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December 14, 2011

Via E-Filing

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

Re: Interim Guidelines Regarding Standards for Changing a Customer's Electricity Generation Supplier
Docket No. M-2011-2270442

Dear Secretary Chiavetta:

Enclosed for filing please find the Comments of PECO Energy Company on the Commission's Proposed Interim Guidelines in the above-captioned proceeding.

Copies have been served as indicated on the parties listed on the attached Certificate of Service.

Very truly yours,

Jeanne J. Dworetzky

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Assistant General Counsel

JJD/adz
Enc.

Cc: Parties on the Attached Certificate of Service
Office of Competitive Market Oversight
(ra-OCMO@state.pa.us)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Interim Guidelines Regarding Standards For Changing a Customer's Electricity Generation Supplier	: : :	**Docket No. M-2011-2270442**

COMMENTS OF PECO ENERGY COMPANY
ON THE COMMISSION'S PROPOSED INTERIM GUIDELINES

Pursuant to the Pennsylvania Public Utility Commission's (the "Commission") November 14, 2011 Tentative Order in the above-referenced docket, PECO Energy Company ("PECO") hereby submits comments on the Commission's proposed interim guidelines regarding the transfer of a customer's account from an electric distribution company ("EDC") to an electric generation supplier ("EGS") or from one EGS to another (the "Interim Guidelines"). PECO appreciates the opportunity to provide input on the Interim Guidelines.

I. GENERAL COMMENTS REGARDING THE INTERIM GUIDELINES

PECO supports the Commission's efforts to explore options to accelerate the customer account switching process. The Company is actively involved in addressing this and other retail competition issues through the Commission's stakeholder process, the Committee Handling Activities for Retail Growth in Electricity ("CHARGE"), and the Commission's ongoing investigation into Pennsylvania's retail electricity market. PECO understands and supports the Commission's desire to remove impediments to retail competition and address customer understanding of electricity supplier shopping and the retail market in general.

While the Company agrees that the existing switching process can be streamlined, PECO suggests that the existing 10-day confirmation period be shortened to four days instead of being eliminated completely. Over the past several months (August 2011 through November 2011), PECO has received rescission requests for approximately 4% of the enrollments that relate to the transfer of a customer's account, with about one-third of those rescissions relating to switches between EGSs. Given this volume of rescissions, the Company is concerned that eliminating the confirmation period altogether could lead to increased customer frustration with shopping, customer complaints, billing issues, and additional unnecessary costs. PECO believes that shortening the confirmation period to four days will address the Commission's goal of promoting retail competition while also maintaining meaningful customer protections.

The Company's specific comments regarding the timing, cost and feasibility of implementing various components of the Interim Guidelines, as well as responses to specific Commission questions, are detailed in Section II below. In Section III, PECO identifies certain issues regarding the use of the Interim Guidelines to establish state-wide requirements and the need for additional clarity regarding the proposed penalties and cost recovery.

II. COMMENTS REGARDING THE IMPLEMENTATION OF CUSTOMER SWITCHING PROPOSALS

A. Overall Implementation and Cost Issues

PECO does not believe that the Interim Guidelines can be implemented in the 90-day timeframe proposed in the Tentative Order. As described in the following sections, adequate time must be provided for the development of new Electronic Data Interchange ("EDI") transactions through the Electronic Data Exchange Working Group ("EDEWG"), the implementation of the EDI changes, modifications to the Company's billing system, changes to business processes, revision of employee scripts and training materials, and training of employees in new business processes. The Company estimates that it will require 10 to 12 months from the date of a Final Order to design, test and implement the Interim Guidelines, assuming that the final Interim Guidelines are substantially the same as the Tentative Order and that any other major changes to Company systems required as a result of the Commission's retail market investigation are not required to be completed in advance of the accelerated switching changes. This implementation timeframe does not include implementation of mid-cycle switching, which the Company believes should be completed following the full deployment of smart meters in PECO's service territory. At this time, PECO's smart meter deployment is projected to be completed as early as late 2014.

One of the most significant implementation challenges arises from the fact that the Interim Guidelines propose changes to the customer enrollment process, but not the customer drop process. Currently, customer enrollments and drops follow the same set of rules and therefore can be processed under a single system. If the rules for enrollments are changed, then a second system will have to be built to accommodate the changes and additional system testing performed to ensure that the separate enrollment and drop systems are coordinated and can function simultaneously. Moving forward, maintaining separate systems would increase general IT maintenance costs as well as necessitate the testing of both systems for any future switching process changes. From a business process perspective, different rules and timelines for enrollments and drops will add complexity and increase the likelihood of customer confusion. PECO therefore recommends that the Commission implement coordinated changes to the drop process in order to allow enrollments and drops to continue to follow the same set of rules.

