



800 North Third Street, Suite 301, Harrisburg, Pennsylvania 17102  
Telephone (717) 901-0600 • Fax (717) 901-0611 • [www.energypa.org](http://www.energypa.org)

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January 2, 2008

**VIA HAND DELIVERY**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
P. O. Box 3265  
Harrisburg, Pennsylvania 17105-3265

Re: Proposed Rulemaking for Retail Electricity Choice Activity Reports  
Docket No. L-00070184

Dear Secretary McNulty:

Enclosed for filing are an original and fifteen (15) copies of the *Proposed Rulemaking for Retail Electricity Choice Activity Reports* of the Energy Association of Pennsylvania on behalf of its member electric distribution companies listed on page one (1) of the comments.

Please note electronic copies have been served on Charles Covage, Patricia Krise Burket and Cyndi Page.

Cordially,

A handwritten signature in blue ink that reads "Donna M. J. Clark".

Donna M. J. Clark  
Vice President & General Counsel

Enclosures

Cc: Chairman Wendell F. Holland  
Vice Chairman James H. Cawley  
Commissioner Tyrone J. Christy  
Commissioner Kim Pizzigrilli  
Charles Covage (via electronic copy)

Patricia Burket (via electronic copy)  
Cyndi Page (via electronic copy)  
William R. Lloyd (Small Business Advocate)  
Irwin A. Popowsky (Office of Consumer Advocate)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Proposed Rulemaking for** :  
**Retail Choice Activity Reporting** : **Docket No. L-00070184**

**COMMENTS OF THE ENERGY ASSOCIATION OF PENNSYLVANIA**

**Introduction**

The Energy Association of Pennsylvania ("Association") hereby submits these comments in response to the Pennsylvania Public Utility Commission's ("PUC" or "Commission") *Proposed Rulemaking Order for Retail Choice Activity Reporting* ("Proposed Rulemaking") entered on April 17, 2007 and published in the Pennsylvania Bulletin ("PA Bulletin") on November 3, 2007.

Prior to issuing the Proposed Rulemaking Order, the Commission issued an *Order Requesting Comments on Development and Production of Retail Electricity Choice Activity Reports*<sup>1</sup>. This Order sought comments on the appropriate content of reports to be submitted by electric distribution companies ("EDCs") and electric generation suppliers ("EGSs"). The Association submitted comments on June 12, 2006. In light of the more detailed information provided in the Proposed Rulemaking Order and corresponding attachment, the Association files these comments on behalf of its members<sup>2</sup>.

The Association is generally supportive of the Proposed Rulemaking and believes that the additional reporting requirements can be handled with modifications as outlined in these comments. However, the Association urges the Commission to provide a twelve -month implementation period after the Final Rulemaking goes into effect to a just data systems. The EDCs will need this time to make the information technology changes required to accommodate the change in reporting by customer class required by the new rules. Furthermore, the Association recommends there be a twelve month

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<sup>1</sup> *Development and Production of Retail Electricity Choice and Activity Reports*, Order entered April 12, 2006 at Docket No. M-00061939

<sup>2</sup> Electric distribution company members supporting these comments include: Allegheny Power, Duquesne Light Co, Metropolitan Edison Co, A *FirstEnergy Company*, Pennsylvania Electric Co, A *FirstEnergy Company*, Pennsylvania Power Co, A *FirstEnergy Company*, PPL Electric Utilities, and UGI Utilities, Inc – Electric Division

implementation period if any future changes are made by the Commission to the reporting forms. Allowing this implementation period is important for a smooth transition to accommodate the additional reporting requirements and to implement necessary information system programming.

### Comments on identified issues

**1. Should this Commission implement reporting requirements similar to ones created by the Maryland Public Service Commission (MD PSC) to monitor competitive market development?**

The Commission, after reviewing the parties' responses to its Order Requesting Comments<sup>3</sup>, developed draft report forms that are similar, but not identical, to those used by the MD PSC. Two forms were developed to report on customer shopping: 1) one for use by EDCs and 2) one for use by EGSs. The Proposed Rulemaking states that:

"An EDC will be required to report shopping activity in its service territory while an EGS will be required to report on a statewide basis. Note that only active EGSs need file these reports. For the purposes of this reporting requirement, active EGSs will be defined as: (1) suppliers that are licensed to provide retail electric generation service and (2) that are currently providing service to one or more customers."<sup>4</sup>

The Association supports the proposal, as modified by these comments, for EDCs to report shopping activity in their service territories because this approach will facilitate the objective comparison of shopping versus non-shopping statistics within the state and among different distribution systems.

