COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

Investigation of Pennsylvania's Retail	**)**	
Electricity Market	**)**	**Docket No. I-2011-2237952**

COMMENTS OF THE

PENNSYLVANIA ENERGY MARKETERS COALITION

The Pennsylvania Energy Marketers Coalition ("PEMC")[1] appreciates this opportunity to submit Comments in response to the Pennsylvania Public Utility Commission ("PUC" or "Commission") motion of April 28, 2011, which launches an investigation into Pennsylvania's retail electricity market. At the outset, the PEMC would like to acknowledge the Commission's disciplined, careful and consumer-oriented development of competitive policies, which have fostered a robust retail marketplace intended to ensure on-going reliability while introducing choice for industrial, commercial, and residential customers. We believe the PUC has made great progress in recent years by its decisions and actions; this deliberate support of competition is having a significant impact on the market.

The PEMC seeks to respond to specific questions posed by the Commission in relation to the motion launching the investigation into the electricity market. In addition, PEMC is providing information regarding the current state of the retail natural gas market in Pennsylvania and the importance of broadening the Commission's focus in this proceeding to both electricity and natural gas.

[1] The PEMC currently consists of Agway Energy Services, LLC ("Agway"), Energy Plus Holdings LLC ("Energy Plus"), Gateway Energy Services Corporation ("Gateway"), Interstate Gas Supply, Inc., dba IGS Energy ("IGS"), Pennsylvania Gas & Electric ("PAG&E"), Vectren Source, LLC ("Vectren") and SouthStar Energy Services, LLC ("SouthStar")

GENERAL COMMENTS

Through the action of the General Assembly, the leadership of the Commission, the efforts of Staff, and the collaboration of key stakeholders in processes like the Committee Handling Activities for Retail Growth in Electricity ("CHARGE") for electricity and Stakeholders Exploring Avenues for Removing Competition Hurdles ("SEARCH") for natural gas, Pennsylvania has made significant strides towards a truly competitive energy marketplace for consumers of all classes. As generation rate caps have expired across the state over the past year and a half, and as electric distribution companies ("EDCs" or "utilities") have begun to implement Purchase of Receivables ("POR") programs, suppliers in turn have rapidly moved to make offers to consumers in utility territories across the Commonwealth.

With over one million customers having switched to an Electric Generation Supplier ("EGS" or "supplier" or "marketer") to provide their electricity supply[2], it is clear that consumers are increasingly interested in the potential value found in the products and services offered by suppliers. In addition to a variety of commodity purchasing plans including both variable and fixed price options, marketers also have the ability to provide additional consumer benefits such as renewable energy products, energy efficiency and conservation services, and promotional incentives. As the retail markets continue to grow and expand, competition will drive suppliers to continually innovate in response to consumers' developing definition of the products and services they desire to take control of their energy purchases and use.

A number of market features have proven crucial to the success of the retail electricity market in Pennsylvania thus far, with the implementation of POR being chief among them. From a cost effectiveness standpoint, POR programs help to leverage utility billing systems, reduce redundancy, and send a clear message to consumers about the reliability of energy service that is supplied by competitive marketers and delivered by utilities. A related key program is consolidated billing, which provides a streamlined, intelligible bill to customers with an all-in cost of electricity and natural gas. Consolidated billing can ideally help to ensure that customers do not face additional administrative burdens as a result of retail choice, such as dual monthly bills and dual payment processes.

[2] PAPowerSwitch.com, accessed May 24, 2011.

The efforts of the Commission, EGSs and EDCs to educate consumers about retail choice have also been crucial to its success thus far. In particular, the Commission's establishment of the PAPowerSwitch.com website, its customer shopping events, and similar activities, have not only provided clear, accurate information about the retail energy market in Pennsylvania, but have also helped consumers feel comfortable with exercising a choice for their energy needs.

Additional market elements which have been vital to choice implementation include the movement towards the efficient use of Electronic Data Interchange (EDI) to streamline the customer enrollment and monthly maintenance processes, the development of supplier marketing and sales guidelines, and the aforementioned CHARGE and SEARCH processes. Commission Staff, particularly the Office of Competitive Market Oversight ("OCMO"), deserves particular commendation for its commitment and dedication to the stakeholder collaboratives like CHARGE and SEARCH which they have organized on a regular basis; the importance of these efforts to the proper functioning of the retail market cannot be overstated. Additionally, credit is due to the Office of Consumer Advocate ("OCA"), which has played a vital role in ensuring that consumer protections are integral to all developments in the energy marketplace. The members of PEMC are committed to continued collaboration with OCMO and OCA in the proper level of consumer education and oversight.

