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March 22, 2013

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

RE: Petition of PECO Energy Company for Approval of its Default Service Program II *et al.*,
Docket No. P-2012-2283641 *et seq.*; **COMMENTS OF INTERSTATE GAS SUPPLY,
INC. AND DOMINION RETAIL, INC. TO TENTATIVE ORDER**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the original Comments of Interstate Gas Supply, Inc., and Dominion Retail, Inc. to the March 14, 2013 Tentative Order in the above-captioned docket.

Thank you for your attention to this matter. If you have any questions related to this filing, please do not hesitate to contact my office.

Very truly yours,

Todd S. Stewart
*Counsel for Dominion Retail, Inc. and
Interstate Gas Supply, Inc.*

TSS/jld
Enclosure
cc: Office of Special Assistants (via email)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for Approval of its Default Service Program II	:	Docket Nos.: P-2012-2283641
	:	
	:	
Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs	:	P-2011-2273650
	:	P-2011-2273668
	:	P-2011-2273669
	:	P-2011-2273670
	:	
	:	
Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan	:	P-2012-2302074
	:	
	:	
Petition of Duquesne Light Company for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015	:	P-2012-2301664
	:	
	:	

**COMMENTS OF INTERSTATE GAS SUPPLY, INC.
AND DOMINION RETAIL, INC.
TO TENTATIVE ORDER**

Dated: March 22, 2013

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AND NOW, come Interstate Gas Supply, Inc. d/b/a IGS Energy (“IGS”) and Dominion Retail, Inc. d/b/a Dominion Energy Solutions (“DES”) (collectively “EGS Parties”) and hereby offer their Comments to the Tentative Order issued by the Pennsylvania Public Utility Commission (“Commission”) on March 14, 2013, in the matters identified in the caption above.

The EGS Parties are concerned that the Commission would choose to suspend and possibly terminate the retail opt-in (“ROI”) programs, given that various parties to these four proceedings -- including EGSs, EDCs, Consumer Parties and Commission Parties--have over the past year expended countless hours of time and effort in developing and designing ROI programs. The EGS Parties also are concerned that the Commission’s actions could dampen the desire of competitive suppliers to test the waters of Pennsylvania’s retail market in the short and longer term. Accordingly, the EGS Parties urge the Commission to review and revise the ROI programs, as discussed below, even if the schedule for implementation must, by necessity, be delayed.

The EGS Parties hope that through this comment process, the Commission may gain a better understanding of the concerns expressed by several parties, including the EGS Parties, that certain components of the ROI programs could be confusing or potentially harmful to customers, and that it will come to believe that alteration of those components could allow the ROI to move forward. In anticipation of that eventuality, the EGS Parties offer a few modifications that they believe will make the ROI programs more universally palatable for all stakeholders in the Commonwealth. The EGS Parties offer their specific comments as follows:

I. HISTORY OF THE PROCEEDING

The Commission launched an investigation into ways in which it could improve the competitiveness of the retail electricity markets in Pennsylvania in an Order dated April 29,

2011.¹ In response to the April 29 Order, the Commission received comments from a number of parties. On June 8, 2011, the Commission held an *en banc* hearing, at which various stakeholder representatives testified. The Commission subsequently issued an Order on July 28, 2011 (in the same docket) in which it concluded that “Pennsylvania’s current retail market requires changes in order to bring about the robust competitive market envisioned by the General Assembly when it passed the Electricity Generation Customer Choice and Competition Act...” (July 28 Order at p. 7).

As a consequence of the July 28 Order, the Commission directed the Office of Competitive Market Oversight (“OCMO”) to hold technical conferences to address intermediate and long-term issues pertaining to the competitive market. Part of the Commission’s direction was that OCMO was to present specific proposals for changes to “the existing retail electricity market and default service model.” OCMO held a total of 10 technical conferences beginning in August 2011 and running through December 2011. In addition to these technical conferences, the Commission held another *en banc* hearing on November 10, 2011, where interested parties discussed intermediate modalities for enhancing the competitiveness of the market on a shorter-term basis. These included: increased customer education, accelerated switching time frames, customer referral programs, **retail opt-in auction programs** and modifications to the rules for Default Service Plans beyond 2013. Following the *en banc* hearing a number of parties filed informal comments on the subjects addressed at the *en banc*.

After gathering substantial input from all of the comments and the testimony presented in two *en banc* hearings, the Commission entered a Tentative Order on December 16, 2011. The Tentative Order provided solidified recommendations regarding customer education, accelerated

¹ *Investigation of Pennsylvania’s Retail Electricity Market*, Docket No. I-2011-2237952 (Order entered April 29, 2011). (“April 29 Order”).

customer switching time frames, customer referral programs, **retail opt-in auction programs** as well as other modalities. Two programs in particular, namely the ROI and the standard offer customer referral (“SOR”) programs were proposed for inclusion in EDC’s upcoming default service plans that would eventually be litigated over the ensuing year.