**2. What reporting frequency is optimal for EGSs and EDCs?**

The Rulemaking proposes that EDCs file quarterly reports 15 days after the end of the quarter. EGSs, on the other hand, would be required to file their sales activity report annually for the previous calendar year on or before April 30 of each year.

The Association urges the Commission to establish consistent reporting requirements for EDCs and EGSs. Specifically, the Association believes that EDCs and EGSs should report at the same

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<sup>3</sup> *Order Requesting Comments on Development and Production of Retail Electricity Choice Activity Reports*, Order entered April 12, 1006, at Docket No. M-00061939.

<sup>4</sup> See page 5, *Proposed Rulemaking Order on Retail Electricity Choice Activity Reports*, Order entered April 17, 2007, at Docket No. L-00070184.

frequency, and recommends that the reports be filed on either an annual or quarterly basis to maintain consistency with other PUC reporting requirements already established. Requiring EGSs to report on the same frequency as EDCs will maintain consistency among the data being reported and will enable the Commission to effectively use the data filed by both EGSs and EDCs.

The Association also recommends that EDCs be required to file the reports 30 days after the end of the previous quarter rather than the proposed 15 days. As stated above, the Association believes that maintaining consistency with already established reporting requirements will enable the PUC to effectively evaluate the information provided. Filing reports 30 days after the previous quarter will provide the time needed to reconcile sales before compiling the information for reports and is a consistent time period with current reporting requirements for reliability and other reports.

### **3. What Data Elements should be gathered from EGSs and EDCs?**

The Commission found that more detailed reports would enable it to monitor which EGSs and which customer classes are participating in retail markets. Therefore, the Commission is proposing to require that EDCs report the following information by customer class:

- (1) Number of customer accounts.
- (2) Sales by EGS (MWh).
- (3) Sales by the EDC (MWh).
- (4) Number of EGSs serving customer accounts.
- (5) Number of time of use customer accounts served by EGSs.
- (6) Number of time of use customer accounts served by the EDC.
- (7) Number of hourly/real time price customer accounts served by EGSs.
- (8) Number of hourly/real time price customer accounts served by the EDC.
- (9) Sales by EGSs to hourly/real time priced customer accounts (MWh).

The Association requests clarification on item numbers 5, 7 and 9. There can be two ways to interpret these items. For example, one way to interpret item number 5 would be to provide the number of the EDC's time of use accounts being served by an EGS. A second way to interpret the Commission's request is to provide the number of accounts an EGS is serving and pricing on a time of use basis. Similar interpretations can be made for item numbers 7 and 9. The Association requests the Commission to clarify this ambiguity. In the event the Commission is requesting information based on the second interpretation, the Association believes the EDCs will not have access to the pricing information regarding EGSs' customer accounts. Specifically, item number 5 (the number of time of use

customer accounts served by EGSs), item number 7 (the number of hourly/real time price customer accounts served by EGSs) and item number 9 (sales by EGSs to hourly/real time priced customer accounts (MWh)) require EDCs to provide information that they simply will not have and cannot readily obtain. Therefore the Association is requesting that the reporting requirements for EDCs be modified by deleting item numbers 5, 7 and 9 because the required information will not be generally available to the EDCs.

Furthermore, the Rulemaking proposes that EDCs report EGS market share as the number of customer accounts served by EGSs and the total sales in Megawatthours ("MWh") that these accounts represent. Specifically, the Commission proposes to require EDCs to report the following information for each EGS providing generation sales in the EDC's service territory:

- (1) Identity of EGS.
- (2) By customer class for residential customers, small C&I customers, medium C&I customers and large C&I customers, number of customer accounts served by the EGS.
- (3) By customer class for residential customers, small C&I customers, medium C&I customers and large C&I customers, sales in MW to customer accounts.<sup>5</sup>

This approach is consistent with the allocation established in the Commission's Final Rulemaking Order Regarding Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period ("Default Service Rulemaking" or "DSR")<sup>6</sup> and will, therefore, keep the information provided to the Commission consistent for ease of comparison. However, as discussed in more detail below, it is essential that this information remain confidential and not be released to any third parties.