PECO estimates that the initial cost of implementing the Interim Guidelines set forth in the Tentative Order in PECO's service territory -- not including costs associated with mid-cycle switching -- will likely be in the range of $700,000. However, if further customer switching system changes are required in the future, additional expenditures and work, including a possible rebuild of the same systems, could be required. In addition, the Commission has instituted several other initiatives to promote retail shopping that involve EDC IT system changes, which will require EDCs to implement significant system changes with Commission approval. It is critical that customers, EDCs and EGSs have a clear, orderly path for the completion of all of these system enhancements to avoid conflicting requirements, duplication of effort, confusion, unnecessary costs, and system errors, all of which would reflect negatively on shopping. For these reasons and the reasons discussed in Section III.A *infra*, the Company believes that the Commission should promulgate regulations to implement the changes in the Tentative Order instead of issuing a Final Order.

B. Development And Implementation Of New EDI Transactions

PECO agrees with the Commission that any changes to EDI procedures must be coordinated with EDEWG and estimates that this process will take approximately 90 days.[1] Once any new EDI transactions are finalized, the Company will require 5-6 months to implement changes to the EDI processes, including time to complete project planning, transaction design, internal testing and supplier testing.

C. Customer Switching Deadline

Interim Guideline E provides that, upon request, an EDC must provide an EGS with a customer's next immediate meter read date and switching deadline. As the Commission acknowledged in the Tentative Order, EGSs currently have access to the information used to determine when a customer's new supply service will start.[2] In particular, EGSs can determine a customer's "switching deadline" by using the following pieces of information: (1) the annual

[1] Tentative Order, p. 8.

[2] Tentative Order, p. 7.

meter reading schedule, which is posted on PECO's website for EGSs (the SUCCESS website[3]); (2) the customer's next meter read date, which is printed on the customer's bill; and (3) the customer's meter read cycle, which is provided on the Eligible Customer list ("ECL"), or, if the customer has opted out of the ECL, can be obtained via an EDI request (using the customer's account number) for historical usage information. PECO also currently provides a guidance document, posted on the SUCCESS website, to assist EGSs in determining switching dates, and responds to EGS inquiries regarding how to determine a switching date. Accordingly, the Company believes that the existing process whereby EGSs have the responsibility to determine customer switching deadlines is appropriate and does not present any undue burden for EGSs.

Finally, because the Interim Guidelines eliminate the 10-day notification period, the Company is unsure how the switching deadline is intended to interact with a customer's 3-day contract rescission period. If a customer receives a written disclosure statement from the EGS less than three days before the switching deadline, it is possible the customer will seek to exercise his/her right to rescind the contract after the switching deadline has passed. In that circumstance, PECO may not be able to prevent the switch from occurring. PECO would appreciate additional guidance in the Final Order regarding how to address this situation and how any resulting costs should be recovered.

D. Customer Account Transfer Letter

As a consequence of eliminating the 10-day confirmation period, the Interim Guidelines eliminate the existing EDC confirmation letter and replace it with a customer account transfer letter. The system changes required to implement the new customer account transfer letter are

[3] PECO's SUCCESS website is used to exchange information with EGSs, including electric choice program information, Eligible Customer Lists, and EGS-specific settlement data.

relatively minor and the Company estimates that the process (including finalizing letter content) would take approximately 90 days. PECO currently delivers customer notices through U.S. mail and would use the same delivery process for the customer account transfer letter. The Company appreciates the sample transfer letter provided along with the Tentative Order, but notes that specific letter content may need to be tailored on an individual EDC basis to assure compliance with previous Commission orders. As part of the settlement approved in PECO's Revised Electric Purchase of Receivables proceeding, for example, the Company agreed to include certain notification materials in enrollment letters regarding termination rules.[4]

E. EGS Rescission

Interim Guideline M provides that: (1) an EGS may rescind the transfer of a customer's account no later than three business days prior to the switching deadline; (2) the EGS should utilize an established EDI transaction to accomplish the rescission; and (3) the EGS should reimburse an EDC (or default service provider) for reasonable costs directly related to the rescission. With respect to the rescission deadline, PECO notes that its system utilizes calendar days instead of business days because the use of business days adds complexity and variability to the system as a result of the need to account for holidays and weekends. Thus, the Company requests that any new requirements be stated in terms of calendar days instead of business days.

