

PENNSYLVANIA ENERGY MARKETERS COALITION

February 1, 2012

Rosemary Chiavetta
Secretary, Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Dear Secretary Chiavetta:

Please find enclosed the Reply Comments of the Pennsylvania Energy Marketers Coalition ("PEMC"), in response to the Pennsylvania Public Utility Commission's Tentative Order of December 15, 2011, in the matter of the proposed Intermediate Work Plan for the Investigation into Pennsylvania's Retail Electricity Market (Docket No. I-2011-2237952). Please do not hesitate to contact me with any questions or concerns regarding our Comments.

Sincerely,



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Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

REPLY COMMENTS OF THE PENNSYLVANIA ENERGY MARKETERS COALITION

INTRODUCTION

Pursuant to Docket No. I-2011-2237952, the Pennsylvania Public Utility Commission (“PUC,” or “Commission”) seeks Reply Comments on a Tentative Order (“Order”) issued on December 15, 2011, regarding the proposed Intermediate Work Plan for the ongoing Investigation of Pennsylvania’s Retail Electricity Market (“RMI” or “investigation”). This work plan was developed by the Office of Competitive Market Oversight (“OCMO”) with significant input from stakeholders and participants in the technical conferences led by OCMO as part of the RMI process.

The Pennsylvania Energy Marketers Coalition (“PEMC”)¹ appreciates the opportunity to provide Reply Comments in response to the Initial Comments filed by PEMC and other RMI parties on January 17, 2012. We continue to be appreciative of the hard work of OCMO and the vision of the Commission in developing a serious, comprehensive approach to enhancing the competitiveness of the retail electricity market in the Commonwealth.

PHILOSOPHICAL CONCERNS

The Office of Consumer Advocate (“OCA”) expressed two major concerns with proposed competitive market enhancements included in the Order: (1) the cost of initiatives, and (2) possible conflicts between programs that are implemented simultaneously (OCA 2). Further, OCA notes that Act 129 and Chapter 28 of the Public Utility Code require Electric Distribution Companies (“EDCs” or

¹ For purposes of this filing, the PEMC consists of Agway Energy Services, LLC (“Agway”), Energy Plus Holdings LLC (“Energy Plus”), Gateway Energy Services Corporation (“Gateway”), Interstate Gas Supply, Inc. (“IGS”), Pennsylvania Gas & Electric (“PAG&E”), and Vectren Retail, LLC (“Vectren”). PEMC members supply electricity, natural gas, and various other energy services to residential and commercial customers across a large number of utility markets throughout several states. PEMC works collaboratively on non-competitive, regulatory issues to advance competitive markets and consumer choice.

“utilities”) to serve both those customers who do not choose a supplier and those whose supplier is unable to provide service for some reason (OCA 5-6). OCA argues that this means an EDC has a legal obligation beyond that of a “provider of last resort.” OCA acknowledges that neutrality should be upheld between both default service and Electricity Generation Supplier (“EGS” or “supplier”) service (OCA 5-6).

The PEMC appreciates the concerns of OCA, but would respectfully point out that, hypothetically, if all customers in the Commonwealth shopped and switched to a supplier, the suppliers would, in effect, be serving as default service providers. As no RMI stakeholders, to our knowledge, have proposed a cap on the number of customers who can choose to switch (outside of caps in specific proposed competitive enhancements), it would appear that stakeholders accept that this hypothetical situation is possible and appropriate. If we can agree that suppliers serving 100% of customers is possible and appropriate as a result of shopping, why would it be *inappropriate* to suggest that suppliers could serve as alternative default service providers for the same customers through a different mechanism?

The combined Comments of AARP, the Pennsylvania Utility Law Project (“PULP”), and Community Legal Services, Inc. (“CLS”), along with the comments of Exelon Generation Company (“Exelon”), similarly argue that customer confusion might result from running both the retail opt-in auction and customer referral programs simultaneously. AARP, PULP, and CLS recommend undertaking the auction first, evaluating its success, then determining whether or not to implement additional enhancements (AARP/PULP/CLS 13-14). Exelon, on the other hand, recommends that other competitive enhancements be implemented first, followed at some point by the retail opt-in auction (Exelon 3).

While the PEMC agrees that all efforts should be undertaken to minimize customer confusion and provide an open, transparent process, as we have argued elsewhere in this investigation, even stronger action must be undertaken in order to reap the benefits of a fully competitive marketplace for the Commonwealth’s consumers. The auction is a one-time event; the customer referral programs

are ongoing. These programs are targeted broadly at similar customer groups – non-shopping customers – but offer different channels by which customers can learn about, and exercise, their energy choices. Implementing one without the other will only stall movement towards a full competitive marketplace in the Commonwealth.

