

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held March 13, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly M. Barrow, Vice Chair
Kathryn L. Zerfuss
John F. Coleman, Jr.
Ralph V. Yanora

Guidelines for Eligible Customer Lists

Docket No. M-2010-2183412

ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission or PUC) for consideration are the guidelines for the Eligible Customer Lists (ECLs)¹ that Electric Distribution Companies (EDCs) make available to Electric Generation Suppliers (EGSs) and that Natural Gas Distribution Companies (NGDCs) make available to Natural Gas Suppliers (NGSs)(collectively suppliers). For the reasons set forth in this Order we decline to discontinue ECLs but will amend the guidelines to make the process more efficient and cost-effective.

BACKGROUND

The Commission implemented the ECL via Order entered November 12, 2010, at Docket No. M-2010-2183412, outlining interim guidelines for EDCs' provision of ECLs.

¹ The ECL, in general, includes a listing of those utility customers eligible for choice, along with customer addresses, rate class and load information. Specifically, the Commission sought comments concerning the use of electronic methods to deliver communications to customers regarding the ECL, and the use of electronic methods for customers to respond to the utility with their ECL preferences. Customer telephone numbers are not included on the ECL under any circumstances.

That Order provided for uniform categories of customer information to be made available to EGSs by EDCs and addressed customers' ability to restrict the inclusion of their information in the ECL.

On November 10, 2011, the Commission entered a Final Order on Reconsideration updating the interim ECL guidelines. Following subsequent processes, including informal and formal comments, the Commission adopted final ECL guidelines through the ECL Order on October 23, 2014. In relevant part, the ECL Order directs EDCs to conduct a solicitation every three years, beginning in the first quarter of 2015, to update their ECLs. These solicitations provide customers with an opportunity to restrict the inclusion of their information in the ECL that is provided to EGSs. Customers who do not respond to a solicitation are automatically included in the ECL unless they otherwise request to be excluded.

On August 15, 2013, the Commission entered a Final Order at Docket No. M-2012-2324075 establishing analogous requirements for NGDCs. Like the EDC-related Order noted above, the NGDCs were directed to conduct a solicitation every three years to update their ECLs and to provide customers with an opportunity to restrict the inclusion of their information that is provided to NGSs.

On October 30, 2020, Duquesne Light Company (DLC) filed a petition for a waiver (*2021 ECL Petition*) with the Commission at Docket No. P-2020-3022674 to expand email ECL service to include "e-communication customers" in addition to e-Billing customers for its 2021 ECL solicitation. E-communication customers are those residential customers who have not registered for e-Billing but have provided their email address to Duquesne and consented to receive electronic communications. The 2021 ECL Petition pertained only to the 2021 triennial ECL solicitation.

In the January 14, 2021 Order granting the 2021 ECL Petition (*January 14, 2021 Order*), the Commission determined that it was in the public interest to allow DLC to serve the 2021 ECL solicitation for e-communications customers, finding, in part, that doing so would “reduc[e] costs, will provide useful analytical information on the effectiveness of ECL solicitation by email, and is consistent with consumer preferences.” *January 14, 2021 Order* at p.7.

Pursuant to the *January 14, 2021 Order*, DLC conducted its 2021 triennial ECL solicitation electronically for customers who opted-in to electronic mailings of certain communications but have not opted for electronic mailings of bills. On December 30, 2021, at Docket No. P-2020-3022674, DLC provided a report to the Commission and stakeholders, as directed by the January 14, 2021 Order, with an evaluation of the electronic ECL solicitation and lessons learned (December 2021 Report).

By Petition filed September 29, 2023, DLC asserted that because the *ECL Order* only pertained to the 2021 solicitation, additional clarification is needed for the 2024 and subsequent solicitations. DLC contended that granting their Petition would be in the public interest because it would better align the ECL solicitation method with customer expectations and preferences, enable enhanced solicitation tracking and messaging, and substantially reduce costs borne by customers. Moreover, considering the successes of their 2021 ECL solicitation, including the high open rate for email solicitations and DLC’s actual cost savings, and DLC’s efforts to increase customer engagement in 2024, it would be in the public interest to allow DLC to continue electronically distributing the ECL solicitations, including their 2024 ECL solicitation.

