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December 10, 2012

Via Electronic Filing

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

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

Dear Secretary Chiavetta:

On behalf of the Retail Energy Supply Association ("RESA") attached is its Comments with regard to the above-referenced matter which have been electronically filed with the Commission.

Sincerely,



Deanne M. O'Dell

DMO/lww
Enclosure

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

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I. INTRODUCTION

In its Tentative Order, the Commission seeks comments regarding its tentative conclusions about the default service model it envisions for Pennsylvania effective June 1, 2015. According to the Commission, its newly proposed default service model – which seeks to more closely track market conditions – will improve competition in the current retail electric market.¹ The Commission’s tentative conclusions are the result of an investigation that was opened “with the goal of making recommendations for improvements to ensure that a properly functioning and workable competitive retail electricity market exists in the state,” consistent with the goals of the Electricity Generation Customer Choice and Competition Act (“Competition Act”).² The Competition Act was intended to give the Commonwealth’s residents and businesses the opportunity to free themselves from their decades long need to rely exclusively on the electric distribution company (“EDC”) for their electricity generation service.³ Instead, the Competition Act envisions consumers receiving their generation from the competitive market through electric generation suppliers (“EGS”).

The Retail Energy Supply Association (“RESA”)⁴ fully supports the goals espoused by the Commission to foster a well functioning, robust competitive market as the best way to

¹ Tentative Order at 1.

² *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code Approving A Change of Control of West Penn Power Company and Trans-Allegheny Interstate Line Company*, Docket Nos. A-2010-2176520 and A-2010-2176732, Order entered March 8, 2011 at 46. *See also* 66 Pa.C.S. § 2801 et. seq.

³ 66 Pa. C.S. § 2806(a).

⁴ RESA’s members include: Champion Energy Services, LLC; ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P..

provide Pennsylvania consumers the most innovative products and services at the most reasonable prices. The Commission's chosen June 1, 2015 default service structure is not as far reaching as the approach supported by RESA in this process. However, it does represent a progressive and reasonable step forward on the path to a fully robust competitive market. As explained more fully in the comments below, RESA offers the following suggestions for further improvement:

- Make clear that continued market design reforms necessary to fully satisfy the goals of the proceeding will be pursued;
- Clarify intent to expand hourly priced default service to a larger group of medium and industrial customers notwithstanding EDCs' current existing rate class or procurement class definitions;
- Require default service provider ("DSP") to provide Price-to-Compare ("PTC") to EGSs no later than 45 days in advance of its effectiveness date;
- Minimize potential for delays to proposed implementation timeline that may result from pursuit of unnecessary legislative changes;
- Consider giving EGSs additional tools to manage bad debt risk and requiring EDC to unbundle the billing function;
- Establish stakeholder process focused on developing the shortest timeframe possible to switch customer to EGS that would be uniformly applicable statewide;
- Direct EDCs to establish firm goals and timelines to implement process enabling all new and moving customers to immediately begin receiving service from an EGS;
- Support legislation to modify energy efficiency and conservation ("EE&C") requirements to rely more on competitive market participants and develop protocols to enable customers to conveniently take advantage of these programs;
- Exercise caution against any unnecessary market intervention regarding renewable development and prior to any shift in current policy, permit all interested stakeholders the opportunity to provide full input;

The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

- Reconsider the scope and cost of a statewide consumer education campaign in light of policy recommendations of the Tentative Order;
- Direct that statewide consumer education campaign to be paid by all consumers; alternatively, revise the proposed Fair Share approach so that shopping customers are unfairly allocated a more significant proportion of the expense;
- To the extent Commission pursue requiring additional payments from EGSs to fund its operations, RESA prefers a flat fee approach

II. COMMENTS

A. Guiding Principles

As the Commission correctly recognizes, the current structure of the market presents many barriers to EGS entry and, “absent a robust competitive market for electricity, consumers’ only option would be the EDC.”⁵ RESA agrees with the Commission that a fundamental problem with the current market design is that default service remains “highly regulated and does not reflect current market conditions.”⁶ To that end, RESA supports the Commission’s desire to find ways to improve this situation. The Commission’s tentative conclusions to move toward a more market-reflective default service price through the use of expanded hourly pricing for the commercial and industrial sector and a quarterly fixed-price, full requirements procurement structure for the mass market represent a good first step and RESA fully supports implementation of these reforms on June 1, 2015. However, RESA recommends that the Commission should also make clear in its final order that there is still work to be done and that it will consider continued market design reforms as necessary to achieve the a fully and robustly competitive retail electric market as soon as feasibly possible.

⁵ Tentative Order at 11.

⁶ Tentative Order at 10.

B. Maintaining EDCs As Default Service Providers

The Commission proposes that EDCs maintain their present status as the DSP and retain the right to full cost recovery of costs associated with the provision of default service through the use of a reconciliation mechanism.⁷ Consistent with RESA's advocacy throughout this process, RESA believes that "default service" can and should be fulfilled by competitive EGSs rather than the EDC.⁸ The retention of the incumbent EDC as the provider of default service presents structural barriers that impede competitive market development, to varying degrees based on customer class, ultimately preventing customers from achieving the benefits of a fully workable and competitive market. To address this, RESA set forth a process by which EGSs could be transitioned into the default service role in the near term and provided a detailed legal analysis explaining how this goal could be implemented without the need for statutory changes.⁹ RESA continues to believe that the end state vision it has advocated in this proceeding is the optimal way to accomplish the objective of a fully robust competitive retail market structure which provides downward pressure on prices for consumers and businesses while creating needed jobs and other economic development opportunities in the Commonwealth. .

Although the Commission has chosen not to take RESA's preferred path for default service effective June 1, 2015, the Commission notes that its decision "strikes the appropriate balance that allows the retail electric market to continue its fairly steady process of organic growth through education and customer migration while availing the Commission the option to

⁷ Tentative Order at 13.

⁸ *Investigation of Pennsylvania's Retail Electricity Market*, Order entered April 29, 2011, RESA Comments filed June 1, 2011 ("RESA Phase I Comments") at 18-21.