CONSUMER EDUCATION

The Commission has proposed a three-pronged approach to consumer education for 2012: (1) a PUC-endorsed postcard mailing on shopping and switching to be sent to all customers by the electric distribution companies (“EDCs”) no later than February 29, 2012; (2) a PAPowerSwitch.com brochure to be sent to all customers by the EDCs in May 2012, which will include a detailed walk-through of the shopping process as well as a highlight of savings that can be achieved by the consumer; and (3) a letter to customers from their EDC encouraging shopping, directing customers to PAPowerSwitch.com, and emphasizing that utilities will continue to deliver electricity reliably even after customer switching, in early Fall 2012.

In general, we are pleased to see that almost all parties see strong value in enhanced consumer education efforts. No commenters suggest the campaign is ill-advised or should be changed in a substantial manner, which is testament to the hard work of the RMI stakeholder groups in developing this campaign.

We note that in their combined Comments AARP, PULP, and CLS express concern that the consumer education materials, particularly the May brochure, over-promise the potential savings a consumer might receive as a result of shopping (AARP/PULP/CLS 2-3). We expressed similar concern in our January 17, 2012 Comments; it is critical that language be judicious and prudent with regard to the savings a consumer can expect from switching to a supplier. We would go beyond the concerns of AARP, PULP, and CLS to reiterate that the key message to deliver to customers is that Choice has great value *beyond* savings, even as important as savings are and should be. A vibrant marketplace of choices will include other value-added products and services, like fixed or variable prices, time-of-use pricing, renewable energy options, and energy efficiency audits.

We also appreciate the concern expressed by OCA that each of the three mailings be executed in as effective a manner as possible. OCA proposes that each mailing be completed and evaluated before a final decision is made to implement the next mailing (OCA 4). We would respectfully disagree with this approach. While it is reasonable and prudent for the EDCs and Commission Staff to evaluate and adjust minor logistical details after each mailing, we do not believe this straightforward effort should be tied up in protracted deliberations multiple times throughout the year. EGSs, EDCs, Commission and Staff, OCA, and other stakeholders all have expressed support for further consumer education; this is one area of the RMI that can be executed upon without further delay.

We appreciate the concerns of the EDCs that costs of the three proposed mailings be fully recoverable by the utilities, and we support that position. We are concerned, however, that both Duquesne Light Company (“Duquesne”) and PECO Energy Company (“PECO”) request flexibility with the timing of the mailings, in order to avoid “overwhelming” customers with multiple mailings, as well as for administrative and cost reasons (Duquesne 4; PECO 3). We would argue, however, that each of the three mailings is distinctive but also mutually reinforcing; in order to successfully educate consumers about Choice, it is critical to provide clear, consistent and regular exposure to consumer education materials, in different formats and on different letterheads. Lengthening the time between mailings will result in lost momentum towards the goal of widespread awareness of Choice across the Commonwealth in 2012.

ACCELERATED CUSTOMER SWITCHING TIMEFRAMES

The PEMC submitted Comments on the PUC’s Tentative Order on *Interim Guidelines Regarding Standards for Changing a Customer’s Electricity Generation Supplier* (Docket No. M-2011-2270442) on December 14, 2011. In those Comments, we noted our support for the accelerated switching timeframes guidelines; in particular, the Commission’s proposal to waive the current 10-day waiting period after an EGS submits a new enrollment or change request to an EDC.

Several EDCs (Duquesne and PECO) and one EGS (Dominion Retail) expressed concern in their Comments on the instant proceeding regarding the Commission's proposed waiver (Duquesne 406; PECO 3-4; Dominion Retail 2-3). Rather than respond to their concerns at length in this proceeding, we recommend discussion of this issue occur in the separate proceeding (Docket No. M-2011-2270442) on this subject. We would merely reiterate that the members of the PEMC strongly support robust and appropriate consumer protections but we believe this waiting period unnecessarily prolongs the switching process and can result in customer dissatisfaction and frustration. While there are, unfortunately, incidents of true slamming that occur because of unscrupulous actors, these occasions are rare, and can *always* be addressed through customer communication with the EGS, the EDC, and when necessary and appropriate, through the Commission's complaint and dispute resolution process.

