EDCs were concerned about their role in screening and accepting enrollees and the problems that could arise depending on how eligibility is structured. Generally,

⁹ Note that “discriminatory” and “discrimination” as used throughout this order should be interpreted to mean discriminatory or discrimination in the general, and not the legal, sense. However, the Commission believes that the customer referral program and the retail opt-in auction proposed herein extend reasonable and limited preferences to selected customers and EGSs that do not constitute discrimination in rates or service in violation of either Section 1304 or Section 1502 of the Public Utility Code. *See* 66 Pa.C.S. §1304 (relating to discrimination in rates); § 1502 (relating to discrimination in service).

the EDCs would like eligibility to be as broad as possible to prevent potential customer dissatisfaction and possible rejection of customers wishing to participate. If only default service customers are eligible to participate, the EDCs expressed concern that current shopping customers could inundate EDC call centers with requests to return to default service in order to participate in the opt-in auction pool, especially if a bonus payment is involved. However, if shopping customers are eligible to participate, there could be an increase in the termination of existing EGS contracts with customers, possibly leaving those customers vulnerable to the imposition of early termination fees. The EDCs requested clear guidance about eligibility criteria for the opt-in auctions and, also, on the treatment of shopping customers wishing to participate.

Most EGSs wanted eligibility to be limited to non-shopping residential and small C&I customers. However, some acknowledged that there may be practical reasons that make this problematic. They suggested targeting the marketing and education solely to default service customers while allowing those shopping customers who wished to participate the ability to do so. Most also believed that if commercial customers are allowed to participate, this should be limited to “small” commercial despite the lack of a standard, statewide “small commercial” rate class.

Resolution

We believe that opt-in auctions should be limited to the residential customer class. We find persuasive the shopping statistics that demonstrate shopping levels among residential customers are less than those for commercial customers. As such, we propose that small C&I customers not be included in the opt-in auction due to the lack of a standard “small commercial” definition across the state. Although the Commission’s

Customer Information Regulations provide a definition of “small business customer,”¹⁰ this standard rarely, if ever, aligns with EDC commercial rate classifications. We also believe that, given that most, if not all, small C&I consumers are also residential consumers at their homes, they will have the opportunity to participate in opt-in auction pools as residential consumers. This may provide an experience to shop that may encourage them to also shop for the generation supply for their business. For those stakeholders proposing the inclusion of small C&I customers in the auction, we request that they propose a definition for “small commercial customer” and explain the process that an EDC could use to identify eligible small commercial customer accounts, especially on a statewide basis.

Within the residential rate class, we agree with the parties that suggested that the opt-in auction program be targeted to non-shopping, default service customers, with the marketing efforts, notifications and consumer education targeted towards that audience. However, we also agree with those that noted that, as a practical matter, shopping customers will become aware of these opt-in auction pools and may want to participate. In order to avoid the impression of discrimination and to avoid the return of shopping customers to default service to participate, we propose that all customers be eligible to participate in these programs. Possible exceptions are those customers in CAP programs or in exotic rate classes, such as net-metering, time of use, etc. We invite parties to comment on how to best address the possible exception of such customers and how to convey this information to them, especially with regard to CAP customers. CAP customer shopping rules and procedures vary considerably from EDC to EDC, and as such, their ability to participate in the opt-in auctions may vary accordingly.

¹⁰ *Small business customer*—The term refers to a person, sole proprietorship, partnership, corporation, association or other business entity that receives electric service under a small commercial, small industrial or small business rate classification, and whose maximum registered peak load was less than 25 kW within the last 12 months. 52 Pa. Code § 54.2 (relating to definitions).

2. EGS and EDC Participation

There was agreement among the RMI stakeholders that any licensed EGS may participate in opt-in auction programs within those service territories, and for those rate classes, for which it is licensed. The small EDCs (Citizen's Electric, Wellsboro, and Pike County Light & Power Company (PCL&P) were also uniform in their wish to be excluded from such auctions, with PCL&P pointing out that that it already has a large percentage of customers receiving competitive supply courtesy of a process similar to an opt-in auction process.

Resolution

We agree that EGS participation should be voluntary and all appropriately-licensed EGSs should be eligible to participate. We also agree that the three smallest EDCs (Citizen's Electric, Wellsboro, and PCL&P) be excluded from this opt-in auction process. The RMI may yet explore mechanisms to facilitate shopping within the smaller EDC service territories, but this mechanism will not be required at this time.

3. Pilot Programs

Some RMI stakeholders advocated the use of a pilot opt-in auction -- either with a small group of customers within each EDC or a limited number of EDCs -- as a way to "test" the concept within the Pennsylvania market. Some were particularly interested in small pilot programs in the belief that a small, limited program could be launched as early as 2012, thus accelerating the pace of the competitive market.

EDCs generally questioned the usefulness of a pilot program and, especially, its appropriateness if it was to be implemented during the current default program period

(prior to June 2013). Some EDCs contended that holding pilot opt-in auctions during the current default service period could negatively impact existing supply contracts.

EGSs were generally more enthusiastic, seeing pilots as a small-scale effort that could be implemented quickly, *i.e.*, in 2012) and provide valuable experience in developing full-fledged versions.

Resolution

We agree with those parties that question the usefulness and appropriateness of pilot programs, especially in 2012. Even a small-scale program would involve considerable effort by the EDCs and EGSs and it is questionable whether this could be accomplished in time for a 2012 pilot, especially since the time to litigate this matter is currently unknown. Similarly, it is not evident whether the Commission would have time to incorporate any “lessons learned” into the planning of the full-scale opt-in auctions. We also believe it is inappropriate to risk tampering with current default supply contracts. For these reasons, we propose the exclusion of opt-in auction pilot programs.

4. Program Length/Term

Currently, RMI stakeholders have determined the period of time that a customer should receive supply service under the terms of the opt-in auctions could vary anywhere from six months to two years. The parties differed considerably as to the program length, with EGSs generally wanting a term of a year or less. They believed a longer period interjects too much uncertainty into the process, thus leading to higher risk premiums, higher rates and the possible discouragement of EGS participation. Also, the longer the term, the more complicated the message concerning pricing and savings to consumers will be since future default service PTCs will be unknown.

The EDCs, in general, preferred terms of one or two years, arguing that, given the effort and expense involved, anything less may not be financially worthwhile for those involved. A six-month product may not be attractive enough to customers who have already shown a resistance to shopping, whereas a two-year fixed or percentage-off rate may be very attractive. EDCs also preferred a one or two-year program as it may more easily align with default service plan periods.