⁹ RESA Phase I Comments at 35. *Investigation of Pennsylvania Retail Electricity Market*, Secretarial Letter dated March 2, 2012, RESA Comments Of The Retail Energy Supply Association Post March 21, 2012 En Banc Hearing filed April 4, 2012 ("RESA Post En Banc Comments") at 4-19.

take further action in the future in order to foster an even more dynamic competitive market landscape.”¹⁰ To that end, RESA urges the Commission not to foreclose the possibility of implementing more significant market design structural reforms in the future, such as those advocated by RESA. RESA cautions against characterizing the more market reflective default service pricing reforms as “end-state” recommendations. Notably, other more mature retail electricity markets – such as New York – have implemented default service structures similar to that proposed here and have not experienced a significant shift of residential customers moving into the competitive market.¹¹ Importantly, even after implementation of the Commission’s proposed reforms here, the EDC as DSP will continue to enjoy the right to full cost recovery which gives the default service provided by EDCs a competitive advantage over generation supply provided by EGSs.¹² Without more significant structural reform, there is only so much the Commission can do to alleviate this competitive advantage. As the market continues to grow and develop, the Commission should remain open to implementing other reforms appropriate to achieve the goal of robust competition. To that end, the Commission should ensure that any legislative changes it chooses to seek or support do not foreclose this possibility.

¹⁰ Tentative Order at 14.

¹¹ The most recent statewide average of residential customers continuing to receive default service in New York is 77.5%. *See* New York Electric Retail Access Migration Data for May 2012 available at: [http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/4759ecee7586f24b85257687006f396e/\\$FILE/Electric%20Migration_5.2012.pdf](http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/4759ecee7586f24b85257687006f396e/$FILE/Electric%20Migration_5.2012.pdf)

¹² The Commission recognizes this reality in its Tentative Order at 15 (“Since the EDCs will maintain the right to full cost-recovery for its provision of default service, the EDC has an entirely different exposure to risk than an EGS.”) Because of this full cost recovery guarantee, wholesale suppliers do not demand costly credit assurance which, in turn, results in an artificially lowered default service price.

C. Applicability of Proposed Default Service Reforms

The Commission proposes that the changes set forth in its Tentative Order be applicable to all jurisdictional EDCs in Pennsylvania.¹³ RESA fully supports this recommendation. One of the difficult aspects of analyzing whether to provide competitive generation service in all (or some parts of) Pennsylvania is the fact that there are twelve different EDC service territories and each has their own rules and procedures. While uniformity exists in some areas (such as the FirstEnergy service territories), a supplier considering entering the market has to consider the different default service procurement plans for each EDC as well as the nuances for the service territory based on their specific tariffs. Examples of these variances include the different definitions of small commercial and industrial customers which vary from EDC-to-EDC as well as how each EDC handles cost recovery for a variety of transmission-related changes. Issues such as these impact an EGS's decision-making process about entering a specific market. To the extent a uniform procurement plan approach can be adopted and used uniformly throughout the Commonwealth, that would create a better incentive for EGSs to provide more services to more areas.

D. Default Service Product

The Commission's main goal in its chosen default service design is to "create a more market-based PTC."¹⁴ As explained above, RESA supports this goal as a good step forward in the transition to an optimal end state where a fully robust competitive retail market exists. Default service rates must be market-responsive and must reflect all costs related to default service so that competitive retail suppliers can compete on equal footing with the EDC's default

¹³ Tentative Order at 14.

¹⁴ Tentative Order at 15.

service, perhaps necessitating a Commission-directed process for each utility to fully unbundle its costs. If default service prices in a market diverge from current market prices for an extended period of time (either up or down), or if default rates do not fully reflect all of the costs of providing generation service, retail suppliers are likely to view that market as presenting only intermittent opportunities for competitive suppliers to attract customers, making the market unattractive for suppliers to enter or remain in the marketplace. This will ultimately hinder a customer's ability to experience the array of options that would have otherwise been available from competitive suppliers. While this may not seem like a significant problem, when default prices are low compared to the market price (a "boom" cycle), it will be a problem when default prices are high compared to the market price (a "bust" cycle). During the "bust," customers will have few or no competitive options that would allow them to lower their electricity costs, experience new products, or experience other benefits from the competitive marketplace. As the Commission has recognized, eliminating this "boom/bust" cycle is important and pricing default service in a manner that avoids a sustained divergence from underlying wholesale market prices is one of the proven ways to ensure customers have consistent access to a myriad of products and service offerings from competitive suppliers.¹⁵

Additionally, RESA cautions against providing too much latitude to the EDCs to define the appropriate customer size threshold for defining the hourly priced default service group. RESA recognizes that EDCs currently have in place different tariff rate classifications and different default service procurement group classifications. These EDC-by-EDC definitions may not directly match the 100 kW breakpoint identified by the Commission. RESA urges the Commission to clarify in its final order that its intent is to expand hourly priced default service to

¹⁵ Tentative Order at 16.

a larger group of medium commercial and industrial customers. EDCs should not be permitted to continue to rely on existing rate class or procurement group definitions if such thresholds would result in substantially reducing the number of customers to be transitions to hourly priced default service.

1. Medium and Large Commercial And Industrial Rate Classes

The Commission proposes that an hourly locational marginal price (“LMP”) default service product for medium and large commercial and industrial (“C&I”) accounts; and, those accounts within this group that do not have interval meters, would be charged hourly LMP by using customer load profiles. Because there is not a uniform definitions of which customers fall into this class across all the EDCs, the Commission envisions that those accounts with demand of 100 kW or greater be included in the medium and large C&I customer class. The Commission notes, however, that EDCs can select a different delineation point based on their existing rate schedules if it is “impractical to create default service subclasses.”¹⁶ The LMP product would be offered on a quarterly basis with an auction held one to two months prior to the beginning of the delivery for each quarter. Wholesale suppliers would also bid on an administrative adder.¹⁷

RESA supports the Commission’s proposal for the near-term. However, consideration should be given to transitioning to an even lower threshold as long as the EDC remains the default service provider. All of these customers are larger businesses and institutions who are more sophisticated buyers of goods and services and can understand the implications of being placed on a more market responsive procurement plan. Moreover, as these customers migrate into the competitive market, hourly-priced default service is a reasonable procurement approach for the remaining default service customers. This is because the hourly priced service model provides the EDC more flexibility to handle migration and, therefore, minimizes the costs necessary to provide default service to those remaining on default service in the customer class.

¹⁶ Tentative Order at 16-17.

¹⁷ Tentative Order at 17.