By a January 18, 2024 Opinion and Order (*January 18, 2024 Order*), the Commission granted, in part, and denied, in part, DLC’s petition. The Commission found that allowing DLC to provide its solicitations to customers as requested would serve the public interest by reducing costs, providing useful analytical information on the

effectiveness of ECL solicitation by email, and is consistent with consumer preferences. However, we agreed with the suggestions made by the OCA that DLC's request to expand email solicitation should only apply to the 2024 ECL solicitation period and not future solicitation periods, and that the request to expand email solicitation should apply only to DLC, and not to other EDCs. We further agreed with the OCA that we should initiate a proceeding to investigate the efficacy of email solicitation during the triennial ECL periods on a statewide basis and consider amendments to the current Interim Guidelines to better address consumers' preferences during future ECL solicitation periods. *January 18, 2024 Order* at p.8.

Accordingly, the Commission directed the Office of Competitive Market Oversight (OCMO) in conjunction with the Law Bureau to open a proceeding at Docket No. M-2010-2183412 to update the eligible customer list guidelines. *January 18, 2024 Order* at pp. 8-9. Further, while the *January 18, 2024 Order* was in reference to DLC and the EDCs and EGSs, we believe that it is appropriate to expand this proceeding to also consider the ECL guidelines for the NGDCs and NGSs, since the guidelines for the two industries are very similar and we think it is in the public interest to maintain consistency between the two industries as it relates to ECL processes. Similar processes will lessen the likelihood of confusion for consumers, utilities, and suppliers alike.

By Secretarial Letter dated March 1, 2024, the Commission requested comments from all interested parties on the guidelines that govern the ECL, especially the use of electronic methods in communicating with customers, in lieu of written notices sent via the U.S. Postal Service. The Commission directed parties to the above-noted *January 18, 2024 Order* for additional discussion and guidance on this topic.

The Commission received comments from the following interested parties: the Office of Consumer Advocate (OCA), NRG Energy, Inc. (NRG), PPL Electric Utilities Corp. (PPL), the Retail Energy Supply Association (RESA), Duquesne Light Company

(DLC), PECO Energy Company (PECO), the Pennsylvania Utility Law Project (PULP) and Community Legal Services (CLS), First Energy Pennsylvania Electric Company (FE), the Energy Association of Pennsylvania (EAP), and Columbia Gas of Pennsylvania, Inc. (Columbia).

COMMENTS

OCA:

The OCA's main argument is that the ECL, which allows energy suppliers to access customer information for marketing purposes, is no longer necessary and ultimately harms consumers. The OCA presents data showing that customers who switch to competitive suppliers have paid over \$1.5 billion more since 2015 than if they had stayed with default service providers. This suggests that competition isn't leading to lower prices as intended. The OCA further contends that with the rise of the internet and resources like PaPowerSwitch and PaGasSwitch, consumers have easy access to information about energy suppliers, and therefore, the ECL is no longer essential for facilitating informed choices. The OCA highlights abuses arising from access to ECLs, such as "slamming" (unauthorized switching of suppliers) and the potential for misuse of customer data. They argue that the current opt-out system is insufficient to protect consumer privacy. The OCA further contends that eliminating the ECL is more cost-effective, as maintaining the ECL and the associated opt-out process creates administrative costs for utilities, which are ultimately passed on to consumers. Ultimately, the OCA's primary recommendation is to phase out the ECL entirely, arguing that suppliers have other means of reaching potential customers.

If the ECL is retained, however, the OCA suggests making opt-out the default, requiring customers to actively choose to share their information. The OCA also proposes a "Do Not Switch" list to further protect consumers from unauthorized switching. Finally, the OCA recommends allowing electronic solicitations for customers who have consented to receive communications from their utility electronically.