While Pennsylvania has made significant gains, further action must be taken in order to bring the market to the next level of competition. The PEMC believes the following items outline the important next steps to advance retail choice in Pennsylvania:

1. It is time to begin specific consideration of a methodical and proactive plan that ultimately transitions both electric and natural gas utilities from the merchant sale of energy commodity. This effort should include the development of a model for alternative default service and the opportunity for competitive suppliers to fill the role of default service provider. It is critical to assure consumer protection and system reliability throughout this transition, but these

considerations cannot be used as an excuse to delay its development. It is possible to have both.

2. Natural gas should be included with electricity as part of the Commission's consideration of further developing the retail energy market in the Commonwealth. Natural gas choice should be made as simple, seamless, and easy as electricity choice.
3. The proposed EGS sales and marketing guidelines (Docket No. L-2010-2208332) should be finalized and promulgated.
4. The outstanding issues regarding eligible customer lists (Docket No. M-2010-2183412) need to be resolved so that suppliers have access to accurate, high-quality information about customers. This information is critical to ensuring that suppliers are applying their resources to the areas of the Commonwealth where consumers are interested in choice. Customer list information must, of course, be handled with care and all necessary and proper consumer protections should be fully implemented.
5. The Electronic Data Exchange Working Group ("EDEWG") should continue to be supported. While great progress has been made, the future of energy is information and data, and further efforts are needed to ensure open and complete communication between utilities and suppliers.
6. Consumer education efforts should be broadened and enhanced, on the part of the Commission, the Office of Consumer Advocate, the utilities, and suppliers.
7. Consolidated utility tariffs for both electricity and natural gas should be completed over time. The leadership of PPL Corporation in the recently completed draft Uniform Supplier Coordination Tariff for electricity is a great example of this effort, and PPL should be commended. While the PEMC realizes there are reasonable questions and concerns on the part of both Natural Gas Distribution Companies ("NGDCs" or "utilities") and Natural Gas Suppliers ("NGSs" or "suppliers") about how to approach consolidated natural gas tariffs, we believe there should be an effort to make consistent what can be, to ensure the marketplace operates as clearly and efficiently as possible.

8. The Commissioners must continue to deliver positive messages about retail choice to the legislature, the media, and most importantly, consumers.

Pennsylvania has completed the first phase of building a truly competitive energy market, but now is an ideal opportunity to accelerate the market's further transformation. It is critical that this policy momentum continue in order to enable the competitive marketplace to continue its steady growth and to provide price protection, expanded services, energy efficiency, and environmentally-friendly offerings to the people of the Commonwealth.

In the Commission's Notice, specific questions are posed for consideration by those who provide Comments. PEMC addresses those questions below:

1. What is the present status of competition for retail electric generation for customers, by class and service territory, and for alternative suppliers?

While progress has been significant, as noted above, switching has been uneven across individual utilities and customer classes. A majority of commercial and industrial customers now purchase electricity from suppliers, while just under 20% of residential customers have made the switch from an EDC to an EGS. It should be noted that even a 20% residential switching rate in a short period of time is impressive given the recent opening of the retail market and the unique challenges of educating residential customers about energy choice, but there is no doubt there is significant room for growth.

2. Does the existing retail market design in Pennsylvania present barriers that prevent customers from obtaining and suppliers from offering the benefits of a fully workable and competitive retail market? To the extent barriers exist, do they vary by customer class?

The primary and fundamental obstacle to the creation of a fully competitive retail electricity market is the continued presence of the EDCs and NGDCs in the energy commodity supply business. The core business of EDCs and NGDCs is to provide a reliable delivery system for energy in the

Commonwealth. The natural monopoly enjoyed by utilities in the erection and maintenance of "poles, wires and pipes" makes sense and serves consumers well.

The extent to which utilities leverage their natural advantages in transmission and distribution to compete for energy commodity business, however, serves neither the ratepayer nor ultimately the EDCs or NGDCs themselves. By design, utilities are compensated for their investment in infrastructure and their provision of energy delivery through rates set by the Commission, not through the sale of electricity and natural gas (the wholesale cost of which is merely passed through to consumers). Suppliers, on the other hand, earn revenue through the carefully managed generation and/or wholesale purchase of electricity and natural gas, which is then sold to consumers with additional value-added products and services.