2. Residential And Small C&I Rate Classes

For residential and small C&I customers, the Commission proposes that the quarterly PTC be established by quarterly auctions, held one to two months prior to delivery, that will procure all default service load via tranches of full requirements, load-following contracts for the upcoming quarter. The Commission concludes that this structure “will benefit the marketplace by decreasing the potential for large over- and under-collections. . . [and] will help to create a PTC that more truly reflects current market conditions.”¹⁸ The Commission also recommends that “consistent with current procedures, EDCs will continue to provide estimates of the next quarterly PTC until the EDC has determined the tariffed PTC charge.”¹⁹

RESA generally supports the Commission’s proposal. However, the PTC that is to be effective in the upcoming quarter needs to be provided to EGSs as soon as possible. Because the Commission’s approach in the Tentative Order makes no recommendations to change the current emphasis placed on the EDC’s PTC,²⁰ like today, the PTC will continue to be used as a benchmark for price comparisons. Therefore, having the final PTC calculation in a reasonable amount of time in advance of its effective date is important to provide both customers and EGSs time to react to the new PTC price signal. Publishing the PTC with more advance notice will also allow EGSs to more effectively educate customers about upcoming changes in the PTC and will allow customers to make better informed shopping decisions. If the default service request for proposal (“RFP”) process takes place approximately 60 days in advance of the applicable

¹⁸ Tentative Order at 18.

¹⁹ Tentative Order at 17.

²⁰ In its *Intermediate Work Plan Final Order*, the Commission concluded that including the EDC’s PTC on the consumer bill would remain despite objections raised by EGSs. However, the Commission noted that it would reconsider this approach in the future if significant changes to the default service model resulted from this proceeding. *Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Final Order entered March 2, 2012 at 91. The Commission has not proposed any changes regarding this issue in its Tentative Order.

effective period, this should enable EDCs to calculate the new PTC no later than 45 days in advance of its effective date. This 45-day window will give sufficient time for both customers and EGSs to react to the new PTC.

E. Transition Timeline

To achieve the June 1, 2015 implementation date for the changes proposed by the Tentative Order, the Commission proposes: (1) to encourage the passage of any necessary legislative changes in 2013; (2) to issue guidelines as soon as practicable which would set forth the components that should be included in the default service plans and address any other implementation issues; and, (3) to require EDCs to file their default service plans by July 1, 2014 to be adjudicated within six months.²¹

RESA generally supports the Commission’s timing proposal but is concerned about delays that may result from pursuing potentially unnecessary legislative changes. RESA submits – primarily because the Commission is proposing to continue to maintain a DSP’s right of full cost recovery – legislative changes are not necessary at this time to implement the modifications proposed in the Tentative Order. As explained more extensively in RESA’s April 4, 2012 comments, the law does not require a specific rate design methodology for default service.²² Instead, it requires that the default service provider offer electric generation supply service “pursuant to a commission-approved competitive [default service] procurement plan” that must include a “prudent mix”²³ of resources designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and, (iii) to achieve these results through

²¹ Tentative Order at 18.

²² RESA Post En Banc Comments at 11-18.

²³ 66 Pa. C.S. § 2807(e)(3.2).

competitive processes which shall include one or more of the following: auctions, requests for proposals and/or bilateral agreements.²⁴

The Commission has determined that what constitutes a “prudent mix” should be “interpreted in a flexible fashion” to permit default service providers “to design their own combination of products” to meet the requirements of the statute.²⁵ Thus, the Commission has declined to establish specific percentages of default service load that should be served under various types of products²⁶ and, in fact, has adopted default service procurement plans with a varying degree of contract types, some of which consist solely of spot market purchases. For example, the FirstEnergy EDCs’ large C&I customers rely on default service which is priced on an hourly spot market basis as are many other default service plans for this customer class.²⁷ The Commission has also approved a spot market only approach for default service for all customers in the Pike County Light & Power Company (“PCL&P”) service territory. The Commission first adopted this model in 2007 after a litigated proceeding.²⁸ The plan was approved for a second time for the period of June 1, 2009 through May 31, 2011 with the Commission finding that:

[C]ustomers can obtain competitive supply pursuant to the spot market, which represents the appropriate least cost portfolio for the few remaining

²⁴ 66 Pa. C.S. §§ 2807(e)(3.1).

²⁵ *Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets*, Docket No. L-2009-2095604, Final Rulemaking Order entered October 4, 2011 at 60.

²⁶ *Id.* at 66.

²⁷ *See, e.g., Petitions of Metropolitan Edison Company and Pennsylvania Electric Company for approval of their default service programs*, Docket No. P-2009-2093053 and P-2009-2093054 (Order entered November 6, 2009)(The Companies will offer industrial class customers an Hourly Pricing Service (“HPS”) priced to the PJM real-time hourly market); *Petition of Pennsylvania Power Company for approval of its default service programs*, Docket No. P-2010-2157862 (Order adopted October 21, 2010)(same); *Petition of the West Penn Power Company d/b/a Allegheny Power for Approval of its Retail Electric Default Service Program and Competitive Procurement Plan for Service at the Conclusion of the Restructuring Transition Period*, Docket No. P-00072342(Order entered July 28, 2008) (ST 40 customers will be charged based upon hourly LMP).

²⁸ *Petition of Pike County Light & Power Company for Expedited Approval of its Default Service Implementation Plan* Docket No. P-00072245 Opinion and Order entered August 16, 2007 .

customers currently taking default service. . . Temporary spot purchase, in this instance, are the optimal and prudent solution from a least cost over time perspective.²⁹

The Commission approved continuation of the spot market approach for a third time, consistent with the agreement of the parties, for another one-year term from June 1, 2011 through May 31, 2012.³⁰ Although the Commission's order approving this approach for the fourth time for PCL&P is currently on appeal, the Commission specifically noted in approving the procurement plan that it was the "prudent" approach as demonstrated by the record.³¹

RESA submits that the Commission's proposed procurement approach is consistent with this precedent which necessarily means that it is compliant with existing law. Therefore, RESA urges the Commission to not let the pursuit of unnecessary legislative changes slow down its progress toward the June 1, 2015 goal established by the Tentative Order.

F. Consumer Protections

The Commission is not proposing any changes to its current consumer protections as a result of implementing its proposed default service plan structure.³² RESA supports this tentative conclusion.

²⁹ *Re: Petition of Pike County Light and Power Company for Expedited Approval Of Its Default Service Implementation Plan*, Docket No. P-2008-2044561 on and Order entered March 23, 2009 at 14-15.