NRG:

NRG comments that the ECL is essential to facilitating customer choice and competition in Pennsylvania. It enables efficient participation in the market by licensed retail suppliers, and it benefits consumers by giving them access to products designed to meet their unique needs. The ECL also makes it convenient for customers to enroll for energy supply service with the supplier and product they choose while away from home. NRG urges the Commission to continue supporting the ECL in electric and gas markets. NRG raises concerns about how utilities conduct the triennial opt-out solicitations, arguing that some utilities may be subtly encouraging customers to opt-out, which undermines the purpose of the ECL. Because protecting customer privacy is paramount, the Commission should consider requiring all suppliers that access the ECL to implement a robust program to protect the data it contains. Finally, NRG urges the Commission to establish a stakeholder process led by OCMO to develop a standardized triennial notice with language that must be reviewed and approved by the Commission before the next solicitation.

PPL:

PPL submits that the ECL is no longer needed, creates unnecessary costs and privacy concerns for customers, and should be eliminated. If it must continue, however, it should be significantly reformed. PPL opines that, at this point, the retail electric market is well-established, making the ECL redundant, and that EGSs should be able to acquire customers through their own marketing efforts. Moreover, the triennial solicitations are expensive (costing PPL ~\$800,000 in 2021), and these costs are unfairly passed on to all customers, even those who don't participate in the competitive market. PPL suggests that EGSs should bear these costs. PPL further argues that the ECL process, particularly the opt-out system, can be confusing and frustrating for customers, and that eliminating the ECL wouldn't prevent customers from accessing the competitive market.

If the Commission decides to retain the ECL, PPL argues that the ECL should shift from an opt-out to an opt-in system; meaning only customers who actively choose to share their information should be included in the ECL. The Commission should also allow electronic delivery and responses for the triennial solicitation, as many customers prefer this method, and it is more cost-effective. Once a customer opts out, their information should remain excluded until they affirmatively request to be re-included. Customers shouldn't have to opt out repeatedly. Moreover, the Commission should reduce the frequency of solicitations from every three years to every five years. Finally, EGSs should pay all costs associated with the ECL, including managing, updating, delivering the list, and conducting customer solicitations.

RESA:

RESA submitted comments supporting the use of electronic communications regarding ECLs but stressed the need for Commission oversight of utility messaging. RESA opines that electronic communication is efficient and effective and should be allowed for ECL solicitations and customer responses. RESA also suggests that utilities share customer communication preferences with suppliers. RESA expresses concern that some utilities are using scare tactics to discourage customers from being included on the ECL by misrepresenting the purpose of the list and the role of suppliers. RESA argues that this undermines competition and is a breach of the utility's duty of reasonable service. RESA further advocates for retaining the ECL, clarifying that the ECL contains basic customer information (name, address, account number, usage) and not sensitive financial or personal data. They emphasize that this information is crucial for suppliers to create tailored offers.

RESA proposes specific requirements for utility messaging regarding ECLs, including prohibiting statements suggesting ECL inclusion equates to public exposure of information; requiring an affirmative statement that only licensed entities access ECL data for developing competitive offers; mandating that utilities file draft messaging with

the Commission for stakeholder comment; and requiring Commission review and approval of final messaging. RESA further supports requiring utilities to notify EGSs of the electronic communications preferences of EGS customers.

DLC:

DLC questions the continued value and necessity of the ECL, suggesting it should be retired, and, if it's not retired, DLC proposes significant revisions. DLC questions whether the ECL remains a useful tool, given the maturity of the energy market and the availability of other consumer education resources like PAPowerSwitch. They argue that the costs associated with maintaining the ECL may outweigh its benefits. DLC highlights the costs associated with the triennial ECL updates, both in direct expenses (like postage, which they estimate at over \$62,000 every three years) and in staff time that could be used for other customer service activities.