Suppliers are incentivized to compete to provide consumers the best value possible, as their sales (and consequently, their revenue) depend on it. Utilities are not similarly incentivized; thus, their continued presence in the commodity market only serves to distort competition on a purely value-driven basis.

There are a number of other barriers to competition in the existing market design. Currently, utilities are required to disclose their price-to-compare on a quarterly basis. Utilities post prices as estimates just two weeks before the required disclosure date, even though suppliers are required to disclose their exact price to customers at least 30 days in advance. This creates an uneven playing field for suppliers by forcing them to make commitments well in advance of utilities. This inflexibility hurts consumers in both the short and long term. What is more disturbing is the fact that consumers are misled when comparing supplier offers to utilities' price-to-compare when unbeknownst to the consumer the comparison is an apples-to-oranges exercise. Utilities can bundle their commodity administrative costs as well as transmission and distribution investments into the distribution rate paid by all consumers, making the commodity rate for default service appear lower when compared with the suppliers' offers. Unbundling commodity-related costs from distribution costs in the utilities' price-to-compare is critical to allowing the consumer to make an informed decision between default service from the utility and a competitive supplier.

In addition, access to a comprehensive list of eligible customers ("ECL") in each utility area is fundamental to the ability of competitive suppliers to reach all consumers with detailed information and offers that may be of interest. PEMC supports monthly ECL updates by all utilities to ensure that suppliers can efficiently engage in targeted marketing activities by having up-to-date information which enables the provision of competitive and innovative products. PEMC believes the Commission has a very important opportunity to provide more consistency in ECLs, which will help ensure robust electricity and natural gas competition in the Commonwealth.

3. **What are the economic and managerial costs associated with electric distribution companies (EDCs) fulfilling the default service role? Are the EDCs accurately passing those costs along to default service customers? Do default service rates include any elements that are not cost-based? Is an examination of distribution rates needed to ensure proper cost allocation? Are there barriers to competition as a result of having EDCs provide default service?**

For decades, the utility was the most logical provider of default service. With the significant recent changes in the energy landscape, however, this logic no longer necessarily holds true. As more and more consumers move to choose their own energy commodity supplier, transitioning the way default service works may make sense. With a solid foundation of evolving policies to support the development of competitive energy markets, PEMC believes the time is right to establish a collaborative process among all stakeholders which begins looking ahead towards an end-state model that will best fit the needs of those that do not choose an energy supplier. This concept is based on the premise that allowing competitive suppliers to provide some or all of the default service supply in utility areas could produce savings for each utility as they transition remaining customers to competitive supply over time. Various programs have successfully been implemented in Ohio, Texas, and Georgia. While no one of those states' programs may fit best for the ultimate evolution of default service in Pennsylvania, it would be instructive to study closely what has occurred in these markets and apply the best practices of each model here.

Such a process would allow utilities to reduce their exposure to credit markets necessary for the purchase of commodity supplies (and, in relation to natural gas, the capacity and storage considerations) while maintaining system reliability. This "Alternative Procurement Strategy" would enable utilities to perform their critical role of delivering electricity and natural gas and focus more attention on maintaining an efficient delivery system, while the commodity purchase and sales function transfer completely to the competitive market.

4. Are there unintended consequences associated with EDCs providing default service, and related products, such as time-of-use rates?

Yes. Whenever EDCs develop, and the Commission approves, products and services like time-of-use rates, which include cost recovery for utilities, the competitive marketplace is significantly harmed. The primary role of utilities has been to provide reliable energy delivery service, and they have done it well. Now as the Commission is trying to encourage competition and expand innovative products and services in the marketplace, this core function of the EDCs will remain more important than ever. However, it is time to encourage utilities to move away from the sale of commodity and recognize that the reliable delivery of energy is their core business in the future. This transition will require that consumers receive education on the equally important but distinct roles of their utility and energy supplier. Consumers need to understand that the EDC will continue to be responsible for delivery of their energy, while EGSs will provide customers with their energy commodity, as well as other related products and services.

5. Should default service continue in its current form? Does default service impede competition or otherwise prevent customers from choosing electricity products and services tailored to their individual needs? Does default service provide an advantage to the incumbent EDC and/or its generation affiliates?