³⁰ *Petition of Pike County Light & Power Company for Approval of its Default Service Implementation Plan*, Docket No. P-2010-2194652, Order entered February 25, 2011

³¹ *Petition of Pike County Light & Power Company for Approval of Its Default Service Implementation Plan*, Docket No. P-2011-2252042, Opinion and Order entered May 24, 2012 at 30. On June 22, 2012, OCA filed an appeal of this order to the Commonwealth Court which is pending. *Irwin A. Popowsky v. Pennsylvania Public Utility Commission*, Commonwealth Court Docket No. 1179 C.D. 2012.

³² Tentative Order at 20.

G. Portability Of Benefits For Low-Income Customers

The Commission proposes that all EDCs develop plans that allow their CAP customers, on or before January 1, 2015, to shop in the competitive market without restriction.³³ RESA supports this conclusion as CAP customers should preserve their benefits and not be denied the benefits available from the competitive retail market.

H. Supplier Consolidated Billing

The Commission tentatively concludes that supplier consolidated billing (“SCB”) would be made available as a billing option as part of a vibrant, competitive market and proposes that by July 1, 2013, OCMO provide a recommendation to the Commission about how to proceed with making it available.³⁴

RESA supports the recommendation to make SCB available because under the current system the EDC reinforces its relationship with the customer every month with its EDC branded billing and this reinforcement will continue with implementation of the Commission’s proposals here to maintain the EDC in the DSP role.³⁵ RESA, however, recommends that SCB be available as quickly as possible, but no later than June 1, 2015, to coincide with the other changes affecting default service. While Purchase of Receivables (“POR”) and utility consolidated billing programs are regulatory mechanisms that attempt to mitigate the competitive advantages that utilities enjoy with respect to customer care and billing costs, these programs do not address the relationship advantages that the EDCs continue to enjoy with customers.

³³ Tentative Order at 23.

³⁴ Tentative Order at 28.

³⁵ Note that for most larger C&I customers, EGSs are able to utilize dual billing and, therefore, do not need to rely on single bills from the EDC.

Therefore, RESA supports implementing policies, such as SCB, to allow EGSs the option to build and maintain a direct billing relationship with customers of all sizes.

Importantly, however, an effective supplier consolidated billing program must also address the inequities that exist between EGSs and the EDC regarding the tools available to manage bad debt risk. Currently, only the EDC can terminate service when a customer fails to pay his or her bill. While the current POR programs have been reasonably successful at placing EGSs on a level playing field with the EDC in terms of bad debt expense, these programs are only available for EGSs utilizing utility consolidated billing and they still permit only the EDC to terminate service for nonpayment. To address this concern EGSs should be given additional tools in managing bad debt risk to include the ability to terminate service to customers for nonpayment.

In addition to SCB, another option the Commission should consider would be to require the EDC to unbundle the billing function as part of a full, Commission-directed utility-specific cost of service studies. This could be done by requiring the utility to tariff its billing function which would require suppliers to buy utility billing services at cost-based tariffed rates. Under this approach, all billing and customer care costs would be removed from distribution rates and customers receiving default service as well as suppliers utilizing a utility consolidated billing service would pay the same tariff rates for access to the regulated utility billing and customer care infrastructure. A similar outcome could be achieved by designating a “BillCo” which would be another third party entity to handle all the billing for those EGSs that choose to utilize it. This third-party entity could be structured to enable it to submit bills branded with the name of the supplier. By giving competitors more flexible access to the billing of customers, the supplier can control the content and format of the bill and change it to fit the needs of the

customer. Such ability would enable the bill to become a vehicle for competitive suppliers to establish a real retail relationship with the customer.

I. Accelerated Switching And Day One Switches For New And Moving Customers

In its Tentative Order, the Commission acknowledges that delays in the process of switching a consumer to a selected EGS can impact the development of a robust competitive retail market and seeks comments on ways to address this issue.³⁶ In its Interim Guidelines Regarding Standards For Changing a Customer's Electricity Generation Supplier ("Accelerated Switching Interim Guidelines"), the Commission gave EDCs the option to utilize a 5-day confirmation period, rather than the current 10-day confirmation period, before effectuating a switch of a customer's supplier.³⁷ As the Commission acknowledges, implementation of this operational change should result in a shortened timeframe for switching. The Tentative Order also acknowledges that customers who are new to an EDC's service territory or are moving within an EDC's service territory should be able to receive supply from an EGS on day one of the service and invites comments on these issues.

RESA agrees that, particularly in a default service model where customers remain with the EDC "by default," the process of effectuating a customer's expressed decision to receive alternative supply must occur as soon as possible. While the Commission's Accelerated Switching Interim Guidelines represent a step in the right direction by giving EDCs the option to alter the current regulatory requirement that consumers be given 10-days to "change their mind" before effectuating the switch, these guidelines should be viewed as just the first step, hopefully

³⁶ Tentative Order at 28-31.

³⁷ *Interim Guidelines Regarding Standards For Changing a Customer's Electricity Generation Supplier*, Docket No. M-2011-2270442, Final Order entered October 25, 2012 at 46-50.

among many, to modify the enrollment protocols to facilitate more expeditious customer switching to an EGS. Importantly, the enrollment process involves more than just the confirmation period. For example, pursuant to Pennsylvania law, consumers have a three-day right of rescission.³⁸ Also, under the procedures in place today, the effective date for a customer's EGS selection is dependent on the customer's meter read date which creates further complexity from an operational standpoint in accelerating the enrollment timeframe. Because of both the importance and complexity of this issue, RESA recommends that a stakeholder process be convened to develop the switching deadline and to implement the necessary operational and EDI changes resulting from this modified process. The goal of the stakeholder process should be clear that the involved participants are to develop the shortest timeframe possible, from an operational standpoint, and to develop a switching deadline that would be uniformly applicable to each EDC in Pennsylvania.

RESA also fully supports ensuring that consumers have the ability from day one of either moving into a new service territory or changing location within the same service territory to begin service with an EGS. A true "day-one switch" means that a customer can establish service with an EGS at the same time, and in the same way as he or she does for distribution service. Such a process is an important part of leveling the playing field between EDC provided default service and EGS provided competitive service – particularly where the EDC provides the default service as the Commission is recommending here. Importantly, today in Pennsylvania, even for customers who know which EGS they want to provide them service (presumably because they were receiving service from that EGS at their prior address), they are forced to take an EDC's

³⁸ 73 P. S. § 201-7. *See also* 52 Pa. Code § 54.5(d) (the customer must be given three business days following receipt of the disclosure statement to exercise this right.)

default service. Unfortunately, there has been resistance from some EDCs to commit to implementing the processes necessary to address these issues.³⁹ Because of this resistance, RESA recommends that the Commission establish firm goals and timelines for the EDCs to submit plans to the Commission detailing how they will implement a process to enable all new and moving customers into their service territories to immediately begin service with an EGS.