The Commission finalized its recommendations for the Default Service Plans (“DSP”) for the 2-year period commencing after May 31, 2013, with the issuance of a Final Order on March 2, 2012.² Since that time, and even before, those EDCs that are subject to its requirements filed DSPs, litigated those cases, were required to modify their plans, including modifications to the basic structure of the ROI, engaged in collaborative meetings with interested parties regarding those plans, submitted compliance filings, and in some cases, submitted multiple compliance filings. There was no wavering, however, in the fundamental insistence that the ROI in particular, was necessary and would be beneficial. Moreover, there was no retraction from the Commission’s initial conclusion that there was no reason to believe that implementing the ROI and SOR programs in close proximity would cause customer confusion. The Commission considered this very argument, and rejected it in its Final Order in March 2012.³ The Commission also explicitly rejected the same argument in its approval of several EDC DSP plans where testimony was offered that the respective EDC’s SOR might confuse customers if it were offered too close in time to the ROI. The Commission concluded that no such interference was likely.⁴

² *Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*; Docket No. I-2011-2237952 (Final Order entered March 2, 2012). (“Final Order”).

³ Final Order, p. 24;

⁴ See, e.g., *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, pp. 119 – 121)(Wherein the Commission concluded, “We are not persuaded that having the two programs in effect at the same time is a concern. We also agree with FES’ observation that, because the Standard Offer Program will be marketed only to default service customers and not to customers who have enrolled in the Opt-In Program, the potential for customer confusion is diminished.” *Id.*, p. 121)

On March 14, 2013, however, upon its own motion, and without having received or cited to new or additional evidence, the Commission reversed its course and issued an Order that tentatively concludes that the ROI might interfere with the SOR, and as a consequence, should be suspended and possibly terminated. This action has perplexed the EGS Parties because the ROI--which is to be a once and done affair, not a continuous 2 year plus program like the SOR--would reach a mass market, not the narrowly targeted audience of the SOR. Properly crafted the ROI would reach a larger group of consumers and provide an opportunity unique to the SOR. It would seem logical to implement the SOR programs in a way that the referral process is commenced after the ROI is in place and customers are actually taking service through the program. At that point, those participating in the ROI, as shopping customers, will not be provided with the SOR messaging – hence no confusion.

II. COMMENTS

A. A lengthy suspension, or termination, of the ROI programs at this time would not be helpful or appropriate.

The EGS Parties do not believe that it is necessary or appropriate to suspend the ROI programs beyond the time necessary to address the recommendations contained herein and to ensure that adoption of a revised program by the 7 major EDCs in Pennsylvania is uniform and on track. The EGS Parties would not object to the Commission taking the time that is necessary to ensure that the programs are viable, so long as there is a clear intention to see the matter through to the end in a way that is more universally acceptable. Because of the ongoing nature of the SOR programs, a delay in the implementation of those SOR programs to avoid overlap with the ROI may be necessary.

A permanent suspension of the ROI programs, however, after they have been litigated for more than a year and have been the subject of Commission proceedings for almost a year prior

to that, if alternatives to complete elimination could provide value while addressing concerns, may be too drastic a step. Instead of simply terminating the program, the preferred approach would be to reexamine the program to address any lingering concerns and make revisions.

B. Suggested Revisions to ROI.

If the Commission's concerns lie less with the implementation dates for the programs and more with the content and structure of the ROI programs as presently formulated, a temporary suspension could be beneficial and would allow the Commission the opportunity to make modifications that would address what may be some of the more controversial portions of the ROI program. The modifications proposed below would bring the program structure nearly full circle, to what was initially conceived by the Commission. The EGS Parties strongly support these changes as a means of keeping the ROI on track.

1. The ROI should be changed to a 1 year fixed price product.

The EGS Parties have consistently maintained throughout the litigation of the EDC DSP programs, that the ROI product should be a one-year fixed price product. The appropriate range of the discount off of the initial price to compare ("PTC") for these products should be in the range of 5% to 10%. The EGS suggest simply focusing on the discount without a corresponding bonus, because a discount alone would allow for a longer period of time for the discount to apply, without putting pressure on the market prices for following periods. If a bonus payment needs to be part of the program, it will necessitate a lower discount for a shorter period of time. An ROI discount within this 5-10% range would go a long way to ensuring that customers will receive service over the one-year term of the program at a price that is at or below the applicable PTC. As the PTC changes over the period the supplier's price would not, but it would stand a better chance of remaining at or below the applicable PTC even as that PTC

changed. Moreover, this type of a program eliminates the mid-term price change aspect of the programs as presently conceived by the Commission. Finally, it should not be overlooked that the one-year fixed price product, with a bonus, is what had been originally recommended by the Commission in the Final Order.

