

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Investigation of Pennsylvania’s Retail
Electricity Market**

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Docket No. I-2011-2237952

**COMMENTS OF
CONSTELLATION NEWENERGY, INC. AND
CONSTELLATION ENERGY COMMODITITES GROUP, INC.**

I. INTRODUCTION

On October 14, 2011, the Public Utility Commission (“Commission”), adopted a Tentative Order based upon recommendations from the Commission’s Office of Competitive Market Oversight (OCMO) related to the electric distribution companies’ (EDCs) next set of default service plans (DSPs) pursuant to the Commission’s pending statewide investigation of Pennsylvania’s Retail Electricity Market. This proceeding was initiated by the Commission’s April 29, 2011 Order which articulated the goal “of making recommendations for improvements to ensure that a properly functioning and workable competitive retail electricity market exists in the state.”¹ Following written comments and oral testimony provided during an *en banc* hearing of June 8, 2011, the Commission issued a second order initiating a stakeholder process for the discussion of both intermediate and longer term reforms to the retail electricity market.² In the second order, the Commission announced that a work plan for intermediate

¹ April 29 Order, at p. 2, citing *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company and Trans-Allegheny Interstate Line Company*, Docket Nos. A-2010-2176520 and A-2010-2176732 (Order entered March 8, 2011), at 46.

² *Investigation of Pennsylvania’s Retail Electricity Market*, I-2011-2237952 (Order entered July 28, 2011)(“July 28 Order”).

competition enhancing measures would be issued in December 2011 with a work plan for longer term reforms scheduled for the first quarter of 2012.³

Through the issuance of the Tentative Order, the Commission seeks comment on the following tentative recommendations:

- that the DSP periods be established from June 1, 2013 through May 31, 2015;
- that the use of long term supply contracts be limited with no contracts extending past the end date of the DSP period;
- that each DSP include an opt-in auction program;
- that each DSP include a customer referral program;
- that each EDC contemplate contracting with a retail EGS to satisfy their statutory requirement to provide time-of-use (TOU) rates;
- that each EDC contemplate the incorporation of semi-annual default service rate adjustments; and,
- that each EDC contemplate expanding hourly-priced default service to the medium sized commercial and industrial class.

In accordance with the Commission's directive, Constellation NewEnergy, Inc. ("CNE") and Constellation Energy Commodities Group, Inc. ("CCG") (collectively, "Constellation") appreciate the opportunity to submit these Initial Comments.

II. BACKGROUND ON CONSTELLATION

CCG and CNE are indirect, wholly-owned subsidiaries of Constellation Energy Group, Inc., a FORTUNE 500 North American energy company with several merchant subsidiaries in addition to CCG and CNE. CCG and CNE have been granted market-based rate authority by the Federal Energy Regulatory Commission ("FERC") and are buyers and sellers of wholesale electricity and capacity.

³ July 28 Order, at p 10.

CNE is an electric generation supplier (“EGS”), licensed by the Commission to serve Residential, Commercial and Industrial customers in all utility territories in the Commonwealth. CNE is the largest provider of competitive retail electric supply to Commercial, Industrial and Governmental customers throughout the United States, including Pennsylvania. In addition, CNE has a growing presence serving residential customers in Illinois, the District of Columbia, Maryland, New Jersey, and Ohio and has begun to serve residential customers in the Commonwealth. CCG, meanwhile, is one of the largest suppliers of wholesale electric power to utilities, municipalities and cooperatives throughout the United States, including the provision of electric power and energy to the Commonwealth’s utilities under current default service plans and programs.

This combination of CNE’s and CCG’s broad and thorough experience and interests affords Constellation unique and valuable perspectives on the future of Pennsylvania’s retail electricity market, including both the Default Service structures and the retail market enhancements that may be considered by the Commission. As one of the largest suppliers of retail and wholesale electric power in the Commonwealth, the Commission’s Investigation presents important issues which affect Constellation’s business interests in Pennsylvania.