Consumer groups emphasized that, whatever the supply contact term length, it must be clearly communicated to potential participants, along with accurate representations of the rates that will apply during said term. All parties were in general agreement that, regardless of the length of the term, customers should be able to exit the program at any time, without the imposition of termination fees, noting that such a departure could cause the forfeit of any incentive or bonus payment depending on when the customer exits. However, such customers would not be allowed to re-enter the program.

Resolution

We share the concern expressed that a two-year contract term is too long in that it may increase the risk premiums suppliers will have to incorporate into their prices. A long term contract may also discourage some suppliers from even participating, thus shrinking the bidding pool, and also possibly leading to higher prices. We are also convinced that a two-year contract term could complicate the price and savings messages to consumers. As such, we propose that the program term be no shorter than six months and no longer than 12 months. We also agree that customers should be able to exit the program at any time; but that such customers shall not be permitted back into the program once they return to default service.

5. Timing

The timing issues in question are as follows: (1) when the opt-in auctions should be held; (2) when the initiation of auction service to customers should begin; and (3) when the customer notification/enrollment period should occur.

The EDCs were very concerned with the timing of the opt-in auction, emphasizing that nothing should interfere with current default supply contracts (pre-June 2013). Some added that they have existing full-requirements contracts that extend past June 2013, which were entered into without the possibility of an opt-in auction occurring. They asked that these be considered, as well, when determining the start date.

Some EGSs suggested that the enrollment period occur prior to the wholesale default service procurements for June 2013. This would provide wholesale suppliers with full transparency. However, other EGSs countered by pointing out that this could require customers to enroll without information regarding default service rates or the opt-in auction rate. This would also mean a long lag-time between enrollment and actual initiation of service, which is contrary to efforts to speed up the supplier switching process.

To avoid delays and customer frustration, some of the parties wanted enrollment to be as close as possible to the actual initiation of service.

There are varying concepts as to the sequence of events leading up to enrollment. Should the retail auctions be held before customer enrollment? This would give potential customers full knowledge of the price before deciding whether to enroll or not. A possible problem with this approach is that opt-in auction bidders, *i.e.*, EGSs, will not know the precise size of the opt-in auction pool. However, if customer enrollments are capped, EGSs will have an idea of the possible approximate size of the pool.

An alternative approach is to have enrollment before the auction; this would give potential opt-in auction bidders complete information as to the number of customers in the pool. However, the downside to this approach is that customers would be asked to enroll without knowing the price they would end up paying. Given that the target market is non-shopping customers, it is very unlikely such a customer would volunteer to enroll under such conditions.

A “middle ground” approach is possible, where potential customers would be asked to enroll on the promise that their rate will be “at least X.X cents” or “at least XX% off the default [service] PTC.” Then, participating bidders, who would know the size of the pool, would have to at least match or, preferably, beat this price. A possible problem with this approach is setting the “promised rate” – if set too low it may discourage bidders and may not even be possible to meet; set too high and it will not attract customer interest.

Resolution

We agree that the actual start of service under these programs should occur on, or after, June 2013 so as not to tamper with current default service supply contracts and plans. We propose a service start date of June 1, 2013. However, we are willing to consider any special circumstances that an EDC may have which would provide good cause for a later start date; keeping in mind that statewide uniformity is desired. As such, we would expect any delay to be no more than a few months. We also agree that, to avoid customer confusion and frustration, the enrollment period should occur as closely as possible to the actual service start date, and we invite all parties to comment on the practicality of such timing. We are also inclined to have a short enrollment period of no longer than a month, in order to begin service to the participating customer as soon after enrollment as is possible. In order to prevent any unfair practices with regard to

wholesale bidding, we propose the initiation of a customer participation cap, discussed below. This will prevent the occurrence of an unknown wholesale auction pool size due to the enrollment of customers in the opt-in auction *after* the procurement of default service.

We do not believe the opt-in auction will be successful in increasing customer shopping levels if customers do not know the precise price of the product at the time they are asked to enroll. As such, we are inclined to prefer that the retail auction occur first, followed by customer enrollments. This will allow the potential enrollees to know the exact price they will be asked to pay. While we understand that the “problem” with this approach is that EGSs will not know the precise size of the auction pool when bidding, we believe EGSs will have sufficient information to determine the approximate size of the customer pool. EGSs will know the size of the EDC’s default customer base and will know the customer participation cap that we put in place (refer to our following discussion of “Customer Participation Caps”). Furthermore, the pool will also be divided into tranches (refer to our following discussion of “Supplier Participation Caps”).

Another possible sequence of events would have customers enroll into the program first based on being provided with some sort of commitment as to the price, such as “at least XX% off the default service PTC” or “no more than X.XX cents.” The auction would then occur, which would set the final, actual price. However, we are concerned that this kind of “tentative offer” will not provide enough information to entice default customers who we know, based on the fact that they are default customers, have been reluctant to shop. Another problem with this approach is the difficulty in picking a “percent off” or “cents per kWh” amount that is realistic while still enticing enough to attract customers. We acknowledge that there is a diversity of opinion on the enrollment and auction sequence of events and invite parties to offer comments on such. We ask parties to address the balance between the need for potential customers to have sufficient

pricing information with the need of interested EGSs to have some idea of the size of the auction pool.

6. Customer Participation Caps

Some RMI stakeholders have proposed the capping of customer participation levels for the opt-in auctions. Some EDCs expressed discomfort at the possibility of customer disappointment from those enrollment rejections initiated due to such caps.

Most EGSs also opposed a participation cap. The EGSs believed that a bigger opt-in auction pool may attract more suppliers and, thus, more competitive prices.

Consumer groups, however, suggested the use of a customer cap that limits the pool to approximately 10-20% of the default service customer base of each EDC. Some EDCs agreed with a limit on participation as it may be easier to manage and, due to the program's immaturity, may be safer. They added that additional opt-in auction pools could be formed if there is an unmet demand after the first auction.

Finally, some parties suggested that caps are unnecessary, as they believe that the opt-in process will be, inherently, self-limiting. Based on experiences in other jurisdictions with opt-in programs (not necessarily auctions), some stated it would be unlikely that participation levels would reach 20%.

Resolution

Ideally, we would like to maximize the customer participation in the opt-in auctions as to provide as much savings to as many customers as possible. However, we believe a customer participation cap is needed as an appropriate and useful mechanism for providing transparency to wholesale suppliers. This information as to the potential

size of the default service base would aid them in making informed bids for default service. We will propose a cap of 50% of an EDC's default service customer base. This cap should be set at a date before the auction begins, in order to provide participating EGSs with an indication of the potential number of customer participants. We also want to make clear that we envision these retail auction pools to be a one-time event and, as such, we do not foresee follow-up auction pools.

