**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held June 19, 2014

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

James H. Cawley

Pamela A. Witmer

Gladys M. Brown

Interim Guidelines Docket No. M-2010-2183412

For Eligible Customer Lists

**TENTATIVE ORDER**

**BY THE COMMISSION:**

Before the Commission is a recommendation from the Commission’s Office of Competitive Market Oversight (OCMO) to require triennial company-wide solicitations of residential and small commercial customers by the Electric Distribution Companies (EDCs) in order to update the electric Eligible Customer Lists (ECL), which are made available to Electric Generation Suppliers (EGSs). Through this Tentative Order, we seek public comment regarding OCMO’s proposal.

**Background**

On January 9, 2009, the Pennsylvania Public Utility Commission announced the formation of OCMO to oversee the development and functioning of the competitive retail natural gas supply market.[[1]](#footnote-1) Since then, OCMO has been handling issues with the assistance of a group of legal, technical and policy staff members from various Commission bureaus and offices.

Pursuant to a Secretarial Letter issued on December 10, 2009, the Commission expanded the role of OCMO to serve as the Commission’s electric retail choice ombudsman, as described in the Default Service and Retail Electric Markets Policy Statement at 52 Pa. Code §69.1817.[[2]](#footnote-2) Specifically, OCMO was given responsibility for responding to questions from EGSs and other market participants, monitoring competitive market complaints and facilitating informal dispute resolution between the EDCs and EGSs.

In the course of a meeting held by OCMO through the Committee Handling Activities for Retail Growth in Electricity (CHARGE) on April 8, 2010, the issue of creating a uniform ECL was raised.[[3]](#footnote-3) This issue had previously been committed to and discussed by the Commission’s Electronic Data Exchange Working Group (EDEWG). Following the discussion at the April 8 CHARGE meeting, a team was assigned the task of continuing the discussion held by EDEWG and determining which ECL issues could be solved by consensus between the EDCs and EGSs and which issues would need to be resolved with Commission guidance. At the conclusion of those discussions, the team reported back to CHARGE during a teleconference held on April 29, 2010. Various aspects of the ECL were discussed, including consensus items, non-consensus items and the various positions taken on the non-consensus items. At the conclusion of the discussion, Commission Staff stated that it would take under advisement the team’s ECL report and the CHARGE discussion and prepare a recommendation for the Commission’s consideration. At its July 15, 2010 Public Meeting, the Commission adopted for public comment a Tentative Order outlining OCMO’s proposal for the provision of more uniformity in the information to be provided in the EDCs’ ECLs.[[4]](#footnote-4) On November 15, 2011, the Commission adopted a Final Order, at the above-referenced docket, which outlined interim guidelines for the EDCs’ provision of the ECLs.[[5]](#footnote-5)

The issue of the provision of ECLs was again raised on March 6, 2012, this time in relation to the Commonwealth’s competitive retail natural gas market. On March 6, 2012, Dominion Retail, Inc., Interstate Gas Supply, Inc., and Shipley Choice, LLC, petitioned the Commission, at Docket No. P-2012-2291983 (Petition), for a declaratory order stating that natural gas distribution companies (NGDCs) were under a continuing obligation to provide complete ECLs to retail natural gas suppliers (NGSs) operating in their service territories without the imposition of fees on the NGSs.[[6]](#footnote-6) By an Order adopted at its September 27, 2012 Public Meeting, the Commission determined that NGDCs were not required to continually provide ECLs at no cost to the NGSs and denied the Petition.[[7]](#footnote-7)

In a separate Order, also adopted at the September 27, 2012 Public Meeting, the Commission determined that it was apparent from the pleadings in the declaratory order proceeding at P-2012-2291983 that there is much divergence among NGDCs concerning the provision of customer lists. Accordingly, the Commission issued a Tentative Order setting forth proposed guidelines in order to provide uniformity in the customer account information provided by NGDCs to NGSs.[[8]](#footnote-8) At its August 15, 2013 Public Meeting, the Commission unanimously adopted the Joint Motion of Commissioners Pamela A. Witmer and James H. Cawley regarding a Final Order[[9]](#footnote-9) outlining final interim guidelines for the NGDC provision of ECLs. In the Joint Motion, the Commissioners stated the following:

Additionally, upon further review of the *Electric ECL Order*, it has come to our attention that while we determined that “[i]n lieu of annual companywide solicitations, EDCs shall actively notify customers of their withholding options through each new customer’s welcome package and through periodic announcements in customer bill inserts, e-mail, or a separate announcement included in the customer’s paper bill or electronic notification, if available,” we failed to institute any sort of dedicated solicitation to “refresh” an EDC’s ECL on a company-wide basis. Accordingly, as part of this Motion, we suggest referring this issue to the Office of Competitive Markets Oversight (OCMO) for discussion by its CHARGE[[10]](#footnote-10) group in order to explore the necessity of such a requirement for EDCs.

