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July 28, 2011

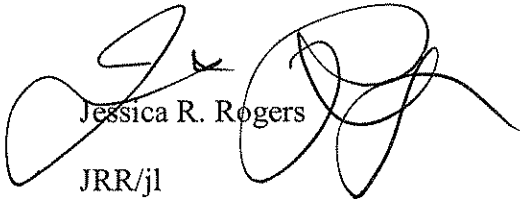
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Notice of Reconsideration Order for Eligible Customer Lists
Docket No. M-2010-2183412

Dear Secretary Chiavetta:

Enclosed please find the Reply Comments of PPL Electric Utilities Corporation to the Pennsylvania Public Utility Commission's Notice of Reconsideration Order for Eligible Customer Lists in the above-referenced proceeding.

Respectfully Submitted,



Jessica R. Rogers

JRR/jl

Enclosure

cc: Office of Competitive Market Oversight (*via E-mail*)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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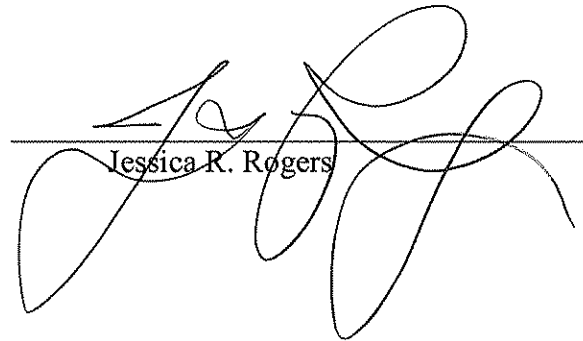
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Date: July 28, 2011


Jessica R. Rogers

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Interim Guidelines For Eligible Customer Lists	Docket No. 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

**REPLY COMMENTS OF PPL ELECTRIC UTILITIES
CORPORATION TO NOTICE OF RECONSIDERATION ORDER**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”), by and through its attorneys, in accordance with the Pennsylvania Public Utility Commission’s (“Commission”) June 13, 2011 Notice of Reconsideration (“Reconsideration Order”), hereby submits these Reply Comments to the July 13, 2011 comments submitted by various parties.¹ While numerous comments were filed by several parties on a broad range of issues, resolution of this matter, in PPL Electric’s view, need not be complex or protracted. Specifically, as explained in more detail below, the Commission can resolve most of the issues raised by the parties by adopting rules which allow customers to restrict access to all of their information on an opt out basis. PPL Electric believes that this result addresses the primary concern raised by most parties in a manner that achieves an appropriate balance between promoting the development of a competitive retail

¹ In addition to PPL Electric, the parties that filed comments are: the Office of Consumer Advocates, the Pennsylvania Coalition Against Domestic Violence, the American Civil Liberties Union, the Energy Association of Pennsylvania, Domestic Violence Services of Lancaster County, the National Energy Marketers Associations, First Energy Solutions Corporation, Duquesne Light Company, the Energy Marketers Coalition, the Pennsylvania Utility Law Project, Washington Gas Energy Services, Dominion Retail, the Retail Energy Supply Association, the Industrial Customer Group, Wellsboro and Citizens Electric Companies, PECO Energy Company, and Metropolitan-Edison, Pennsylvania Electric, Pennsylvania Power, and West Penn Power Companies.

market and protecting the legitimate privacy concern of customers. In support of this approach, PPL Electric offers the following:

I. BACKGROUND

By order entered on 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 (“ECLs”) which are then made available to Electric Generation Suppliers (“EGSs”). Two parties appealed the November 12 Order to the Commonwealth Court. Upon the Commission’s application, the Court returned jurisdiction to the Commission for reconsideration of the November 12 Order, pursuant to Section 703(g) of the Public Utility Code. 66 Pa. C.S. § 703(g).

On June 13, 2011, the Commission entered its Reconsideration Order requesting comments and reply comments on various ECL issues, particularly the customer privacy issues that were the subject of the Commonwealth Court appeals. In addition, in order to achieve statewide uniformity in its resolution of the various issues regarding the ECL, the Commission provided notice of its intention to reconsider two earlier orders that established ECL parameters for PPL Electric and Duquesne Light Company.² Comments were due on July 13, 2011. Reply comments are due within 45 days of entry of the Reconsideration Order, i.e., by July 28, 2011.

PPL Electric is a “public utility” and an “electric distribution company” as those terms are defined under the Public Utility Code, 66 Pa.C.S. §§ 102 and 2803, subject to the regulatory jurisdiction of the Commission. PPL Electric furnishes electric distribution, transmission, and default service provider electric supply services to approximately 1.4 million customers

² *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.

throughout its certificated service territory, which includes all or portions of twenty-nine counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania.

