PENNSYLVANIA ENERGY MARKETERS COALITION

December 10, 2012

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

Dear Secretary Chiavetta:

Please find enclosed the Comments of the Pennsylvania Energy Marketers Coalition ("PEMC"), in response to the Pennsylvania Public Utility Commission's Tentative Order of November 8, 2012, in the matter of the proposed End State of Default Service resulting from 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:)
Tentative Order on End State for Default Service) Docket No. I-2011-2237952

COMMENTS OF THE PENNSYLVANIA ENERGY MARKETERS COALITION

INTRODUCTION

Pursuant to Docket No. I-2011-2237952, the Pennsylvania Public Utility Commission ("PUC," or "Commission") seeks comments on a Tentative Order ("PUC Order" or "Order") issued on November 8, 2012, regarding the proposed End State for Default Service ("proposal") resulting from the ongoing Investigation of Pennsylvania's Retail Electricity Market ("RMI" or "investigation"). This proposal 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 comment on this proposal and is grateful for 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.

A. Guiding Principles

The PEMC shares the goal of the General Assembly and the PUC in hastening the transition of the Commonwealth's electricity market from a regulated model to a fully-competitive marketplace with robust consumer protections and a variety of supplier offerings based on consumer needs and preferences. To that end, the PUC argues in the Tentative Order that the Electric Distribution

[1] For purposes of this filing, the PEMC consists of Agway Energy Services, LLC ("Agway"), Energy Plus Holdings LLC ("Energy Plus"), Interstate Gas Supply, Inc. ("IGS"), and Pennsylvania Gas & Electric ("PAG&E"). 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.

Companies' ("EDCs" or "utilities") current methodology for developing the Price-to-Compare ("PTC"), including long-term supply procurement contracts, reconciliation, and the timing of adjustments to the PTC, represent a significant market barrier to competition. PUC Order at 9. The PUC also identifies other structural barriers which hamper electric generation suppliers ("EGSs" or "suppliers"), including the challenges related to billing and customer switching which disrupt the commercial relationship between suppliers, customers, and potential customers.

The PUC continues by arguing that the price signal that is crucial to moving EGSs to invest in the Pennsylvania marketplace bears all-too-little relation to the real wholesale electricity market. According to the PUC, when the PTC is higher than prevailing market prices, customers are unable to capture the value of lower market prices because EGSs can afford to "cluster" slightly below the PTC, effectively creating an artificial floor on prices. When market prices are higher than the PTC, utilities can afford to "play the long game" as they have long-term procurement contracts and guaranteed cost-recovery, whereas suppliers must make business decisions driven by current market realities. PUC Order at 10-11.

On balance, the PEMC believes the PUC's line of reasoning is a good explication of some of the current retail market impediments related to default service. We believe, however, that the Tentative Order does not go far enough in recognizing three key issues with the default service *status quo*.

First, the order fails to take into account that default service in its current form includes an inherent presumption that a customer who has not actively chosen their energy supplier has made a *de facto* choice in favor of the utility. In a truly competitive market, no party should be given such an advantage. Imagine, for example, if another marketplace was set up in a similar fashion: "If you don't choose a make and model of car, you will be sold a Ford Taurus by default." We recognize that some Pennsylvanians will continue to not choose to shop for energy supply, no matter how much effort is placed into consumer education or how attractive the offers for retail supply. We do not believe, however, that this fact means a single company – i.e., the EDC – should be given a preferential advantage in retaining these non-shopping customers.

Second, the proposal does not acknowledge that the primary problem with the PTC is not that it does not track the market more closely, but that it continues to exist at all. Consumers will continue to be misled when comparing supplier offers to utilities' PTC when unbeknownst to the consumer the comparison is an apples-to-oranges exercise. Utilities can bundle their commodity administrative costs as well as transmission and distribution investments into the distribution rate paid by all consumers, making the commodity rate for default service – the PTC - appear lower when compared with the suppliers' offers. Ideally, the best way to eliminate this problem would be to eliminate the PTC all together, and move to a fully competitive marketplace. We recognize, however, that the PUC has moved back from such an approach. At a minimum, then, the PUC should require utilities to unbundle commodity-related costs from distribution rates and include those costs in the PTC. This is critical to allowing the consumer to make an informed decision between default service from the utility and a competitive supplier.