CUSTOMER REFERRAL PROGRAMS

Following careful consideration of the topic in the RMI technical conferences, in this Tentative Order the Commission has laid out two approaches to implementing a customer referral program in the Commonwealth. First, the PUC proposes the establishment of a "New/Moving Customer Program" ("N/MCP"), to be implemented during 2012, which would be primarily targeted at customers moving to or within an EDC territory, but would also be open to all default service customers. In particular, the Commission is seeking comments on the following elements of such a program: (1) the use of a dedicated referral call center versus an existing EDC call center; (2) the types of customer contacts that should include mention of the referral program; (3) the customer groups eligible for the program, specifically whether small business customers and those customers on financial assistance should be eligible; and (4) the inclusion of a "hot transfer" process which would allow the call center to instantly transfer the customer to the EGS for the enrollment process.

A number of stakeholders, including UGI Energy Solutions ("UGIES"); Washington Gas Energy Services ("WGES"); and Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company ("Met-Ed/Penelec/Penn Power/West

Penn”) expressed concern that customer referral programs, particularly the proposed N/MCP, could put an unreasonable burden on EDCs to educate their customer service representatives (“CSRs”) about EGSs and their current offers, and could put EDC CSRs in the uncomfortable and inappropriate position of acting as the “marketing arm” of EGSs (UGIES 5; WGES 3; Met-Ed/Penelec/Penn Power/West Penn 7-8). WGES further noted the EDCs could, even if it is unintentional, express a bias towards an EDC affiliate (WGES 3). We appreciate and share these concerns. As we proposed in our January 17, 2012 Comments, if the N/MCP is re-tooled to more closely resemble the SOCRP, by offering a standard percentage discount across participating EGSs, the need for EDC CSRs to be well-versed in various supplier offers would be eliminated. It is also critical to also remember that this is only a single step on the road to a fully competitive marketplace.

AARP, PULP, and CLS also expressed a general concern that cost of both the SOCRP and the retail opt-in auction will be borne by ratepayers, rather than suppliers, which they believe is unfair because ratepayers have already paid “millions” to implement retail competition in the Commonwealth (AARP/PULP/CLS 4-5). AARP, PULP and CLS note that they are not opposed to customer referral programs on principle, as long as the need is demonstrable (as measured, for example, by lower customer awareness of Choice and lower shopping rates) (AARP/PULP/CLS 4-6). They question the need of the program in Pennsylvania, claiming evidence indicates more customers have switched in PPL without a referral program than have switched in New York State territories *with* a referral program (AARP/PULP/CLS 6-7). We believe that the circumstances in Pennsylvania are very different than those in New York and that properly structured referral programs still add strong value in educating and migrating customers.

EDC Pike County Light and Power (“PCL&P”) proposed adopting the well-known PowerSwitch customer referral program used by PCL&P’s parent company, Orange and Rockland, in New York State. This program provides a uniform 7% off the utility default service rate to customers for an initial two-month introductory period (PCL&P 4). The PEMC agrees with the adoption of the PowerSwitch model as one that works well in the marketplace.

DPL argues that the N/MCP should apply to *only* new and moving customers, and that the SOCRP program should not be implemented at this time, to avoid customer confusion with two customer referral programs plus the opt-in auction occurring simultaneously. We appreciate the concern of DPL in ensuring that customers are fully informed and empowered to make their own energy choices. We believe this concern can be partially addressed by reforming the N/MCP as we propose above. In terms of customer confusion between the referral programs and auctions, it is important to remember that the auction will be a one-time event, while the referral programs will be ongoing elements of the Choice infrastructure in the Commonwealth. If the two referral programs can be brought into alignment, customer confusion between the programs should be minimized.

PECO and PPL both endorse the concept of the N/MCP, and believe the program could be implemented in 2012 (PECO 4; PPL 7). The PEMC appreciates these EDCs' progressive attitude towards competitive enhancements and their efforts towards meeting the PUC's proposed timeline for implementation.

PECO has further proposed a variation of a SOCRP which would require a dedicated statewide call center and a separate auction process. Under this proposed "Supplier of the Month" program, participating suppliers would submit bids to enroll all customers referred to the winning EGS in a given month at a fixed discounted rate over a 12 month period (PECO 5-6). While we appreciate PECO's creativity and willingness to experiment with a variety of Choice enhancements, we believe this approach has two significant flaws. First, monthly auctions to be the next month's featured supplier will be an administrative burden for both the EDCs and EGSs. Second, and more importantly, this approach could result in a single, large supplier being able to dominate the entire PECO territory, if it is able to price other smaller suppliers out of the competition. While in the short-term this approach might result in lower prices and higher switch rates in the medium- to long-term, such market concentration could lead to higher prices, as well as a paucity of innovative, value-added products and services that come with a fully competitive market.

