COMMONWEALTH OF PENNSYLVANIA

OFFICE OF CONSUMER ADVOCATE
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWIN A. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

January 17, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17101

RE: Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan
Docket No. I-2011-2237952

Dear Secretary Chiavetta:

Enclosed for filing please find the Comments of the Office of Consumer Advocate in the above-referenced proceeding.

If you have any questions, please feel free to contact me at the number listed above.

Respectfully Submitted,

Tanya J. McCloskey

Tanya J. McCloskey
Assistant Consumer Advocate
PA Attorney I.D. # 5004

Enclosure
cc: Office of Competitive Market Oversight
Retail Markets Investigation (E-Mail only)
Dan Mumford, BCS (E-Mail & Hand Delivery)
Kirk House, OSA (E-Mail & Hand Delivery)
143808

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation of Pennsylvania's Retail Electricity Market	: :	Docket No. I-2011-2237952

COMMENTS OF THE OFFICE OF CONSUMER
ADVOCATE ON THE COMMISSION'S
TENTATIVE ORDER ENTERED DECEMBER 16, 2011

Darryl Lawrence
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org
Aron J. Beatty
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org
Jennedy S. Johnson
PA Attorney I.D. # 203098
E-Mail: JJohnson@paoca.org
Assistant Consumer Advocates
Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Dated: January 17, 2012

TABLE OF CONTENTS

I. INTRODUCTION

On December 16, 2011, the Pennsylvania Public Utility Commission (Commission) entered a Tentative Order setting forth its proposed Intermediate Work Plan in the Commission's pending Investigation of Pennsylvania's Retail Electricity Market. The purpose of the Intermediate Work Plan is to recommend steps to improve the current retail electricity market. Through the Tentative Order, the Commission provides recommended programs and steps to enhance the current retail electricity market. The proposed Intermediate Work Plan provides recommendations regarding: (1) the expansion of consumer education; (2) the acceleration of the time it takes to switch a customer when he/she shops for an alternative supplier; (3) the initiation of customer referral programs; (4) the initiation of a retail opt-in auction program; (5) the inclusion of the default service price to compare (PTC) on customer bills; and (6) an increase in coordination between electric distribution companies (EDCs) and electric generation suppliers (EGSs).

The OCA has provided comments on these issues in the stakeholder meetings, through its November 3, 2011 Comments to the Commission's Tentative Order of October 14, 2011, its November 23, 2011 Comments to the November 10 *En Banc* Hearing and through its December 14, 2011 Comments on accelerated switching in response to the Commission's proposed Interim Guidelines Order issued November 14, 2011. The OCA appreciates the opportunity to provide further comment on some of these topics as the details of many of the proposed competitive enhancements begin to take shape. As the OCA has stated throughout this investigation, the OCA supports the introduction of competitive enhancements that are consistent with current law and that are designed to educate, inform and facilitate retail choice without causing harm to default service, customers or the retail competitive market. The OCA is of the view that the Commission's recommendations in the Intermediate Work Plan can be designed to achieve these important goals.

As noted, the OCA has filed detailed comments on these topics and has provided testimony at the *En Banc* Hearing on several of the topics that are the subject of the Intermediate Work Plan. The OCA incorporates its Comments and Testimony by reference herein. The OCA will focus these Comments on specific issues that require further discussion rather than repeat all of its positions from its prior Comments and Testimony. The OCA would also note that several of the competitive enhancements presented in the Tentative Order are subject to consideration in on-going default service proceedings. The OCA anticipates that it will present the testimony of expert witnesses to address the detailed proposals that have been presented in those proceedings.

As the details of an Intermediate Work Plan are developed, the OCA would note two issues that have not yet been given full consideration. The first issue concerns the cost of the initiatives proposed for the Intermediate Work Plan. The second issue concerns the potential for the simultaneous implementation of possibly competing initiatives contained in the Intermediate Work Plan. As to costs, the OCA remains concerned that there has not been an estimate of the costs associated with the various programs and there has been no determination as to who will bear the costs of these initiatives. The costs of these initiatives should be considered to ensure that there will be customer benefits commensurate with any costs that customers are asked to pay. In this same regard, the OCA submits that many of these programs will provide significant benefits to the suppliers participating in the programs. The Commission must ensure that suppliers make a fair contribution toward these initiatives. To that end, in these Comments the OCA makes some specific recommendations regarding cost recovery for certain programs.

The OCA also remains concerned about the simultaneous introduction of multiple initiatives, many with overlapping features. Not only can this be confusing for customers and customer service representatives who must explain these programs, but the overlapping introduction of multiple initiatives could also have unintended interactions that run counter to one another. The OCA submits that consideration must be given to the proper coordination and implementation timing of the different initiatives. This is a particular concern with the retail opt-in auction and the customer referral program. These two programs share many similarities in design and purpose. The simultaneous implementation of these programs could compromise the success of both programs. The OCA recommends that consideration be given to the proper timing and sequencing of the implementation of these programs.

The OCA looks forward to continuing to develop the details of the design, cost and benefit of the initiatives contained in the Intermediate Work Plan. The OCA provides comments on key issues raised by the Tentative Order below.