Regarding the EDI transaction, PECO believes that an existing EDI transaction (the 814 drop transaction from an EGS to an EDC) could be used to allow EGSs to initiate rescissions. Regarding costs, the Company believes that reimbursement should be mandatory and asks that guidance be provided concerning what constitutes the "reasonable costs" that EGSs will be

[4] *See* Docket No. P-2009-2143607 (Order entered June 18, 2010) (providing required customer notification language).

obligated to pay. At a minimum, these costs should include IT and labor expenditures associated with processing the rescission. The Company also notes that new manual business processes would need to be created to track rescission-related costs and any payments received by the EGS.

F. EDC Rescission

Interim Guideline N provides that EDCs: (1) may rescind an account transfer upon the request of an EGS; (2) may recover the reasonable costs directly related to the rescission from the EGS; and (3) must treat customer requests to rescind an account transfer as slamming disputes. First, PECO believes the Commission should clarify that EGS rescission requests should be sent via an EDI transaction. Second, the Company has the same concerns regarding cost reimbursement that are identified in the EGS Rescission section above and believes that reimbursement should be mandatory. Finally, the Company does not believe that it is appropriate to treat timely customer rescission requests as slamming disputes. At present, if a customer makes a rescission request and PECO has sufficient time to prevent the transfer from occurring, no slamming dispute is initiated because the customer remains with its existing supplier. A slamming dispute is initiated if a customer makes a rescission request either: (1) after they have already been switched to a new supplier; or (2) after the account transfer process has been initiated and cannot be reversed. Once a slamming dispute is initiated, supplier payment for customer charges is automatically withheld until the dispute is resolved or 30 days after the dispute is opened. The Company also directs the customer to contact the EGS to resolve the dispute.

PECO believes that its existing process provides customers with appropriate protection against unauthorized transfers. As noted earlier, PECO receives rescission requests for approximately 4% of all enrollments related to the transfer of a customer's account. Treating every request as a slamming dispute, even in cases where the Company could prevent the transfer from occurring in the first instance, would result in unnecessary administrative expense and EGS account holds.

G. Applying Interim Guidelines To Natural Gas Distribution Companies and Natural Gas Suppliers

For the reasons set forth below, PECO hopes it will be possible for PECO to maintain the same customer switching rules for both electric and gas service because doing so would reduce the overall systems, training, and customer service burdens associated with implementing changes. Doing so would also help avoid additional, ongoing IT maintenance costs that would result from maintaining separate systems and lessen confusion for customers receiving both electric and gas service from PECO and for those suppliers that provide both gas and electric supply in PECO's service territory.[5] However, while stakeholders have been considering accelerated switching for electric customers for several months, switching in the natural gas context has not been closely considered. Accordingly, PECO supports taking a closer look at the impacts of accelerated switching on gas suppliers and customers.

H. Customer Education

PECO agrees with the Commission that EDCs should review and update their educational materials to reflect any changes made to the switching process.[6] For PECO, at a minimum, this would include revising website material and customer service training manuals. The Company notes that additional customer confusion may be created if: (1) there are different switching rules

[5] Currently 14 of the 22 natural gas suppliers in PECO's service territory are also licensed EGSs.

[6] Tentative Order, p. 25.

for gas and electric service; or (2) there are different rules and timelines for customer enrollments and drops.

I. Mid-Cycle Customer Switching

In the Tentative Order, the Commission discusses the use of mid-cycle meter reads under current metering systems as being impractical and instead proposes that "supplier switching be fully integrated into all smart meter deployment plans, with the expectation that, once smart meters are in use, supplier switching will be able to occur at any given point in time."[7] PECO agrees with the Commission that mid-cycle switching under current systems is impractical and that any implementation of mid-cycle switching should come after full deployment of smart meters.

PECO notes that mid-cycle switching is not part of the Company's Commission-approved smart meter plan. Although smart meters can facilitate mid-cycle switching, they cannot accomplish mid-cycle switching unless significant changes are made to the Company's billing system. PECO believes that EDCs should be given time to formally evaluate how they would implement mid-cycle switching after smart meter deployment and the changes that would be necessary to their existing smart meter plans. At this time, the Company believes that it could work on billing system changes in tandem with smart meter deployment so that the billing system would be capable of accommodating mid-cycle switching once full deployment is completed (currently estimated as early as late 2014).