7. Supplier Participation Load Caps

In RMI technical conference discussions, the issue arose as to the possibility of a limitation on percentage of opt-in auction load for which each participating EGS can provide service. Such a limitation would prevent the possibility in which one EGS provides service to the entire opt-in auction customer load. Opinions differed both between and within the EDC and EGS communities. Some opposed load caps because they believe the lowest price should be the main, and maybe only, criteria, regardless of the number of EGSs providing service. These parties also suggested that if a load cap is applied, it should be high, such as 50-80%.

However, others believed that this approach risks simply exchanging one default supplier with another "de facto" default supplier. Consequently, this supplier may continue to benefit from status quo bias and customer inertia, customer behaviors, the changing of which is one of the main focus areas of this Investigation. These parties suggested caps ranging from 25-50%.

Regardless, there was general agreement among all parties that it is irrelevant whether any such cap is based on percent of load or percent of customer accounts. Everyone agreed that, for residential accounts, the two measures are basically the same.

Resolution

We do not want to replace one default service provider with another, which would continue on with the same problems we are trying to combat - customer inertia and status quo bias. We also do not want to drive smaller suppliers out of the market; we believe a diversity of suppliers is best for the long-term health of the competitive residential market. A market consisting of a handful of dominant EGSs will not benefit consumers and could ultimately result in a more costly, less-competitive market in the long-run. We believe that we can protect both the diversity of the market and obtain a reasonable retail auction price by imposing an EGS participation cap of 50% of the customer class default service accounts for each EDC service territory. An EGS participation cap of 50% of default service accounts is large enough to provide the necessary economies of scale to deliver a reasonable price while making it impossible for one supplier to capture the entire load.

In addition to a 50% EGS participation cap, we envision that a tranche structure, similar to the structure used in wholesale default service auctions, could help support participation from a diversity of EGSs. To illustrate, such an auction could offer for bid ten tranches, each tranche representing 10% of participating default service customer accounts under an EDC's customer participation cap. Interested EGSs could then bid on anywhere from one to five tranches. Additionally, we believe a tranche structure will help provide EGSs with information to better grasp the potential number of enrollments that their participation in the opt-in auction may generate, given our recommendation to hold the enrollment after the auction.

8. Composition of Customer Offer - Product

Much of the discussions related to opt-in auctions centered on the product being offered to participating customers. Issues such as structure, fixed vs. variable rates,

percentage off of default service rates, incentives, introductory rates, and the imposition of early termination fees were all discussed.

There was extensive discussion of the product to be offered to customers with a wide range of differing views. Some EGSs thought an incentive signing "bonus" of \$50-\$150 would generate enthusiasm, attract customer attention, and thus create a larger retail auction pool. This bonus would at least, in part, represent the customer acquisition cost the EGS avoided by obtaining the customer through the opt-in auction.

However, others, including consumer representatives, were suspicious of anything that may appear "gimmicky" or distract a customer from paying attention to the price they will pay for regular monthly service. Low-income and CAP customers may be particularly vulnerable to being persuaded, by an up-front bonus, into something they cannot afford in the long run. Concerns were also expressed regarding whether such bonuses would be viewed by current shopping customers as discriminatory, *i.e.*, "Why didn't I get a bonus?" There was also concern that a bonus could condition customers to always expect "bonuses" when they enroll with a supplier, and that this could actually discourage customers from shopping in the future when not offered such a bonus. Some EDCs suggested that a set, statewide bonus amount may be problematic because in some EDC service territories, given the variance in default service rates, there may be insufficient headroom to provide both a bonus and a discounted monthly EGS rate. On the other hand, if bonus amounts differ by EDC, this could appear to be discriminatory.

There also were varying opinions as to how the regular monthly rate should be structured. Some parties suggested that a set, fixed rate for the term of the program (six to 12 months as proposed; see previous discussion) would be the simplest for a customer to understand and may also be simpler for participating EGSs. It would provide certainty for both the customer and the EGS for a set period of time. However, others pointed out that a fixed price that looks good when compared to the current default service rate may

or may not be as attractive six months later, as EDC default service rates change quarterly. This may lead to customer confusion and anger. Some parties suggested this may be preventable if a customer is provided with a product that is priced at a certain percentage off the default service rate, such as 10%, and the rate is adjusted accordingly each time the default service rate changes. This could prevent the customer from ever being charged more than the EDC default service rate, which could minimize customer anger - although some customers may be confused by their rate fluctuations and may not fully understand their rate's relationship to default service rates. As such, consumer groups urged that the rate offers be fully and carefully explained to potential enrollees. Consumer representatives were strongly opposed to any kind of "introductory rate" structure where the rate would change after a few months of service, claiming that it would be too confusing and potentially misleading ("bait and switch").

The parties, to date, have been unanimous in stating that customers should be able to exit the opt-in auction pool at any time without the imposition of early termination fees. However, if a signing bonus is part of the product structure, many parties believed that the customer should be obligated to stay with the pool for a set period of time to qualify to receive such a bonus. The period of time suggested varies from two to six months. So, while a customer would be free to leave the pool at any time without paying a termination fee, such a customer may sacrifice his or her bonus if he or she has not remained for the requisite number of months.

Resolution

We do not agree that the product structure needs to be uniform statewide. While we prefer uniformity as much as possible to make implementation easier and to simplify consumer education efforts, we are concerned that varying EDC default service rates make the use of a single, statewide product infeasible. We do see merit in the EGS disbursing the avoided customer acquisition costs by the payment of a bonus to the

customers so that customers directly receive the benefit of these avoided costs. A bonus could also attract attention and a higher level of interest and participation which will expand the retail auction pool and make it more attractive to interested EGSs. However, we are also concerned that a bonus structure may not be appropriate for all EDC markets given the status of default service rates, and that perhaps the avoided acquisition costs should instead be reflected in the regular monthly rate in some markets. As a result, we think some flexibility is needed. For this reason, we are proposing two possible product models to which we specifically request that comments be addressed:

(1) *Fixed Rate Product with a Bonus*: The fixed rate will provide certainty to both EGSs and customers. While the possibility exists that the fixed rate could eventually exceed the default service rate at some point (depending on quarterly adjustments), the customer will have received a bonus of \$50-100 to ameliorate this concern.

(2) *Percent-Off Rate, No Bonus*: The rate will be set at a certain percentage off the EDC default service rate and will be adjusted to reflect the quarterly fluctuations of the EDC's default service rate. This will provide customers with the certainty that they will never be paying more than the EDC's default service rate. However, in return for this certainty, the EGS does not have to provide a bonus payment.