II. COMMENTS ON PROPOSED INTERMEDIATE WORK PLAN

A. Consumer Education

In its Tentative Order, the Commission notes the consumer education initiatives that Staff has developed and discussed with the stakeholder group. As the Commission states, a postcard is to be mailed in early 2012. The postcard is Commission-endorsed, encourages customers to shop for a competitive supplier, and promotes the Commission's website. The Commission then references two additional mailings for 2012, including a tri-fold mailer and a letter from the EDC. As each of these initiatives goes forward, the OCA suggests that the Commission consider the results and feedback of the prior round of consumer education before making a final determination about the next step. Follow up discussions about the effectiveness of each of the mailings and messages would be useful to ensure that the subsequent round of consumer education provides the most benefit for the costs involved.

B. Acceleration of Supplier Switching Timeframes

In this Section, the Commission discusses its proposed Interim Guidelines which are intended to streamline the switching process. The OCA filed Comments on December 14, 2011 in *Interim Guidelines Regarding Standards for Changing a Customer's Electricity Generation Supplier* at Docket No. M-2011-2270442. In those Comments, the OCA urged the Commission to retain the confirmation letter process but shorten the confirmation period as a means to address the supplier switching timeframe. See, OCA Comments of December 14, 2011. The OCA continues to support the position set forth in its Comments.

C. Customer Referral Programs

1. Introduction

The OCA notes that it filed extensive Comments addressing customer referral programs in this Docket on November 3, 2011. In lieu of repeating those Comments here, the OCA incorporates the Comments herein and adds the following in response to the Tentative Order.

In its Tentative Order, the Commission discusses two types of customer referral programs—a New/Moving customer program and a standard offer customer referral program. Order at 16-17. The OCA will address the specifics of these programs below. Preliminarily, however, the OCA would like to make two general comments. First, the OCA would note that the Commission has stated that it strongly agrees with the OCA's position that call center management should not result in diminished customer service. Order at 18. This position is consistent with Public Utility Code Section 2807(d) which states: "Customer services shall, at a minimum, be maintained at the same level of quality under retail competition." 66 Pa.C.S. § 2807(d). The OCA will work with the Commission and EDCs to help ensure that any form of referral program that is adopted does not compromise customer service.

Second, the OCA would like to comment on the statement in the Tentative Order that default service has a "design flaw" because it is the "first choice" presented to Pennsylvania consumers and not a "supplier of last resort" model. Order at 16. The OCA disagrees with this characterization. Some consumers will choose not to switch to an alternative supplier for their generation service. Act 129 is very clear that Default Service must serve both customers "who do not choose an alternative electric generation supplier" and customers whose "chosen electric generation supplier does not supply the service." 66 Pa.C.S. § 2803. These default service customers have that right—which is equally as important as the right of customers to choose an alternative generation supplier—as guaranteed by the General Assembly and embodied within Act 129 and Chapter 28 of the Public Utility Code. While the OCA agrees that the use of a properly structured opt-in New/Moving customer program or standard offer referral program could be utilized to better inform customers about electric choice, the OCA submits that messaging about electric choice should be informative and neutral. Neither alternative EGS service nor default service should have a pre-eminent place in the message provided by an EDC's customer service representative.

2. New/Moving Customer Referral Program

In its Order, the Commission recommends that a New/Moving customer referral program be implemented in 2012. Order at 17. It is the OCA's understanding that this program would be used to present customers who call an EDC with information about electric choice during that call. The Commission specifically seeks comment on the following issues: types of calls during which it would be appropriate to provide customer choice information, call center logistics, cost recovery, and the actual enrollment process if the customer decides to act at the time of the call. Id. The OCA will address these issues below.

a. Appropriate Calls for Dissemination of Electric Choice Information

The Commission specifically notes that the New/Moving customer referral program can be applied to "any current default service customer who contacts an EDC call center for any reason, other than emergencies such as service outages or termination of service issues." Order at 17. As a preliminary matter, the OCA would note that the goal of the referral program is to assist customers in making an informed decision about entering the retail generation supply market. Providing this information during a contact will lengthen the time of the call, perhaps substantially, if not properly designed. The longer the call, and the more distant the subject matter from the original purpose of the call, the more likely customers are to become frustrated with, and form a negative opinion about, the process. Therefore, the OCA submits that dissemination of customer choice information must be done in a brief but thorough manner. Further, as the amount of information disseminated on the call increases, the less likely a customer is to fully understand or remember that information. It is critical, therefore, that all customers be provided with written educational materials about customer choice as a follow up to any call center contact. Such documentation should serve to expand customer confidence in the shopping process as a whole.