Throughout this process some parties have complained that a mid-year price change could be a “bait and switch” opportunity, where suppliers could raise prices to customers who may not pay attention to the price change. While the Commission’s process for reviewing the rates for the 8-month price has the potential to address this issue, it is not clear to what extent the Commission has the desire or authority to regulate the rates of EGSs and whether review would equate to rate regulation. Nonetheless, no standards for such review have yet been shared with suppliers, making the prospect of any meaningful review less likely.

2. Customers need not be asked to pay for the costs of the ROI.

It also appears that there may continue to be some confusion among interested parties with regard to the recovery of the costs of these programs. It has become increasingly clear during the implementation process, that the EDCs universally believe that they should be able to conduct the retail opt-in aggregation program (as opposed to the auction process that originally was proposed) at a cost of approximately \$1.00 per letter mailed. The EDCs, apparently, seem to have universally agreed that suppliers would be charged this \$1.00 per letter mailed fee as a basis of participating in the ROI programs. Nonetheless, because of the EDC’s valid desire for full cost recovery for these programs, and because of the suppliers’ desire to have a known fee prior to participating in these programs, the Commission concluded that a capped \$1.00 fee to suppliers was necessary. Any monies not recovered by the \$1 fee would be recovered either through a non-bypassable surcharge to all customers or shared; with 50% paid by suppliers and

50% paid by default service customers. While the difference between a \$1.00 per letter program as currently proposed and the \$20.00 to \$30.00 cost per customer program as initially conceived by the Commission is vast, the difference between a \$1.00 program and a \$1.25 or \$1.50 per customer program is not so great. The EGS Parties, therefore, would not object to fixing the fee at an amount which absolutely will recover the costs of the program with the utilities then refunding any excess back to the suppliers on a *pro rata* basis after the full accounting for the costs of the program. Thereby ensuring complete cost recovery for the utilities and ensuring that customers are not asked to bear any of the costs of the ROI program.

If there is a similar concern with respect to the SOR program, however, the EGS Parties would urge elimination of the SOR programs if an appropriate capped cost for participation cannot be derived. The currently proposed \$30.00 capped cost per customer, with the remainder to be recovered as discussed above, either from all customers through a non-bypassable surcharge or split between suppliers and default service customers, appears to be an appropriate compromise. In the long run, however, SOR programs are far less likely to transition large numbers of customers, and because of the significantly higher cost per customer, seem to be a less efficient means of doing so. If a compromise per-switch-fee cannot be found, the EGS Parties would not oppose the Commission suspending the SOR programs indefinitely, or at least until a suitable cost recovery mechanism can be derived.

In the meantime, the EDCs and Commission would have the ability to investigate the most efficient and effective means of implementing these types of referral programs so that all customers are presented with the option or requirement to choose a supplier at some later date.

3. Programs similar to the ROI have not caused customer confusion.

It appears, based upon the records of these various proceedings as discuss above, that the Commission initially conceived of the idea of the ROI program, at least in part, based upon the experience of the First Energy Companies in implementing a provision contained in their last DSPs, wherein the utilities aggregated offers from various suppliers and sent them out to customers in a company envelope with a cover letter from the company suggesting to customers that it is okay to shop and that they should consider the enclosed supplier offers. That program appears to have functioned well and without substantial complaint or concern from customers with regard to the utility providing them with the offers of suppliers. The type of program proposed here is very similar except that there is actual Commission regulation in vetting the content and structure of the offer to be provided to customers and in ensuring that customers will receive a standardized product.

The success of the First Energy programs, even in the absence of this additional regulation, should allay fears that customers may be incapable of understanding the offerings being provided to them in the ROI program. This is not to suggest, however, that additional clarity in the messaging to customers is not possible. Some have suggested that including such things as supplier logos, or lessening the amount of fine print may enhance customer understanding of the programs--and the EGS Parties agree. We support efforts to ensure that customers are fully informed because we believe that an educated customer is our best customer.

III. CONCLUSION

Whatever the reason for the Commission's unexpected reversal of course, there can be no doubt that if the ROI is permanently suspended or terminated, it will negatively impact the future

competitiveness of the retail market. The EGS Parties, therefore, urge the Commission to maintain its original course and to implement the ROI. However, the EGS Parties also urge the Commission to take another look at the structure of the ROI and to address what have been some of the most persistent concerns expressed about that structure, so that all stakeholders can be comfortable that the programs will cause no harm. These include eliminating the two-part price and moving instead to a 1 year price, and adjusting the cost recovery so that customers are not asked to pay for the costs of the programs. With these changes, the programs should be able to make a positive difference.

The EGS Parties believe that the Commission desires a positive result and therefore urge the Commission to take the practical steps outlined in these comments, and to continue on the road to the finish line of this marathon that we started nearly two years ago -- improving the competitiveness of Pennsylvania's retail electricity market.

Respectfully submitted,



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