[7] Tentative Order, p. 25.

J. Responses To Questions Posed In Commissioner Cawley's Statement

1. How important is it to consumers that they have a good faith estimate of the projected starting date for EGS service in the [EGS] Disclosure Statement?

This question is not directed to EDCs.

2. Are there other means or timelines that would more beneficially provide information to customers regarding the service starting date?

As explained in Section II.D, PECO believes that the current process whereby EGSs are responsible for determining customer switching deadlines (and also service starting dates) and then communicating that information to the customer is appropriate. EGSs have access to the information needed to determine when a customer's new supply service will start. PECO also provides a guidance document, posted on the SUCCESS website, to assist EGSs in determining switching dates, and responds to EGS inquiries regarding the determination process. The Company does not believe that other means or timelines are necessary.

3. If a customer opts out of the Eligible Customer List (ECL) and the EGS and/or customer does not readily have information on customer-specific meter read dates, will this complicate the customer contracting process, and what new processes or EDC information can be provided <u>in real time</u> to enable effective contracting between EGSs and customers?

Under either circumstance, at least some customer-specific information must be provided by the customer to the EGS in order for contracting to take place. A customer's next meter read date and account number are on the customer's bill, and either could be used by the EGS to initiate the contracting process if the customer has opted-out of the ECL. If a customer is unable to locate this information, the customer can call PECO to obtain that information and then provide it to the EGS.[8] Once the EGS has a customer's account number, it can obtain the customer's meter read cycle via an EDI request for historical usage information and proceed with the contracting process. PECO believes the existing process, where customers can obtain required information by reviewing their bills or contacting PECO, is appropriate and facilitates timely contracting with EGSs.

4. **What is the experience of EGSs with regard to customers having ready access to their billing statements so that EGSs can provide the necessary meter read information to customers during the contracting process? Does the vast majority of customers keep a copy of their bills and/or have a bill available when contracting with an EGS?**

This question is not directed to EDCs.

III. COMMENTS REGARDING THE COMMISSION'S PROCESS FOR IMPLEMENTING THE INTERIM GUIDELINES AND ITEMS REQUIRING ADDITIONAL SPECIFICITY OR CLARIFICATION

A. Uniform, State-wide Waivers and Requirements Should Be Implemented Through Formal Rulemaking Procedures

While PECO understands that the Commission intends to initiate a rulemaking at some point after the Interim Guidelines are finalized, the Company suggests that the regulatory waivers and new requirements established by the Interim Guidelines be promulgated as regulations in the first instance. Doing so would provide a clear and orderly process for all stakeholders by establishing specific and coordinated goals, timelines, and cost recovery mechanisms and by allowing for review by the public, the Attorney General, the Legislature, and Independent Regulatory Review Commission.[9]

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[8] In addition, if a residential customer has established an "eCustomer" account on PECO's website, that customer may obtain its customer account number online.

[9] *See* Commonwealth Documents Law, 45 P.S. §§ 1102, 1201–1208; Pennsylvania Administrative Code, 71 P.S. § 232; Commonwealth Attorneys Act, 71 P.S. §§ 732-101–732-506; Regulatory Review Act, 71 P.S. §§ 745.1–745.15; *Department of Environmental Resources v. Rushton Mining Company*, 591 A.2d 1168, 1171 (Pa. Cmwlth. 1991).

Under Pennsylvania law, a regulation establishes a standard of conduct which has the force of law while a statement of policy expresses what the agency hopes to implement in future rulemakings or adjudications "but has no immediate effect."[10] Courts will consider not only the plain language of the pronouncement, but also the manner in which the agency implements the pronouncement and whether the agency's discretion is restricted.[11] In addition, courts have previously invalidated the implementation of uniform, state-wide agency policy through a statement of policy instead of a regulation. In *Department of Environmental Resources v. Rushton Mining Company*,[12] for example, the Commonwealth Court considered whether "standard conditions" contained in coal mining activity permits constituted regulations and, if so, whether they were invalid because they had not been properly promulgated. The Department argued that the conditions were policy statements because they did not have the force of law.[13] However, the court disagreed and found the standard conditions were regulations noting that "[i]nherent in a state-wide policy is that the regulations will necessarily be binding on the agency, and none of the agency's personnel will have any discretion to vary those terms and conditions." [14]

In the Tentative Order, the Commission states that "[w]hen finalized, the proposed Interim Guidelines will apply to EGSs, EDCs and Default Service Providers (DSP) and will

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[10] *Borough of Bedford v. Commonwealth*, 972 A.2d 53, 64 (Pa. Cmwlth. 2009).