PPL has also proposed: (1) including a message for customers in the “hold queue” of the EDC’s interactive voice response (“IVR”) system, which promotes shopping and directs customers to PAPowerSwitch.com; (2) enhancing the new customer welcome kit with additional shopping information, and (3) developing an automated system that would direct CSRs to note customers’ interest in more information on shopping during a phone conversation, and provide for a follow-up SMS message or email with more information (PPL 8-10). We believe these enhancements could be of great benefit to consumers, but we would want a careful accounting of costs, and a determination on cost recovery, before giving unqualified support.

Hot Transfer

A number of Commenters expressed concern with the use of a “hot transfer” of a customer from the EDC to the EGS to facilitate enrollment. AARP, PULP, and CLS, in their joint Comments, argued hot transfer should only be used if the customer specifically requests speaking with a particular EGS; they say there should be no randomized transfer to an EGS (AARP/PULP/CLS 8-9). PECO notes that hot transfer functionality requires logistical details that are not yet worked out; for example, to work successfully, an EGS must have a fully-staffed call center with the same hours as PECO’s call center (PECO 8-9). OCA proposes a “warm transfer” rather than “hot transfer”; the EDC CSR would not stay on the line with the customer to initiate the conversation with the EGS representative, but rather just transfers customer directly to EGS and ends the call. OCA believes this approach would ensure EDC call centers meet their metrics for quickly and efficiently resolving customer enquiries (OCA 7-9). PPL similarly supports a warm transfer option (PPL 11-12). First Energy, another EDC, also opposes hot transfers, and instead recommends a dedicated line at each EGS to which the EDC CSR could transfer an interested customer, without remaining on the line to provide an explanation to the EGS CSR.

As we noted in our January 17, 2012 Comments, we share concerns about a hot transfer mechanism to refer customers to EGSs. We recognize the administrative costs that could come into play, and are concerned about potential delays that could result in the launch of a referral program if

hot transfers were included. The so-called warm transfer option proposed by OCA and PPL may be a plausible alternative, but we recommend further discussion in a subgroup comprising suppliers, utilities, and OCA to determine the viability of including it as part of a transfer protocol.

Customer Eligibility

OCA, AARP, PULP, and CLS argue that all customers on financial assistance from EDCs (“CAP customers”) should be excluded from referral programs, because of the risk of price volatility (OCA 7; AARP/PULP/CLS 9-10). PECO also says that under its existing protocols, CAP customers automatically lose benefits if the customer enrolls with an EGS (PECO 7). PPL, on the other hand, does allow CAP customers to shop while retaining benefits, and believes that CAP customers should be eligible for customer referral programs (PPL 11).

The PEMC sees PPL’s successful implementation of portable CAP benefits for shopping customers as a model for other EDCs to adopt. We recognize there are administrative, policy, and educational hurdles to effectively implementing this approach, but we believe a collaborative process, such as an RMI subgroup, could build on the PPL model to ensure that customers could shop, retain their benefits, and be assured of robust consumer protection.

Types of Calls that Should Trigger Referral Discussion

AARP, PULP, and CLS note in their comments that it is crucial for the EDC CSR to resolve the original purpose of customer’s call first before engaging in customer referral discussion (AARP/PULP/CLS 10). They also state it is only appropriate for an EDC CSR to bring up shopping with a customer if speaking with a new or moving customer seeking service; other calls should not be used for EGS marketing (AARP/PULP/CLS 11-12). PECO says referral scripts should only be triggered if customers are calling to move, initiate, or transfer service, or if they are enquiring about shopping (PECO 7). FirstEnergy argues that referral scripts should only be triggered for moving customers /new service calls, high bill inquiries, or shopping inquiries (Met-Ed/Penelec/Penn Power/West Penn 11-12). OCA believes certain calls (outage, quality of service, billing problem, CAP or energy

efficiency program enrollment, and complaints) should *not* result in a customer referral conversation (OCA 7-8).

The PEMC agrees that not every customer contact should result in the EDC CSR mentioning the referral program. There are clear cases when such discussion is *not* appropriate, including emergency calls, service disruption reports, and requests to disconnect service because of a move out-of-state. We believe the specific call type triggers should include (1) new/moving customer calls; (2) shopping inquiries; and (3) high bill inquiries. Additional call types that may result in a customer referral script trigger should be determined by EDCs as part of their default service filings. The PEMC reiterates that for calls that do not fall into clear categories in which a referral discussion is appropriate, CSRs could use a short, standard “sign-off” statement directing consumers to PAPowerSwitch.com (for example, “Thank you for calling [EDC name]. Remember, you have a choice when it comes to your electricity supply. Please visit PAPowerSwitch.com for more information.”).

