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December 10, 2012

Electronic Filing
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street - Filing Room (2nd Floor)
PO Box 3265
Harrisburg, PA 17105-3265

RE: Investigation of Pennsylvania's Retail Electricity Market
Docket No. 1-2011-2237952; COMMENTS OF NRG ENERGY, INC.

Dear Secretary Chiavetta:

Enclosed for filing with the Commission on behalf of NRG Energy, Inc. is an electronic copy of its Comments in the above-referenced proceeding.

If you have any questions regarding this filing, please direct them to me at 609.524.4696 or via email at abraham.silverman@nrgenergy.com.

Respectfully yours,

Abraham Silverman / with permission Dana Coulter

Abraham Silverman
Assistant General Counsel, Regulatory

cc: Office of Competitive Market Oversight Retail Markets Investigation at ra-RMI@pa.gov.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF NRG
PHASE II TENTATIVE ORDER

Date: December 10, 2012

Phase II Tentative Order
Comments of NRG

NRG Energy, Inc. is one of the nation's largest, most diverse power companies with over 24,000 MW of generation and subsidiaries that provide retail electricity in many states with competitive retail electricity markets.[1] NRG has three licensed retail companies with a keen interest in the Pennsylvania retail market – Energy Plus Holdings LLC (EPH), Green Mountain Energy Company (GME), and Reliant Energy Northeast LLC (REN).[2] NRG has actively participated in the Commission's Retail Market Investigation, providing written comments and participating in the Commission's *en banc* hearings, technical workshops and stakeholder conference calls.

Through its Retail Market Investigation (RMI) and its consideration of the best path to bring robust, sustainable competition to its own competitive retail electricity market, Pennsylvania had the unique opportunity to draw on the experiences and lessons learned from other market models instituted around the country. NRG commends the Commission and its Staff for their efforts to compile and synthesize a vast amount of information collected over the course of the investigation. While much has been done to move the market forward, more work remains to ensure Pennsylvania consumers receive the benefits that only a fully competitive retail electricity market can deliver.

NRG appreciates the opportunity to comment in response to the proposals for the "end state of default electric service" outlined in the Commission's November 8, 2012 Tentative Order.[3] NRG's comments address the following issues:

1. The continuation of the electric distribution companies (EDCs) as default service providers (DSP) should be viewed as a transitional step toward more robust, sustainable competition. Only when the EDC is removed from the DSP role will a fully functioning competitive retail market develop and the Commission should set a date

[1] On July 22, 2012, NRG announced its merger with GenOn Energy, Inc., which when complete, will result in NRG being the largest competitive generator in the United States with a diverse fleet of 47,000 MW of capacity and assets concentrated in the East, Gulf Coast and West. *July 22, 2012 NRG/GenOn Press Release*.
[2] EPH received its license to serve residential and commercial customers on January 14, 2010. GME received its license to serve all customer classes on June 10, 2011. REN received its non-residential license on October 18, 2010 and its residential license on May 19, 2011.
[3] Tentative Order, *Investigation of Pennsylvania's Retail Electric Market,* Docket No. I-2011-2237952, November 8, 2012.

certain for a transition to a true "end-state" where the utilities no longer serve the DSP role;

2. EDC provided default service products must be market reflective to allow for more robust competition to develop. NRG supports the Commission's proposal for hourly priced default service for customers 100 kW or greater, and quarterly procured/priced default service for customers less than 100 kW;
3. NRG supports the Commission's proposal to require the utilities to implement portable Universal Service programs; however we encourage the Commission to require consistent approaches across all EDCs to ensure simple to understand programs for both customers and EGSs;
4. Supplier consolidated billing (SCB) is critical to allowing EGSs to build relationships with their customers and offer innovative products and services; NRG proposes answers to the policy questions and urges the Commission to provide guidance on those questions to help expedite the implementation of SCB;
5. NRG looks forward to participating in a rulemaking proceeding aimed at implementing accelerated switching and seamless moves to foster retail competition;
6. NRG supports the Commission's proposal to allow the EDCs to continue to provide Energy Efficiency and Conservation (EE&C) programs; however, we urge the Commission to develop a process to allow EGSs and other third parties to compete for a share of these funds and propose their own EE&C solutions to meet the Act 129 goals;
7. NRG supports the continuation of the Commission's established solar policy; however, NRG does not support the Commission's proposal to allow EDCs to enter into new long term contracts for non-solar AECs.
8. NRG strongly supports the Commission's proposal for a statewide consumer education campaign; however, NRG does not support the Commission's proposal for cost recovery and instead urges the Commission to recover the costs associated with such a campaign that will benefit all customers through a non-bypassable surcharge; and
9. NRG supports the Commission's proposal to collect annual licensing assessments from electric generation suppliers (EGS) based on each EGS's gross operating revenues.