The OCA submits that this type of program should be limited, for now, only to new or moving customers. This is the critical contact in which information about customer choice is most relevant and useful. As for the proposal that any non-emergency customer contact is an appropriate forum to discuss electric shopping, the OCA respectfully submits that a utility customer should be able to call the EDC and discuss any matter relating to essential service without being subjected to referral or discussions that they do not seek and in which they may not be interested. Additionally, the OCA submits that calls by CAP customers (or those customers interested in finding out more about the CAP program) should not be included in the new/moving referral program at this time, but the treatment of these customers should, instead, be considered as part of the RMI low-income working group. While providing information about customer choice is appropriate when a customer sets up new service or transfers service, any requirement that an EDC initiate these discussions, for example, based on a customer contact for outage, bill payment, high bill complaint, Energy Efficiency Plan inquiry, or service quality reporting would not be reasonable. Such a requirement may, in fact, hamper the EDC's ability to resolve the issue that prompted the contact. Accordingly, the OCA recommends that unless the customer specifically requests it, the requirement for EDCs to provide information relating to customer choice should be limited to calls from new or moving customers.

b. Call Center Logistics

The Commission has asked for comments on whether a referral program should be managed by existing EDC call centers, a contracted call center, a statewide call center or some combination of the three. Order at 18. The OCA has no information regarding the costs associated with any of these methods or the time it would take to implement any method, so it cannot provide comment as to these issues at this time.

The OCA does, however, submit that the Commission should continue to gather information on the practical effects of any referral program on the important services that call centers provide. For example, providing additional information to customers about a referral program will cause a lengthening of average call times. This could result in longer wait times and additional "busy outs." While the OCA is heartened that the Commission "strongly agree[s]" that call center management should not result in diminished customer service, a more detailed examination of the potential ramifications of any referral program on call center service still needs to be conducted. Order at 18.

c. Enrollment Processes

In its Order, the Commission discusses the development of scripts to implement the new/moving customer referral program and states the competitive market alternatives must take a "prominent place" in those scripts. The OCA submits that the goals of neutrality and equality must remain the primary focus of all EDC Call Center scripts. Therefore, in Appendix A attached hereto, the OCA provides a draft script that it believes accomplishes the

Commission's stated goal while ensuring that the information is presented in a neutral and concise way.

With respect to enrollment processes, the Commission also addressed the issue of "hot transfers" and states that "there should be the opportunity for a 'hot transfer' from the EDC call center to the EGS to facilitate a customer's choice." Order at 18. The Commission defines a hot transfer as "the capability of the EDC call center representative to immediately transfer the customer's call to the selected EGS without any delay or other action required of the customer." Order at 18, fn 8. It is the OCA's understanding that during a hot transfer, the EDC call center representative would not only make the transfer but would also stay on the line while that call is connected and may even explain the purpose of the call to the EGS representative who answers the phone. In a hot transfer, the resulting contact with the EGS is, at least in the beginning, a three-person call. This type of transfer can consume a considerable amount of EDC call center time and resources. During a "warm transfer" it is the OCA's understanding that the EDC call center representative would immediately transfer the customer's call to the EGS without any delay, but that the EDC representative would disconnect as soon as the call transfer occurred. In this instance, the responsibility is on the customer to explain to the EGS representative the reason for the call or to call the EGS back if the line is busy or the call is disconnected. Warm transfers will use considerably less EDC call center resources. As the warm transfer meets the Commission's goals while conserving call center resources, the OCA submits that, at this time, a "warm transfer" is the appropriate approach for call transfers.

3. Standard Offer Referral Programs

In its Order, the Commission also discusses the implementation of a Standard Offer Referral Program that provides a percentage off an EDC's Price to Compare (PTC) for a stated period of time. Order at 20. At the conclusion of the standard offer, with proper notice to customers, the EGS can offer new terms or continue with the initial standard product. Id. The customer can accept the new terms, switch to an alternative supplier or move to default service. Id. There is no early termination penalty and the customer is free to switch away from the EGS at any time unless the customer affirmatively agrees to a new arrangement at the conclusion of the introductory period. Id.

The OCA agrees with the Commission's description of a standard offer referral program, as well as with a number of the "broad guidelines" that the Commission has enumerated for the implementation of this program. Specifically, the OCA agrees with the Commission that the program should be voluntary (opt-in), customers should not be charged any termination penalty or fee at any time during the effective period of the standard offer, customers may choose an EGS or be randomly assigned, the offer should be uniform within an EDC's service territory, all existing customer notification requirements apply, and the terms and conditions of the standard offer must be presented to customers before they decide to enter the program. Order at 20-21. There are three guidelines in the Tentative Order, however, that the OCA requests the Commission reconsider.

First, in its Order the Commission proposes a minimum standard offer period of three months. The OCA recommends that the minimum term for the standard offer period be no shorter than four months. Order at 20. A minimum four month period addresses practical concerns regarding the provision of notice, receipt of bills showing the new pricing and the length of time required to switch to a different EGS or to return to default service if the customer does not wish to remain with the EGS. The standard offer period must be sufficiently long for the customer to actually see the benefits of shopping and consider any new offers before having to make any further decisions about his or her generation service. Therefore, the OCA submits that any standard offer rates that provide benefits should apply, at a minimum, for four months.