Referral Product Composition and Post-Introductory Period

AARP, PULP, and CLS oppose the use of an introductory rate to incentivize customers to switch through a referral program, and they also argue that affirmative consent by customer should be required for EGS to retain a customer after the introductory period has expired (AARP/PULP/CLS 11-12). OCA similarly argues that customers should revert to default service without affirmative action to stay with EGS (OCA 12).

The PEMC appreciates the concern that consumers be protected against “bait-and-switch” tactics. An introductory rate, however, is not such a tactic. If the introductory rate and time period are (1) communicated to the customer in an upfront and transparent manner; (2) are uniform across EGSs within a particular EDC territory; and (3) provided to the consumer by a well-trained and neutral EDC CSR, there should be minimal confusion about the limits of the referral program rate. Requiring an affirmative customer decision in order for a customer to continue with an EGS after the introductory period has ended, would place an unnecessary burden on the consumer to have to act in order to maintain supply from their current EGS. The existing, robust consumer notification

procedures will remain in place for referral program customers, like all shopping customers, and consumers will have the opportunity to remain with the incumbent supplier, switch to another supplier, or return to EDC supply at the end of the contract period without forcing such a decision. It is equally important to remember that existing consumer protections are strong and according to most stakeholders are transparent and effective. Requiring affirmative consent in order for a customer to continue on EGS supply undermines Choice and the purpose of providing a “kick-start” to shopping.

RETAIL OPT-IN AUCTION

In its Final Order on EDC Default Service Plans (Docket No. No. I-2011-2237952), issued on December 15, 2011, the Commission expressed its position that the EDCs’ next default service plans (to be filed for approval in 2012 in order to take effect by June 1, 2013) should include a retail opt-in auction, in which customers currently on default service could voluntarily elect to participate and suppliers would bid to serve tranches of these customers. In the instant proceeding, the Commission has provided more detail on, and seeks comments regarding, a number of elements of such an auction, including: (1) customer eligibility; (2) EGS and EDC participation; (3) pilot programs; (4) program length or term; (5) timing of an auction; (6) customer participation caps; (7) supplier participation load caps; (8) composition of customer offer – product; (9) customer options upon program expiration; (10) opt-in auction structure; and (11) creditworthiness and security. We have addressed each of these points in our January 17, 2012 Comments, but we will focus on only a few of the topics below.

General Concerns

UGIES expressed its opposition to the auction concept on principle, arguing that the Pennsylvania market has not yet had time to mature on its own (UGIES 9-10). The PEMC appreciates UGIES’s recognition that while the Commonwealth has made tremendous strides towards a fully competitive retail electricity market, more work needs to be done. Unlike UGIES, however, the PEMC believes that a properly designed and implemented opt-in auction would promote this further

development. At the same time, we recognize that such an auction is an interim step, and just one such step, on the way towards a fully competitive marketplace in which well-educated customers act on their own behalf to select the suppliers, products, and services that best meet their energy needs.

Customer Eligibility

OCA is supportive of the retail opt-in auction concept and believes the eligible pool should be limited to current residential, non-shopping customers (OCA 15). OCA is cautiously supportive of CAP customers participating in the auction, but should be on a utility-specific basis and reliant upon the “no-harm” principle (OCA 16-17). AARP, PULP, and CLS argues that CAP customers should be excluded, but if they are not, they should be allowed to go back to default service without paying an early termination fee, and should retain full benefits while on EGS service (AARP/PULP/CLS 15). PPL notes that because it currently lets CAP customers (and other special classes of customers, including net metering and time of use rate classes) shop, including them in the retail auction might be less difficult (PPL 16).

The PEMC supports the Commission’s and other stakeholders’ position that eligibility for an opt-in auction be focused on residential customers. We reiterate, however, that shopping numbers for *small* commercial customers are relatively similar to residential numbers. This customer class is also in need of a shopping “kick-start.” Evidence from focus groups made up of small businesses in PECO and PPL utility territories as well as statewide surveys of a representative sample of small commercial customers in all major utility territories, has demonstrated that small commercial customers are supportive and interested in participating in a retail opt-in auction program. We recommend that the Commission include small commercial customers (those under 25 kW or identified as in a “small commercial” class by EDCs) in an opt-in auction. With regard to those in Customer Assistance Programs (“CAP customers”), the PEMC recommends that they also have the right to opt-in to participate in the retail auction. We agree OCA, AARP, PULP, and CLS’s cautions that CAP customers should not lose their assistance funds by shopping and switching.

