

COMMONWEALTH OF PENNSYLVANIA



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July 28, 2011

Rosemary Chiavetta  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

RE: Interim Guidelines for Eligible Customer  
Lists  
Docket No. M-2010-2183412

Dear Secretary Chiavetta:

Enclosed for filing are the Reply Comments of the Office of Consumer Advocate, in the above-referenced proceeding.

Should you have any questions, please contact our office at the number above.

Sincerely,

A handwritten signature in cursive script that reads "Tanya J. McCloskey".

Tanya J. McCloskey  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 50044

Enclosures

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Interim Guidelines For Eligible Customer Lists	:	Docket Nos.	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 Period January 1, 2011 through May 31, 2013	:		P-2009-2135500

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REPLY COMMENTS OF THE  
OFFICE OF CONSUMER ADVOCATE

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TABLE OF CONTENTS

- I. INTRODUCTION .....1
- II. REPLY COMMENTS .....4
  - A. Telephone Numbers Should Not Be Included On The Eligible Customer List For Residential Customers .....4
  - B. The OCA Agrees That A Net Metering Flag Should Be Added To The Eligible Customer List For Residential Customers .....6
  - C. New Data Elements Should Not Be Added To The Eligible Customer List In The Future Without A Full Review Through A Commission Generic Process Such As Used To Establish The Final Order In This Case .....6
- III. CONCLUSION .....9

## I. INTRODUCTION

The Office of Consumer Advocate (OCA) has reviewed the Comments filed by the stakeholders to the Notice of Reconsideration issued on June 13, 2011, by the Pennsylvania Public Utility Commission (Commission). The Notice of Reconsideration sought comments on the Commission's stated intent to reconsider its November 12, 2010 Order (November 12<sup>th</sup> Order) requiring Electric Distribution Companies (EDCs) to compile and make available Eligible Customer Lists (ECLs) to licensed Electric Generation Suppliers (EGSs) as a means of fostering the development of the competitive retail market in Pennsylvania.

In the November 12<sup>th</sup> Order, the Commission provided a list of 23 data items that were to be included on the ECL (if available) including, *inter alia*, such information as the customer's name, billing address, service address, telephone number, account number, historical usage, monthly on and off peak usage, monthly peak demand, load factor, and transmission obligations. Of the 23 items of information included on the Eligible Customer List, under the November 12<sup>th</sup> Order, customers could only restrict access to three pieces of information -- the service address, the historical billing data and telephone number. Unless the customer qualified under a special exception developed for victims of domestic violence or other similarly endangered victims, the EDC was required to post all other information about the customer on the ECL for access by EGSs even if the customer objected to the release of such information. Domestic violence victims and other similarly endangered victims, could restrict all of their information from the ECL by contacting the EDC and identifying themselves as such a victim.

Comments were filed by EDCs, EGSs, the OCA, the Industrial Customer Groups, the Pennsylvania Coalition Against Domestic Violence (PCADV), the American Civil Liberties Union of Pennsylvania (ACLU), and the Pennsylvania Utility Law Project, AARP, Tenant Union

Representative Network and Action Alliance of Senior Citizens (PULP, *et al.*). A review of the Comments shows that there is nearly unanimous agreement among this diverse group of commentors, that *all* customers must be afforded the opportunity to restrict the release of *all* data that is proposed for inclusion on the eligible customer list. In other words, there is nearly universal agreement that if a customer does not want any of his or her personal and private information released by the electric distribution company, it should not be released. While many of the parties may strongly differ on the necessary procedures (*i.e.*, “opt-in” or “opt-out”), there is virtually no disagreement that all consumers should be afforded the opportunity to restrict the release of all information.<sup>1</sup>

In light of the Comments, the OCA again urges the Commission to reverse the position set out in its November 12<sup>th</sup> Order that would require an EDC to release personal and private information about a customer even over the customer’s objection. The Commission should establish the principle that all customers can restrict the release of any and all data that the Commission deems appropriate for inclusion on the Eligible Customer List. In the OCA’s view, this requirement is both constitutionally required and represents sound public policy.