1. EDC as *Transitional* Default Service Provider

The Commission's proposal to retain the EDCs in the default service provider (DSP) role will not result in the development of robust sustainable retail competition nor will it fully unlock the full array of innovative products and services capable of meeting the diverse and growing individual needs of consumers. As NRG has previously noted, a fully-functioning, robust, and sustainable competitive retail electricity market will only flourish when the EDCs have been removed from the DSP role. Only then will customers benefit from the full spectrum of value-added services and products designed to meet their individual needs and desires. While EGSs are delivering a limited number of these innovative products and services today, so much more is possible when the EDC is out of the DSP role. To capture market share and enhance profitability, competitive suppliers have strong incentives to attract and retain customers to maximize the lifetime value of the consumer. This is accomplished through better understanding the differing needs and desires of different customers and developing products that address those customer preferences such as length of fixed price term, renewable energy, demand response, smart energy, quicker response times, and dedicated agents skilled in addressing unique customer needs. In short, competitive suppliers have strong incentives to satisfy customer demand for supply and services and robust retail competition aligns the industry value chain with the customer.

Moreover, relieving the EDCs of DSP responsibility will enable them to focus on their core competencies and obligations for reliability and safety. It also will allow them to focus their resources on the infrastructure investment needed to modernize and maintain their transmission and distribution systems, including more rapid deployment of Smart Meters and associated system upgrades. These investments will further support the development of the competitive retail market by enabling innovations that leverage Smart Grid technologies. For all these reasons, retaining the EDCs in the DSP role as described in the Tentative Order should be viewed not as an "end state," but rather as yet another transitional step toward full competition. NRG urges the Commission to set a timeline in its final order – as described in our comments filed during Phase I of the RMI – for a more complete transition to full retail competition where the EDC is replaced as the DSP by

EGSs, including a process for implementing changes resulting from an EGS petition to become a default service provider as the Commission has proposed.[4]

2. *Transitional* Default Service Product

If Commission determines that retaining the EDCs in the role of DSP is a necessary next step in the transition to robust, sustainable competition, then NRG supports the default service product definitions outlined in the Tentative Order for customers at or above 100 kWh (i.e., hourly priced service), and below the 100 kWh (i.e., quarterly priced service). The transition of these customers to a more market reflective, EDC provided, default service product is critical to the ultimate goal of moving toward more robust, sustainable retail competition.

The Commission has rightly concluded that a default service product that more closely resembles market conditions over time is necessary to spur competition to the next level. Default service rates must be market-reflective and must include all costs incurred by the EDC in providing default service to ensure customers are able to fully benefit from the myriad innovative products and services that only a fully competitive retail market can deliver. Market reflective default services rates that are inclusive of all costs associated with supply that service are also required to enable competitive retail suppliers to compete on equal footing with the EDC's default service. If default service rates diverge from the underlying wholesale market prices for an extended period (either up or down), or if default rates do not reflect all costs of providing generation service, then the pricing uncertainty will make the market unattractive for suppliers. They will be reluctant to enter the market or be less likely to remain in the marketplace. Either event will ultimately hinder customers' ability to experience the options that would have otherwise been available from competitive suppliers. As the Commission has noted, this may not seem like a significant problem to certain customers when default prices are low compared to the market price, but it will likely be a problem when default prices are high compared to the market price and those same customers have few or no competitive options to lower their electricity costs or to otherwise benefit from the competitive marketplace. One of the proven ways to ensure customers have consistent access to

[4] Comments of NRG Energy, Inc., in the Pennsylvania Public Utility Commission's *Investigation of Pennsylvania's Retail Electricity Market*, Docket I-2011-2237952, June 3, 2011.

numerous product and service offerings from competitive suppliers is to price default service in a manner that avoids a sustained divergence from underlying wholesale market prices.