Third, the proposal does not recognize that the PTC is subsidized by virtue of the fact that it does not contain all of the costs (actual and avoided) of providing and receiving competitive service, especially if it is considered as a benchmark against which the rest of the market is gauged. As long as there is an option labeled "default service" that customers receive as a result of doing nothing, without paying the full cost of doing so, retail competition will struggle to fully develop and consumers will suffer because improper pricing signals will result from the subsidized default service, and consumers taking competitive service will subsidize the "do-nothing" option of default service.

B. **Provision of Default Service**

Despite recognizing to a large measure the fundamental problems with default service, the PUC proposes (1) retaining EDCs as the sole providers of default service for the foreseeable future; (2) maintaining quarterly adjustments to the PTC; and (3) continuing the existing reconciliation mechanism. PUC Order at 13. In short, the PUC has decided to keep into the place the very impediments which it rightly recognizes are inhibiting the development of a fully competitive marketplace.

The PUC attempts to leave the door open for a future Commission to allow for an alternative default service provider ("ADSP") in a given utility territory. PUC Order at 13-14. While no doubt well-intentioned, the PEMC is concerned that in the unlikely event a Commission did decide to allow an ADSP, this could merely result in the establishment of a new, *de facto* monopolist that would just be a competitive supplier rather than a utility. A single EGS acting as a DSP is not in the interests of the competitive marketplace nor of Pennsylvania consumers. As the PUC has persuasively argued, however, neither is the *status quo* of default service.

Pennsylvania has a unique opportunity for a once-in-a-generation shift in the way Pennsylvanians can choose to meet their energy needs. The PEMC respectfully recommends that the PUC reconsider its decision to essentially maintain the *status quo* for default service.

We offer three potential options for a restructuring of default service that would truly advance the competitive marketplace to the benefit of Pennsylvania consumers. We list them in descending order from most comprehensive to least.

(1) Eliminate utility-provided default service and move EDCs out of the merchant function. Utilities would transition non-shopping customers to certified, qualified competitive suppliers through an open, competitive auction in which a minimum number of qualified suppliers were selected as providers and a maximum number of customers could be transitioned to any one supplier. In the unlikely event a supplier serving non-shopping customers exited the marketplace, that suppliers' customers could be transferred to other qualified suppliers in that territory, apportioned in an equitable manner across all qualified suppliers.

(2) Allow EDCs to continue in default service role, but require a premium be placed on the default service price, to compensate EDCs for maintaining a non-core business, to reflect the value placed on default service by customers who have made an effective decision to remain on default service by not shopping, and to recognize that the default service price is subsidized by virtue of the fact that it does not contain all of the costs (actual and avoided) of providing and receiving competitive service.

(3) Allow EDCs to continue in default service role, but unbundle commodity costs from the distribution rate and include those costs in the PTC; and eliminate utility reconciliation for commodity costs.

We believe that any of these options would be a significant advancement for the marketplace.

Without prejudice to our above-stated belief that the PUC should re-evaluate the entire default service end-state proposal, our subsequent comments will address the existing proposal on its merits in order to improve its implementation should the PUC decide to retain the proposal's substance.

C. Applicability of Proposed End-State

The PEMC agrees that the proposal should apply to all jurisdictional EDCs in the Commonwealth.

D. Default Service Product

1. Medium and Large Commercial and Industrial Rate Classes

The PEMC agrees that these customers should be offered hourly locational marginal pricing, provided for by wholesale suppliers that bid in a quarterly auction to serve these customers based on an offered administrative adder.