[11] *Northwestern Youth Services, Inc. v. Commonwealth*, 1 A.3d 988, 993 (Pa. Cmwlth. 2010). Thus, even where a pronouncement explicitly states that it is not a regulation and that the agency retains discretion in how to apply the pronouncement, courts have found that a binding norm is created when those implementing a policy never deviate from its terms. *Borough of Bedford*, 972 A.2d at 65-66 (citing *Eastwood Nursing & Rehabilitation Center v. Department of Public Welfare*, 910 A.2d 134 (Pa. Cmwlth. 2006)).

[12] 591 A.2d 1168 (Pa. Cmwlth. 1991)

[13] *Id.* at 1173.

[14] *Id.* at 1174. (emphasis added).

govern the transfer of customer accounts from an EDC or DSP to an EGS or between EGSs."[15] The Commission also states that these uniform, state-wide requirements will take effect 90 days after the Commission enters a final order. Although the Tentative Order highlights the Interim Guidelines' use of "directory language", the Interim Guidelines do not provide for agency discretion in how the guidelines might apply to particular cases or circumstances. Accordingly, the Company believes that the Commission should undertake the formal process required to promulgate regulations rather than proposing a series of single-issue orders that may be vulnerable to procedural challenges and that may contain overlapping requirements that cause duplication of effort and unnecessary expense.

B. The Proposed Penalty Provision Should Be Clarified

PECO believes the Commission should revise the terms of the penalty provision in the Interim Guidelines to clarify when penalties will be imposed and to provide some indication as to the nature of those penalties. The terms of a regulation must be sufficiently specific to inform those who are subject to the regulation what conduct on their part will render them liable to its penalties.[16] A regulation must also establish "reasonably clear guidelines . . . in order to prevent arbitrary and discriminatory enforcement."[17]

Interim Guideline P.2 first states that fines and other penalties will be imposed "as is deemed necessary" for the unauthorized transfer of a customer account without a customer's express consent. It then provides that such transfers "*will*" result in penalties for an EDC or

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[15] Tentative Order, p. 12.

[16] *Watkins v. State Board of Dentistry*, 740 A.2d 760, 764 (Pa. Cmwlth. 1999).

[17] *Fabio v. Civil Service Commission*, 414 A.2d 82, 84-84 (Pa. 1980) (internal citations and quotations omitted).

default service provider and "*can*" result in penalties for an EGS.[18] The language is not sufficiently clear to inform EDCs and EGSs when enforcement will occur. Furthermore, there is no explanation as to why EDC penalties are presented as mandatory while EGS penalties are discretionary, or even why EDCs should be penalized at all since EDC switching of customers is based on EGS requests. Finally, if EDC penalties are intended to be mandatory, the provision is not consistent with the switching process established in the Interim Guidelines. EDCs are specifically authorized under Interim Guideline I to rely on EGS account transfer notices as evidence of customer consent unless and until a customer complains. If a customer initiates a complaint *after* its account is switched, the EDC would have already completed the conduct warranting the penalty (the transfer itself) even though it was following the process established by the Interim Guidelines.

For the above reasons, PECO believes the penalty provisions should be revised to indicate when penalties will be imposed, the nature of those penalties, and to clarify that an EDC is not subject to penalties or, at a minimum, is not subject to penalties if it has fully complied with the provisions of Interim Guideline I.

C. The Commission Should Clarify That EDCs Will Recover All Costs To Implement Switching Rule Changes And Explain How Those Costs May Be Recovered

With the exception of Interim Guidelines M and N regarding rescissions, the Tentative Order does not address whether or how EDCs may recover costs associated with implementing changes to customer switching rules. As discussed in Section II.B *supra*, the Company estimates that it will incur significant costs in order to implement the changes proposed in the Tentative

[18] *Id.* (emphasis added).

Order. The Commission's Final Order on this matter should clearly state that EDCs are entitled to full and current recovery of all associated costs.

IV. CONCLUSION

PECO appreciates the opportunity to comment on this important topic and respectfully asks that the Commission consider its comments.

Respectfully Submitted,

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December 14, 2011

Counsel for PECO Energy Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Interim Guidelines Regarding Standards For Changing a Customer's Electricity Generation Supplier	: : :	**Docket No. M-2011-2270442**

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the **Comments of PECO Energy Company on the Commission's Proposed Interim Guidelines** on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

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Dated: December 14, 2011

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