Next, the OCA disagrees that the Standard Offer Referral Program should be presented during all "non-emergency" customer calls. Order at 14. The OCA reiterates its position, discussed above, that a utility customer should be able to call the EDC and discuss any matter relating to essential service without being subjected to referral or discussions that they do not seek and in which they may not be interested. Therefore, the OCA proposes that, unless a customer requests the information during the call, an EDC not initiate customer choice discussions when a customer calls for the following reasons: to report an outage or other emergency; to report a quality of service issue or high bill; to request information about or enroll in the EDC's CAP or EE&C programs; to request a payment arrangement; or to make any formal or informal complaint. EDC initiation of shopping discussions in these instances could potentially discourage customers from contacting the EDC, as well as hamper the EDC's ability to resolve the issue that prompted the contact. Accordingly, the OCA recommends that unless the customer requests it, information relating to customer choice should not be provided during the foregoing types of calls.[1]

Finally, the Commission lists the "eligible customer base" for the standard offer referral program to be those residential customers currently on default service at the time of the contact. Order at 21. The OCA understands the intent of this limitation as it serves to encourage only those who are not already shopping to do so. The OCA submits, however, that fairness requires that if a customer calls the EDC and requests to be put into the standard offer referral

[1] The OCA would also note that the Order does not address adding details of the Standard Offer Referral Program to the Company's website. *See, e.g.,* Central Hudson Gas & Electric's "EnergySwitch" Program at: http://www.centralhudson.com/energy_choice/energy_switch.html. The OCA would support making the information about any Standard Offer Referral Programs available on the EDCs' websites.

program, such customer should not be denied that opportunity, even if they are already shopping with another EGS.

Below, the OCA will provide additional comments regarding what happens to the customer at the end of the effective period of the standard offer as well as about the allocation of the costs associated with any referral programs.

a. At the Conclusion of the Standard Offer Period, Customers Should Revert Back to Default Service Unless Affirmative Customer Action is Taken

In its Order, the Commission states that, at the conclusion of the standard offer period, and unless the customer takes affirmative action to the contrary, the customer would remain with the EGS on a month-to-month basis without the imposition of any early termination fees. Order at 21. The OCA disagrees with this treatment and, instead, submits that in the case of short-term referral programs, customers should not automatically remain with the EGS at the end of the introductory period. Rather, they should revert to default service unless they affirmatively choose to stay with the EGS or select another alternative supplier.

Given call center requirements, the initial discussion of the program information will need to be done in a brief but thorough manner. Customers will already have gone through the process of enrolling for distribution service and will then have to make a decision about entering the referral program for generation service. It may be difficult for customers to process all of the information they are receiving. Further, the terms and rates that will apply to the customer after the standard offer period end may vary dramatically depending on the EGS to whom the customer is referred. Given all of these factors, customers may not understand what impact the expiration of the standard offer period may have on their bill.

For these reasons, the OCA submits that customers should return back to the Default Service Provider at the expiration of the standard offer period unless the customer affirmatively chooses to stay with its current EGS or move to another EGS.[2]

b. Cost Recovery

In its Order, the Commission requests that the parties comment on how and from whom the costs associated with the new/moving customer program be recovered. As discussed above, it is possible that the extra duties required to conduct any referral program will impose additional burdens on utility call centers and could slow down call center answering times. It is also possible that the EDC may need to hire additional personnel or install additional systems/equipment for hot or warm transfers. Further, costs will almost certainly increase if a statewide call center is put into place. Before a determination can be made about what would be the appropriate call center type to use, a thorough examination of costs and customer impacts must be conducted. If the referral program merely provides brief, educational information then these costs can probably be included as part of normal call center expense. If, however, more detailed information is provided or a referral is made that benefits participating EGSs by saving them acquisition and advertising costs, then participating EGSs should bear at least some of the costs.

At least one other jurisdiction has supported the latter treatment. In the *Proceeding on Motion of the Commission to Review Policies and Practices Intended to Foster the Development of Competitive Retail Markets*, the New York Public Service Commission ordered suppliers (called energy service companies or ESCOs) to bear the cost of any

---

2 This treatment is similar to the "EnergySwitch" program of Central Hudson Gas & Electric in New York. The OCA discussed this program in the Comments it filed in the instant docket on November 3, 2011. More information on the EnergySwitch program is also available at: http://www.centralhudson.com/energy_choice/energy_switch.html.

promotional efforts beyond the utilities' basic outreach and education program that are intended to assist customers seeking to participate in retail access. Case 07-M-0458, *Order Determining Future of Retail Access Programs* at 2 (October 27, 2008) (NY Order).[3] The New York Commission terminated some retail access programs that were subsidized by ratepayers and encouraged utilities to continue existing referral programs, but conditioned such programs on supplier funding. Id. at 13. Only those suppliers that fund the program would be eligible to participate in it. Id. The OCA suggests that the cost recovery of any referral program in Pennsylvania occur in the manner explained above.

4. Conclusion

The OCA appreciates the opportunity to comment on these important issues. The OCA agrees with a number of the guidelines discussed by the Commission for these two referral programs and has proposed, in these Comments, certain modifications to those guidelines to better serve and educate customers. The OCA respectfully requests that the Commission adopt its recommendations.

D. Retail Opt-In Auction Programs

The Commission's Intermediate Work Plan provides specific proposals as to the organization and implementation of retail opt-in auction programs. The Tentative Order provides the opportunity for parties to provide comments on these specific proposals. Therefore, the OCA submits the following comments. As part of this ongoing investigation of the retail electricity markets in Pennsylvania the OCA has previously provided several sets of Comments. Specifically, the OCA's November 3, 2011 Comments are incorporated by reference herein.