Joint Motion of Commissioners Pamela A. Witmer and James H. Cawley, *Interim Guidelines for Natural Gas Distribution Company Eligible Customer Lists*, Docket No. M-2012-2324075 (Aug. 15, 2013 Public Meeting) (hereinafter Joint Motion).

In meeting this requirement, OCMO, during its January 16, 2014 CHARGE call, requested that interested parties submit informal comments on the issue of company-wide electric ECL solicitations. Informal comments were due to OCMO by February 28, 2014. Informal comments were submitted by Citizens’ Electric Company of Lewisburg and Wellsboro Electric Company (Citizens’ & Wellsboro); FirstEnergy Solutions Corporation (FES); Office of Consumer Advocate (OCA); PECO Energy Company (PECO) and PPL Electric Utilities Corporation (PPL).[[11]](#footnote-11)

**Discussion**

OCMO, in developing the proposal included herein, has reviewed and taken into consideration the informal comments provided by the aforementioned parties.

**A. Summary of Informal Comments**

In their informal comments, Citizens’ & Wellsboro agree with a three-year refresh procedure as it would be a reasonable balance between the goals of providing EGSs with updated information while preserving customers’ right to restrict information released through the ECL. Additionally, Citizens’ & Wellsboro believe such a schedule would not impose an undue administrative burden on EDCs.[[12]](#footnote-12)

Similarly, FES and PECO do not oppose a triennial refresh requirement.[[13]](#footnote-13) PECO requests that those utilities with both electric and gas services be allowed to perform a single solicitation to dual-service customers and also requests full cost recovery for the preparation, distribution and solicitation of natural gas ECLs.

PPL and OCA disagree with a three-year requirement.[[14]](#footnote-14) PPL believes company-wide refreshing is unnecessary because new customers receive information about their options in welcome packets while existing customers receive reminders of those options through PPL’s periodic articles and Internet and social media outreach. PPL and OCA both believe triennial refreshing would be confusing to customers who already opted-out of including any, or all, information in the ECLs and may prove to be costly endeavors for the EDCs. OCA also notes that the competitive retail electric market is considerably more developed than the natural gas retail market and that a customer opting out of the ECL is still exposed to substantial EGS advertising efforts. OCA submits that it is counterproductive to require customers who already opted out of the ECL to affirm that decision every three years; rather, OCA believes that a customer’s decision to opt out of including information on the ECL should be maintained unless or until the customer requests a change. OCA expresses concern that continuous solicitations may “add to the negative impression of electric choice” that has caused the Commission concern in the past.[[15]](#footnote-15) OCA also agrees with PPL that the EDCs should provide periodic information to customers about the ECL, its benefits and the mechanism to change preferences regarding the information, if any, included on the ECL.

**B. Frequency of Company-wide Solicitations**

Based on our review of the informal comments provided, we propose a triennial company-wide requirement for the EDCs to refresh their ECLs. While the Commission recognizes the ongoing ECL education efforts offered by the EDCs, such as welcome packets, bill inserts, Internet and social media outreach, etc., we believe many customers would benefit from a direct outreach from the EDC via a separate communication, detailing their options with regard to the ECL. In our *November 15, 2011 Electricity ECL Order*, we rejected the idea of annual company-wide solicitations and, as previously noted, allowed EDCs to simply provide such education efforts.[[16]](#footnote-16) However, we believe this issue needs to be revisited and, after reviewing the decisions made with regard to the natural gas ECL, we believe consistencies in actions between the natural gas and electricity retail markets, where possible, are beneficial to all parties. Accordingly, we are proposing a consistent methodology for company-wide ECL refreshes.

We acknowledge the informal comments provided by OCA, who appears to be concerned with the communications provided to customers who have already opted-out of including any, or all, of their information from their EDC’s ECL. However, we believe triennial solicitations will provide a reminder to those customers who have not opted out of including their information from the ECL that they have the ability to do so. Additionally, we believe it is also beneficial to remind those customers who have opted out of including information that they have the ability to include their information on future ECLs.