There is far less agreement among the commentors on the appropriate procedures that should be put in place to provide customers the opportunity to exercise this fundamental right. That is, whether customers’ data should be released on an opt-in or opt-out basis. In its Comments, the OCA has taken the position that an opt-out procedure would be an adequate means of providing customers with the opportunity to restrict the release of personal information under certain circumstances. Specifically, an opt-out procedure would be sufficient if consumers are provided adequate information, a simple method to exercise the right to opt-out on both an

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<sup>1</sup> From the OCA’s review of the Comments, the OCA found only FirstEnergy Solutions (FES) as taking the position that personal information regarding a customer should be released by the EDC even over the customer’s objection. FES Comments at 3-6.

annual and on-going basis, and if the personal data on the ECL excludes the telephone number and is limited to that information necessary for an EGS to make an offer to customers within the class. The OCA sought to strike a balance through the process it described between the customer's right to privacy of personal information and the goal of fostering a more competitive retail market.

As the OCA pointed out in its Comments, however, while an informed and meaningful opt-out process may be workable for information that the OCA identified for inclusion on the ECL, the inclusion of additional data raises significant concerns. In particular, any inclusion of data associated with smart meters raises significant concerns that require further discussion and development at both the state and national level. Smart meters introduce a whole new category of individualized data about customers that can reveal personal details about the lives of consumers, including information about whether a customer is at home or not, whether a home has an alarm system, and whether a home has expensive electronic equipment. At this time, the OCA urges the Commission to refrain from including smart meter data on the eligible customer list, particularly if an opt-out process is utilized. National discussion continues as to how best to address this personal and sensitive customer data. As the OCA pointed out in its Comments, the Department of Energy has been assessing privacy concerns and smart meter data for some time. OCA Comments of July 13, 2011 at 23-29. In its most recent Report, DOE found a "fairly broad consensus on some core principles" with one of those core principles being that smart meter data "should not be disclosed to third parties unless a customer has consented to such disclosure affirmatively, through an opt-in process that reflects and records the consumer's

informed consent.” Dep’t of Energy, Data Access and Privacy Issues Related to Smart Grid Technologies, Report at 15 (October 5, 2010).<sup>2</sup>

From its review of the comments, the OCA identified several areas where further discussion of the issues is warranted. In its Reply Comments below, the OCA responds to the position of certain parties for inclusion of the customer telephone number on the ECL for residential customers; the request to add a net metering indicator on the ECL for residential customers; and discussions regarding the process of modifying the ECL in the future.

## II. REPLY COMMENTS

### A. Telephone Numbers Should Not Be Included On The Eligible Customer List For Residential Customers.

Several commentors supported the inclusion of a residential customer’s telephone number of the Eligible Customer List. See e.g. PEMC Comments at 4; NEM Comments at 5; RESA at 4. In its Comments, the OCA argued that the residential customer’s telephone number should not be included on the ECL. OCA Comments at 16-17. As the OCA pointed out in its Comments, the Commission has consistently protected a customer’s telephone number from release by an EDC. See e.g. Procedures Applicable to Electric Distribution Companies and Electric Generation Suppliers During Transition To Full Retail Choice, Docket M-00991230, Final Order (May 18, 1999) (Enrollment Procedures Order), affirmed sub nom Mid-Atlantic Power Supply Association v. Pa. P.U.C., 746 A.2d 1196 (Pa. Cmwlth. 2000). In that Order, the Commission stated the following regarding a customer’s telephone number:

Although we desire to see the broadest possible amount of customer information made available to EGSs, we continue to be concerned about the privacy of customers, particularly with respect to the release of telephone numbers, which often might be unlisted or protected for various reasons.

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<sup>2</sup> [http://www.gc.energy.gov/documents/Broadband\\_Report\\_Data\\_Privacy\\_10\\_5.pdf](http://www.gc.energy.gov/documents/Broadband_Report_Data_Privacy_10_5.pdf)

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Therefore, due to concerns related to customer convenience, as well as unwelcome or untimely telephonic solicitation by marketers, we will not include telephone numbers on the list of items that must be furnished to EGSs by EDCs.

Enrollment Procedures Order at 22.

Commissioner Gardner's Dissent in this case from the November 12<sup>th</sup> Order also provided compelling reasons for not including a customer's telephone number on the ECL. As Commissioner Gardner correctly pointed out, many customers guard their telephone numbers closely and do not want those numbers released so that they receive sales calls. Partial Dissenting Statement of Commissioner Wayne E. Gardner, Docket No. M-2010-2183412 (Nov. 12, 2010). Commissioner Gardner aptly noted that release of telephone numbers could have the unintended consequence of harming competition. Id. Commissioner Gardner then concluded:

Finally, there is no legitimate reason to release customers' phone numbers. The purpose of the ECL is to provide information to EGSs that will assist them in preparing competitive offers to potential customers. A phone number is not needed to accomplish this as the EGSs will have access to sufficient information including the customer's name, billing address, usage information and other data that will allow them to market their products and services.