With a move to quarterly pricing as the next step in the transition to a fully competitive market, NRG urges the Commission to establish a timeline for post-2015 when the default service products proposed in the Tentative Order will be transitioned to EGSs and then subsequently eliminated at a later date after transition to EGS. NRG proposes that the date for this transition to EGS provided default service be no later than June 1, 2016. This would allow customers to become acclimated to quarterly or hourly pricing for one full year before the next transition date.

If, contrary to the Commission's decisions regarding the provision of default service for large commercial and industrial customers and its decision in Pike County[5], the Commission now believes that legislative changes are required to move to quarterly priced default service –then NRG urges the Commission to include a transition to a true "end state," where on a date certain the EDC is replaced as the DSP by EGS and default service is subsequently eliminated. This is consistent with the proposal the Commission has indicated it will seek in 2013. [6] NRG's comments in Phase I of the RMI provided a series of additional steps necessary to allow for a smooth transition to a fully competitive retail electricity market.

3. Universal Service Programs

NRG agrees with the Commission that the current EDC CAP program needs to be replaced with a fully portable benefit that allows low income customers to exercise their right to shop for the energy products that best meet their needs. Establishing such a system will ensure that EGSs are indifferent to the economic status of the customers they enroll, and that these at risk customers have the same access to the competitive products and services that all other customers enjoy.[7] However, NRG encourages the Commission to

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[5] In Pike County, the Commission allowed for a default service portfolio to be made up of a single pricing product – in that case hourly pricing.
[6] Tentative Order, *Investigation of Pennsylvania's Retail Electric Market,* Docket No. I-2011-2237952, November 8, 2012.
[7] In Texas, suppliers have no insight into any assistance a customer may receive, and are expressly prohibited from discriminating on that basis.

require statewide uniformity in how these benefits are applied to minimize customer confusion and simplify the programs. Current EDC approaches to subsidizing low income customers range from simple percentage off the bill calculations to more complicated percentage of income calculations that neither consumers nor EGSs can easily replicate. An overhaul of the current system is necessary to ensuring these customers have full access to the diverse products and services available in a more robust competitive retail market.

With regard to the other low income benefits programs, to the extent that the EDCs continue in the DSP role, NRG supports the Commission's proposal to not change the LIURP, hardship funds, and CARES programs. NRG also fully supports the Commission's proposal to work with the Department of Public Welfare to modify LIHEAP to allow benefits to be paid to EGSs. Only when these benefits are fully portable can customers access the benefits of competitive retail markets that all other customers in the Commonwealth currently enjoy. However, as part of any transition to a fully competitive retail market, we urge the Commission to revisit how these programs are provided to allow, and even require, EGSs to step into the role of providing these benefits directly to consumers.

As previously noted in NRG's filed comments in this proceeding, Texas successfully implemented an overhaul to its utility specific low income customer assistance programs at the onset of the state's fully competitive retail market. In Texas, retail suppliers assume many of the obligations for providing low income assistance and that allows all customers to shop and retain their low income benefits through an easy to understand cents per kWh discount programs. NRG recognizes that the significant systems improvements required to effectuate this change will require a concerted effort by all interested stakeholders. However, those changes are critical to a successful and fully functioning competitive retail market. We look forward to participating in any stakeholder efforts and sharing our experience with these universal service programs in Texas.