---

3 The New York Commission's order is available on the PSC website: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={5EEE2C8C-CA7C-4B8B-B58C-4F3399FE5E77}

The OCA submits that a retail opt-in auction, appropriately structured, could work to provide a positive impetus for retail shopping activities while at the same time not harming default service. The OCA submits that certain elements should be included in any program of this type to ensure that the costs, benefits and risks of such a program are properly aligned in order to provide the best opportunity of success for all stakeholders. The OCA agrees with many of the specific proposals that are set out in the Tentative Order. The OCA does, however, have some concerns with a few of the specific proposals and will provide clarifying comments in those areas as part of the following.

1. Customer Eligibility

For the residential class, the Commission proposes that current, non-shopping default customers be the target. The OCA agrees with this proposal. In order to avoid any appearance of discrimination, the Tentative Order also provides that no customer who wishes to participate should be turned away – with some potential exceptions. The Tentative Order specifically requests comment on how CAP customers and other customers in unique rate classes, such as TOU, net-metering, heating, off-peak and residential thermal storage should be treated.

The OCA agrees that the opt-in auction process should be open to any standard rate class residential customer who wishes to participate. As for customers in certain other rate classes, such as special heating rates, the rate differentials in the default service rate between the regular residential rate class and many of these classes are currently being phased out. Accordingly, by 2013 (when the opt-in auctions will occur) it is likely that the price to compare for classes such as Heating, Off-Peak, Residential Thermal Storage (RTS) and the like will be aligned with the regular residential default service rates. As a result, these customer classes should be able to benefit to a similar extent as regular residential rate classes and should be able to participate in the opt-in auctions.[4]

There are three exceptions: Time of Use (TOU) rates, customers who have Net-Metering arrangements and CAP customers. TOU customers should not be specifically excluded, but it is likely that the offer price for the opt-in auction would not be attractive to the TOU customer. That said, however, should a TOU customer wish to participate in the opt-in auction it would seem that they would have to leave the TOU program in order to accept an auction offer.

As to customers with net-metering arrangements, there should be no prohibition against these customers participating in the auction but such customers must be provided with very clear information prior to that choice. By Commission regulation, net-metering default residential customers who take default service receive a credit from their EDC for their generation in excess of their usage. 52 Pa. Code § 75.13(c). Should a net-metering customer choose to receive generation service from an EGS, however, the terms and conditions as to credit for surplus generation are controlled by the specific EGS contract. 52 Pa. Code § 75.13(e). The OCA submits that prior to entering the opt-in auction process, net-metering customers must fully understand the disposition of any surplus generation under the terms and conditions associated with the opt-in auction offers.

As to CAP customers, the OCA submits that a "no harm" standard to the CAP customer or to the cost of the CAP program should be adopted. How CAP customer discounts are calculated and reconciled varies among Pennsylvania EDCs. Accordingly, each EDC will need to determine whether, under their CAP, harm could result to CAP customers participating

---

[4] At commencement of the opt-in auctions, however, if these rate classes have not aligned with the regular residential rates then such customers would need to be excluded, or treated separately in the bid process.

in the opt-in auction process or to remaining customers who fund the CAP discounts. If any scenario would result in such harm, then the OCA submits that such customers should not be included in the opt-in auction at this time. In the interim, this issue should be referred to the universal service working group in order to discuss possible solutions prior to 2013 as to the challenges of CAP customer participation in the opt-in auctions.

2. EGS and EDC Participation

The Tentative Order addresses the issue of which EGSs and EDCs should be eligible to participate in a retail opt-in auction program. The specific proposal is that all appropriately-licensed EGSs should be eligible to participate. As to EDC participation, the specific proposal is that the three smallest EDCs, Citizen's Electric, Wellsboro and PCL&P be excluded from the retail opt-in auction program at this time. The OCA agrees with these proposals and has no further comment at this time on the issue of EGS and EDC participation.

3. Pilot Programs

The Tentative Order addresses the issue of whether pilot opt-in auction programs should be used as a learning tool prior to the implementation of full-scale opt-in auction programs. The specific proposal is that, based on the questionable usefulness and appropriateness of pilot opt-in auctions, such programs should be excluded from consideration as part of any retail opt-in auction program. The OCA agrees with this conclusion and has no further comment at this time on the issue of Pilot Programs.

4. Program Length/Term

The Tentative Order addresses the issue of the appropriate length of time that a customer should receive generation service under the terms of an opt-in auction offer. The specific proposal is that customers who receive generation service as a result of participating in an opt-in auction should receive such service on terms of no less than six (6) months and no longer than twelve (12) months. The OCA does not object to this proposal, but generally would support the use of a 12-month term.

The Tentative Order also provides that customers should be able to leave the program at any time, but that such departing customers would not be allowed to return to an opt-in auction program after they have returned to default service. The OCA agrees that customers should be free to leave the opt-in auction program at any time, and also agrees that such customers should not be allowed to reenter the program once they have returned to default service. The OCA seeks clarification, however, that customers who choose to leave before the term expiration should not be subject to any cancellation or termination fees. See OCA Nov. 3 Comments at 21-22.