If the ECL is retained, DLC offers some proposed modifications including, mandating electronic delivery of ECL solicitations for all customers who have consented to electronic communication from the utility (DLC notes that a majority of their customers prefer electronic communication, and it's also cheaper and more efficient); eliminating the requirement for customers to be able to respond to the solicitation via mail (DLC argues that processing paper responses is time-consuming and costly, and that other self-service options (phone, website, mobile app) are sufficient); shifting to an opt-in system for the ECL, where customer information is only included if they affirmatively consent (DLC argues this is more protective of customer privacy, as customers may inadvertently miss or forget to respond to opt-out solicitations).

PECO:

PECO's comments focus on the practical challenges and considerations surrounding the use of electronic communications for ECL solicitation. PECO's current ECL solicitation process includes a bill insert with a tear-off form, a pop-up message in

the customer's "MyAccount," a banner in the mobile app, and a notice via the Internet Voice Response (IVR) system. PECO notes that it does not currently have a "reply" functionality for mass emails. PECO points to the cost and environmental benefits of electronic communication as supporting its use, recognizing that customers increasingly expect it. PECO recognizes the challenge that not all customers provide email addresses, and not all customers have email addresses. This means that even if they expand electronic communication, they will still need to send written notices to a significant portion of their customer base. Even customers who have provided email addresses may have opted out of receiving electronic communications, requiring continued written notices. PECO emphasizes the importance of considering all customers, including low-income customers who may not have access to technology, stressing the need to maintain non-electronic communication channels to ensure accessibility for everyone. Overall, PECO states that they do not object to the elimination of the ECL and its associated guidelines and solicitations, suggesting it may share the concerns about cost and effectiveness raised by other utilities.

PULP and CLS:

PULP and CLS submitted comments focusing on consumer data privacy and protection concerning ECLs. Primarily, PULP and CLS strongly advocate for an opt-in ECL, requiring consumers to affirmatively consent before their information is shared with energy suppliers. They argue that customer data provided to utilities for essential service should remain private unless explicitly authorized for sharing. They highlight the power imbalance between utilities and consumers, and the lack of clear recourse for data misuse by competitive suppliers. PULP and CLS argue that the current opt-out system, combined with inconsistent messaging from utilities, creates confusion and mistrust, pointing out that other utility services (like e-billing) require opt-in, and the ECL should follow suit. As with other commenters, PULP and CLS argue that with a well-established competitive market, suppliers have ample alternative avenues for advertising, and that consumers shouldn't be automatically included on marketing lists

simply for not responding to a triennial solicitation. PULP and CLS propose that customers enrolled in Customer Assistance Programs (CAP) be automatically removed from ECLs. Because CAP customers are required to remain on default service, their inclusion on the ECL is irrelevant and could lead to confusion and potentially harmful marketing practices. PULP and CLS provided data demonstrating that CAP customers who were allowed to shop in the past often paid more than default service, increasing costs for both the customers and other ratepayers.

If the Commission decides to retain the ECL, PULP and CLS conditionally support electronic solicitations if specific criteria are met, namely, postal mail follow-up for undeliverable emails or unsubscribes; clear messaging as per previous Commission orders; a one-click opt-out option; and mobile optimization. Moreover, customers who have previously opted out should remain opted out indefinitely, without needing to repeatedly opt-out every three years. This would be more in line with federal regulations supporting this position.²

FE:

FE submitted comments supporting the use of electronic communications for the ECL and other supplier-related communications. FE's current ECL process involves monthly updates, a triennial refresh, and customer opt-out options via bill inserts (physical or electronic for e-bill customers) or phone calls. They provide access to the ECL through an EGS portal, which is also used by brokers and energy consultants. FE strongly supports electronic ECL communications, arguing that the current bill insert method is costly, resource-intensive, and outdated. They state that bill insert production and printing costs them over \$10,000 annually, not including postage and labor. They

² 12 CFR Part 1022 – Fair Credit Reporting Act (Regulation V), Section 1022.24; Reasonable opportunity to opt out. <https://www.consumerfinance.gov/rules-policy/regulations/1022/24/>. 12 CFR Part 1022 implements the federal Fair Credit Reporting Act. Section 1022.24, which aligns with current Commission ECL practice, provides that eligibility information about a consumer, received from an

argue that moving to electronic communication would reduce costs and align with customer expectations. FE provided data showing a year-over-year increase in customers opting for e-billing, suggesting a growing preference for electronic communication. They argue that this trend supports the transition to electronic ECL solicitations.