4. Supplier Consolidated Billing

NRG appreciates that the Commission recognizes the importance of Supplier Consolidated Billing (SCB) in helping EGSs establish more robust, familiar relationships with their customers. EGSs are the entities best suited to providing end-use customers with unique products and services tailored to meet individual customer needs. The current reliance on the utility consolidated billing model denies customers' the opportunity to benefit from innovative new tools designed to help them be smarter energy consumers because it precludes EGSs from billing for such new and innovative services. The existing EDC billing systems are designed for tariffed utility services. They simply cannot accommodate the plethora of billing needs of multiple EGSs and it is not economically feasible for the utilities to continually update their billing systems to accommodate the changing needs of the competitive marketplace. Moreover, the limitations of the utility systems are also costly to customers, in that EGSs are prevented from offering products and services aimed at helping customers reduce their energy costs.

To maximize the benefits of a competitive market, retail suppliers must have the option of frequent, regular access to the customers making decisions about the products and services they are purchasing. Without frequent communication between the supplier and customer through customer service, billing, and other channels, customers will not have access to the innovative products offerings and, as a result, customers will only see competition as limited by unnecessary restrictions. They will have less information upon which to base their purchasing decisions and the market will be less likely to flourish.

We commend the Commission for providing direction to the Office of Competitive Market Oversight (OCMO) to submit a recommendation to the Commission by July 1, 2013 as to how to proceed with making SCB available as a billing option for EGSs and third-parties. However, NRG urges the Commission go further and help expedite the stakeholder process by providing the requested policy guidance on the unresolved issues identified by the EDEWG and outlined in its November 8, 2012 Tentative Order. NRG proposes that the Commission resolve the policy questions as follows:

- Customer accounts with past-due EDC balances are eligible for SCB. Any unpaid charges follow the customer and will be billed by the EGS via SCB. Existing utility deposits associated with an SCB EGS will be transferred to the EGS to defray past due balances.

- EGSs that offer SCB must be permitted to manage their bad debt expense. A key to managing those costs is having the ability to terminate customers for non-payment. EGSs will be permitted to terminate customers for non-payment following the existing disconnection regulations contained in Chapter 56. An EGS will notify the EDC of the need to disconnect and the EDC will take action to complete the disconnection within a period of 5 days.
- EDCs are required to provide usage data to EGSs under the existing methodology that exists today. If an EDC does not provide usage data in time for billing, an EGS will be permitted to estimate a customer's bill using the same bill estimation procedures that the EDCs currently use. The EGS will base its estimates of EDC charges on past charges provided by the EDC.
- EGSs will be required to purchase the receivables of the EDCs within 5 days of receipt of those charges at no discount.
- EGSs may support hardship fund donations. EGSs may allow customers to add a dollar or more to their payment for the hardship fund. Customers who choose not to contribute will cause no donation to the fund, and vice versa. Donations to the hardship fund will not be treated as a "billed" charge but rather processed like an overpayment.
- Until EGSs replace the EDC as the default service provider, EGSs that provide SCB will be required to provide price to compare information on the bill as well as a bill message informing customers of the frequency of the default service price changes.
- In the unlikely event that a customer on SCB submits payment to the EDC instead of the EGS, the EDC will be required to immediately forward that payment to the EGS.
- For combined electric and gas utilities that have combined gas/electric accounts, summary billing must be modified to allow for the electricity charges to be separated and forwarded to the EGS providing SCB.
- EGSs that offer SCB must notify their customers that they will begin to receive a consolidated bill from the EGS and that all payments must be made directly to the EGS.
- EGSs that provide SCB will assume responsibility for including all bill inserts required by regulation in the same manner currently provided by the EDCs. The EDCs will provide electronic copies of the required inserts to the EGSs for inclusion

with the SCB bill. EGSs are permitted to print and mail the inserts or send them to customers electronically to those customers who have elected electronic billing.

- EGSs that provide SCB will be responsible for handling all customer disputes related to commodity charges and will take all calls for any bill disputes. EGSs will follow the Commission's existing dispute regulations found in Chapter 56. The EDC will be obligated to provide the EGS with requisite information to resolve billing disputes for utility charges.
- EGSs that provide SCB are required to offer payment plans to customers who become delinquent. Customers on a payment plan with the utility at the time of the switch to EGS will be required to pay the EDC in full before switching to SCB with the EGS.
- EDC supplier coordination tariffs and all rate tariffs must be revised to stipulate the Purchase of Receivables (POR) payment terms/agreement between an EGS and the EDC for SCB to ensure transparency to EGSs and customers.