Default service is necessary and important, and should continue <u>in some form</u>. There is no question, however, that default service in its current form provides an advantage to utilities because it includes an inherent presumption that a customer who has not actively chosen their energy supplier has *de facto* chosen the utility. In a truly competitive market, no party should be given such an advantage. While strong consumer education initiatives as well as adjustments to the market infrastructure will significantly increase switching rates, the reality is likely to continue to be that some customers will choose not to shop for energy supply. Maintaining the default service *status quo* is not the only way these non-shopping customers can be provided for, however. The salient feature of whichever new model the market moves towards is to ensure that EDCs do not continue to be incentivized to fight to hold on to commodity customers. Any new default service model should not provide any advantage to the incumbent EDCs or NGDCs, but allow customers to take advantage of the best products in the marketplace.

6. **Can/should the default service role be fulfilled by an entity, or group of entities, other than the EDC? If the default service role should be filled by an entity other than an EDC, what mechanisms could be employed to transition the default service role away from the EDC and onto competitive electric generation suppliers (EGSs)? Are different approaches appropriate for different customer classes? What criteria should be used to ensure that EGSs are qualified to assume the default service role and maintain reliable service?**

Yes, default service could be handled through a number of different methods other than continued provision by the EDC and NGDCs. As noted above, states including Georgia and Texas have implemented mechanisms that establish a “provider of last resort” (“POLR”) other than an EDC or NGDC. One or more of these mechanisms could be adopted for Pennsylvania, consistent with the status of the marketplace. For example, suppliers could bid to serve as POLR within an EDC or NGDC territory, or the right to serve customer blocks could be auctioned off to suppliers. The same criteria that qualify an EGS or NGS to be in the Pennsylvania marketplace in the first place – their operation experience and credit rating – should be sufficient to qualify such a supplier to serve as a POLR. Provisions can be made to ensure continuity between suppliers should the POLR in a given territory exit the business while serving non-shopping customers.

7. **How can Pennsylvania's electric default service model be improved to remove barriers to achieve a properly functioning and robust competitive retail electricity market? Are there additional market design changes that should be implemented to eliminate the status quo bias benefit for default service?**

Please see previous comments.

8. **What modifications are needed to the existing default service model to remove any inherent procurement (or other cost) advantages for the utility?**

Please see previous comments.

9. **What changes, to Regulations or otherwise, can the Commission implement on its own under the existing default service paradigm to improve the current state of competition in Pennsylvania?**

As noted above, the timing related to utility price disclosure under current requirements hurts suppliers and overall competition. In the short-term, moving the EDCs to a monthly price reset, rather than quarterly disclosure, would level the playing field for EGSs. We understand that this most likely would require a legislative initiative, but believe that it is an important consideration as part of the overall approach to competition in the future.

In the longer-term, a collaborative process needs to be put in place to move the default service model to an alternative procurement process. The goal should be to guide the market in such a way that EDCs can focus on their core competency – transmission and distribution – while allowing competition to drive the development of new, innovative energy products and services for consumers.

10. **What legislative changes, including changes to the current default service model, should be made to better support a fully workable and competitive retail market?**

Changes to short-term utility price disclosure rules and the ultimate movement of utilities away from providing default service will likely require legislative solutions.

11. Are there, or could there be, potential barriers being created by the implementation of the EDC Smart Meter plans?

The implementation of smart meter programs is a positive development in the energy market, and is consistent with the EDC's ideal focus solely on energy delivery. What is vital to the continued success of the retail energy market, however, is the seamless and efficient sharing of smart meter data between the EDC and EGS. Accurate and timely consumer data is crucial to EGSs providing continued excellent service to customers as well as to the proper allocation of resources and development of new products and services. As the Commission monitors the development of EDC smart meter programs, great care must be taken to ensure that EGSs are integral to the process and have unfettered access to the data collected from the programs.

CONCLUSION

PEMC believes that this investigation is a very important step in the further development of the competitive electricity and natural gas marketplace in the Commonwealth of Pennsylvania. It is critical that any changes to retail competition are approached with a continued commitment to empowering consumers so that they have the ability to take control of their energy purchases with products that they believe best fit their individual needs. If this process develops with a strong commitment to open, robust competition by all parties, consumers will have access to more choices for their energy supply – and more control over their energy future.

We recognize that more work remains to be done and pledge to the Commission our continued support to help with these efforts.

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