Moreover, FE urges the Commission to extend its inquiry to other supplier-related communications currently required to be sent via USPS, for example, 53 Pa. Code §57.173 regarding notification of EGS switching or return to default service. FE argues that these requirements are also outdated and should be revised to allow electronic communication. FE also lists other examples like customer education letters, enrollment notifications, and welcome letters.

EAP:

The EAP argues that the ECL is no longer a necessary tool for a functioning competitive retail energy market in Pennsylvania and should be eliminated. The EAP argues that the energy supply market has matured significantly since the ECL was implemented (citing a 2016 PUC survey), and suppliers have numerous other ways to reach potential customers. Suppliers can now use a wide range of marketing methods (radio, TV, print, social media, direct mail) that don't rely on the ECL. They also have access to a secure website portal to access customer account numbers for facilitated switching. Accordingly, the EAP contends that the ECL is redundant, given the availability of other resources like PAPowerSwitch and PAGasSwitch, purchased mailing lists, general advertising, and readily available customer account numbers. As with other commenters, the EAP emphasizes the substantial cost of the triennial solicitations, which are borne by ratepayers, not the suppliers who benefit. They cite a collective cost of over \$1.5 million for the most recent update for EAP member utilities. They argue these funds could be better used for essential utility functions. Finally, the EAP argues that utility-

affiliate to make a solicitation to the consumer about products or services, must not be used unless the consumer is provided a reasonable opportunity to opt out.

customer communication should prioritize essential topics like CAP, energy efficiency, and safety messaging, rather than marketing competitive suppliers.

EAP argues that if the ECL is maintained, suppliers, not utilities, should bear the costs of maintenance and solicitations. The EAP also suggests using more cost-effective electronic communication channels, and that the ECL should switch to an opt-in model rather than an opt-out model. Given market maturity and customer awareness, customers who wish to receive supplier solicitations should actively choose to be included on the list, while those who take no action should remain opted out.

Columbia:

Columbia submitted comments echoing the EAP's position regarding the ECL. Columbia argues that maintaining the ECL is no longer a reasonable expense, given the maturity of retail markets in Pennsylvania, citing its last triennial solicitation cost (nearly \$190,000), excluding the costs of handling customer responses and inquiries. Columbia believes that this ratepayer-borne expense is no longer justified.

If the Commission decides to retain the ECL, Columbia agrees with EAP that the costs of the required solicitation should be borne by suppliers, not ratepayers. Moreover, Columbia suggests expanding the solicitation period from three years to five years. Columbia also proposes allowing utilities to use electronic service (email, etc.) for ECL solicitations to customers enrolled in electronic billing or who accept electronic communications.

DISCUSSION

EAP, PPL, Duquesne, Columbia, and OCA ask that the Commission consider eliminating the ECL, believing that it is no longer necessary given the maturity of the market; that there are other sources of customer data available to suppliers; or citing customer data confidentiality concerns. We reject the calls to eliminate the ECL for

several reasons, primarily because the ECL, as its name suggests, plays a crucial role in identifying those customers who are eligible for choice – because not all customers are eligible. The most notable and largest group of customers not eligible for choice are those that participate in the utility’s CAP. Over the past several years, the Commission has addressed the issue of CAP customer shopping via a number of proceedings, primarily in individual electric utility Default Service Plans (DSPs). In addition to the DSPs, the Commission in April 2023 issued an Order addressing CAP shopping – withdrawing a proposed Policy Statement but noting that “...parties are still free to propose CAP shopping in the EDCs’ respective DSP proceedings.” The end-result of these many proceedings is that CAP customers cannot currently shop – they are not permitted to receive supply service from a competitive supplier. This is a significant number of customers; over 460,000 electric and gas customers as of the end of 2022.