Timing Sequence of an Opt-in Auction

The Commission notes the benefits and challenges surrounding different approaches to the timing sequence of a retail opt-in auction, in particular whether the supplier bidding process or the customer enrollment in the program should come first. The Commission prefers the sequence of auction first, followed by customer enrollment, in order to ensure that customers have full information about the price they will pay *before* opting-in to the program.

OCA strongly supports the approach that the supplier auction should happen first to establish the customer price then customers should be able to make the decision on whether or not to enroll in the program (OCA 19). Supplier Spark Energy states that the enrollment period should start immediately after the auction, but that suppliers who bid should be given the option to include a caveat which allows tranche size to be capped, should an adverse condition in the market occur during the enrollment period (Spark Energy 2-3). Supplier FirstEnergy Solutions proposes a timeline that has wholesale auctions occurring first to establish the price-to-compare, followed by the retail auction, then the customer opt-in period and finally customer assignment to winning EGSS (FirstEnergy Solutions 10-12). Exelon (parent company of both EDCs and EGSS) similarly objects to customer enrollment in the program prior to the auction (Exelon 4-5).

The PEMC appreciates the desire by these stakeholders to ensure that customers have as much information as possible prior to their decision to opt-in to the retail auction program. However, the PEMC continues to believe it might be possible to have the best of both worlds if the starting price point for planning an opt-in service rate were to be established at or near the current utility default service rate, to eliminate adding another “price to compare” to the market which would confuse consumers. Armed with this knowledge, consumers could then be solicited to determine their potential interest in participating in the opt-in auction. Following this (and no doubt with many more details to work through), the opt-in auction could be established, whereupon true pricing will be determined. This would give customers some comfort in knowing an approximate default service

rate, and provide a better idea to suppliers about the number of potential customers that might be included in the opt-in auction.

Customer Participation Caps

The Commission proposes a cap of 50% of an EDC's default service base to participate in the opt-in auction. The PUC's argument is that a cap will provide EGSs with greater certainty about the size of the auction pool on which they are bidding, as well as provide wholesale suppliers with certainty regarding the size of the default service pool which they will be providing for in the 2013-2015 default service plans.

Duquesne proposed to further restrict customer participation in the auction, by setting a cap that would be 50% of each EDC's residential rate base, less the percentage of residential customers already shopping (Duquesne 24-27). OCA recommends going even further and limiting customer participation to 20% of the rate base (OCA 20). Having already argued in our January 17, 2012 Comments that imposition of *any* customer cap is a step backwards for the retail electricity market, the PEMC views these proposals from DPL and OCA similarly. The cap may discourage some EGSs from participating in the auction, which will mean less competition and the price savings and product innovation that a more robust marketplace brings, and may also discourage customers who are excluded from participating. More importantly, if the PUC continues to believe that a customer participation cap is necessary, and that 50% of the rate base is the appropriate limit, it would make more sense in terms of encouraging both EGS and customer participation to make the limit simply be 50% of the non-shopping rate base.

Supplier Participation Load Caps

In order to avoid the establishment of a new incumbent market advantage, held by a large supplier rather than a utility, the Commission has proposed limiting the maximum share of an EDC opt-in auction pool to 50% for a single EGS. Additionally, the Commission recommends dividing the eligible auction pool into tranches, which would be bid on by EGSs individually. The Retail Energy Suppliers Association ("RESA") recommends the PUC require a minimum number of winning bidders

in addition to the load cap; RESA suggests a minimum of four winning suppliers (RESA 13). Exelon and FirstEnergy Solutions, on the other hand, oppose the imposition of supplier participation caps outright (Exelon 5; FirstEnergy Solutions 12-13).

In our January 17, 2012 Comments the PEMC indicated our strong support for the Commission's proposed participation caps; however we believe that a load-cap of 33% would contribute even more significantly to maintaining a diversity of suppliers in the auction process. We support consideration of the RESA minimum number of bidders proposal as well. We strongly oppose the position of Exelon and FirstEnergy Solutions; preventing the establishment of a new, *de facto* price-to-compare through a dominant supplier is crucial to developing an even more innovative, competitive marketplace.