PPL Electric fully supports the Commission’s ongoing efforts to facilitate competition and supports the Commission’s efforts to improve and standardize the types of information provided in ECLs. In its reply comments, PPL Electric will primarily address those issues raised by the Office of Consumer Advocate (“OCA”).

II. REPLY OF PPL ELECTRIC

In its Notice of Reconsideration, the Commission solicited comments on two primary topics. The first was whether the Commission should allow customers to withhold all of their personal information from the ECL. The second was whether the Commission should continue utilizing an opt out process for allowing customers to withhold information. An opt out process is one in which a customer must affirmatively express a desire to withhold their information. This is in contrast to an opt in process, where a customer must affirmatively express a desire to have their information released. PPL Electric, in its comments filed on July 13 and as stated herein, supports allowing customers to withhold all of their personal information through the continued use of the opt out process. In addition, PPL Electric would encourage the Commission to take up the issue of the EGS’ obligations to maintain customer information, records, and confidentiality in a future proceeding.³

³ The issue of an EGS’ obligations with regard to information contained in the ECL was noted by a number of parties in their comments, including PPL Electric, the OCA, and the PACADV.

A. The Commission Should Allow Customers to Completely Restrict the Release of Their Information.

PPL Electric believes, consistent with its comments filed on July 13, that customers should be allowed to restrict disclosure of all of their personal information. No party that filed comments to the Notice of Reconsideration disputed that all customers should be given such an option. Therefore, there appears to be no dispute among the parties on this issue. PPL Electric encourages the Commission to adopt a policy that would allow any customer to restrict disclosure of all personal information.⁴

B. The Commission Should Continue to Utilize the Opt Out Process.

In their July 13 comments, the PACADV, ACLU, PULP and Duquesne Light proposed that the Commission direct EDCs to use an opt in process rather than an opt out process when soliciting customers' preferences on disclosure of their personal information. PPL Electric disagrees, and recommends that the Commission maintain its current practice.

The Commission has long recognized the delicate balance between customer privacy and encouraging competition. In its Final Order in *Procedures Applicable to Electric Distribution Companies and Electric Generation Suppliers During Transition to Full Retail Choice*, Docket No. M-00991230 (Order entered May 18, 1999), the Commission acknowledged the importance of finding a balance between competition and privacy, stating that it "continue[d] to be concerned about the privacy of customers." In order to strike a balance between competition and privacy, the Commission approved an opt out process for soliciting customer information in the 1999 Order. The Commonwealth Court affirmed the Commission's determination regarding customer privacy, holding that the Commission, "properly exercised its discretion and preserved

⁴ PPL Electric does not agree with those parties that have argued that limited distribution of customer information would rise to the level of a Constitutional violation of privacy, particularly if a customer is given the opportunity to opt out.

the delicate balance between a viable and competitive marketplace and customer privacy.” *The Mid-Atlantic Power Supply Association v. Pa. P.U.C.*, 746 A.2d 1196, 1201 (Pa. Cmwlth 2000). PPL Electric believes the Commission should continue its well-established, and Court-approved, practice of using an opt out process to allow customers to protect their privacy. The opt out process strikes the right balance between encouraging competition in the Commonwealth and allowing customers to protect their privacy.

C. No Unique Treatment is Required for the Release of Smart Meter Information.

In its Comments, the OCA encouraged the Commission to require an opt in process to specifically address the distribution of customer information compiled from data collected from smart meters. PPL Electric disagrees with the OCA’s interpretation of 66 Pa. C.S. § 2807(f)(3), and recommends that the Commission not adopt the OCA’s suggestion.

First, PPL Electric believes that adopting an opt in process for smart meter data, in addition to continuing the general opt out process for obtaining customer consent, would be unnecessarily confusing, burdensome, and expensive. Even if EDCs were to conduct extensive educational campaigns, which would cause them to incur additional expenses, there would still likely be a large number of customers who would be confused by receiving two distinct solicitations. In addition, using two solicitations would require EDCs to do double the work that they are currently required to undertake in order to compile their ECLs. Even recognizing that EDCs would be permitted to recover the costs associated with these extensive extra expenses, it would be unfair to place the additional time and money burden upon the EDCs and their customers. PPL Electric encourages the Commission to reject the OCA’s suggestion, as it will only lead to confused and frustrated customers.

Further, PPL Electric does not believe that Section 2807(f)(3) is applicable to the data that the Commission has identified for release in its Interim Guidelines on the ECL. Section 2807(f)(3) states that:

Electric distribution companies shall, with customer consent, make available direct meter access and electronic access to customer meter data to third parties, including electric generation suppliers and providers of conservation and load management services.