III. CONSTELLATION’S COMMENTS

Constellation commends the Commission for issuing this Tentative Order for Comment in an effort to provide guidance to the EDCs as they prepare to file their next round of DSPs – especially in light of the broader investigation into the retail electric market under this docket. The Commission’s Tentative Order once again recognizes that competitive retail and wholesale

markets continue to represent the best way to ensure that Pennsylvania consumers receive reliable electric power and have access to innovative products and services from a broad pool of suppliers that may best meet each customer's individual needs, while simultaneously assuring the affordability and reliability of supply as competitive markets continue to grow.

Before addressing the specific issues addressed in the Tentative Order, Constellation remains concerned that great care must be taken to ensure that existing or future DSP wholesale supply contracts are not compromised, put at risk or, worse yet, abrogated. At pages 8-9 of the Tentative Order, it appears that the Commission is suggesting that an EDC may be required to modify its approved DSP which could include changes that affect wholesale suppliers with contracts under the approved plan. In order to reduce or eliminate any unintended uncertainty regarding the sanctity of wholesale contracts, the Commission should make clear that wholesale DSP contracts will be fully honored even if the Commission orders changes to previously approved DSPs.

A. Term of Default Service Plan

In the Tentative Order, the Commission recommends that EDCs file default service plans with two-year terms.⁴ Constellation supports this recommendation.

Furthermore, making sure that all default service rates are set within similar time frames, under similar pricing structures, and implementing other commonalities will help consumers better understand the market and make educated shopping choices. For customers with accounts in several utility service territories in Pennsylvania, one consistent approach or program across the state would make it easier for them to understand and make more

⁴ Tentative Order, p. 4 (citing 52 Pa. Code § 54.185(a)).

comprehensive and coordinated purchasing decisions. Moreover, a single, uniform schedule and approach would better enable EGSs to prepare and advertise offers across the Commonwealth, rather than only in limited EDC territories.

B. Energy Contract Duration

In the Tentative Order, the Commission affirms its determination not to “mandat[e] a prescriptive portfolio of contract lengths,” but makes two specific recommendations: first, that EDCs file new default service plans that limit or eliminate the existence of short-term energy contracts that extend past the end date of the plan (i.e., June 1, 2015); and second, that EDCs limit the proportion of long-term contracts included in their default service plan portfolios.⁵

While the Tentative Order seems to indicate that the Commission does not wish to have any wholesale supply contracts extend beyond June 1, 2015, the Commission may wish to provide the EDCs with some flexibility to utilize shorter-term wholesale supply contracts that extend beyond the term of the plan as long as procured closed in time to the delivery.

As it may be unnecessary to procure long term products, it should be deemed unnecessary to procure any future block products and all purchases should take the form of full-requirements purchases. Current block procurements are on the books, and future blocks therefore would not need to be procured. If the EDCs were to be required to purchase blocks, then how that block is treated as a portion of its supply is important to the success of future procurements. PECO currently uses blocks to satisfy a share of load, with excess and shortages dealt with in the spot market. The other approach, which is used by PPL in its DSP, is to use the block as the base portion of all requirements (e.g. the first MWh of load is satisfied by the

⁵ Tentative Order, p. 5.

block), and then have the full requirements contracts supply over and above what this block does not provide. Our preference would be to follow the methodology utilized by PECO as compared to the methodology used by PPL for block purchases since PPL's methodology has caused odd supply requirements as a large amount of customers have left DS and has made POLR unnecessarily expensive and complicated when serving load above a block versus allocated to a specific share of the load.

C. Retail Opt-in Auction

At this time, and based upon the lack of consensus in the stakeholder process, Constellation does not support the mandatory offering of an opt-in program. Constellation is concerned that opt-in auctions would have an adverse impact on existing or future default procurements as effective wholesale procurement for a subset of customers (Retail Opt-in) would cannibalize the other wholesale procurement (POLR Service via the EDC). This would cause the wholesale auction (POLR Service) to have unduly high prices to account for this potential risk.