As part of the CAP shopping process addressed in the above-noted proceedings, utilities committed to various means to inform both customers and suppliers of the CAP shopping restrictions and how to identify CAP customers. For example, FE committed to use the ECL to identify CAP customers by including a “CAP flag” for each CAP customer on the list. This allows suppliers to screen out CAP customers from solicitations and enrollments. PULP and CLS, in its comments, remind us of the necessity of preventing CAP customers from enrolling with a supplier, and we agree. Without being able to screen out CAP customers, suppliers could end up soliciting and enrolling customers who are not eligible. Utilities would then have to send out enrollment rejection notices, and CAP customers could be left confused, under the mistaken impression that they are able to enroll and receive service from a competitive supplier. This all leads to wasted time and resources for suppliers, utilities and CAP customers alike. The ECL serves an important role in avoiding all this waste and confusion.

We also think the ECL plays a crucial role in providing suppliers with the utility number that is needed to execute a supplier switch. As NRG notes in its comments, customers do not memorize their utility account numbers nor walk around with a utility bill. This is further complicated by the fact that many utilities no longer use the customer's account number to process switching, but instead use a special number created specifically for that purpose. For example, starting in February 2024, PECO started requiring the use of what they call a Choice ID number – not the customer account number. FE and DLC similarly use a special number in the same fashion. If it is unlikely a customer memorizes or has their utility account number readily available, it seems even more unlikely they would have the special switching number that they need. The ECL plays a crucial role in making this number available. For example, with the above noted recent PECO change, PECO committed to modify its Eligible Customer List by replacing customers' account numbers with Choice ID numbers.

We are also not convinced that there are other sources of information that suppliers can use in lieu of the ECL. While there may be other sources of information available to suppliers that may include names and addresses, they are not necessarily names and addresses linked to utility service. Also these other sources do not include the utility account number (or the special number discussed above) needed to process switching requests. Furthermore, we agree with NRG when it notes that the Commission adopted an opt-out ECL model because the incumbent utilities, as the historical monopoly provider, possess all the customer information – with the ECL playing a key role in providing a more level competitive playing field. Depriving competitive suppliers of customer information would hobble the competitive market, leading to less competitive supplier market share and more customers on default utility service – reinforcing the incumbent utility's monopoly position. This is not the pathway to a vibrant competitive market.

As for confidentiality concerns, the Commission takes this opportunity to remind all utilities and suppliers of their obligations to maintain the privacy and confidentiality of the customer information on the ECL. We point electric utilities and suppliers to 52 Pa. Code §54.8, relating to the privacy of customer information, which specifies that an “...EDC or EGS may not release private customer information to a third party unless the customer has been notified of the intent and has been given a convenient method of notifying the entity of the customer’s desire to restrict the release of the private information.” Further, 52 Pa. Code §54.43 relating to the standards of conduct and disclosures for licensees, requires that a licensee “...shall maintain the confidentiality of a consumer’s personal information including the name, address and telephone number, and historic payment information, and provide the right of access by the consumer to his own load and billing information.” The analogous regulations for natural gas utilities and suppliers can be found at 52 Pa. Code §62.78, relating to the privacy of customer information and 52 Pa. Code §62.114 relating to the standards of conduct and disclosure for licensees.

We therefore conclude that retaining the ECL is necessary for a supplier to develop specific pricing offers and to provide suppliers with a meaningful opportunity to attract customers. Accordingly, we will continue to direct the utilities to generate and make available to licensed suppliers an ECL on an opt-out basis. However, as we will discuss further, we think that after a decade of experience with the ECL, changes can be made to the process that will reduce utility costs and make the ECL process more consumer-friendly while protecting confidentiality and preserving the usefulness of the lists for suppliers.

