**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held June 9, 2011

Commissioners Present:

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| Robert F. Powelson, Chairman  John F. Coleman, Jr., Vice Chairman |
| Tyrone J. Christy, Statement |
| Wayne E. Gardner  James H. Cawley |

Interim Guidelines Docket No.

For Eligible Customer Lists M-2010-2183412

PPL Electric Utilities Corporation Retail Markets M-2009-2104271

Petition of Duquesne Light Company for

Approval of Default Service Plan for the P-2009-2135500

Period January 1, 2011 through May 31, 2013

**Notice of RECONSIDERATION**

**BY THE COMMISSION:**

By order adopted November 12, 2010 (November 12 Order), the Commission established interim guidelines designed to produce more uniformity in the type of customer information provided by Electric Distribution Companies (EDCs) in their Eligible Customer Lists (ECL) which are then made available to Electric Generation Suppliers (EGSs). As more fully described below, the November 12 Order was appealed and, upon the Commission’s application, the Commonwealth Court has returned jurisdiction to the Commission so that we may reconsider the November 12 Order, pursuant to Section 703(g). 66 Pa. C.S. § 703(g).

In addition, in order to achieve statewide uniformity in our resolution of the various issues regarding the ECL, we hereby provide notice of our intention to reconsider our earlier orders that establish ECL parameters for PPL Electric Utilities Corporation (PPL Electric) and Duquesne Light Company (Duquesne).[[1]](#footnote-1) Finally, consistent with our commitment to the Commonwealth Court and the parties to the appeal, we shall maintain the stay granted by the court so as to maintain the *status quo* pending a final order on reconsideration.

**HISTORY OF THE PROCEEDING**

**The November 12 Order**

In the November 12 Order, we acted upon a recommendation from our Office of Competitive Market Oversight (OCMO) regarding uniformity in the information provided by EDCs in the form of ECLs to EGSs who are licensed to market to consumers in the Commonwealth. Reasonable access by EGSs to customer information held by EDCs is an essential component to implementation of the retail market authorized by the Legislature in Chapter 28 of the Public Utility Code. 66 Pa. C.S. §§ 2801, *et seq.* EGSs, in turn, are obligated to honor the confidentiality of any customer information that they receive. 52 Pa. Code §§ 54.8(a) and 54.43(d). The proposal had been the result of discussions held by different stake-holder committees under the auspices of OCMO. November 12 Order at 1-3. The November 12 Order followed our July 15, 2010, Tentative Order regarding the ECL. The July 15 Tentative Order proposed adoption of specific elements to be contained within a uniform, statewide ECL and called for comments on those elements.

With respect to release of customer information, we addressed two issues raised by the commenters. The first related to the treatment of EDC customers who were victims of domestic violence and wished to protect themselves from potential harm by abusers. With regard to such customers, the Commission stated that “victims of domestic violence or customers that are similarly endangered should have the unfettered ability to restrict all of their customer information.” November 12 Order at 7. Second, we addressed the consumer protections available to the general public pursuant to our existing regulation. In particular, we provided guidance, consistent with our regulations and precedent, that a customer may restrict the release of (1) customer telephone number, (2) customer address, and (3) historic billing data.

Moreover, we repeated our caveat that the protection provided by the Commonwealth’s “do not call” list remained in place and that existing regulations required all EGS firms that receive customer information to maintain the confidentiality of that customer information, citing 52 Pa. Code § 54.43(d).[[2]](#footnote-2)

The other major portion of the November 12 Order was a delineation of the minimum list of customer information and data points that would be included in the ECL. The list included, *inter alia*, customer account number, customer name, customer telephone number, service address, billing address, tariff rate class and schedule, rate sub-class and sub-code, meter read cycle, load profile group, monthly consumption, on-peak and off-peak consumption, monthly peak demand. A complete list is contained in Appendix A to this order.

Finally, the November 12 Order rejected a suggestion that the Commission impose a moratorium on changes to the ECL until after December 31, 2012, and determined that EDCs should update their ECL on a monthly basis.

**Petitions for Review**

Following entry of the November 12 Order, on December 13, 2010, Irwin A. Popowsky, Consumer Advocate (OCA), filed a Petition for Review with Commonwealth Court and, on December 27, 2010, the Pennsylvania Coalition Against Domestic Violence (PCADV) filed a cross-appeal with was subsequently consolidated with OCA’s appeal by the court.