We also agree with the consensus of RMI participants that a customer should be free to exit the opt-in auction pool at any time using standard drop-change procedures without the imposition of termination fees. However, if a bonus payment is part of the customer's rate structure, we agree that it is reasonable to deny the bonus if the customer fails to remain in the pool for a period not to exceed three months. We also believe that an introductory rate structure is inappropriate for this kind of program, and that the only kind of variable rate structure to be permitted is that linked to the default service rate as discussed in our proposal # 2 above.

9. Customer Options Upon Program Expiration

A significant concern with some parties, especially consumer representatives, is what is to happen to a participating customer when the program term ends. A variety of options have been discussed including the following: (1) the customer automatically stays with the EGS in the event he or she does not request to leave that EGS's service; (2) the customer stays with the EGS in the event he or she opts to do so; and (3) the customer is automatically returned to EDC-provided default service.

Consumer groups were very concerned with what will happen to customers at upon program expiration, and were emphatic that consumers need timely and complete information in order to make informed decisions as to whether to stay with the EGS, shop for a new EGS or return to default service. They insisted that customers should receive the standard two renewal notices that are required by Commission guidelines, and that these notices be very clear regarding any changes to terms and conditions. *See Interim Guidelines Regarding Advance Notification by and Electric Generation Supplier of Impending Changes Affecting Customer Service; Amendment re: Supplier Contract Renewal /Change Notices*, order entered September 23, 2010 at Docket No. M-2010-2195286, Reference Docket No. M-0001437. The consumer groups also generally agreed that the type of product should not change. For example, if the program provided a fixed-rate product, the post-program terms should not be a variable rate product. The new rate product should also be month-to-month without the risk of a termination fee being imposed.

The EGSs emphatically opposed the idea that customers should automatically return to default service when the program ends as they believed that this would defeat the entire purpose of the program. They insisted that these customers should not be treated any differently from any other shopping customer and should have the same protections and obligations of such customers. EGSs generally agreed that the usual

renewal notices should be provided, but they did not necessarily agree that the new product cannot be a variable rate. They believed the current guidelines permit a variable rate product, as long as it is fully explained to the customer.

Resolution

We agree that program participants should be treated no differently than any other shopping customer when the program ends, and that the Commission's renewal notice guidelines should be fully applied. These guidelines state that each customer will get two notices; an initial notice 52-90 days before the end of the program followed by a more detailed "options notice" at least 45 days before the program ends. The options notice, per the guidelines, must provide detailed information as to the new terms and conditions, including the price (which can be variable or fixed), information on their other options (including shopping for a new supplier and a referral to PAPowerSwitch.com and www.oca.state.pa.us) and a date by when the customer must act. Additionally, per the guidelines, if the customer does not affirmatively respond to the notices, the supplier can impose new terms and conditions, as long as the new product is a month-to-month product with no early termination fee. We note that there is no requirement for an EGS to continue service with a customer after the program ends. Such an EGS would still need to provide customers with the standard two notices informing them that they will not be receiving service from that EGS beyond a certain date and providing them with their options ("remaining with the supplier" of course not being an option in this situation).

10. Opt-In Auction Structure

The Opt-In Auction Subgroup discussed and presented proposals as to the structure of the opt-in auctions to be held to meet the auction pool service load. The two proposals presented by the subgroup were: (1) a sealed bid process or (2) a descending

clock auction. There was general agreement by all parties that a sealed bid process would be less expensive and easier to implement than the descending clock auction; but some parties thought the descending clock auction may provide a lower price. There was also general agreement that customer accounts should be randomly assigned to the winning bidders and that this should be based on the number of customers, not load. However, with residential accounts, there is no practical difference between number of accounts and load.

Resolution

There does not appear to be strong arguments to support choosing one method over the other. We therefore believe the best course of action is to solicit additional comments on how the mechanics of both a sealed bid process and a descending clock auction would work to provide a single clearing price. We do agree that customers should be randomly assigned to the winning bidder on the basis of accounts; assignment based on load is not necessary as we are proposing that this apply only to residential accounts.

11. Creditworthiness and Security

The Opt-In Auction Subgroup discussed EGS creditworthiness and security but did not present a specific proposal on said issues. Such security, theoretically, would cover any EDC obligations incurred due to non-performance by a participating EGS. The primary issue appears to be what financial assurances, if any, a participating EGS should be required provide to the EDC in order to participate in this program. Some parties believed that the financial assurance should cover both performance under energy supply and under incentive payments; while others insisted it is only necessary to cover incentive payments.

Resolution

Given the very limited discussion of creditworthiness and security to date, we are not prepared to offer a specific proposal on this topic at this time. Instead, we invite the parties to comment as to the need for security. Those expressing such a need should comment on what obligation should be secured and the appropriate security amount.

We also invite comments from parties on any other aspect of opt-in auctions that we may have overlooked in our proposals. Given the lack of previous experience with this concept, we concede that we may not have addressed every aspect that may need to be resolved, and we urge the parties to carefully consider the matter in full and bring to our attention any additional issues that unintentionally escaped our notice. For example, there was very little, if any, discussion of any reporting requirements or post-program reporting and analysis. Comments on this and any other related issues would be appreciated.

E. Default Service Price to Compare on Bills

OCMO discussed the placement of the default service PTC on customer bills with EDCs, EGSs and consumer representatives in CHARGE. The topic was also discussed in the RMI at both the August 10 and August 31, 2011 technical conferences.

The Commission's billing information regulations,¹¹ with one exception,¹² do not address or require the placement of the EDC's default service PTC on customer bills.

¹¹ See 52 Pa Code § 54.4 (relating to bill format for residential and small business customers), § 56.15 (relating to billing information) and § 69.251 (relating to plain language-statement of policy). Note that these regulations are only applicable to residential and small business customers.

¹² Section 54.187(b) (relating to default service rate design and the recovery of reasonable costs) does require that a default service provider offer a default service customer "a single rate option, which [is] identified as the PTC and [which is] displayed as a separate line item on the customer's monthly bill."

Based on discussions in the above-noted forums and exploration of the issue by Commission Staff, it appears that all of the major EDCs do, however, place the default service PTC on the bill. However, how the PTC information is displayed varies from EDC to EDC. Some EDCs simply place the customer's current PTC on the bill; while others include some information indicating that the PTC provided is effective for a specific time period. Some EDCs place the average PTC¹³ for the customer's rate class on the bill; while others calculate a customer-specific PTC. In some cases, such as PECO, there are provisions in default service settlements¹⁴ that govern the placement of PTC information on customer bills.