2. Residential and Small Commercial and Industrial Rate Classes

The PEMC is cautiously supportive of wholesale auctions in which EDCs procure full-requirements, load-following supply contracts for 90 day periods. Merely reducing the utilities' ability to enter into long-term, price-distorting contracts is less-preferable than any of the options we outlined in Section B above, but represents a marginal improvement over the current approach to procuring default service supply. We continue to believe that if the PTC has to continue in some form, including unbundled commodity costs or the introduction of a premium in this price is vital to even come close to giving the customer an apples-to-apples comparison with supplier offers.

E. Transition Timeline

The proposed timeline to begin the default service end-state as of June 1, 2015 is reasonable and likely achievable.

F. Consumer Protections

In its Tentative Order, the Commission refrained from altering its current consumer protection regulations, noting that in light of the decision to keep EDCs in place as default service providers, current and past customers of EDCs have been adequately protected under the pre-existing regulations. PUC Order at 20. Moreover, the Commission pointed out that it reserves the right to enhance or amend these provisions at any time, for example, by highlighting its plan to review accelerated switching regulations in the interest of both EDC and EGS customers. PUC Order at 20-21.

The PEMC appreciates the Commission's willingness to prioritize and enhance consumer protections. The PEMC is committed to maintaining a robust system of consumer protections while also ensuring a properly functioning marketplace. We look forward to any future discussion with the Commission regarding ways in which consumer interests may be further protected.

G. Portability of Benefits for Low-Income Customers

The Tentative Order provides that all low-income customers in utility-sponsored customer assistance programs ("CAP customers") will be able to shop for competitive supply without losing financial benefits, unlike current conditions in which some EDCs disallow shopping for CAP customers. The Order further specifies that CAP customers will be eligible to shop by June 1, 2015. and emphasizes consumer education for such customers. PUC Order at 23.

PEMC strongly supports the Commission's proposal to allow CAP customer participation in shopping for competitive supply. CAP customers should not be limited in their desire for choice nor penalized for receiving financial benefits. As noted above, while the PEMC supports consumer protections for all customers, we would like to emphasize that care should be taken to educate and protect CAP customers in particular.

H. Supplier-Consolidated Billing ("SCB")

The PUC, while noting the technical and legal questions that remain to be answered, states in the Tentative Order that "SCB should be made available as a billing option as part of a vibrant, competitive market. We agree that SCB can help EGSs establish a more robust, familiar relationship with a customer." PUC Order at 27.

The PEMC agrees that SCB should be an option for suppliers in all utility territories, and applauds the PUC for advancing this option. At the same time, the utility billing system is a public asset that has been constructed at ratepayers' expense for their own benefit. For smaller EGSs in particular that do not want to duplicate this investment in billing systems at this time (the cost for which would ultimately be passed to retail customers), the option to continue to use utility-consolidated billing should be retained. Avoiding cost-duplication and ensuring that smaller EGSs are not excluded from making offers to Pennsylvanians is vital to the development of the fully-competitive marketplace.

I. Accelerated Switching

We appreciate the efforts undertaken by the PUC in a separate proceeding to temporarily waive the requirements at 52 Pa. Code §§ 57.173 – 174, essentially reducing the "confirmation period" for a customer account to switch from an EDC to an EGS from 10 days to five days.[2] We also look forward to participating in a future PUC rulemaking on the final composition of switching regulations.

As the PUC notes in the Tentative Order, EGSs believe that a truly competitive marketplace in which customers are fully empowered to choose the energy product that best meets their needs and preferences, "Instant Connect" – i.e., immediate switching to EGS service – would be the default. We recognize that there are technical hurdles to achieving this, but there is no reason why with effort and funding this could not be achieved. When viewed properly as a programming issue, not a policy one, achieving "Instant Connect" is a logical next step for the marketplace.

[2] Final Order, *Interim Guidelines Regarding Standards for Changing a Customer's Electricity Generation Supplier*, Docket No. M-2011-2270442, Order entered October 24, 2012.