5. Timing

The Tentative Order addresses several issues in regard to the appropriate timing of any opt-in auction programs. The Tentative Order provides that the start of service for opt-in auction customers should occur on or after June, 2013, in order to avoid any disturbance of existing default service contracts or plans. The OCA agrees.

The Tentative Order provides that the enrollment period should be open no longer than one (1) month, and that the enrollment period and the actual start date of service should be as close in time as practicality will allow. The Tentative Order specifically invites comments on this proposed timing issue. The OCA agrees that potential customer confusion and frustration with the process would be lessened if the time between enrollment and actual commencement of service is brief. The OCA submits that a limiting factor here likely is the ability of the EDC to effectively coordinate final meter reads. As such, although the OCA supports a contracted timeframe as is specifically proposed in the Tentative Order, the EDCs are in the best position to provide further technical comment on this topic.

The Tentative Order provides that customer participation levels in the opt-in auctions will likely be higher if customers know the exact offer price at the time of enrollment. Accordingly, the specific proposal is that the auctions for EGS generation offers occur first in order to establish retail prices, followed by customers enrolling at that offer point. The OCA strongly supports this approach. The OCA has supported this approach in its prior comments as being a more useful process than asking customers to enroll first, then having the auction process, then going back to customers who have already enrolled and asking them to commit at a price point they are seeing for the first time. See OCA Nov. 3 Comments at 13-25. Customers must have full knowledge of all terms, conditions and prices before being asked to enroll.

6. Customer Participation Caps

The Tentative Order addresses the issue of whether some upper limit should be placed on the number of customers who can participate in each EDC opt-in auction program. The specific proposal is that no more than 50% of an EDC's default service customer base can participate in an opt-in auction program. The OCA agrees with the concept of establishing a participation cap for the number of customers who would enroll in an opt-in auction process. The OCA submits, though, that a 50% participation cap is too high.[5]

The OCA submits that a 50% participation cap may create unintended issues and challenges for the EDCs and default service. Such a number of customers switching at one time

[5] There may be some confusion as to whether the participation cap applies to the number of customers who are *asked* to participate or the number of customers allowed to enroll. The OCA has viewed the participation cap as the maximum number of customers allowed to enroll. The OCA does not object to asking all default service customers if they wish to participate, but there must be a maximum number that are allowed to enroll. The OCA submits that this should be done on a time-limited, first-come, first-served sign up basis. See OCA Nov. 3 Comments at 18-19.

may have a significant impact on default service operations, causing problems from purchasing to reconciliation. See OCA Nov. 3 Comments at 13-19. The OCA submits that a 20% participation cap is a more reasonable and manageable level for a program of this type.

The Tentative Order also discusses the pros and cons of additional opt-in auctions, as a follow-up to the process currently being considered. The specific proposal is that the opt-in auctions would be a one-time event. The OCA supports this proposal.

The opt-in auctions should be viewed as a one-time event, meant to provide a jolt, particularly to those service areas where switching has been light. The Commission should not become an integral part of choosing winners and losers in the competitive marketplace by the continued operation of a business model that may not be suitable for many EGSs. Repeated auctions may also have the unintended effect of providing disincentives for customers to go out and shop for offers on their own; rather, customers may simply decide to wait for the next auction to come along. In the OCA's view, a well designed, one-time program should be capable of providing a jumpstart for shopping activities without disrupting the market going forward. See OCA Nov. 3 Comments at 22-23.

7. Supplier Participation Load Caps

The Tentative Order addresses the issue of whether caps should be placed on the total number of participating customers that one EGS can capture through the auction process. The specific proposal is that no individual EGS can end up with more than 50% of the eligible customer accounts in an EDC's service territory. The OCA is not opposed to this course of action as it is currently being proposed in the Tentative Order.

8. Composition of Customer Offer – Product

The Tentative Order addresses the issue of what type of product should be offered to customers who participate in the opt-in auctions. The specific proposal is that the offering should be one of the following: (1) a fixed rate product with a $50-$100 bonus; or (2) a guaranteed percent off the price-to-compare with no bonus. The OCA submits that both approaches could be reasonable and could be designed to bring benefits to customers and the market.

In addition, a third option for a product offering exists. A third product could be a fixed rate that must be less than or equal to the price to compare for the duration of the program, coupled with some bonus sign-on offering. Under this approach, a fixed rate would be busted, but if at any time during the course of the program the PTC dropped below the fixed rate, that rate would be adjusted downward to match the lower PTC. In addition, as the OCA has suggested in prior comments, a semi-annual adjustment of the price-to-compare as opposed to the current quarterly process may make the composition of such offers easier to construct and easier for consumers to understand. Moreover, changing the current time frame for the energy cost adjustment to a 12-month reconciliation method should also tend to avoid volatility in the price to compare and provide customers with better price signals. See OCA Nov. 3 Comments at 37-39.