Therefore, Constellation recommends that the Commission defer such activity until after the delivery term of this 2-year transition POLR Service. Then, when the EDCs seek supply after the transition, these customers would be completely carved out of the EDCs service and the suppliers of this service would know who is eligible to take EDC supplied POLR service and who is eligible to take retail supplied POLR service. Another option, and probably a second preference, would be to have such retail opt-in auctions in the middle of the 2-year transition period but still start after any committed EDC supplied POLR contract. This would also achieve

the benefit of knowing which customers have chosen EDC default service versus retail provided default service.

Other key terms of a retail opt-in auction approach would include:

- All customers would be eligible (both on and off-service customers)
- The customers who elected this option would no longer be eligible for EDC supplied POLR service
- Customers, who have opt-in, would have the free choice to move back and forth from this service as desired on a meter cycle basis without any switching fee
- No minimum stay provisions for these customers
- No upfront bonus payments, and instead offer the lowest possible rate
- This service would be auctioned in a fair and transparent method (e.g. RFP or descending clock auction with the same contract for all winners)
- Ample data would need to be provided well in advance of any bid and include 3-years of historic hourly load, PLC and NSPL data for customers who have elected to opt-in, and other similar data that is provided under the current DSP structure.
- Terms of these auctions should be 1 year or 2 year in length
- It would be bid with specific customers allocated to “bid groups” in advance of each bid, so EGS suppliers know exactly what they are bidding on.

D. Referral Programs

Constellation supports the development of well-planned customer referral programs. The Retail Energy Supply Association has taken a leading effort to develop a New/Moving Customer Referral Program which is intended to partially mitigate the current structural barrier resulting from existing protocols that automatically assign customers to EDC-provided default service at the time of new service initiation and when customers transfer service from one location to another.⁶ Stakeholders have held several rounds of productive discussions on how this program could be implemented and have the lessons learned from experiences in New York on how such programs can be implemented.

E. Having the EDC Bid Out the Provision of Time-of-Use Rates to EGSs

The Commission recommends that EDCs contemplate contracting with a retail EGS to provide a TOU program as required by 66 Pa. C.S. § 2807(f)(5).⁷ In our Initial Comments, Constellation indicated that if the EDCs are going to remain the default service providers, each should offer only a single product to each customer class and should not provide multiple rate options such as time-of-use (“TOU”) rates for certain classes of customers. In those Comments, we noted that the TOU products offered by PPL Electric, PECO and Duquesne Light Company are made available only to the utility’s default service customers.⁸

⁶ A copy of the current discussion document is available at: [http://www.puc.state.pa.us/electric/PDF/RetailMI/RESA_DISCUSSION%20FOR_NEW_MOVING_CUSTOMER_PROGRAM_AND_RELATED_CUSTOMER_CHOICE_EDUCATION_\(L0456130\).pdf](http://www.puc.state.pa.us/electric/PDF/RetailMI/RESA_DISCUSSION%20FOR_NEW_MOVING_CUSTOMER_PROGRAM_AND_RELATED_CUSTOMER_CHOICE_EDUCATION_(L0456130).pdf)

⁷ Tentative Order at 7.

⁸ *PPL Electric Utilities Corporation Supplement No. 94 To Tariff Electric Pa. P.U.C. No. 201 Time-of-Use*, Docket Number R-2010-2201138, Order entered December 2, 2010; *Petition of PECO Energy Company for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan*, Docket No. M-2009-2123944, Opinion and Order entered April 15, 2011; and, *Petition of Duquesne Light Company for Approval of a Time-of-Use Plan*, Docket No. P-2009-2149807, Order entered June 23, 2010.

Requirements such as these create additional “default service” product options and are counterproductive to encouraging customers to receive generation supply from the competitive markets in order to exercise their ability to choose. Furthermore, the competitive market and EGSs are fully able to provide these varied products to consumers, and allowing (or requiring) EDCs to offer these additional products to customers can act as a barrier to competition.