Ignoring the issue of consent for a moment, PPL Electric would draw the Commission's attention to what information is to be made available under § 2807(f)(3). The language addresses two particular items. The first is direct meter access, and the second is electronic access to customer meter data. None of the information to be released under the ECL falls within these categories, i.e., the ECL does not address and therefore does not provide EGSs with direct customer meter access or electronic access to customer meter data. Therefore, contrary to the contentions of the OCA in its comments, § 2807(f)(3) has no bearing on the information to be included in the ECL.

Finally, even assuming *arguendo* that the information to be released in the ECL does fall within the ambit of data specified by § 2807(f)(3), there is no indication that the language of the statute requires express or affirmative consent as opposed to implied consent. The courts of Pennsylvania have held that individuals can impliedly consent to the disclosure of information, including information which may be confidential. *Haddad v. Gopal*, 2001 Pa. Super. 317, 787 A.2d 975, 981 (Pa. Super. 2001).⁵ Therefore, because § 2807(f)(3) fails to specify that consent

⁵ Pennsylvania Courts have recognized implied consent in numerous contexts, including: jurisdiction, *Wagner v. Wagner*, 564 Pa. 448, 768 A.2d 1112, 1115 (Pa. 2001); motor vehicle operator's test for chemical substances, *Commonwealth v. Shaw*, 564 Pa. 617, 770 A.2d 295, 298 (Pa. 2001); contributory negligence, *Hughes v. Seven Springs Farm, Inc.*, 563 Pa. 501, 762 A.2d 339, 342 (Pa. 2000); severance of an estate, *Fazekas v. Fazekas*, 1999 PA Super 223, 737 A.2d 1262, 1264 (Pa. Super. 1999); limited investigatory search,

must be affirmative, the Commission should not read in such a requirement. Consent through an opt out process is sufficient to allow an EDC to provide data gathered from smart meters to third parties without violating the statute. For the reasons stated above, PPL Electric encourages the Commission to reject the OCA's proposal to require a separate opt in solicitation for smart meter information.

D. Electric Distribution Companies Must be Allowed to Recover Any Costs Associated with Changes Pursuant to this Rulemaking Proceeding.

The OCA has recommended a number of programs relating to customer education and awareness. These include comprehensive education programs to make customers aware of what information may be disclosed, where that information will be going, and what options are available in order to restrict the release of information. The OCA has also identified a need for uniform customer communications between the EDCs, as well as suggesting the frequency of solicitations and the appearance of materials to be sent to customers.

PPL Electric has pursued for many years an extensive campaign to educate and inform its customers regarding all aspects of the competitive retail electricity market and their options to participate in that market. PPL Electric would not object to undertaking additional education efforts prior to an ECL solicitation with two important caveats. The first is that PPL Electric would be able to recover all costs associated with any educational programs or campaign, as well as the solicitation. The second is that PPL Electric would be required to conduct such a solicitation only once. As PPL Electric recommended in its July 13 comments, after the initial solicitation, the Company would update its records on an ongoing basis through customer

Commonwealth v. Witman, 2000 PA Super 92, 750 A.2d 327, 335 (Pa. Super. 2000); breach of bank-depositor confidentiality, *McGuire v. Shubert*, 722 A.2d 1087, 1091 (Pa. Super. 1998); and in civil proceedings to release medical records when placing treatment in issue, *Moses v. McWilliams*, 379 Pa. Super. 150, 549 A.2d 950 (Pa. Super. 1988).

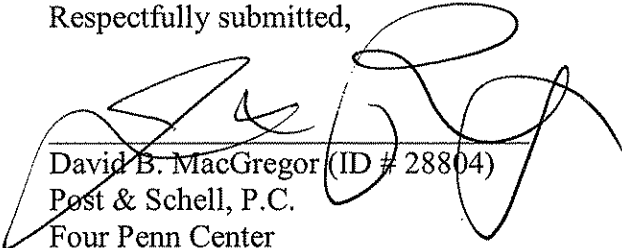
welcome packets and bill inserts but would not issue additional solicitations. PPL Electric does not object to OCA's recommendation to clearly identify the solicitation materials. However, PPL Electric recommends that any additional requirements that place a financial obligation on the EDCs include an explicit cost recovery mechanism.

III. CONCLUSION

As stated above, PPL Electric supports the efforts of the Commission in this proceeding to improve and make more uniform the types of information provided in ECLs. Accordingly, PPL Electric respectfully requests that the Commission's final order after reconsideration contain provisions consistent with the Company's initial comments filed on July 13, 2011, and the reply comments set forth herein.

Respectfully submitted,

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