In our *November 15, 2011 Electricity ECL Order*, the Commission directed the EDCs to perform, by the end of the first quarter of 2012, a single company-wide solicitation to refresh their ECLs.[[17]](#footnote-17) Because we are proposing a triennial refresh schedule within this Tentative Order, we also propose that the EDCs perform their next company-wide solicitation by end of the first quarter of 2015, three years after the previous solicitation. The triennial process would continue on from that time – first quarter 2018, first quarter 2021, and so on.

**C. Company-wide Solicitations for Dual-Service Customers**

We also acknowledge the informal comments provided by PECO that companies with dual-service customers (i.e. a customer receiving natural gas and electricity service from the same utility) be allowed to provide a single solicitation to such customers. Additionally, in our *September 23, 2013 Natural Gas ECL* *Order*, we stated “[l]astly, when feasible, we do not oppose PECO’s suggestion that combination electric and gas utilities should only have to perform [a] single solicitation across their entire customer base.”[[18]](#footnote-18) Therefore, we propose that such companies be allowed to provide a single solicitation providing all pertinent information regarding the electric *and* natural gas ECLs. However, we recognize that the triennial company-wide solicitation schedules for the natural gas and the electricity ECLs may not run in tandem. Accordingly, we request comments, especially from those dual-service utilities such as PECO, as to the most effective manner in which to do company-wide solicitations for those customers who receive both electric and natural gas service from the same utility. Additionally, we request comments as to whether or not a dual-service customer can restrict some, or all, of his or her information from one ECL, such as the electric ECL, while restricting or allowing different points of information on the other ECL. For example, a dual-service customer may restrict the inclusion of their telephone number on the electric ECL but allow its inclusion on the natural gas ECL.

**D. Content of Company-wide Solicitations**

In our *November 15, 2011 Electricity ECL Order*, the Commission directed the EDCs to consult with our Office of Communications regarding ECL solicitations to ensure that customers are aware of their choices; what their choices mean; how the information on the ECL would be used; and clear instruction on how to opt-out of including any, or all, of their information from the ECL.[[19]](#footnote-19) Additionally, in its *September 23, 2013 Natural Gas ECL Order*, the Commission directed the NGDCs to include the following information in the initial solicitation of customers in order for customers to choose their preferences regarding the release of information through the ECL: (1) what the ECL is; (2) what information is to be included on the ECL; (3) what the more detailed information represents; (4) how this information is to be used by NGSs; (5) how the information is to be safeguarded by NGDCs; (6) how widely the information will be disseminated; and (7) the potential benefits to the customers of having their information included on the ECL.[[20]](#footnote-20) We propose that the EDCs include these seven information elements listed above in their triennial solicitations to customers. Additionally, we propose that the EDCs work in consultation with the Commission’s Office of Communications in developing those solicitations to ensure that the solicitations do not, as OCA notes, create a negative impression of electric choice.

The Commission, in its *September 23, 2013 Natural Gas ECL Order*, agreed with comments provided by OCA that customers should be given various methodologies through which they can change their disclosure preferences regarding the ECL. The Commission stated that the ongoing process should allow customers to change preferences through the mail, a website process or a telephone contact with an EDC customer service representative.[[21]](#footnote-21) While this directive was in relation to a customer’s ongoing ability to change their ECL preferences, regardless of the company-wide solicitation schedule, we believe it to be a valuable directive for all ECL initiatives. On that basis, we propose that EDCs allow customers to not only reply to the triennial solicitation via direct mail, but through website processes, electronic mail and/or telephone contacts with EDC customer service representatives. Therefore, in addition to the seven areas of information proposed for inclusion in the solicitation, we propose the inclusion of language outlining the methodologies through which a customer can respond with his or her preferences regarding information included on the ECL.

**E. Costs and Cost Recovery**

We specifically request comments from the EDCs regarding the costs of performing triennial company-wide solicitations. Additionally, we request comments from all interested stakeholders regarding how EDCs should recover the costs associated with this triennial solicitation. We would like to note that, in our *September 23, 2013 Natural Gas ECL Order*, the Commission did not designate a specific recovery mechanism. We simply determined that the incremental costs for the natural gas ECL would be subject to cost recovery.[[22]](#footnote-22)

**Conclusion**

Through this Tentative Order, the Commission seeks comments on the proposed recommendations for a triennial company-wide solicitation schedule for the EDCs to update their electricity ECLs. Specifically, the Commission requests comments on a three-year update schedule; the treatment of those customers receiving both electricity and natural gas service from the same utility; the content of the solicitations; and the amount and recovery of the costs associated with the solicitations.