Placement of the default service PTC on the monthly electric bill is intended to let the customer know the price that he or she is paying for default service so the customer can then use this information when shopping for competitive generation supply. With the now-quarterly changes to the default service PTCs (started in January 2011), these frequent changes in default service PTCs make getting timely PTC information to customers more of a challenge. There are concerns that the traditional annual/semi-annual bill insert notices are no longer seen as a timely or effective method of providing PTC information to consumers.

However, this practice is not without controversy. Concerns about placing the default service PTC on the customer's bill have been expressed in the CHARGE and RMI forums. One concern is that simply placing the PTC, by itself, on the bill provides

However, it does not require that the PTC be placed on all customer bills. It is noted, without further comment, that this provision remains unchanged in the Commission's rulemaking, *Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets*, Docket No. L-2009-2095604.

¹³ Note that the use of customer-specific vs. rate class average PTCs is only an issue for those EDCs and rate classes that use variable and/or block rate structures. As these kinds of rate structures continue to be phased-out, this will become less of an issue in the future.

¹⁴ *Petition of PECO Energy Company for Expedited Approval of its Default Service Program and Rate Mitigation Plan*, order entered September 23, 2010 at Docket No. P-2008-2062739, Section D. Tariff Changes, Rate Design and Cost Recovery, ¶¶ 50 and 51.

insufficient information for the customer to use when shopping and comparing prices. It can also create an impression that the price for default service is “permanent” or “fixed” when, in fact, it can change quarterly, as it does for most EDCs. Some participants expressed the concern that placing the current PTC on the bill is of little use to a customer when shopping because the PTC, which changes quarterly, will likely expire by the time the customer actually starts receiving service from a supplier. Concerns were also expressed that placing the default service PTC on the bill inappropriately invites the customers to compare a competitive offer with the default service rate, with some believing that customers really should be comparing the competitive offers of one supplier with the competitive offers of other suppliers. Some also objected because the term itself appears to invite comparison based only on price; and not on other products or services that may be compared and considered when a customer is shopping for a supplier, *e.g.*, renewable options.

Resolution

The Commission understands the concerns expressed by some in the supplier community that placing the default service PTC on bills invites consumers to compare the price of EGS offers only with the EDC’s default service rate, when they should be comparing the offer with those of other suppliers, and should also be considering more than just price. However, given the current default service market model, with PTCs changing quarterly, it is important that customers know their default service PTC. Simply put, we believe it is important to give consumers more information, rather than less, so they can make informed choices when shopping for generation. Accordingly, we will propose to require that EDCs place current PTCs on customer bills, and state when this PTC will be in effect.

Additionally, we recognize that just placing the PTC on the bill, with no explanation or indication of its variability, can give customers the impression that the

PTC is a fixed price. To avoid creating this false impression, we propose that a statement that the PTC is subject to change, and an explanation of the frequency of the change, be placed on the bill along with the PTC. Moreover, if EDC bill space/character limitations permit, we propose that referral information to PaPowerSwitch.com should also be included.

In summary, we propose to require that the EDCs display the following information on monthly customer bills:

- The PTC for the customer's rate class; or a customer-specific PTC for those EDCs and rate classes where the EDC has previously committed to provide a customer-specific PTC. The price should be labeled "Price To Compare." If the PTC varies within a rate class as a function of usage characteristics, a customer-specific PTC should be provided;
- A statement of when the PTC will be in effect, that the PTC can be adjusted and an explanation about how often it can be adjusted;
- A reference to PaPowerSwitch.com as a source for more information (space permitting).

The following example shows how this information could be presented on a bill:

Your Price To Compare for your rate class is X.XXX per kWh through ___/___/__. This can change quarterly. For more information and supplier offers visit www.PAPowerSwitch.com.

In implementing these proposed directives, the EDCs may develop the wording, format, and placement of this information as they see fit as long as the basic information stated above is provided. In addition, EDCs may omit the referral information to PaPowerSwitch.com if space limitations on the bill do not permit its inclusion.

To ensure due process, the Commission is issuing this proposed directive for comment as set forth in the ordering paragraphs of this Tentative Order. Commenters are specifically requested to provide cost data related to the implementation of this proposal.

F. Coordination between EDCs and EGSs

1. EDC Supplier Charges

EDC charges to suppliers for various services provided to those EGSs are generally set forth in each individual EDC's supplier tariff. At the onset of the RMI, we were initially concerned about the nature of such charges and whether the charges currently contained in the supplier tariffs accurately reflected the costs to the EDCs of providing the services described.

EDC supplier charges were specifically discussed at the Technical Conferences held on August 10, 2011, and October 28, 2011. On each occasion, we provided advanced notice that the topic would be discussed, together with requests that stakeholders provide specific examples of those charges which were causing concern. During the October 28, 2011 Technical Conference, we were advised that EDC supplier charges had ceased to be a major issue in Pennsylvania. In fact, it appeared that, for the most part, current EDC supplier charges were not a significant concern. As the Commission moves to smart meter deployment and with increasing demands for EGS access to smart meter data, that concern may change, but EDC supplier charges appear to be of little concern for purposes of this Intermediate Work Plan.

Should stakeholders disagree with this assessment, we invite comments which set forth specific EDC supplier charges together with substantial information regarding why such charges should be further addressed within the Intermediate Work Plan.

2. Sample Bills

At the Technical Conference of October 27, 2011, the EGS community expressed an interest in having three distinct sample bills which could be accessed by EGSs on the secure EDC website. The specific bill samples requested included: a sample bill showing the billing format when an EDC provides default service; a sample bill showing the billing format when an EDC provides a consolidated bill, which included generation service provided by an EGS; and a sample bill showing the billing format under a dual bill scenario, where the EDC bills only for transmission and distribution charges. No concerns were raised regarding the EDCs' provision of generic sample bills as described. Absent adverse comments, we expect to provide direction to the EDCs to make these types of sample bills available in our final Intermediate Work Plan Order.

The discussion regarding sample bills also addressed the ability of an EGS to request a specific customer's bill from an EDC. These requests usually arise when an EGS is trouble-shooting a billing problem with a customer. Concerns were expressed by consumer groups, such as OCA, regarding whether customers had consented to having their total bill disclosed to an EGS, even if it provides that customer's generation supply. There was discussion regarding whether existing Letters of Authorization (LOAs) provided by customers to EGSs would encompass such a disclosure. There was also some discussion regarding whether EDCs had the capability to provide customer-specific bills to a requesting EGS.

Resolution

We agree with the EGSs that, in the context of trouble-shooting billing issues with an existing EGS customer, EGSs should have the opportunity to examine that customer's bill with a minimum number of steps necessary to achieve such access. Accordingly, we seek comments regarding whether the language in existing LOAs should be deemed

sufficient to provide customer consent to such requests. If it is not, what processes should be considered for customers to provide such consent? We also seek comments regarding whether EDCs are able to provide copies of specific customer bills and, if not, how difficult it would be to provide that capability. Based upon the Technical Conference discussions, it does not appear that these types of requests are frequent occurrences.