Composition of Customer Offer – Product

The Commission, recognizing differences that exist across EDC territories, has proposed that the product offered by EGSs through the opt-in auction program be flexible enough to allow the avoided costs of customer acquisition to be returned to customers through a variety of value-added means (including reduced monthly rates and the payment of a one-time bonus). The Commission proposes two different models: (1) a fixed rate product that includes a one-time bonus; and (2) a guaranteed percentage off the default service rate, adjusted quarterly, but without a bonus. The Commission also proposes that a customer that drops out of the program before three months elapse should not be paid the bonus under the first model.

Duquesne recommends that following the one-year post-auction period, EGSs be required to offer a product for an additional year with price changes no more frequent than quarterly (Duquesne 28-30). OCA proposes a third standard product type – a fixed product (with a bonus) that adjusts with the default service rate, if the default service drops at any time during the initial year (OCA 21). Exelon proposes a third product as well – a fixed rate product without a bonus (Exelon 6). PPL proposes each EDC be allowed to design a structure that will encourage a diverse mix of EGSs,

without specifying the exact format, and that each EDC be allowed to design its own standard product offering for the auction (PPL 19).

RESA opposes the PUC's Product #2 (percentage off of default service rate) on the grounds that the default service rate does not truly reflect market price because of uncertain quarterly reconciliations and lack of unbundling. RESA would prefer a fixed rate auction product, but PUC should allow some flexibility across EDCs; pilot programs would provide good experience in this regard (RESA 13-15). WGES and FirstEnergy Solutions oppose all bonuses (WGES 7; FirstEnergy Solutions 13).

The PEMC agrees with PPL to a certain extent, in that we are supportive of allowing EGSs some flexibility in the opt-in product(s) offered in each specific utility territory, providing they are consistently administered. Individual suppliers may have differing preferences for one model over the other. Nevertheless, we believe that it is crucial for the Commission to provide clear, specific, and transparent guidance to the EGSs and EDCs about which products are acceptable, and which are not, in the opt-in auction process. The PEMC urges the Commission to consider a product that may include a variety of options such a percentage off the default service rate or a one-time minimum bonus payment. Either option would have the potential to provide an incentive that raises the interest of the consumer and would certainly help achieve the mission of the opt-in auction – to accelerate the migration of customers from default service to Choice through their initial exercise of which option appeals to the customers most.

The products proposed by Duquesne, OCA, and Exelon, however, would put significant risk and cost on most suppliers, however, except the largest ones that can rely on parent companies to provide additional capital while offering "loss-leader" products. Consumer interest should be paramount, but if the auction products represent a losing proposition for suppliers, the entire auction process will be a failure.

Customer Options upon Program Expiration

The Commission has proposed that upon the expiration of the initial term, a customer receiving service from an EGS through the opt-in auction program would be treated identically to customers who had switched to a supplier outside of the program. The EGS would need to provide the customer with the required notices within the mandated timeframes but that absent an affirmative decision to sign a new agreement, or switch to another supplier, the customer would remain with the incumbent EGS on a month-to-month, variable rate basis.

OCA recommends that EGSs go beyond current requirements to provide customers with three notifications, rather than two, at 90, 60, and 45 days prior to the expiration of auction rate (OCA 22). PPL similarly proposes that EGSs should have to make additional “end-of-program” communications to customers beyond what is required normally in the statutes (PPL 19-20).

The PEMC believes these additional communications are unnecessary and will result in higher administrative costs, which, in turn, will result in higher prices for consumers. While maintaining appropriate consumer protections is critical, going beyond what is already required under statute and PUC regulation will just put additional hurdles in the way of a diverse group of suppliers participating in the auction. The PEMC strongly believes that the two required notices will provide more than sufficient notice to consumer about the impending end of the auction program.

For customers who do not respond to the “options” notice, OCA proposes that they should be placed on a fixed rate product with the supplier, which can be terminated without a fee on a month-to-month basis (OCA 22). AARP, PULP, and CLS, and Citizen Power, recommend even more drastic action, proposing that customers be returned to default service after auction period ends, unless they affirmatively choose to stay with the supplier (AARP/PULP/CLS 14-15; Citizen Power 4). Citizen Power offers an alternative proposal to the default service return; a customer could be allowed to remain with an EGS without having to take positive action if the EGS has agreed to not raise their rate more than 25% for the period of a year following the end of the auction program (Citizen Power 4).

The PEMC strongly opposes these proposals. The point of this retail opt-in auction is to encourage customers to take their energy decisions into their own hands. Returning customers to

default service provided by the EDC following expiration of the initial period would undermine the whole purpose of this initiative and would reinforce the idea that the supply provided by EDCs should be a customer's "first resort" or "default position.". Customers who have chosen to participate in the auction program have already taken affirmative action to seek supply from an EGS. Forcing them to take additional positive action is unnecessary, undermines the purpose of the retail auction program, and may discourage customers from shopping in the future.