5. Accelerated Switching/Seamless Moves

NRG supports the Commission's directives related to accelerated switching. NRG looks forward to participating in the rulemaking to review and revise the switching regulations to shorten the switching timelines, allow for off-cycle switches, "seamless moves," and day-one service with an EGS. In particular, allowing customers to chose and enroll with a supplier at the time of request to initiate new service for a premise – either through contact with an EGS or EDC – is essential to eliminating the inherent presumption that EDCs "own" the customer from the outset. Day-one switching is consistent with the Commission's objective of providing the structure in which the customer is empowered to make its supply purchase decision. Similarly, customers should be allowed to remain with their chosen EGS when they move within an EDC service territory, rather than be systematically returned to EDC default service for one or more billing cycles and required to repeat the enrollment process with their prior EGS. A seamless move process without interruption in EGS service is fundamental to improving the customer experience in a competitive market. Moreover, requiring EGS customers to return to EDC default service whether they move across the hall or across the county economically harms the incumbent EGS. The EGS faces a loss on its customer acquisition investment, as well as the loss of revenue during the re-enrollment period. In its most recent default service proceeding, PECO proposed, without opposition, to initiate a collaborative process with interested EGSs to develop technical requirements and cost estimates for system changes required to permit residential and commercial customers to change their service address and maintain EGS service.[8] NRG urges the Commission to direct all EDCs to do the same.

6. Act 129 Energy Efficiency Programs

NRG agrees that for the transition period, it is reasonable to continue to allow the EDC to provide some of these energy efficiency products and services. However, we also support the proposal that certain programs addressed in the Commission's retail market enhancement implementation order, e.g., Time-of-Use pricing, should be competitively bid to allow EGSs to provide such services. Ultimately, we believe that most, if not all, of the energy efficiency programs identified in Act 129 can and should be provided in the competitive marketplace and that eventually there will no longer be a role for the EDCs in the provision of these services.

Commissioner Witmer posed several questions in her motion accompanying the Tentative Order. NRG's response to these questions follows:

> **Do any EGSs currently provide or plan to provide EE&C services as part of their competitive retail offerings within Pennsylvania?**
>
> The Commission recently approved REN as the EGS that will provide Time-of-Use (TOU) supply service to PECO customers. The development of EE&C service in Texas suggests that as Smart Meters are more fully deployed and EGS load is settled based on customers' hourly data, it is highly likely that a growing number of EGSs will begin to deliver a variety of EE&C products and services to Pennsylvania's customers. For example, in Texas Reliant offers a suite of e-Sense® products that help consumers more closely track and control their energy consumption, including Account Management that allows a customer monitor their electricity use and set cost and usage alerts and compare their energy use to that of their neighbors; weekly summary emails that allow a customer to track their weekly electricity usage compared to their historical usage; Home Energy Monitor that provides customers with an in-home display that transmits incremental usage data, and

[8] *Petition of PECO Energy Company for Approval of its Default Service Program II*, P-2012-2283641

shows the impact of different electrical devices in the home as they are turned on and off; and time-of-use plans, among others. NRG intends to offer increasing amounts and types of EE&C services in Pennsylvania and elsewhere.

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?

To the extent EGSs are offering, or begin to offer, EE&C services in a given EDC service territory, the EDC should be permitted to count the provision of that EGS service toward meeting its Act 129 obligation (e.g., if an EGS is providing TOU service in the territory, the EDC can count the obligation as being met). To the extent the EDC has a specific demand reduction target or energy efficiency goal, EGS efforts should be counted toward meeting those targets or goals. The Commission should establish a process by which EGSs can register their demand reduction or energy efficiency successes which can then be subtracted from the EDC targets, thereby reducing the EDC's 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?

The Commission should direct the EDCs to establish a system to allow EGSs and other third parties to compete to provide EE&C service, rather than require the EDCs to develop and implement programs to meet Act 129 goals and targets. Under this approach, EGSs and other third parties would compete for a share of the EE&C funds by proposing – and the "winning" suppliers would then implement – their own programs, services and technologies designed to meet the statutory goals. Such a competition would ensure that only the most economic technologies are implemented, while drawing on the creativity and innovation of the market to reach the largest number of customers most economically.