3. Creditworthiness Standards

This issue will be bifurcated into two sub-issues. The first sub-issue to be discussed involves the type of credit instruments which EDCs should find acceptable for EGSs operating in their service territories. We believe that this requirement should be as uniform as possible across the Commonwealth. The second issue involves the nature of the risk to be covered which, in turn, will dictate the amount of collateral or supporting credit (credit requirements) which must be posted by an EGS in order to operate in an EDC's service territory. These issues were discussed at the Technical Conferences held on August 10, October 27 and November 17, 2011. We note that the sub-issue regarding the risk for which security was sought occupied the vast majority of the discussion.

a. Credit Instruments

The EGS community urged that, to the extent possible, descriptions of acceptable credit instruments should be as clear and as uniform as possible. One example of a clear statement of this requirement was that found in the Supplier Tariff currently issued for Met-Ed. Specifically, RESA noted that Met-Ed's credit requirements provided for some flexibility. However, RESA also suggested that a slightly expanded list of eligible credit vehicles should be implemented.

RESA observed that Met-Ed provides that an EGS may meet its credit obligation by demonstrating that the EGS has an investment-grade long-term bond rating from two of the four major rating agencies, *i.e.*, Standard & Poor's, Moody's, Fitch or Duff & Phelps. Met-Ed's Supplier Tariff provides the specific ratings for each rating agency that must be maintained for an EGS to meet its obligation. EGSs that maintain those long-term bond ratings do not have to submit additional credit vehicles to the EDC, *i.e.*, an unsecured credit limit. RESA suggests that all EDCs adopt this standard.

For EGSs that do not meet the foregoing long-term bond rating criteria, Met-Ed currently provides that credit obligations can be met by one of the following: an irrevocable Letter of Credit; a cash deposit established with Met-Ed; naming Met-Ed as a beneficiary; or, some other mutually agreeable security or arrangement. RESA comments that the foregoing options need to be expanded while maintaining the option for EDCs and EGSs to have some flexibility. RESA suggests that a more expanded list would provide that an EGS not meeting the long-term bond rating criteria could choose from the following credit arrangements in a format acceptable to the EDC: an irrevocable Letter of Credit; a Parental Guarantee from a credit-worthy corporate parent, *i.e.*, a parent meeting the bond rating requirements; a Surety Bond; a cash deposit established with the EDC; including the EDC as a beneficiary; or other mutually agreeable security arrangement.

Resolution

We invite comments to RESA's proposal to use the Met-Ed creditworthiness standard involving long-term bond-rating criteria on a statewide basis. We also invite comments on RESA's proposed expanded list of credit instruments. Subject to comments, we tentatively find that RESA's proposal addresses this Commission's overarching concern that EGSs providing service in the Commonwealth are credit-worthy or have credit instruments in place sufficient to support their operations in Pennsylvania.

b. Nature of the Risk

Consensus could not be reached on this issue when discussed by RMI stakeholders. Quite simply, as EDCs seek to establish the amount of credit/collateral which must be provided by EGSs, what is the nature and amount of risk which should be used to establish the credit requirements? Flowing through this discussion are issues involving credit requirements already imposed upon EGSs operating in the PJM Regional Transmission Organization (PJM RTO); the actual exposure of an EDC in the event of an EGS default; and the actual exposure of an EDC to Pennsylvania's Gross Receipts Tax (GRT) given the existing bonding requirements which this Commission has established for EGS licensing.¹⁵

The concern regarding the amount of credit requirements is whether the EDCs are demanding amounts higher than could be reasonably expected to incur in the event of an EGS default. For example, if the PJM RTO credit requirements adequately provide for risk of EGS default (or substantially do so), then the actual exposure of the EDC is limited to any transmission and customer service costs caused by the EGS default. Similarly, if the EDC is protected by existing load-following contracts, should the EGS be required to post credit/collateral which protects against a risk an EDC would not expect to confront?

FirstEnergy provided an explanation of its risk analysis which, it stated, supported its "EGS Credit Exposure Formula." According to the FirstEnergy, its risk assessment includes provision for FirstEnergy's exposure to price and load volatility for periods when it may be unprotected in the marketplace while obtaining new supplier relationships for the increased load. Also included is the possibility that FirstEnergy will be assessed

¹⁵ See 52 Pa. Code § 54.40 (relating to bonds or other security).

fees by the PJM RTO for an entity's default of PJM's requirements. Additional risk items include EGS default on the GRT and costs for customer logistical services caused by the EGS default. *See* FirstEnergy's Credit Standards, November 10, 2011, discussion document provided to the RMI, pp. 2-5. Within the November 10, 2011 Credit Standards document, FirstEnergy provided the formula they use to determine the risk confronted for procuring short-term load due to supplier default. FirstEnergy's November 10, 2011 Credit Standards document is attached to this Tentative Order as Attachment A.¹⁶

Resolution

We continue to have concerns regarding the risk assessment used by EDCs to establish credit requirements for EGSs. We agree that the risk assessment used should reflect the actual risk that an EDC can expect to face in the event of an EGS default. The risk assessment should not be a "perfect storm" of events where an EDC not only faces default of an EGS, but also wholesale suppliers confronted with unexpected demands. Nor should the risk assessment include costs which are already subject to additional credit requirements such that an EDC would not reasonably be expected to incur those costs.

As part of this investigation, FirstEnergy provided a template of its credit risk exposure calculations to the working group.¹⁷ These calculations are not part of their filed tariff, and provide only one perspective on this issue. A reading of their tariff, however, indicates that credit requirements should be based on forecasted value of coordination services provided over two billing periods. Thus, one interpretation of this approved tariff would lead to a calculation of EGS credit requirements equal to EDC

¹⁶ FirstEnergy's Credit Standards document may also be seen on the Commission's website at: http://www.puc.state.pa.us/electric/PDF/RetailMI/DD-FE_Credit_Standards_111011.pdf

¹⁷ See attached Appendix A.

billing of coordination service charges to the EGS for the last two months, or a forecast of such charges.

Given the large disparity between the FirstEnergy methodology, and the existing filed tariff deposit provisions, the information provided during the technical conferences is insufficient to permit a determination of whether existing credit requirements are inadequate or are appropriate given the risk actually confronted by EDCs. Of equal concern, no alternatives to existing EDC formulas for risk assessment were proposed. Accordingly, we request comments that specifically address the concerns stated in this Tentative Order, together with an analysis of whether or not there can be a uniform risk assessment formula established for the larger EDCs in the Commonwealth and what such a risk assessment formula should be. To the extent that parties believe a separate proceeding should be initiated to resolve the risk assessment issue, they should also address that possibility in the comments to this Tentative Order.