In light of our recent 2024 orders regarding DLC’s ECL and its use of electronic means to communicate with customers about the ECL, we conclude that there is value in updating our guidelines to allow and encourage the use of electronic methods to communicate about the ECL. No party submitted comments opposing the use of

electronic methods; to the contrary, most commenters voiced support for its use. We found especially encouraging the data submitted by DLC indicating the open rate of email communications, and the PPL data displaying the dramatically lower costs of electronic communications as compared to postal mail. Accordingly, we will revise our guidelines to allow for the use of electronic methods for both contacting customers about the ECL and for customers responding to these utility communications. The utility is free to use the method identified by the consumer as the preferred method of communicating. An obvious exception, as noted by some of the commenters, is that this would only apply to those consumers who have opted to receive electronic communications and/or billing from the utility and have provided the utility with valid electronic contact information. If this is not the case, then the utility is still obligated to contact the customer using more traditional methods.

As for DLC's request to be allowed to permit customers to reply only by electronic means (*i.e.* no paper reply option), we agree that this again can present significant cost savings to utilities and will revise the guidelines accordingly. However, the utility must make electronic response options readily available via their website, mobile app and telephonically. A telephonic option is necessary, for as PECO points out, there are consumers who do not have access to certain technologies. Absent these options, the utility must provide a means to reply using paper (non-electronic means).

In the interest of being more consumer-friendly and lowering costs for the utilities, we agree with PPL and Columbia that the ECL refresh interval should be extended from the current three years to every five years. We find that doing the refresh every three years is unnecessary and that it doing the refresh every five years is in the public interest in that it will reduce costs and not seriously impact the ECL, consumers, utilities or suppliers. We note that utilities are free to have information on their websites directed to consumers concerning the ECL and can provide related information to consumers outside

of the five-year cycle. The five year refresh cycle is to begin immediately in that the next refresh is to occur five years after the utilities most recent refresh.

Moreover, in the interest of making the ECL process more consumer-friendly, we agree with OCA and PULP/CLS that once a customer has opted out, they should retain that status without having to take further affirmative action. We agree that this practice aligns the requirements with other consumer protections that customers may be familiar with, such as the Do Not Call registry. These opt-out customers will still receive the five-year notices from the utility, but for these customers, the notices are just a reminder to the customer of what the ECL is, of their opt-out status, and to invite them to change their status if they wish. Of course, customers can change their status at any time by contacting their utility.

With respect to EAP's, PPL's, and Columbia's suggestion that the costs of creating and maintaining the ECL should be shifted to suppliers, we disagree. The ECL is created and maintained by the utilities – it is a utility function, and any costs associated with it is a utility cost. Keeping the function with the utility but assigning the cost recovery to another entity (the competitive suppliers) creates a possibly problematic paradigm wherein the utility is no longer paying the costs, then no longer has any incentive to create and maintain the ECL in an efficient and cost-effective manner. The competitive suppliers then would be obligated to pay costs over which they have absolutely no ability to oversee or control. This is not a sound ratemaking or cost recovery practice. Regardless of who pays the costs (ultimately the consumer), we conclude that the changes we are making to the process in this Order, such as allowing for the process to be done electronically and refreshed only every five years, will dramatically reduce the costs – per the cost data presented by PPL.

We also reject FE's request that we allow other customer communications, like the supplier switch confirmation letter, to be done electronically because this is a matter of

regulation, and it would not be appropriate to address such in this proceeding. For the same reason, we reject OCA's suggestion to create a "Do Not Switch" list. While these suggestions from FE and OCA may have merit, they would have to be explored and vetted via a formal rulemaking proceeding involving the switching regulations at 52 Pa. Code Chapters 57 and 59. We also reject RESA's request to add customer email addresses to the ECL for generally the same reasons we do not include customer phone numbers on the ECL. In weighing the policy concerns of promoting competition against the privacy concerns and expectations of customers, we think the inclusion of email addresses is unnecessary. If suppliers wish to communicate electronically with their own customers, they of course can obtain electronic contact information directly from their customers.