Is there a broader role EGSs can or should play within legislatively mandated EDC EE&C programs?

A more complete transition to a fully competitive retail market will unlock the full array of innovation that the competitive supplier community can offer. The

Commission can – and should – allow interested EGSs and other third-party vendors the opportunity to provide the EE&C services to fulfill the existing legislative mandates. The NRG retail companies look forward to helping shape a process that invites that market participation, and enables the provision of a vast array of innovative products and services in the most economically efficient manner that only a truly competitive retail market can deliver.

7. Long Term Contracts for Alternative Energy Credits

To date, the Commission has permitted the utilities to voluntarily enter into long-term agreements for Solar Alternative Energy Credits (SAECs) and has provided for an allocation mechanism and cost recovery of those SAECs. NRG supports a continuation of this policy for the purpose of supporting solar resources. However, there is no reason to expand this approach to other more mature resources that are better able to compete with established technologies. NRG does not support the Commission's proposal to allow EDCs to enter into new long term contracts for non-solar AECs. AECs are competitive products and EGSs are fully capable of, and are better suited to, competitively procuring the AECs necessary to meet their portfolio standards requirement. Moreover, if the Commission permits the EDCs to procure AECs to meet the Alternative Energy Portfolio Standard (AEPS) requirements, and the EDCs undertake to procure those resources, then EGS access to AECs for voluntary purchases may be jeopardized, potentially limiting the ability of EGSs to offer 100% renewable products. Producers of desirable AECs will be motivated to withhold their inventory in the hopes of winning a long-term contract from an EDC. EGSs may be forced to pay alternative compliance payments rather than a fair market value for those AECs, potentially driving up the cost of renewable energy products to consumers.

EGSs have a demonstrated ability to competitively procure alternative energy resources for the purpose of meeting their AEPS obligations and meeting consumers' needs and desires for renewable product offerings that go above and beyond the existing statutory requirements. For a robust, sustainable competitive market to flourish, the EDCs' role in procuring generation resources and the attributes associated with them must be diminished and not increased.

8. Statewide Customer Education

NRG supports the Commission's proposal for a statewide customer education campaign to increase customer awareness about choice and educate customers about the changing market. As NRG stated in its comments in Phase I of the RMI, the lack of customer education and awareness about electricity choice is a key barrier to robust competition and educating the consumer is a critical element to ensuring the development of a successful competitive retail market.

NRG strongly disagrees with the cost sharing allocation methodology as proposed in the Tentative Order. Requiring shopping customers (who have already become educated and shopped) to pay a disproportionate share of the costs associated with educating customers who have not shopped, and are in fact default service customers, is inappropriate. Shopping customers would pay not only the EGS share of the burden (in the form of higher prices), but also the EDC share that is passed through via their non-bypassable surcharges to distribution customers. Customer education benefits all customers and facilitates a competitive retail market. Because all customers benefit from these efforts, all customers should pay an equal share of the associated costs. The most simple and equitable way to recover these costs is through a non-bypassable surcharge on all residential customers.

9. Annual Supplier Licensing Fees

NRG does not object to annual licensing fees to cover Commission costs associated with regulating the retail supplier community. Indeed, most states impose annual assessments on retail suppliers to cover the costs associated with regulatory oversight of their operations.

As a first step in determining the appropriate assessment level, the Commission needs to determine its total cost associated with regulating EGSs. These costs include, but are not limited to: reviewing all license applications and reports filed by EGSs, answering all EGS inquiries, conducting complaint investigations. With the full scope of costs identified, the Commission can then divide that amount among licensed suppliers. Each supplier's assessment should be based on the percentage share of its annual intrastate gross operating revenues.

Conclusion

NRG thanks the Commission for the opportunity to provide these comments on the default service end state and looks forward to participating in the ongoing discussions and proceedings related to these issues, including a process initiated in the next 12 months to consider petitions by EGSs to become the DSP.