In its petition for review OCA stated that the November 12 Order prevents customers from restricting all “personal and private customer information” from release to EGSs, even if customers object to such release. OCA Petition for Review, p. 5. OCA claimed this violated the Pennsylvania Constitution and the Public Utility Code. *Id.* The PCADV raised similar privacy concerns in its cross-petition and, in particular, stated that requiring customers to identify themselves as victims of abuse in order to restrict the release of customer information violated the constitutional right to privacy of those customers. PCADV Statement of Issues, p. 2. It also objected to the manner of obtaining customer consent, alleging that the opt-out program for information disclosure violates individuals’ right to privacy. *Id.*

**Stay of the November 12 Order**

On December 29, 2010, PCADV filed an Application for Supersedeas seeking to stay the November 12 Order. OCA filed an answer supporting the request for a stay. Counsel for the Commission and Dominion Retail, Inc. (Dominion) and the Retail Energy Supply Association (RESA) which had intervened in the case filed Answers opposing the request for stay. Following a hearing on the Application, on January 28, 2011, the court issued an order granting the request for a stay, stating that the supersedeas “is granted to the extent that the requested supersedeas will maintain the *status quo*.”

We issued a Secretarial Letter dated February 15, 2011, at this docket seeking to inform the electric industry of the stay and clarify the impact of the stay. However, by letter dated February 16, 2011, the PCADV indicated that it had problems with aspects of the Commission’s Secretarial Letter. In particular, the PCADV contended that the Secretarial Letter was inconsistent in its treatment of PPL and Duquesne and suggested that the better approach would be to require those utilities to allow all customer information to be restricted as part of the *status quo*. In its response filed February 24, 2011, PPL Electric objected to this approach because, since its earlier order was not appealed and remains in effect, it would not preserve the *status quo* as to PPL, and further it would cause PPL to incur substantial costs and cause customer confusion.

**Application for Remand**

In light of the arguments raised by PCADV and the OCA regarding the rights of consumers to safeguard their customer information, as well as the Commonwealth Court’s stay, on March 8, 2011, the Commission asked the court to remand jurisdiction back to the Commission stating that the public interest would be served by allowing us to reconsider our determinations and, after notice and opportunity to be heard, produce a new order that strikes an appropriate and lawful balance between customer privacy rights and the Commission’s obligations under Chapter 28 of the Public Utility Code. Upon its consideration of the Commission’s application for remand as well as answers both supporting and opposing the motion, the court granted the application and remanded jurisdiction back to the Commission on April 28, 2011.

**DISCUSSION**

**Statewide Consideration of These Issues**

Our main concern throughout this proceeding has been that EDCs begin to operate as much as possible in a uniform manner throughout Pennsylvania in order to facilitate the retail market for electric generation service authorized by Chapter 28 of the Public Utility Code. 66 Pa. C.S. §§ 2801–2812. This will make it easier for licensed EGSs to conduct business in various service territories and for customers to understand their choices in the retail market for electricity.

We patterned our November 12 Order along the same lines as our earlier orders concerning PPL and Duquesne. However, as mentioned above, it became apparent that, among the parties to the appeals,[[3]](#footnote-3) there were varying requirements in these orders and the November 12 Order. In the Commission’s judgment, statewide uniformity is an essential feature for efficient operation of the retail markets in each EDC service territory. We realize that absolute uniformity may not be possible, but to the greatest extent possible EGSs and, ultimately, the consumers of electric power, should be able to do business under the same set of standards anywhere in the Commonwealth.

Therefore, to better achieve statewide uniformity, we shall also include PPL and Duquesne within the scope of this reconsideration proceeding. That final reconsideration order may have the effect of amending our earlier orders concerning these companies, depending upon our resolution of the issues. Including PPL and Duquesne in this proceeding will enable us to address these matters of customer privacy and other ECL issues on a statewide basis.

**Scope of Reconsideration**

OCA and the PCADV appealed the November 12 Order over privacy concerns, specifically a customer’s ability to restrict the release of all customer data held by an EDC, not just the customer’s telephone number and historic billing data pursuant to 52 Pa. Code § 54.8. (Privacy of customer information). PCADV also challenged the manner of obtaining customer consent, alleging that the “opt-out” program for information disclosure violated an individual’s constitutional right to privacy and that asking domestic abuse victims to so identify themselves was also a violation of privacy

As stated in our application to the Commonwealth Court, given the arguments raised by OCA and PCADV regarding the rights of consumers to safeguard their customer information, as well as the Commonwealth Court’s stay, the Commission believes that the public interest would best be served by reconsideration of the determinations made in the November 12 Order and to produce, after notice and opportunity to be heard, a new order on reconsideration that strikes an appropriate and lawful balance between customer privacy rights and the Commission’s obligations under Chapter 28 of the Public Utility Code.

Accordingly, the Commission will reconsider the determinations in its November 12 Order and, in particular, the customer privacy issues raised in the OCA and PCADV petitions for review regarding the release of customer information and the extent of customer information that can be withheld.

**Comments**

EDCs, EGSs, customers and all other interested parties may file comments with the Secretary not later than 30 days following the entry of this order. Replies to these comments may be filed 45 days following the entry of the order.