Partial Dissenting Statement of Commissioner Wayne E. Gardner, Docket No. M-2010-2183412 (Nov. 12, 2010).

The OCA submits that the commentors have provided no adequate reason for the inclusion of a customer's telephone number on the ECL. For the reasons set forth in its Comments of July 13, 2011, in Commissioner Gardner's Partial Dissent and in these Reply Comments, the OCA submits that residential customer telephone numbers should not be included on the Eligible Customer List.



B. The OCA Agrees That A Net Metering Flag Should Be Added To The Eligible Customer List For Residential Customers.

Some commentors recommended that for residential customers, a net metering indicator be added to the ECL. See e.g. PPL Comments at 8; FES Comments at 7-8. The OCA supports the inclusion of a net metering indicator on the ECL for residential customers. Through the CHARGE Working Group and other contacts, the OCA has become aware of issues encountered by residential customer-generators with net meters when switching suppliers. An early indicator of a net meter may assist the EGS in properly informing the customer of its policy regarding customer generation so as to avoid the confusion and misunderstanding that have been reported.

The OCA would note that Minimum Element 17 (Interval Meter Flag) was included in the OCA's proposed list of data elements for the residential customer ECL. See OCA Comments at 15. If there are few or no interval meters deployed to residential customers, this Minimum Element could be modified to be the Net Meter Indicator. If there is some usefulness for residential customers to having both an interval meter indicator and a net meter indicator, the OCA does not object to the inclusion of both on the residential ECL.

C. New Data Elements Should Not Be Added To The Eligible Customer List In The Future Without A Full Review Through A Commission Generic Process Such As Used To Establish The Final Order In This Case.

PPL notes that in its prior comments on the Commission's Tentative Order filed in 2010, PPL had requested that the Commission place a "moratorium" on changes to the ECL until after December 31, 2012. PPL Comments at 11. The Commission rejected that recommendation in the November 12<sup>th</sup> Order, and PPL seeks re-examination of the issue here. While the OCA takes no position on the need for a "moratorium" through a specific date, the OCA wishes to make clear its position regarding any future changes to the data elements

contained on the ECL. The OCA submits that the data elements should not be changed on the ECL except through a generic process that provides an opportunity for all interested stakeholders to comment and provides for a final Commission Order.

As discussed in the OCA's Comments and in these Reply Comments, the release of any personal data held by a public utility regarding a customer raises significant concerns about privacy and sound public policy. Customers have no choice but to provide this information to their EDC in order to establish essential electric service. Once service is established, the EDC collects this information about the customer as part of its process of providing service. As Pennsylvania moves forward with the deployment of smart meters, the types, quality and amount of data held by a public utility about a customer will only grow. It is difficult at this juncture to foresee the implications of the release of such data or to foresee the use or need for such data. The OCA submits, however, that each data element will need to be weighed and considered from all viewpoints so that the necessary balance between customer privacy and the goals sought to be achieved can be reached. Such a balancing should not be done on a piecemeal basis or through procedures where stakeholder involvement may be limited.

Moreover, adding elements to the ECL on anything other than a statewide basis through a statewide process would compromise the uniformity that the Commission seeks to achieve through its order in this case. The ECL data elements proposed by the OCA for residential customers at page 15 of its Comments of July 13, 2011, are already extensive but include data that should be uniformly available in all service territories. Such uniformity should benefit EGSs, EDCs and customers as Pennsylvania moves forward with retail choice.

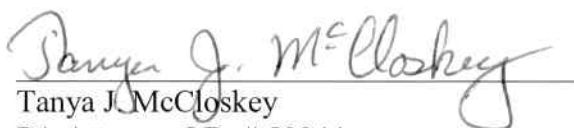
As such, the OCA submits that the Commission should clarify that the ECL as set forth in a final order in this proceeding constitutes the data elements that are subject to release by

an EDC, if not otherwise restricted by the customer. The Commission should also make clear that data elements are not to be added to or removed from the ECL of any EDC until after a Commission process providing for notice and opportunity to be heard by all stakeholders on any proposed changes.

### III. CONCLUSION

The OCA continues to urge the Commission to reconsider its November 12<sup>th</sup> Order and allow all customers the right to restrict the release of all information that the Commission approves for inclusion on the Eligible Customer List. The OCA further submits that the OCA's recommendations regarding the data elements contained on the Eligible Customer List and the process utilized to provide customers the opportunity to restrict the release of information as detailed in the OCA's Comments of July 13, 2011 and in these Reply Comments should be adopted.

Respectfully Submitted,



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