J. Provision Of Metering Services

The Commission proposes to require EDCs to maintain responsibility for all metering service to retail electric customers including the provision of meters, activities associated with the reading of meter data, associating that meter data with the appropriate billing data and performing all relevant PJM settlement tasks.⁴⁰

RESA generally supports this proposal in the context of the Commission's recommendations in the Tentative Order. However, in a truly competitive market environment where a level playing field exists, metering would be a competitive service. California, for example, has unbundled metering functions to the greatest degree whereby a third-party meter service provider can provide any number of metering sub-functions. However, this approach has

³⁹ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs*, Docket No. P-201102273650, et. seq., Opinion and Order entered August 16, 2012 at 152; *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641, Opinion and Order entered October 12, 2012 at 141-142; *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 Through May 31, 2015*, Docket No. P-2012-2302074, Recommended Decision dated November 9, 2012 at 146 (final order pending).

⁴⁰ Tentative Order at 31-32.

generated little participation and is reported to be problematic in a number of regards.⁴¹ Thus, RESA believes the Commission's decision not to tackle this issue at this time is reasonable.

K. Provision Of Energy Efficiency And Conservation Programs

The Commission tentatively concludes that EDCs are the best entities to provide energy efficiency programs because they provide distribution services to a large majority of the retail electric customers in the state. According to the Commission, the provision of these services by the EDCs will not hinder retail electric competition because a customer will be able to participate in the program regardless of shopping status. The Commission, however, does encourage EGSs to provide their own (additional) energy efficiency programs to their customers.⁴² In addition, Commissioner Witmer requested that parties comment on the following questions:

- Do any EGSs currently provide or plan to provide EE&C services as part of their competitive retail offerings within Pennsylvania?
- If such services are or will be offered, how do EDCs and EGSs see those services coordinating with existing EDC Act 129 EE&C program obligations?
- Are there enhancements we can make to the Commission's end state proposal to encourage EGSs to develop and offer additional EE&C services, outside the scope of the Act 129 EE&C Programs?
- Is there a broader role EGSs can or should play within legislatively mandated EDC EE&C programs?

RESA does not agree with the Commission's determination that relying on the EDCs to offer EE&C programs has no impact on retail competition. Relying on the EDCs to provide these types of value-added programs and services leads to further entrenchment of the EDC in the energy service value proposition to the customers. RESA recognizes that under the statute,

⁴¹ See Final Report Of The Competitive Metering Working Group To The Public Service Commission Of Maryland dated May 2001 available at http://sites.energetics.com/madri/toolbox/pdfs/metering_studies/finalreport.pdf.

⁴² Tentative Order at 32-34.

EDCs are legally obligated to provide these programs and face significant financial penalties for failing to meet the mandated demand and consumption reduction targets. RESA recommends that, as part of any other legislative recommendations related to default service, the Commission should also support legislation to modify the EE&C requirements to rely more on competitive market participants to offer such programs and services to customers.

EGSs can and do offer energy efficiency programs. For example, a RESA member's affiliate, operating outside the Commonwealth, offers smart thermostats that allow customers to track their energy usage and change the temperature of their home remotely via a website or smart phone application. The same affiliate also markets energy efficient water heaters that customers rent and the EGS maintains and repairs. Although outside Pennsylvania, these are prime examples of how EGSs can provide innovative technologies to meet the energy savings needs of consumers. Other examples of EGS offerings include:

- Renewable and conventional behind-the-meter generation resources for commodity service customers;
- Demand response services;
- Time-of-use rate offerings;
- Energy optimization and performance based contracting for facility retrofits; and,
- Home services such as furnace, HVAC or other application upgrades.

Rather than require the EDCs to submit complex EE&C plans subject to extensive litigation, the statutory demand and consumption reduction targets could be met in a more efficient and lower cost manner by utilizing a competitive procurement process to select multiple conservation service providers offering a range of programs. These providers would be selected based on the lowest price bid for a MWh of consumption reduction or a MW of peak demand reduction. This would permit all programs and technologies to compete on an equal footing.

To move to a market-model where these functions are provided by EGSs, the Commission should encourage EGSs and their affiliates to develop these programs as a way to foster a greater influx of these types of programs in Pennsylvania. In addition, the Commission should consider how specific operational issues impact the ability of EGSs to offer these types of programs. To implement the EE&C programs of EGSs and their affiliates effectively and to their full potential, customers should be able to take advantage of these programs with little inconvenience or changes. This could be accomplished by: (1) providing space or line items on the customer's utility bill that could include the charges for the EE&C services provided by the EGSs and their affiliates; or, (2) implementation of SCB. In addition, a POR-like mechanism for supplier-provided EE&C services should be implemented. Much like the retail supply market itself, this will make the EE&C service business more appealing to suppliers and their affiliates that have the capability to provide innovative EE&C solutions to consumers.

RESA does agree with the Commission that when these types of programs are offered by the EDC, they must be done so on a competitively neutral basis. Requiring an EDC to offer programs that are limited to their default service customers (as is the case with current Time-of-Use programs) further entrenches the EDC in the role as a generation services provider which may create barriers depending on how the product is structured. In addition, requiring EDCs to provide these programs can lead to unintended anticompetitive pricing and can complicate the EDC's cost recovery and reconciliation process.

L. Existing Long-Term Contracts

The Commission recommends that any existing contracts that exist pursuant to previous or existing default service plans should be held harmless. Such contracts may include alternative

energy contracts and/or contracts that exist pursuant to Public Utility Regulatory Policies Act (PURPA).⁴³ For existing contracts, RESA generally supports this recommendation.

M. Future Long-Term Alternative Energy Credits Contracts

1. RESA Supports Regulatory Policies That Rely On Market Price Signals As Fundamental To Competitive Market Design

As a fundamental guiding principle, RESA supports policies that rely on market price signals to determine what kind and how much of a resource is required. In this regard, RESA cautions policymakers to avoid unnecessary market interventions. Markets can be long or short at different times without need for intervention. Currently, the market for Alternative Energy Credits (AECs) is significantly long. This market length ensures that Pennsylvania's Alternative Energy Portfolio Standard (AEPS) can be safely achieved for several years in the future. In fact, the Commission's 2011 AEPS Annual Report⁴⁴ concluded that adequate supply exists for both Tier 1 and Tier II Pennsylvania compliance through at least 2015. Data from that report goes on to show that the oversupply for non-solar Tier 1 AECs, in particular, is already well in excess of AEPS requirements⁴⁵ and, therefore, may be in excess of AEPS requirements for several additional years.