The Tentative Order also addresses the issue of a customer's ability to terminate service at some point after accepting an EGS-auction offer. The specific proposal is that customers could do so with no early termination fee, but the customer would not be eligible for a bonus payment under certain early termination scenarios where the customer left within the first three (3) months. The OCA agrees with this proposal.

9. Customer Options Upon Program Expiration

The Tentative Order addresses the issue of how the auction program ends for customers. The first specific proposal is that EGSs must follow the Commission's renewal notice guidelines and provide two (2) notices to customers prior to the end of their auction contract term. It has been the OCA's position throughout this investigation that there should be three (3) notices – first, a notice that the auction program is ending, followed by the two (2) notices from the EGSs in accordance with the Commission's renewal notice guidelines. See, 52 Pa.Code § 54.5(g)(1). Due to the nature of this program, and the target non-shopping default service customers, the OCA submits that customers should receive the first notice at 90 days prior to their contract end date. This notice should specifically inform customers that the program is ending and explain what is going to happen next. Then, these customers should receive the two (2) notices from their EGS as required by the Commission's regulations. The OCA submits these last notices may be optimal if sent at 60 and then 45 days prior to the contract end date. The 45-day notice would be the more detailed "options notice" as the Tentative Order describes.

The second specific proposal in the Tentative Order is that customers who do not respond to the notices can be put on new month-to-month terms with their existing supplier, with the ability to cancel at any time without any termination/cancellation fees. It is further proposed that customers who do not respond to the notices can be placed on either a fixed or variable rate month-to-month contract with their existing supplier. The OCA submits that customers who do not respond to the notices must be provided a fixed-rate product that can be terminated by either the customer or the supplier on a month-to-month basis. Authorizing EGSs to continue service at variable rates for customers who do not respond to the notices has the potential to create confusion, misunderstanding, mistrust and lack of incentive for customers to shop in the aftermath of such a situation. The OCA notes that the Tentative Order provides that EGSs are under no obligation to continue service with a customer, under any set of terms, once the opt-in auction program ends. The OCA agrees. EGSs who believe it is not within their business strategy to continue service to such customers on a fixed-rate basis can provide customers with such notice.

10. Opt-In Auction Structure

The Tentative Order addresses the issue of whether a sealed bid or descending clock auction should be used as a structure for the opt-in auction programs. The specific proposal is to solicit additional comments on how either process would work to provide a single clearing price. The OCA agrees that additional information on this issue is needed. The OCA submits, however, that more information than just the "mechanics" of either process is likely needed.

As the Tentative Order provides, there is a general consensus that a sealed bid process is easier to implement and less expensive than a descending clock auction process. There is a school of thought, however, that a descending clock auction may result in a lower clearing price as opposed to a sealed bid process. The underlying issue here is one of effectiveness, or costs versus benefits. The OCA submits that the Commission should consider soliciting quantifiable evidence of same as to one process versus another.

In addition, and consistent with the principles of cost-causation, the participating EGSs should be responsible for all reasonable auction structure/implementation costs. The opt-in auction structure will provide EGSs with access to large groups of customers with very little marketing investment and/or significant barriers to entry. As such, costs for the operation of either auction structure should be borne at least in part by the participating EGSs.

The Tentative Order also addresses the issue of how participating customers would be assigned to the winning EGSs after the auction concludes. The specific proposal is that customers would be randomly assigned by account, and not based on load. The OCA agrees with this proposal.

11. Creditworthiness and Security

The Tentative Order addresses the issue of EGS creditworthiness and security that winning EGS' should provide in order to protect EDCs in the event of EGS non-performance. Order at 41-42. Acknowledging that this issue had received very little discussion up to this point, the Tentative Order did not set forth a proposal and instead requested further comments from the parties. Specifically, the comments should identify the obligation that warrants a security requirement and the appropriate amount.

The OCA does not, in principle, oppose the concept of requirements for creditworthiness and security for EGS, since it is likely that costs of supplier non-performance ultimately will be imposed on customers. However, the OCA also has a strong interest in ensuring that such requirements are not excessive since any such costs will be priced into auction bids, or, may limit an EGS' ability to bid. Since the OCA does not at this time have specific information on the EDC "obligations" that can be adversely impacted, we offer no specific proposal at this time

12. Other Topics

The Tentative Order invites comment on any other aspect of opt-in auctions that was not specifically set out, for example, comments on post-auction reporting. The OCA submits that a standardized post-auction report would be of use to the Commission and the parties. Details such as the number of customers solicited, the number of customers who enrolled and ultimately switched generation suppliers, the timeframes from enrollment to start of service, customer feedback on the programs, expenses incurred for the EDCs and other general indicators of how the program operated could provide a useful overview of the process.

E. Default Service Price to Compare

In the Tentative Order, the Commission addresses the treatment of the Price to Compare and whether it should be placed on each customer's bill. Tentative Order at 42-45. The Commission recognized that all of the major EDCs currently place the PTC on customer bills while addressing views of various parties concerning the appropriateness of such bill placement and the manner in which the PTC information is displayed. The Commission further recognized that the default service providers' practice of changing default rates on a quarterly basis complicates how the PTC should be displayed to avoid customer confusion. Order at 43.