**THEREFORE,**

**IT IS ORDERED:**

1. That this Tentative Order be issued for public comment.

2. That interested parties shall have 30 days from the date of entry of this Tentative Order to submit written comments with the Pennsylvania Public Utility Commission.

3. That interested parties shall have 45 days from the date of entry of this Tentative Order to submit written reply comments with the Pennsylvania Public Utility Commission.

4. That this Tentative Order shall be served on all Electric Distribution Companies, all licensed Electric Generation Suppliers, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Energy Association of Pennsylvania and the Pennsylvania Coalition against Domestic Violence.

5. That the Office of Competitive Market Oversight shall electronically serve a copy of this Tentative Order on all persons on the contact list for the Committee Handling Activities for Retail Growth in Electricity.

6. That a copy of this Tentative Order shall be posted on the Commission’s website at the Office of Competitive Market Oversight’s web page.

7. That the contact persons for this matter are Megan G. Good, Bureau of Technical Utility Services, 717-425-7583 or [megagood@pa.gov](mailto:megagood@pa.gov), or H. Kirk House, Office of Competitive Market Oversight, 717-772-8495 or [hhouse@pa.gov](mailto:hhouse@pa.gov).

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

ORDER ADOPTED: June 19, 2014

ORDER ENTERED: June 19, 2014

1. *See Office of Competitive Market Oversight* Secretarial Letter, at Docket No. M-2009-2082042 (Jan. 9, 2009). [↑](#footnote-ref-1)
2. *See Office of Competitive Market Oversight* Secretarial Letter, at Docket No. M-2009-2082042 (Dec. 10, 2009). [↑](#footnote-ref-2)
3. Recaps of all CHARGE meetings can be found on the Commission’s website at the following link: <http://www.puc.pa.gov/utility_industry/electricity/electric_competitive_market_oversight.aspx>. [↑](#footnote-ref-3)
4. *See Interim Guidelines For Eligible Customer Lists* Tentative Order, at Docket No. M-2010-2183412 (entered July 15, 2010). [↑](#footnote-ref-4)
5. *See Interim Guidelines For Eligible Customer Lists* Final Order on Reconsideration, at Docket No. M-2010-2183412 (Nov. 15, 2011) (hereinafter *November 15, 2011 Electricity ECL Order)*. [↑](#footnote-ref-5)
6. *See Petition of Dominion Retail, Inc., Interstate Gas Supply, Inc. and Shipley Choice, LLC. for Declaratory Order*, at Docket No. P-2012-2291983, filed Mar. 6, 2012. [↑](#footnote-ref-6)
7. *See Petition of Dominion Retail, Inc., Interstate Gas Supply, Inc. and Shipley Choice, LLC. for Declaratory Order* Opinion and Order, at Docket No. P-2012-2291983 (Sept. 27, 2012). [↑](#footnote-ref-7)
8. *See Interim Guidelines for Natural Gas Distribution Company Eligible Customer Lists* Tentative Order, at Docket No. M-2012-2324075 (Sept. 27, 2012). [↑](#footnote-ref-8)
9. *See Interim Guidelines for Natural Gas Distribution Company Eligible Customer Lists* Final Order, at Docket No. M-2012-2324075 (Sept. 23, 2013) (hereinafter *September 23, 2013 Natural Gas ECL Order)*. [↑](#footnote-ref-9)
10. CHARGE is an acronym for Committee Handling Activities for Retail Growth in Electricity. [↑](#footnote-ref-10)
11. These comments are posted on the Commission’s website at the following link: <http://www.puc.pa.gov/utility_industry/electricity/electric_competitive_market_oversight.aspx>. [↑](#footnote-ref-11)
12. Citizens’ & Wellsboro Informal Comments at 2. [↑](#footnote-ref-12)
13. FES Informal Comments at 1; PECO Informal Comments at 2. [↑](#footnote-ref-13)
14. PPL Informal Comments at 2; OCA Informal Comments at 2 and 3. [↑](#footnote-ref-14)
15. OCA Informal Comments at 3. [↑](#footnote-ref-15)
16. *See November 15, 2011 Electricity ECL Order* at page 23. [↑](#footnote-ref-16)
17. *Id.* [↑](#footnote-ref-17)
18. *Id.* at page 7. [↑](#footnote-ref-18)
19. *November 15, 2011 Electricity ECL Order* at page 25. [↑](#footnote-ref-19)
20. *September 23, 2013 Natural Gas ECL Order* at page 13. [↑](#footnote-ref-20)
21. *Id.* at page 14. [↑](#footnote-ref-21)
22. *September 23, 2013 Natural Gas ECL Order* [↑](#footnote-ref-22)