2. RESA Interprets The Tentative Order To Convey A Desire By The Commission To Pursue Additional Policies To Support Renewable Development

According to the Tentative Order, the Commission believes that an AEC procurement methodology whereby either the EDC or the DSP satisfies a portion of their its service territory's

⁴³ Tentative Order at 34-36.

⁴⁴ See 2011 Annual Report, Alternative Energy Portfolio Standards Act of 2004, Pennsylvania Public Utility Commission, http://www.puc.state.pa.us/electric/pdf/AEPS/AEPS_Ann_Rpt_2011.pdf.

⁴⁵ *Id.* at 20-22.

AEPS requirements will help facilitate a successful capacity build-out of AEPS-qualified generation facilities by mitigating long-term cash flow risks for relevant generation owners or financiers.⁴⁶ Although RESA would caution against any unnecessary market intervention, it appears, based on the Tentative Order, that the Commission has determined that additional policies are needed to promote continued development of AEPS resources. Accordingly, RESA submits the following comments in response to the specific AEC procurement policies discussed in the Tentative Order.

a. The Status Quo Regarding AEPS Responsibility Should Be Maintained

The Tentative Order asks whether the DSP should use a prudent mix of short, medium and long term contracts to meet the AEPs requirement for up to 50 percent of the shopping and non-shopping load in the DSP territory.⁴⁷ As an overarching objective, RESA believes that the current structure in terms of AEPS procurement responsibility should be maintained.

Accordingly, RESA does not support requiring the EDCs to procure up to 50 percent of the AEPS requirements for all load in the EDC's service territory.

As the Commission is aware, the EDCs currently utilize different approaches for AEC procurement. For some EDCs, the EGS is responsible for 100 percent of its AEPS compliance obligations. In these EDC territories, EGSs already have contractual arrangements in place with customers based on the assumption that the EGS will meet the AEPS requirement for that customer's load. Under the Tentative Order recommendation, the responsibility for the AEC generation attribute would be removed from the EGS for a portion of the requirement and rest it with the DSP. RESA believes that retail competition would be negatively impacted under such a

⁴⁶ Tentative Order at 37.

⁴⁷ Tentative Order at 36-37.

scenario as this would interfere with existing EGS market strategies, contracting, and hedging practices. Moreover, EGSs procure AECs on the open market, through investment in renewable generation, and through other strategic deals that support specific EGS sales and marketing practices. Removing the AEC procurement responsibility from EGSs would deny EGSs an opportunity to enact competitive strategies to procure AEPS supply more efficiently. Accordingly, RESA recommends maintaining the status quo and continuing to require EGSs to meet 100% of their AEPS responsibility in most EDC service territories.

However, RESA recognizes that in some EDC service territories, such as for solar AEPS in Met-Ed and Penelec, the EDC meets a portion of the AEPS obligation on behalf of all load. In Met-Ed and Penelec, EGSs have contractual and hedging arrangements in place reflecting the fact that the entire solar AEPS obligation rests with the EDC. In these territories it may be appropriate to also maintain the status quo to avoid disrupting existing retail contracts and EGSs procurement practices.

b. The Commission Should Allow The Market More Time To Support AEPS And Renewable Policy Goals

The Commission need not make a decision on implementing non-market or subsidized incentives for AECs and renewable development within this proceeding. Rather, the long AEC market offers the Commission a nearly risk free opportunity to monitor the state of renewable generation as it pertains to the AEPS over at least the next year. The combination of lower AEC prices and no near term threat to AEPS compliance, gives the Commission more time to assess whether the competitive market can continue to be an efficient and cost effective way to balance the supply and demand of AEPS eligible generation. If the glut of existing AECs dries up faster than the Commission's Report suggests, a mechanism to support development necessary to meet the AEPS compliance requirement could be promulgated separately or included in the DSP plans

filed in advance of June 1, 2015. This approach would ensure that customer bills are not unnecessarily impacted by long-term contracts today that end up being unnecessary in the future while still providing time for the Commission to weigh any options that might be necessary to guarantee AEPS goals are met on a consistent basis.

As with any policy consideration that changes existing compliance requirements, RESA encourages the Commission to consider and mitigate any negative impacts on the retail electricity market resulting from changes to the current AEPS policy. Prior to any shift in policy, RESA welcomes the opportunity to serve as a resource for the Commission as it addresses the future of AEPS policy either through the RMI or a separate proceeding more discretely focused on it.

N. Statewide Consumer Education Campaign

1. Scope And Cost Of Proposed Consumer Education Campaign

The Commission proposes to develop and implement a comprehensive statewide consumer education campaign to be launched by June 2014 for an estimated cost of \$5 million per year for at least three years. The campaign would be directed to residential and small C&I customers and the primary messaging would be to educate consumers about the benefits of shopping and to drive them to the Commission's PaPowerSwitch website. Components of the campaign would include: pre/post-campaign surveys; a consumer incentive contest, online, print, radio and television advertising; social media, education material, including videos, on PAPowerSwitch; and PAPowerSwitch.com events.⁴⁸

⁴⁸ Tentative Order at 37-39.

RESA supports the goal of consumer education and recognizes that consumer education managed by the Commission and handled on a statewide basis serves a valuable purpose. While EGSs are adept at marketing their own products and a statewide consumer education campaign does not and should not be viewed as a marketing tool for any particular EGS, a statewide consumer education campaign that is sponsored by the Commission is an important way to reinforce positive messaging to consumers about the benefits of retail competition.

Comprehensive consumer education regarding electric choice has existed since the passage of the Competition Act and the Commission and its staff deserve recognition for all of their efforts throughout the years in this domain. However, RESA respectfully submits that a three year campaign at \$5 million dollars a year to educate consumers about the Commission's proposed default service plan to be in effect on June 1, 2015 appears to be too large in scope given the Tentative Order's recommendation to continue the practice of utility-provided default service.