PRICE TO COMPARE

The Commission proposes that each EDC include on customers' bills the rate class or customer-specific price to compare ("PTC"). The Commission further proposes the EDCs include a statement regarding the effective dates of the PTC as well as that the PTC can be adjusted (and how often that adjustment can take place). Optionally, if space permits, the Commission recommends the EDCs include a reference to PAPowerSwitch.com.

A number of Commenters, including UGIES and the National Energy Marketers Association ("NEM") have proposed renaming the PTC as the "default service rate" (UGIES 14; NEM 10). This is an imperfect solution to the problem; the PEMC continues to be seriously concerned that by requiring the highlighting the PTC on customers' bills at all, the Commission is (1) perpetuating the misperception that utility supply is the "default" for consumers,; and (2) encouraging customers to focus solely on price comparisons, rather than taking into account the range of products and services that suppliers offer that may be of great value to consumers. Renaming the PTC, however, would at least be a positive step towards shifting consumer perceptions away from viewing the default service rate as "the rate to beat." While "default service rate" is an improvement over "price to compare," the PEMC would argue that "Provider-of-Last-Resort rate" would communicate the desired message about Choice even more effectively. We recognize there are regulatory and statutory issues that likely require the use of "PTC" or "Default Service," however.

PECO explains that if it does not have to put the exact dates that the PTC is in effect on customers' bills, but rather can include a message that the PTC changes on a quarterly basis, the cost

for the bill language changes will be much lower (PECO 12). The PEMC believes, however, that specifying the dates communicates far more powerfully to consumers that the default service rate adjusts to the market (however imperfectly) just like many EGS rates. Including the specific dates sends the message to consumers that they need to shop to ensure their energy needs are met in the most satisfactory rate possible; doing nothing and relying on the backstop default service rate will only continue to result in potentially adverse rate changes.

INCREASED EDC AND EGS COORDINATION

Access to Customer Bills

The Commission notes the issues that have arisen when EGSs seek to work with customers to resolve outstanding issues with billing but then face challenges when EDCs are reluctant to release customer bills to suppliers. The PUC recommends a new process by which EGSs can more efficiently examine customer bills when an issue arises.

The Industrial Customers Groups (“ICG”) argue that because of the unique characteristics of large C&I customers’ energy usage, business-confidential information could potentially be gleaned from information released to EGSs. ICG argues that EGSs should not be able to access their customer’s data with the existing letter of authorization (“LOA”) except when preparing a bid (ICG 2-4). OCA also argues on behalf of residential customers that the existing LOA is not sufficient for EGSs to access their own customer bills (OCA 26-27). PECO and PPL, however, note that they already allow EGSs access to the supplier charges portion of their customers’ bills, and this process has worked without significant issues (PECO 13-14; PPL 24).

The PEMC appreciate the IECP’s and OCA’s concern about protecting customer’s sensitive business and personal information. The issue at hand, however, is whether a smooth and straightforward process can be developed which would allow EGSs’ access to their own customers’ bills at the EDC. It is in all customers’ interest to have the EGS access this information, in order to ensure that any errors or potential disputes are resolved quickly and efficiently. EGSs take data protection and privacy seriously, just as EDCs do, and ensuring timely access to their own customers’

bills should not expose a customers' sensitive business information to any greater risk than already exists by the information residing with the EDC.

CONCLUSION

The PEMC appreciates the significant amount of work that has been undertaken by the Commission and its Staff in developing both this intermediate work plan as well as the retail markets investigation in general. This is truly a historic undertaking and a unique opportunity for the Commonwealth to create a truly competitive marketplace for electricity, one in which the incentives for EDCs, EGSs, and customers, are all properly aligned.

The mechanisms identified in this plan are all vital to developing a more robust form of competition that serves the best interests of consumers. As we have noted previously, the single most powerful way to bring about a new, more competitive marketplace, however, is to eliminate the old one; to eliminate the status quo, while ensuring consumer rights are protected and the reliability customers have come to enjoy from today's utilities is preserved. But to reach what we believe is the desired end state – a market of empowered consumers choosing among varied, creative and competitive offers, delivered safely and consistently over the grid – we need to take a bold step. We recognize that more work remains to be done on this topic and others related to competition, and we pledge to the Commission our continued support to help with these efforts.

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Respectfully submitted,

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