

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Interim Guidelines for Eligible Customer Lists))	Docket No. M-2010-2183412
PPL Electric Utilities Corporation Retail Markets))	Docket No. M-2009-2104271
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

**Comments of the
National Energy Marketers Association**

The National Energy Marketers Association (NEM)¹ hereby submits its comments pursuant to the Commission’s Notice of Reconsideration [hereinafter “Notice”] of its November 12, 2010, Order establishing interim guidelines on the electric utilities provision of Eligible Customer Lists (ECLs) to competitive suppliers [hereinafter “ECL Order”]. The Commission is reconsidering its ECL Order following the appeals of consumer groups that argued that the Order violated consumers’ right to privacy by: 1) preventing consumers from restricting the release of all of their customer information (or otherwise requiring them to identify themselves as victims of domestic violence); and 2) constructing the ECL as an opt-out program. As discussed in greater detail herein, NEM supports the provision of ECLs to marketers as a means to reduce costs of doing business and thereby enable marketers to make more competitive energy products available in the

¹ The National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM’s membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.

marketplace. NEM recommends that the ECL be an opt-out program and that all consumers have the option to either restrict disclosure of none or all of their customer information. By simplifying the option to restrict disclosure, and in a manner that does not require a victim of domestic violence to identify themselves as such, it will better ensure the protection of consumer privacy.

A. Procedural Background

In the ECL Order, the Commission determined that consumers had two options regarding the release of their customer information: (1) restrict none (i.e., disclose all customer information authorized for disclosure), and (2) restrict telephone number, billing address and historic usage. (ECL Order at 8). The Order did not permit consumers to restrict any other customer information held by the utility and authorized for disclosure. (Id.) However, the Commission determined that, “victims of domestic violence or customers that are similarly endangered should have the unfettered ability to restrict all of their customer information.” (ECL Order at 7). The Commission is now reconsidering the ECL Order in order 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.” (Notice at 7).

The ECL Order also set forth a delineation of the minimum list of customer information and data points that would be included in the utilities’ provision of the ECL, including 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. The Commission believes that statewide uniformity, “is an essential feature for efficient operation of the retail markets in each EDC service territory,” (Notice at 6) and is reviewing its prior general ECL order and specific PPL and Duquesne orders with this goal in mind. (Id.)

B. The Availability of ECLs Provides Direct Benefits to Consumers and Competitive Suppliers

NEM strongly supports the provision of ECLs to competitive marketers. ECLs provide a number of benefits to competitive market participants. These include:

- Allowing marketers to more cost-effectively target consumers to whom they can deliver competitive offerings;
- Allowing marketers access to data elements that permit them to validate enrollments and therefore prevent customer slamming;
- Reducing customer acquisition costs;
- Encouraging competitive marketers to continue to engage in their own outreach and education of consumers.

All of these benefits that flow from the availability of ECLs allow competitive suppliers to reduce their costs of doing business. In so doing, it encourages supplier entry and market participation which ultimately results in marketers being able to offer energy products with more competitive prices to consumers and also to offer an increased array of energy products in the marketplace. As such, the provision of ECLs to competitive suppliers also provides a significant and direct benefit to Pennsylvania consumers.

C. To Appropriately Protect Consumer Privacy, the ECL Should be Conducted as an Opt-Out Program in Which All Consumers Have the Choice to Restrict Disclosure of None or All of Their Customer Information

The provision of the ECL information can be accomplished consistent with the protection of consumer privacy. Consumers receive prior notice from the utility that the customer information will be shared, subject to their ability to opt out. Given heightened public awareness in general of the availability of consumer information, it is reasonable to expect that consumers understand and accept the terms of the opt-out notice. Additionally, competitive marketers are subject to confidentiality requirements in the treatment of the customer information.² Notwithstanding the availability of the ECL, marketers must also be in compliance with Pennsylvania and federal Do Not Call list restrictions. It bears noting that the state and federal Do Not Call list programs have been conducted on an opt-out basis, consistent with consumer privacy protections. In the instant proceeding, the ECL is also proposed to be conducted as an opt-out program and can likewise be operated in a manner that respects consumer privacy.

In order to better address the concerns expressed by consumer advocacy groups about the opt-out ECL program, NEM recommends that all consumers have the option to either restrict disclosure of none or all of their customer information. In the original Order the Commission would have constructed the opt-out ECL program so that consumers would restrict none of their information or could restrict disclosure of their telephone number, billing address and historic usage. However, the Commission also approved an exception to this structure such that domestic violence victims could restrict all of their information. Therein lies the issue with the protection of consumer privacy as it requires a person to

² Pa. Code § 54.43(d).

distinguish themselves as a domestic violence victim, clearly persons for whom a heightened concern about privacy exists, if they want to restrict disclosure of all of their customer information. By allowing all consumers to choose to restrict disclosure of none or all of their customer information, this result is avoided.

Moreover, NEM members report that providing a customer list without the three elements of telephone number, billing address and historic usage would be of limited usefulness. This is because these three data elements are used by competitive marketers for validation purposes. In consideration of all of these factors and concerns, NEM suggests that the ECL be constructed as an opt-out program in which all consumers have the choice to restrict disclosure of none or all of their customer information.

D. The ECL Should Be Maintained on a Timely, Accurate Basis

NEM does believe that the ECL must be maintained in a manner that strikes an appropriate balance between the accuracy of the information on the list with consumers' information privacy concerns. NEM suggests that there is a need for recordkeeping as to those consumers that choose to opt-out of the list. Additionally, consumers should receive notice of the ECL on a regular basis to permit periodic updating of the ECL and to maintain the information on the ECL on the most current, accurate basis possible. This will ensure that the decisions of consumers that do not wish to participate are respected. Likewise, as consumers move in and out of service territories, the ECL should be a reasonably timely reflection of those eligible to receive service.

E. Conclusion

Opt-out ECL programs enhance competitive suppliers' ability to make targeted, cost-competitive and diversified energy products available to consumers and are in the public interest. In order to ensure ECLs are made available in a manner that appropriately protects consumer privacy, NEM recommends that the ECL be an opt-out program and that all consumers have the option to either restrict disclosure of none or all of their customer information.

Sincerely,

Craig G. Goodman, Esq.
President
Stacey Rantala
Director, Regulatory Services
National Energy Marketers Association
3333 K Street, NW, Suite 110
Washington, DC 20007
Tel: (202) 333-3288
Fax: (202) 333-3266
Email: cgoodman@energymarketers.com;
srantala@energymarketers.com

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