Importantly, from the consumers' perspective, the default service model proposed by the Commission in its Tentative Order will not result in significant changes to their day-to-day lives regarding electricity. The EDC will continue to provide default service and the consumer's PTC will continue to change on a quarterly basis just as it does today. Therefore, much of the work that has already been done over the years in terms of messaging and marketing materials can easily be reused going forward. RESA submits that a change closer to RESA's preferred end-state (where the EDC is no longer providing default service) – from a consumer perspective – would have resulted in a greater need for more significant (and costly) consumer education. This is because new educational and marketing materials would have been required to explain the new model.

Because the Commission is not proposing to undertake such reforms, RESA is concerned that a \$5 million a year for at least three years budget is excessive. Further, RESA notes that the Staff proposal for a statewide consumer education campaign that was issued on March 13, 2012 included three options regarding consumer education including two less costly recommendations. Therefore, RESA urges the Commission to reconsider what it intends to accomplish with the proposed statewide consumer education campaign and then assess the most cost effective channels available to achieve that goal while permitting parties a full opportunity to be a part of the decision-making process before a final statewide consumer education campaign is implemented.

2. Funding For Statewide Consumer Education Campaign

Regarding funding, the Commission proposes to require EDCs and EGSs to contribute to a proportionate share of the overall costs. Pursuant to the Commission's proposal, the applicable proportion would be based on shopping statistics with EGSs being required to pay based on the number of default service customers and EDCs being required to pay based on the number of shopping customers.⁴⁹ As explained further below, consumers – whether they are EDC customers or EGS customers – would pay for the costs of the consumer education campaign and, under the Commission's proposal, some consumers (shopping customers) would be required to pay twice as much as default service customers. For these reasons, RESA believes a funding mechanism – consistent with the prior funding mechanisms utilized by the Commission – where all ratepayers share the costs of consumer education is reasonable based on: (1) RESA's view that the proposed cost and scope of the consumer education campaign identified by the

⁴⁹ Tentative Order at 38-39.

Commission can be scaled back to be more consistent with the utility-provided default service model that the Commission has chosen to pursue; and, (2) the fact that all consumers benefit from consumer education. Placing the costs of a consumer education campaign on EGSs also appears to violate basic principles of cost causation. Arguably, customers who have already selected an EGS are already aware of the benefits of energy competition, however, they would be required to bear the majority of the costs pursuant to the proposal in the Tentative Order.

a. The Preferred Approach: A Distribution Charge Assessed On All Customers

Since 1998, the Commission has allocated the costs of statewide education programs to all customers. Initially, the funding was received through a Competitive Transition Charge assessed on all consumers as a distribution charge. In 2007, the Commission initiated a statewide consumer education campaign that was funded by allocating \$5 million from the assessments paid by the EDCs to the Commission.⁵⁰ As a complement to the statewide consumer education campaign, the Commission required each EDC to file a consumer education plan with the Commission which is funded through a non-bypassable surcharge assessed on all distribution customers.⁵¹

RESA continues to maintain that requiring all customers to pay the costs of consumer education –whether through a surcharge assessed by the EDC on all customers or in the form of the assessments paid by the EDC to the Commission as required by 66 Pa. C.S. § 510 – is a reasonable approach for a number of reasons. First, as the Commission has recognized since 1998, all customers benefit from a vibrant and workably competitive retail market which creates a downward pressure on generation prices and leads to environmental benefits, energy

⁵⁰ *Policies to Mitigate Potential Electricity Price Increases*, Docket No. M-00061957, Final Order entered February 13, 2007 at 9-12.

⁵¹ *Id.* at 6-9.

efficiency, innovation, and economic development benefits. Therefore, allocating the cost of this benefit among all ratepayers is reasonable.

Second, as explained in the previous section, the scope of the changes to the default service model proposed by the Commission here do not appear to support the size and scope of the consumer education campaign proposed by the Commission. However, even at the cost identified by the Commission – the amount of the surcharge could be relatively minimal for each ratepayer. According to PAPowerSwitch, as of December 31, 2010, there were 4,970,057 residential customers in Pennsylvania⁵². Assessing a dollar on each of these customers would result in almost \$5 million dollars available for a statewide consumer education campaign. If the costs were also allocated to the small business customers, even more funding would become available. Other states including the Commonwealth have used this approach and per customer assessments have ranged from 50 cents to over two dollars per customer.

Third, this approach is administratively easy to implement. A new surcharge could either be created in the pending default service/competitive enhancement proceedings involving each of the major utilities or each EDC's current consumer education surcharge could be increased by a specific amount to be allocated to funding this statewide initiative.

Finally, to the extent the Commission believes that its resources are being expended regarding issues solely attributable to EGSs that are not being paid by EGSs, creating a payment obligation for EGSs to fund a statewide consumer education campaign that benefits all customers is not the appropriate avenue to address these concerns. This is especially true given the inherent complications in trying to devise a reasonable and fair mechanism. Rather, the more appropriate

⁵² See Weekly PAPowerSwitch Update: Customers Switching to an Electric Generation Supplier as of December 5, 2012 available at: <http://www.papowerswitch.com/>.

way to deal with this concern is through the consideration of reasonable and fair fees assessed directly on the EGSs.

b. Modifications Are Necessary If Commission Chooses To Implement “Fair Share” Approach

Although not RESA’s preferred approach, RESA provided the Commission with several alternate ways that a statewide consumer education campaign could be structured so as to shift some of the cost burden to EGSs and their shopping customers. Specifically, RESA offered the “Fair Share” concept.⁵³ In its Tentative Order, the Commission states that it is recommending the Fair Share approach but, in explaining how the mechanism would work, has fundamentally altered RESA’s proposal. Pursuant to RESA’s proposal, the costs of a statewide consumer education campaign would be assessed to EDCs and EGSs on a proportionate basis based on current migration statistics. By way of example, approximately 33% of all residential customers are receiving service from an EGS.⁵⁴ Thus, all of the EGSs licensed to serve residential customers in Pennsylvania would equally share 33% of the costs of the consumer education campaign. The remaining 67% of the campaign would be paid by EDCs through a bypassable surcharge (since consumers already shopping would be paying their share through the EGS contribution).

The Commission, however, changed this allocation method so that EDCs would pay based on the percentage of shopping customers and EGSs would pay based on the number of default service customers. Because there are less customers shopping than on default service, the result is that EGSs would bear a greater portion of the cost of the consumer education campaign. Although EGSs operate in competitive markets and do not have captive customers to pass on

⁵³ RESA Post En Banc Comments at 25-26.