Finally, RESA and NRG ask that the Commission, and other stakeholders, play a greater role in overseeing the development of utility messaging to customers concerning the ECL. These parties point to utility refresh messages that they believe go beyond the intent of the refresh (to remind customers of the ECL and their ability to opt-out), and instead actively encourages customers to opt-out. These suppliers believe that this is discriminatory and anti-competitive. We conclude that utility communications to customers must be neutral in that they inform the customer of the existence of the ECL; what it is and its purpose; what information is included on the ECL; how this information is to be used by suppliers; how the information is to be safeguarded by utilities and suppliers; and the potential benefits to the customers of having their information included on the ECL. The notice should then inform the customer of their ability to opt-out (or to opt back in if they are already out) and how to do so. However, we decline taking a more active, interventionist role in developing this messaging at this time. Ultimately, this communication is the utility's responsibility to develop and provide, and giving other stakeholders, and the Commission, a formal role in this is not currently necessary. We reiterate and reemphasize, however, the importance of neutrality in these communications.

CONCLUSION

To reiterate, the Commission directs the utilities to maintain the creation and provision of ECLs, as revised and discussed in this Order. We conclude that the ECL continues to perform an important role in our competitive market and is necessary for a supplier to have to develop specific pricing offers and to provide suppliers with a meaningful opportunity to attract customers. However, given our decade-long experience with the ECL, we conclude that the revisions discussed in this Order are in the best interest of all market participants as they will continue to allow customers to be periodically reminded of their ability to include their information in, or restrict it from, the ECL. The revisions will also significantly reduce the costs to utilities and consumers of creating and maintaining the ECL. We again remind all utilities and suppliers of the importance of maintaining the security and confidentiality of the information on the ECL and of the rules and regulations that address such. Violations of these rules can result in penalties up to and including suspension or cancellation of a supplier's license.

To summarize the revisions to the ECL processes discussed in this Order:

1. Once every five years (instead of the current three years), EDCs and NGDCs will re-solicit their entire residential and small commercial customer base about their options regarding the disclosure of their customer information to suppliers. The utility shall inform the customer of their current status (opted in or out) and the message shall include the information discussed in this order.

2. Once a customer has elected to opt-out of the ECL, this election shall remain in place unless the customer affirmatively elects at some point to opt back in.

3. EDCs and NGDCs are free to use electronic methods to communicate with customers about the ECL and to receive responses back from customers via electronic methods, within the limits discussed in this Order.

4. That in preparing future solicitations, customer communications or reminder materials regarding the ECL, all communications must be neutral in informing the customer of the existence of the ECL; what it is and its purpose; what information is included on the ECL; how this information is to be used by suppliers; how the information is to be safeguarded by utilities and suppliers; and the potential benefits to the customers of having their information included on the ECL.

THEREFORE,

IT IS ORDERED:

1. That the revisions to the guidelines for Eligible Customer Lists as set forth in this Final Order are hereby adopted.

2. That this Final Order shall be served on all Electric Distribution Companies, Natural Gas Distribution Companies, Electric Generation Suppliers, Natural Gas Suppliers, the Office of Consumer Advocate, the Office of Small Business Advocate, the Bureau of Investigation & Enforcement and all parties that filed comments at Docket No. M-2010-2183412 in response to our March 1, 2024 Secretarial Letter.

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

4. That the Secretary shall deposit this Final Order with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

5. That a copy of this Final Order shall be posted on the Commission's website on OCMO's web page.

6. That the contact persons for this matter are Director of the Office of Competitive Market Oversight Daniel Mumford at dmumford@pa.gov or (717) 525-2084, or Deputy Director of the Office of Competitive Market Oversight and Deputy Chief Counsel with the Law Bureau Kriss E. Brown at kribrown@pa.gov or (717) 787-4518. Questions may also be referred to ra-ocmo@pa.gov.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: March 13, 2025

ORDER ENTERED: March 13, 2025