In resolving this issue, the Commission found that it is beneficial for customers to know their quarterly-changing PTC, noting that, "it is important to give consumers more information, rather than less, so they can make informed choices when shopping for generation." Order at 44. The OCA supports the Commission's finding and agrees that more information concerning the PTC will allow customers to make informed shopping decisions. As such, the OCA supports the Commission's position that the PTC should appear on each major EDC's bills.

The Commission further proposed basic requirements for the presentation of PTC information on customer bills. While each EDC could tailor the information as needed, the Commission proposed the customer's PTC, the effective period of that PTC, and a statement that explaining when and how often the PTC can be adjusted. In addition, each EDC would be required to place the PA PowerSwitch website on the bill if space is available. The Commission provided a sample paragraph for guidance.

The OCA supports the data required by the Commission. In addition, the OCA would support the inclusion of the OCA's website on the bill of residential customers where space is available. The OCA has published a residential shopping guide since 1999 that provides additional shopping information that benefits consumers in their shopping decisions. The OCA notes that PPL Electric Utilities currently incorporates the OCA's website in its newly reformatted bills. The Price to Compare is displayed on PPL's current bills, as follows:

> PPL Electric Utilities' price to compare for your rate is x.xx cents per kWh effective 12/1/2011 to 2/29/2011. For a list of supplier offers, visit papowerswitch.com or www.oca.state.pa.us.

The OCA encourages EDCs to include the OCA website in this manner where possible.

F. Coordination Between EDCs and EGSs

1. EDC Supplier Charges

The OCA has no comments on this section at this time.

2. Sample Bills

The Commission addresses the issue of whether actual customer bills, as compared to sample bills, should be made available to a customer's EGS. Order at 47-48. The Commission notes that concerns were expressed by the OCA that customers' bills should be released only when a customer has agreed to the release of the data contained on the bill. The Commission requested that parties comment on whether the existing "Letters of Authorization" (LOA) between the EGS and consumers provide appropriate consent.

The OCA has reviewed a sample Letter of Authorization and does not believe that it is adequate to serve as permission for the release of the actual customer bill. The OCA submits that the release of an actual customer bill to an EGS is only appropriate if a customer has authorized the release of their actual bills. To the extent the current LOAs do not make it clear that actual bills, including all distribution charges and any other information that appears on the bill, will be released, the LOAs should be modified. Actual customer bills can provide information that a customer may not wish to share with a third party. For example, customer bills can provide past due amounts accrued prior to developing an EGS relationship that a customer would want to keep private. In addition, bills could show the receipt of LIHEAP grants and Dollar Energy grants that are not relevant to an EGS relationship going forward. For these reasons, the OCA submits that the release of an actual customer's bill to an EGS should only be permitted if the customer has explicitly authorized the release. The current Letter of Authorization will need to be modified if it is to be used for this purpose.

3. Creditworthiness Standards

The Tentative Order addresses the nature of the risk that an EDC actually faces if an EGS defaults on its obligations to customers. There is no specific proposal on this issue. Parties are invited to comment, and to also address the possibility that a separate proceeding may be needed in order to reach a resolution on this topic. The OCA has no comment on this issue at this time.

III. CONCLUSION

The OCA thanks the Commission for this opportunity to provide further comment on the Intermediate Work Plan. The OCA looks forward to the implementation of programs that will educate, inform and facilitate a customer's choice in accordance with the law.

Respectfully Submitted,

Tanya J. McCloskey

Darryl Lawrence
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org
Aron J. Beatty
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org
Jennedy S. Johnson
PA Attorney I.D. # 203098
E-Mail: JJohnson@paoca.org
Assistant Consumer Advocates
Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

January 17, 2012

151881

APPENDIX A

First step: *Set up distribution service, generate account number, complete service initiation process (Account number may need to be provided to the customer at this stage).*

Second Step: Now we have to set up your generation service. This is the portion of the bill relating to the energy you use and your generation charges. In Pennsylvania, you can choose your electric generation supplier. Licensed alternative generation suppliers offer different electricity products, prices, and terms that you can choose from. If you do not choose an alternative supplier, you will receive your generation service through our default service program. The rate for our default service program is (*PRICE*) until (*DATE*). Are you interested in choosing an alternative generation supplier at this time?

No: OK. I will set up your service for our default service program at a rate of ___. We will be sending you a Welcome Packet that will contain information about (*Typical List*). The Welcome Packet will also include information about supplier choice. You can choose an alternative supplier if you wish at any time in the future. (*Conversation ends*).

Yes: Great. If you know which supplier you would like, I can take that information now (*OR, I can transfer you to that supplier to make the arrangements*). If not, I can give you some more information about your choices.

Knows supplier: *Working group to develop an enrollment process*

More information: Let me tell you about your options.

--Describe the standard offer referral program, if available
--Describe other resources and Welcome Packet
--Obtain customer preference

--**If standard offer/referral program selected:** *Working group to develop an enrollment process*

--**If no decision made:** We will be sending you a Welcome Packet that will contain information about (*Typical List*). The Welcome Packet will also include more information about supplier choice. You can choose an alternative generation supplier if you wish at any time in the future.