⁵⁴ See Weekly PAMPowerSwitch Update: Customers Switching to an Electric Generation Supplier as of December 5, 2012.

these costs, to the extent they are able to recover the costs they will need to be embedded in their pricing meaning that shopping customers will be assessed these consumer education costs.

Based on the Commission's allocation proposal, these shopping customers will be assessed a greater portion of the burden (because there are less shopping customers than default service customers). Since the purpose of a statewide consumer education campaign is to educate those customers who have not shopped about shopping, requiring shopping customers to bear an unreasonable portion of the costs when they are no longer benefiting from the statewide education campaign (because they have already shopped) is not reasonable. Put simply, such a cost allocation approach turns the principle of cost causation completely on its head.

Moreover, because of the EDC-specific consumer education campaigns which are being paid by all EDC customers (whether they are shopping or not), education costs are likely to be passed on to the EGS customer who: (1) has already shopped for an EGS; and, (2) is already bearing the cost of his or her EDC consumer education campaign through the consumer education surcharge assessed on all distribution customers. This result again is placing an unreasonable proportion of the consumer education costs on shopping customers who, ironically, have taken action in accordance with the messaging that they have received through the consumer education campaign.

Regarding the EDC's proportion of costs, the Commission proposes that EDCs could recover them through an automatic adjustment clause and their existing riders.⁵⁵ The practical impact of this recommendation would be that all customers (default service and shopping) would be required to pay the costs of the EDC's proportionate share. This is unreasonable because it means that at the same time shopping customers are being required to pay the full cost of the

⁵⁵ Tentative Order at 39.

EGS proportionate share these same shopping customers are being required to also pay for the EDC's proportionate share. In other words, shopping customers are not only paying the EGS share (as customers of the EGS) but they are paying the EDC share (as distribution customers). Such a result is not reasonable. If the Commission chooses to pursue this allocation mechanism, then the EDCs should be required to utilize a bypassable charge (i.e. one that is only assessed on default service customers). The effect of this would be to assess the correct customer (default v. shopping) and to assess that customer only once.

O. Regulatory Costs And Assessments

The Commission proposes to require EGSs to pay an annual licensing fee to the Commission and has offered two potential structures for this fee. The first is a flat annual fee and the second is a fee based on an EGS's gross intrastate revenues, subject to a maximum cap.⁵⁶ The Commission's stated purpose in assessing the fee is "to cover Commission costs associated with staff review of reports filed by EGSs, as well as the oversight of regulatory compliance issues and EGS bonding requirements."⁵⁷ According to the Commission, it has "allocated the costs of regulating EGSs among EDCs."⁵⁸

RESA is sensitive to the Commission's need to recover costs associated with performing its duties. RESA also recognizes that the Commission is funded through assessments to the various public utilities which are then passed on to the customers of those utilities. As such, all of the Commission's efforts related to the electric industry (including those specifically attributable to EGSs) are allocated through assessments to the EDCs which are then paid by all

⁵⁶ Tentative Order at 40-42.

⁵⁷ Tentative Order at 40.

⁵⁸ Tentative Order at 42.

distribution customers. Since all EGS customers are distribution customers of the EDCs, the Commission's costs related to the electric industry are being fully recovered from electric customers – even those costs directly attributable to EGSs. Thus, RESA's primary position is that there is no need to separately assess EGSs for the Commission's costs because EGS customers are already paying for these costs through their EDC assessments.

Nonetheless, in choosing between the two options offered by the Commission, RESA would prefer a flat fee approach for several reasons. First, the Commission time and resources expended on EGSs are not directly related to the market share of a particular EGS. In other words, Commission staff will spend the same amount of time reviewing a report from an EGS with little to no market share as it does reviewing a report from a larger EGS. As such, a reasonable flat fee is a more appropriate approach.

Second, the use of a flat annual fee would more fairly spread the applicable costs over all EGS entities who are subject to Commission oversight. For example, pursuant to Pennsylvania regulations, brokers and aggregators are also licensed as EGSs. The assumption is that the gross receipts from aggregators and brokers is not significant when compared to their supplier counterparts. Accordingly, it would be more fair to assess all EGSs, regardless of business model, the same flat fee instead of basing the fee on gross receipts.

Third, the use of a market share mechanism would have the unintended consequence of penalizing more successful EGSs. This is because the more successful an EGS, the more the EGS will be required to pay. While RESA recognizes that the Commission is proposing a fee cap, greater financial obligations on EGSs who are more successful than other EGSs creates an unlevel playing field particularly given the significant expenditures these companies have already expended to obtain their customers. The Commission's current reliance on an EGS's

level of gross receipts to establish bonding requirements is a good example of why a market share funding approach can be viewed as penalizing successful market participants.

In accordance with the Commission's regulations, an EGS licensee must provide initial security in the amount of \$250,000 in the form of a bond or other security approved by the Commission and, after the first year that the license is in effect, the security level is annually reviewed and modified to be set at 10% of the EGS's reported gross receipts.⁵⁹ Because an EGS's on-going bonding requirements is based on its gross receipts, significant growth in revenues from Pennsylvania operations leads to increased bonding requirement levels. To satisfy the requirements of bonding companies, EGSs with less resources are generally placed in a more difficult position than their larger competitors because they have to post greater security to be able to meet the bonding requirements. Larger EGSs, however, are also negatively impacted because their success in the market is penalized with greater financial requirements. These real impacts that result from funding requirements tied to an EGSs gross receipts have to be factored into an EGS's decision about entering a market and pricing its products. For these reasons, RESA does not support implementing a similar approach to address the Commission's concerns for funding its operations.

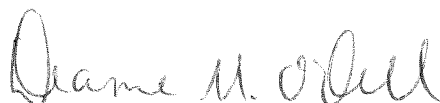
In conclusion, to the extent the Commission chooses to pursue a mechanism to generate additional funding from EGSs, an annual flat fee approach would be preferable. The Commission's identified level of \$1,000 per year also appears to be reasonable.

⁵⁹ 52 Pa. Code § 54.40(c),(d) (emphasis added). This is in addition to other security requirements that EGSs must satisfy including those of the EDC and PJM as well as the requirement that they pre-pay their Pennsylvania state tax obligations each year.

III. CONCLUSION

RESA appreciates the opportunity to provide its feedback on these important issues and urges the Commission to continue moving forward in developing policies that are reasonably calculated to lead to a robust competitive retail electricity market for the benefit of all Pennsylvanians.

Respectfully submitted,



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