J. Provision of Metering Services

The PEMC agrees with the Commission that it is reasonable and prudent that the EDCs continue to carry out metering functions. These functions are best-understood as part of transmission and distribution and thus properly within the ambit of the utility. At the same time, particularly as advanced meter infrastructure is rolled out across the state, it is vital that EDCs share advanced metering infrastructure ("AMI") data, with appropriate consumer protections, with EGSs in order to facilitate the development and implementation of the innovative products and services that the Commission is anxious to see in the Commonwealth's marketplace.

N. Statewide Consumer Education Campaign

The Commission further proposes a comprehensive customer education campaign set to begin in June 2014. The proposed campaign will focus on small business and residential customers with a cost of approximately $15 million over the course of three (3) years. The campaign will be largely funded by EGSs (approximately 66% initially), with EGS contribution decreasing as shopping and switching increase. PUC Order at 38-39. The Commission's shopping website, PAPowerSwitch.com, will be the centerpiece of the education campaign.

The PEMC believes customer education is vital to maintaining a competitive marketplace and applauds the Commission for considering such an ambitious and comprehensive approach. We understand that the so-called "FairShare" approach to the funding the program is designed to be a compromise between the various funding options that have been proposed over the past year. We maintain, however, that a customer education campaign is to the benefit of ALL Pennsylvania consumers. Putting the lion-share of the costs of education on the EGSs and customers that have already chosen to shop strikes the PEMC as unfair. We believe including the cost of the education campaign as a nonbypassable charge on all residential distribution customers' bills is not only the most fair approach but will result in minimal cost to consumers – less than a dollar a year per bill.[3]

Funding issues aside, the PEMC strongly supports this initiative, and pledges to offer any and all resources it can provide to assist in these efforts. In this regard, the PEMC notes that another organization, the American Coalition of Competitive Energy Suppliers (to which several PEMC members also belong) has developed content (including videos, FAQs, maps, and a forthcoming interactive consumer preferences feature) which it would be willing to share in whole or part with the PUC for the purposes of this campaign, at no cost.

O. Regulatory Costs and Assessments

Finally, the Tentative Order includes a proposal that imposes an annual licensing fee on EGSs for the purpose of offsetting the Commission's regulatory and administrative costs for promoting the competitive electricity market. For the calculation of the licensing fee, the Commission proposed either an annual $1000 fee or a percentage of an EGS's gross revenue within Pennsylvania.

The PEMC appreciates the opportunity to comment on both the method of calculation and amount of the proposed licensing fee. We are cognizant that the Commission is actively incurring costs to promote a competitive retail market without recovering those costs from EGSs. It is also important to recognize, however, that the movement towards stronger retail electricity competition is a direct benefit to the Pennsylvania public's interest in a competitive marketplace. In any case, PEMC is aware that some form of licensing fee is necessary to financially support the Commission for its efforts.

Accordingly, we would recommend a combination of both proposed methods of calculating the fee: a percentage of an EGS's gross intrastate revenue, capped at $1000 per year. This will insure that smaller EGSs, which may offer innovative products that other suppliers do not, are not

[3] Based on a $15 million campaign over three years, divided evenly at $5 million each year, spread across 5,659,217 residential customers in Pennsylvania (number extrapolated from data included in the PUC's Weekly PAPowerSwitch Update for November 28, 2012).

discouraged from entering or remaining in the Pennsylvania marketplace because this fee represents too steep a barrier to entry.

While this is our current recommendation, PEMC is not at all foreclosed to other methods of calculation. We look forward to discussing potential options with the Commission going forward.

CONCLUSION

The PEMC has been a strong supporter and active participant in the RMI process over the past 18 months. We continue to believe that this investigation represents an opportunity to demonstrate a commitment to competitive energy markets that not only will impact the Commonwealth for years to come, but will reverberate across the entire North American energy landscape. With that in mind, the PEMC respectfully urges the PUC to reconsider its proposal for default service and take bold action to fundamentally transform the electricity market in Pennsylvania. If this end-state can be designed with a strong commitment to truly open, robust competition by all parties, consumers will have access to more choices for their energy supply – and more control over their energy future.

December 10, 2012

Respectfully submitted,

PENNSYLVANIA ENERGY MARKETERS COALITION

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