CONCLUSION

The proposed intermediate work plan sets forth various recommendations and proposals designed to improve the retail electricity market. This work plan is being issued as a Tentative Order to provide stakeholders and other interested parties with the opportunity for comment. Comments to this Tentative Order shall be due within thirty (30) days of the order's entry date and that reply comments shall be filed within fifteen (15) days thereafter.

Throughout this order, comment has been requested on the various issues, proposals and recommendations included in the proposed work plan. To be able to evaluate the costs of a proposal or recommendation relative to its benefit, the Commission specifically requests that comments include supporting financial data when

applicable. Commenters who offer proposals or recommendations as alternatives to those presented in the proposed work plan should also include such supporting financial data;

THEREFORE,

IT IS ORDERED:

1. That the Intermediate Work Plan as set forth in this Tentative Order be issued for comment.

2. That comments to this Tentative Order shall be filed within thirty (30) days of the entry date of this Order and that reply comments shall be filed within fifteen (15) days thereafter.

3. That an original and five (5) copies of comments and reply comments shall be filed with the Commission's Secretary at, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265. Comments may also be filed electronically through the Commission e-filing system, in which case only one paper copy needs to be filed within three business days with the Secretary. A copy of the comments shall be submitted to the Office of Competitive Market Oversight Retail Markets Investigation inbox at ra-RMI@state.pa.us.

4. That this Tentative Order shall be served on all Electric Distribution Companies, all licensed Electric Generation Suppliers, the Bureau of Investigation and Enforcement, the Office of Administrative Law Judge, the Office of Consumer Advocate, the Office of Small Business Advocate, the Energy Association of Pennsylvania, and all other parties who filed comments or testified in Phases I and/or II of the Retail Market Investigation.

5. That a copy of this Tentative Order shall be posted on the Commission's website at the Retail Markets Investigation web page:

http://www.puc.state.pa.us/electric/Retail_Electricity_Market.aspx.

6. That the Office of Competitive Market Oversight shall electronically send a copy of this Final Order to all persons on the contact list for the Committee Handling Activities for Retail Growth in Electricity (CHARGE), and to all persons on its contact list for the *Investigation of Pennsylvania's Retail Electricity Market*.

7. That the contact persons for this matter are Dan Mumford, Bureau of Consumer Services, 717-783-1957, and Kirk House, Office of Special Assistants, 717-772-8495.

8. That a Final Order shall be issued subsequent to the receipt and evaluation of any comments filed in accordance with this Tentative Order.

BY THE COMMISSION,



Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: December 15, 2011

ORDER ENTERED: December 16, 2011

APPENDIX A

Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company Credit Standards November 10, 2011

INTRODUCTION

Before retail competition, Pennsylvania utilities generated or bought electricity and delivered it to their customers. Now, customers have the ability to choose the supplier to provide their electricity, which the local Pennsylvania utility delivers. The registration and coordination services are set forth under a utility's electric generation supplier coordination tariff ("Supplier Tariff"). The Supplier Tariff establishes the basic requirements for interactions and coordination between the electric distribution company ("EDC") and electric generation supplier ("EGS") necessary for ensuring the delivery of competitive energy supply from EGSs to their customers.

Under the Supplier Tariff, an EGS must satisfy the EDC's creditworthiness requirements. The EDC's creditworthiness requirements are in place to ensure that the EGS is, and will continue to be, a viable entity, protecting the EDC and customers from unnecessary risk due to an event of EGS default. In calculating the credit risk exposure to the EDC under the Supplier Tariff, the exposure calculation must take into consideration the scope of operations of each EGS, as well as changes to the scope of the EGS's operations over time. The purpose of this document is to outline the risk that the EDC is exposed due to default of an EGS under the present Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power") and West Penn Power Company ("West Penn") Supplier Tariffs.¹

Summary of EDC Creditworthiness Standards:

Section 4.14 of the current Met-Ed, Penelec and Penn Power ("the Companies") Supplier Tariffs discloses the current credit requirements for an EGS serving these territories. On a nondiscriminatory and consistent basis, the EDC uses reasonable financial standards to assess an EGS's creditworthiness. The Companies will grant an unsecured credit limit of 5% of a supplier's net worth if its senior unsecured rating from the major rating agencies is considered investment grade. The Companies make reasonable alternative credit arrangements with an EGS if it does not meet the aforementioned investment grade criteria. The alternative credit arrangements may be in the form of:

- Parent guaranty from an investment grade parent;
- An Irrevocable Letter of Credit; or
- A cash deposit

An initial credit amount of \$250,000 is required, which amount is adjusted commensurate with the

¹ West Penn Power anticipates proposing modifications to its credit requirements in order to align West Penn Power's credit standards with those set forth in the Companies' Supplier Tariffs.

financial risks placed on the Companies.

EDC Credit Risk Exposure:

This document outlines the credit requirements that are deemed necessary to protect EDCs, as they are ultimately responsible for providing default service. The following credit requirements and procedures are in place to protect the EDC and its default service customers from identifiable risks that an EDC will incur in the event of an EGS's default.

1. Compensation to the EDC for the costs associated with the return of customers to default service in the event of an EGS default:

An EGS may serve customers from either its generation (local production) or purchase generation from the market; however, EDCs procure power through methods approved by the Pennsylvania Public Utility Commission ("PUC" or "Commission"). Currently, the Companies procure power through a mix of mechanisms including but not limited to:

- (1) EDC as the load serving entity ("LSE") for the industrial class through acquisition of products from members of PJM Interconnection, LLC ("PJM") or through contracts for full requirements tranches executed as a result of a Commission-approved default service auction;
- (2) Bilateral contracts for full requirements tranches executed as a result of Commission-approved default service auctions for the commercial class; and
- (3) A mix of bilateral contracts for full requirements tranches executed as a result of a Commission-approved default service auction and bilateral contracts for forward block products executed as a result of a Commission-approved procurement process mixed with the acquisition of products from PJM members.