The Commission’s recommendation that the EDC bid out the provision of this service to an EGS appears to acknowledge this fact and is a creative suggestion to address these concerns and sounds similar to the manner in which the Commission required EDCs to bid out the provision of demand response pursuant to Act 129. If the Commission were to develop such a program, the EDCs should be required to carve out this load from the other EDC load in advance of any broader wholesale procurement for the balance of the EDC’s load.

Under such a mechanism, the EDCs could use a competitive fair, open and transparent bidding process to select an EGS or EGSs to provide a TOU retail product. In order to accomplish this task, parties should be directed to engage in a stakeholder process that would lead to the EDCs, or an independent third-party, developing a Request for Proposal (RFP) to govern the procurement process. This is similar to the manner in which the EDCs conduct the standard DS procurement process utilizing a stakeholder process to develop the various terms and conditions of EGS participation.

Alternatively, an option would be to have the EDCs conduct an auction, as is done for the balance of the POLR load, but for a separate TOU product through the procurement process. In such an auction, the EDCs would require that the suppliers bid in the form of a TOU

rate, and then the EDCs would simply convert the winning bid rate into the tariff, which should be a straight forward calculation. This is done for certain Maryland and DC EDCs.

F. Default Service Rate Adjustment Structure -- Residential and Small Commercial Customers

Constellation supports the Commission's recommendation that EDCs consider the incorporation of semi-annual default service rate adjustments within their next default service plans.⁹ However, more important than changing the time horizon for collection is how this adjustment is calculated. It seems apparent under some of the current DSPs that these adjustments have been extreme in certain circumstances. Generally speaking, suppliers are getting paid for the MWh that are on Default Service and the customers on Default Service are paying their bills therefore it does not seem apparent why such large balances are accruing. It seems that potentially some snapshot of the working capital balance (even though it will be collected over time) is being used in the calculation of these rate adjustments. Since these funds will eventually be collected through normal course of business, it appears that these adders have applied to rates as per policy rather than truly from funds owed as a result of a tariff rate miscalculation. Moving the time horizon out further would help alleviate this concern associated with this under collection.

Therefore, Constellation supports moving this to a 6 month time horizon.

G. Hourly-Priced Default Service for Medium Commercial and Industrial Customers

⁹ Tentative Order, p. 7.

In its Tentative Order, the Commission recommends that EDCs consider expanding hourly-priced default service to encompass medium commercial and industrial customers, which the Commission defines as customers with demands greater than 100 kW.¹⁰ Constellation appreciates and shares the Commission's goals of bringing more short-term, market reflective pricing to medium commercial customers in the Commonwealth and ensuring there is no cross-subsidy between small and medium commercial customer classes.¹¹

However, changing the threshold for hourly-priced default service is not the only way to address concerns of having smaller customers subsidize this customer class. The DS product could be more market-reflective by the reliance on shorter-term contracts which bid this class of customer separately. Therefore, the resulting retail rates would be set on their own merit without any offsets from other classes. Lowering the hourly-priced threshold may also implicate certain metering or Smart Meter deployment conflicts and issues that would need to be addressed for this next round of DSPs.

CONCLUSION

Constellation appreciates this opportunity to submit its Initial Comments to the Commission. Constellation is confident that its recommendations will promote continued development of the Commonwealth's competitive retail and wholesale markets, for the ultimate benefit of Pennsylvania's consumers. Constellation looks forward to continued

¹⁰ Tentative Order, p. 8.

¹¹ In PECO's service territory, there is no cross-subsidization between the small and medium-sized commercial customer classes because procurements for medium commercial customers are not commingled with procurements for the small commercial class. See *Petition of PECO Energy Company for Approval of Its Default Service Program and Rate Mitigation Plan*, Docket P-2008-2062739 (Order entered June 2, 2009), p. 6.

discussions during this investigation with all stakeholders regarding these and other issues pertaining to the development of the competitive electricity markets throughout the Commonwealth. Constellation is confident that the end result of this investigation will promote continued development of competition in the Commonwealth for the benefit of all consumers.

Respectfully submitted,



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