**Stay of the November 12 Order**

With regard to the stay issued by Commonwealth Court, we state again that through the pendency of our reconsideration of the November 12 Order, we will maintain the stay and *status quo* imposed by the court. As such, all customers affected by the November 12 Order shall have the option to restrict the release of all customer information, until a new order on reconsideration is issued by the Commission.

As we stated in our February 15, 2011, Secretarial Letter:

The effect of the stay or supersedeas is to return the release of customer information protocols to the methods and restrictions in effect before the Guidelines Order [November 12 Order] was issued. This means that customers will have the right to tell the EDC to restrict the release of all of their customer information. This “no disclosure” option will remain in effect pending resolution of the pending appeal. As such, all customers affected by the Guidelines Order shall be permitted to restrict the release of all customer information without being required to state a reason for so doing.

We must note that the stay does not affect other portions of the November 12 Order that were not the subject of the PCADV appeal or application for stay, such as the inclusion in the ECL of specific types of customer information for those customers who do not choose to restrict their information, and the frequency of ECL updates. Also, although we intend that our final order on reconsideration will include PPL and Duquesne, the stay of the November 12 Order does not affect the customer information protocols contained in the Commission’s previously adopted orders concerning those companies. These orders were adopted prior to the November 12 Order, were not appealed, and, therefore, were not subject to the stay issued by the court. However, because the November 12 Order is stayed, PPL and Duquesne have no obligation to change their current practices based on that order.

**CONCLUSION**

For the foregoing reasons, we hereby provide notice of our intention to reconsider the determinations in the November 12 order regarding the ECL, as well as those portions of the earlier PPL Electric and Duquesne orders that address ECL issues. Upon review of the comments and reply comments we will issue a reconsideration order regarding ECL issues and provide uniform ECL guidelines for use throughout the Commonwealth; **THEREFORE,**

**IT IS ORDERED:**

1. That, pursuant to Section 703(g) of the Public Utility Code, 66 Pa. C.S. § 703(g), the Commission hereby provides notice of its intention to reconsider the following orders: November 12 Order, PPL Retail Markets Order and Duquesne Order.

2. That comments to this notice of reconsideration are due within thirty [30] days of the entry date of this order. Interested parties may submit written comments, an original and five [5] copies, to the Secretary, Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265. Comments may also be filed electronically through the Commission e-File System. Reply comments may be filed within forty-five [45] days of the entry date of this Tentative Order on Reconsideration.

3. That this notice of reconsideration and Appendix A shall be served on all Electric Distribution Companies, all licensed Electric Generation Suppliers, the Office of Trial Staff, the Office of Consumer Advocate, the Office of Small Business Advocate, the Energy Association of Pennsylvania and the Pennsylvania Coalition against Domestic Violence, all commenters to the Interim Guidelines Order and all participants in the PPL Retail Markets Order at Docket No. M-2009-2104271 and the Duquesne Default Service proceeding at Docket No. P-2009-2135500.

4. That a copy of this notice and Appendix A shall be posted on the Commission’s website.

5. That a final order on reconsideration shall be issued subsequent to the receipt and evaluation of any comments filed in accordance with this notice.

** BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: June 9, 2011

ORDER ENTERED: June 13, 2011

**APPENDIX A**

**ECL Customer Data Elements per November 12, 2010 Interim Guidelines Order**

**Minimum Elements**

1. ECL Revision Date
2. Customer Account Number
3. Customer Name
4. Customer Telephone Number
5. Service Address
6. Billing Address
7. Billing Country Code (if available)
8. Tariff Rate Class and Schedule
9. Rate Subclass/Rate Subcode (if available)
10. Meter Read Cycle
11. Load Profile Group per Tariff
12. Transmission Obligation (PJM)
13. POLR/Shopping Status (Y or N)
14. Monthly Consumption (each of 12 months)(KWH)
15. On Peak/Off Peak Consumption (each of 12 months)( KWH) (if available)
16. Monthly Peak Demand (each of 12 months) (KW) (if available)
17. Interval Meter (Y or N)

**EDC Specific Elements**

1. Meter Flag (PECO)
2. Loss Factor (First Energy)
3. Procurement Classification Indicator (certain EDCs)

**Optional Elements**

1. Revenue Code
2. Load Factor
3. Fixed Price Election

1. *PPL Electric Utilities Corporation Retail Market,* Docket No. M-2009-2104271, Order entered October 22, 2009 and *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2011 through May 31, 2013*, Docket No. P-2009-2135500, Order entered July 30, 2010. [↑](#footnote-ref-1)
2. “A licensee shall maintain the confidentiality of a consumer's personal information including the name, address and telephone number, and historic payment information, and provide the right of access by the consumer to his own load and billing information.” 52 Pa. Code § 54.43 (d). [↑](#footnote-ref-2)
3. Counsel for the Commission also consulted with representatives of PPL and Duquesne. [↑](#footnote-ref-3)