Should an EGS default, the load obligation immediately shifts to the EDC for default service until new energy supplier relationships are arranged. Establishing energy supplier relationships to replace the power may take several days and subject the EDC and its default service customers to large swings in both market prices as well as load obligation. The credit requirements outlined above are in place to protect the EDC and its default service customers from price and load volatility for periods where the EDC may be unprotected in the marketplace under the following scenarios:

1. The default of an EGS serving a large swath of residential customers will impact both the EDC and the default service supplier ("DS Supplier"). Under the current default service plans for the Companies, the EDC is the LSE for 25% of the load (served from block and spot) and DS Supplier(s) are responsible for the remaining 75% of load (short and long-term contracts).
2. A default of an EGS serving the industrial class load impacts the LSE for default service, which could be both the EDC and DS Supplier(s).
3. The default of an EGS serving commercial load results in the load coming back to the LSEs, which today are the DS Suppliers.
4. The default of an EGS could have a cascading effect that would result in the default of a DS Supplier, leaving the EDC to serve the entire load directly.

In default situations, the credit posted to the EDC provides protection to its customers from market exposure to real time prices while new energy supplier relationships are obtained.

An additional EGS default exposure faced by the EDC is the PJM member default allocation. A PJM member default is the failure of a member to perform its obligations under the PJM Operating Agreement or otherwise fails to meet its financial or other obligations to another member, a PJM settlement, or PJM itself. PJM credit requirements are in place to keep PJM solvent and capable of making payments to market participants in the event of a default by a market participant. In the event that collateral held by PJM is insufficient to cover the default exposure of a member, all PJM members have the obligation to pay PJM the shortfall amount, similar to a financial exchange.

In summary, the EDC is exposed to short-term purchases to cover the load obligation of the defaulting member EGS. This is accomplished by either purchasing power through PJM or contracting directly with another supplier. It should also be noted that not only is the EDC liable for the purchased power cost, but also may incur working capital costs associated with collateral requirements either through PJM or under a purchase power agreement. As discussed earlier, an EDC's cost of purchasing power is ultimately recovered through the EDC's respective Commission-approved Price to Compare Default Service Rate Rider, which is then passed on to customers. By imposing the outlined credit requirements, the EDCs effectively protect their default service customers from incurring these costs.

Below is an example of an EDC's method of calculation of EGS credit exposure for procuring short term load due to supplier default:

EGS Credit Exposure Formula

$$\left[\left[\sum_{n-12}^n \text{Peak}_n \right] \div n \right] * \text{LMP}_{\text{max}} * \text{LMP}_{\text{CF}} * \text{DAY}_{\text{CF}}$$

Where,		
n	month count where n > 0 with greater weight given to most current month	
Peak	each months aggregated load maximum peak; non-coincident with the local control area peak	
LMP_{max}	Previous 12 calendar months' maximum single hour total LMP (includes marginal loss and marginal congestion components)	
LMP_{CF}	Critical Factor multiplier for LMP _{max} . Represents potential for future price exposure to be greater than previous 12 months' LMP.	
DAY_{CF}	Critical Factor multiplier for the number of days may occur for future months duration of potential exposure	
Currently the Critical Factors are set to the following:		
LMP_{CF}	3	300% of previous 12 months' LMP
DAY_{CF}	5	5 Days of potential duration of exposure

EGS Supplier	
Monthly Peak (kw)	
Month	Monthly Peak (KW)
Sep-08	15,576
Oct-08	15,087
Nov-08	17,473
Dec-08	21,567
Jan-09	19,379
Feb-09	17,871
Mar-09	17,201
Apr-09	17,454
May-09	19,209
Jun-09	32,950
Jul-09	26,347
Aug-09	30,847

Weighted Average Monthly Peak = 29,227
 Max. LMP \$0.32
 LMP Critical Factor 3
 Critical Factor Day 5

A	B	C	D	A*B*C*D
YTD AVG EGS's KW's Supplied	LMP _{max}	LMP _{CF}	DAY _{CF}	Exposure Amount
29,227	\$0.32	3	5	\$140,290

Rounded Credit Exposure	\$140,000
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2. Compensate the EDC for payment of the EGS's Gross Receipts Tax liability if the EGS fails to pay Gross Receipts Tax:

EDCs are liable under sections of the Public Utility Code for the Pennsylvania Gross Receipts Taxes not paid by an EGS. When an EGS is qualified by the PUC to serve customers in Pennsylvania, the EGS posts a \$250,000 bond with the PUC to compensate for any expenses incurred due to nonpayment of taxes or other expenses. The Gross Receipts tax return is filed every March, using the EGS's previous year's revenue. Because an EGS may serve customers in multiple EDC service territories, it is possible that the bond posted would not be sufficient to cover an EGS's Gross Receipts tax due. In the event this occurs, the shortfall is picked up by the EDC. As long as the EDC is responsible for any shortfall in Gross Receipts tax due, it is reasonable for the EDC to require an EGS post security as part of the credit requirement.

Below is an example of an EDC's method of calculating exposure to GRT liability:

Gross Receipt Tax (GRT) Exposure is:

$1.25 \times \text{Projected Annual Revenue} \times 5.9\% - \text{Amount of Security Bond the EGS has with the PaPUC}$

The amount of the security bond with the PUC is currently \$250,000, which will be used to cover all EDC territories across the Commonwealth. For credit purposes, the Companies assume only $\frac{1}{4}$ of this bond (or \$62,500) will be available to any one EDC for recovery of these costs.

The 1.25 multiplier is used to account for the exposure to an EDC of new EGSs entering the market without having established their tax requirement until March of the following year.

3. Cost for Noncompliance (Section 12.3 of the Companies' Supplier Tariffs)

As stated in the Companies' Supplier Tariffs, an EGS that withdraws from retail service and fails to provide at least ninety days' written notice shall reimburse the EDC for:

- Mailings by the EDC to the EGS's customers to inform them of the EGS's withdrawal of service;
- Non-standard/manual bill calculation and production performed by the EDC;
- EGS data transfer responsibilities that must be performed by the EDC; and
- Charges or penalties imposed on the EDC by PJM or other third parties resulting from EGS non-performance.

These charges incurred by the EDC are not recoverable through the Companies' Price to Compare Default Service Rate Rider, therefore the Companies would utilize the posted credit to cover these costs, as well.

4. EGS Consolidated Billing Option

Met-Ed, Penelec, and Penn Power's current Commission-approved Supplier Tariffs do not cover or mention EGS consolidated billing. If the Commission were to order changes in Supplier Tariffs to permit EGS consolidated billing, in essence allowing an EGS to bill and collect amounts from customers that must be passed on to the EDC, then the EDC would be exposed to nonpayment of collected distribution charges, as well as additional lag time in the settlement cycle. It is the opinion of Met-Ed, Penelec, Penn Power and West Penn that an additional collateral requirement would be necessary to cover the risk of late and or nonpayment of the distribution charges. Collateral requirements needed to cover the additional exposure could be two months' worth of each customer's distribution billings plus 50%.