#### **4. What class or sizes of customers should be grouped together in reports?**

The Rulemaking states that the issue of grouping retail customers into categories based on rate classes or on consumption has been debated in other Commission proceedings and that no uniform solution has been reached. The Commission believes that the inconsistency in consumption-based

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<sup>5</sup> If sales are to be reported it should be MWH not MW (instantaneous load) as stated page 10, *Proposed Rulemaking Order for Retail Choice Activity Reporting*, order entered April 17, 2007, at Docket No. L-00070184.

<sup>6</sup> *Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa.C.S. § 2807(e)(2)*, Final Rulemaking Order entered May 10, 2007 at Docket No. L-00040169.

customer classifications adds to confusion, and may increase the burden of companies, for both EDCs and EGSs, in complying with regulatory requirements and Commission directives. Therefore it, is seeking to establish a standard classification for use across the board.

Since a customer's Peak Load Contribution ("PLC") is uniform throughout PJM, the Commission believes that a customer classification based on PLC would eliminate variations between EDC service territories, would simplify reporting for EGSs operating in multiple EDC service territories, and would permit direct comparisons of sales activity among various EDC retail markets. It therefore, proposes that customer classification be accomplished using PLCs, rather than the EDC-specific Maximum Registered Peak Load ("MRPL").

Specifically, the Commission believes that the data should be collected and reported for the following groups: residential customers; small C&I customers are those with PLCs less than 25 kW; medium C&I customers are those with PLCs ranging from 25 kW up to and including 500 kW; and large C&I customers are those with PLCs greater than 500 kW.<sup>7</sup>

The Association recommends a different approach. The EDCs' current programs for reporting shopping statistics are based on rate class and the Association members believe reporting by rate class should be continued. Comparison among EDCs currently can be made on the basis of customer rate class (residential, commercial and industrial customers). The recommendation in the Proposed Rulemaking to change reporting requirements from rate class to PLC raises two primary concerns.<sup>8</sup> First, this change in reporting will require costly programming changes which will delay implementation and impose additional expenses plus a significant administrative burden on many of the EDCs. These additional costs will not produce any meaningful benefit to the comparisons. Second, the proposed approach will lead to a situation where, as a customer's use changes, that customer moves from one classification to another. This movement between classifications will require ongoing review by the EDCs and could lead to customer confusion and dissatisfaction. Finally, another concern specific to UGI Utilities Inc., (Electric Division) is that due to their small size they do not currently provide PJM with peak load contributions.

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<sup>7</sup> See discussion at page 14, *Proposed Rulemaking Order for Retail Choice Activity Reporting*, order entered April 17, 2007, at Docket No. L-00070184.

<sup>8</sup> Penn Power is not part of PJM and that MISO does not have a peak load contribution requirement.

For these reasons, the Association supports continuing use of customer rate class as the breakdown for customer groupings. The customer class approach is in place and is well understood by the EDCs and the Commission. It is more predictable from a customer perspective because customers do not frequently move from one class to another. Using any kind of PLC will cut across different rate classes for the various EDCs and not produce like comparisons. The preferred method would be to continue to use rate classes.

The Association believes that the current division of customers into the residential class, commercial class and industrial class will facilitate an effective comparison of the statistics.

**a. Should these classes be the same or be permitted to vary among different EDCs?**

The Association believes that use of the three broad customer classes identified above should be uniform among all EDCs to allow for the effective comparison of shopping statistics. However, the specific rate schedules that comprise each customer class will vary among EDCs. Accordingly, the Association recommends that EDCs should have the flexibility to determine general composition of residential, commercial and industrial classes.

**b. What information should be publicly available vs. confidential?**

The Commission agrees that individual EGS market share information should remain confidential and proposes that EDC information/data that does not disclose individual EGS market share may be made public because it is not confidential.

The Association agrees with the Commission's determination that EGS market share information can be extremely sensitive. For this reason, the Association recommends that the Commission allow EDCs to provide EGS information in aggregate by category<sup>9</sup> and provide supporting data separately to the Commission under confidential cover.

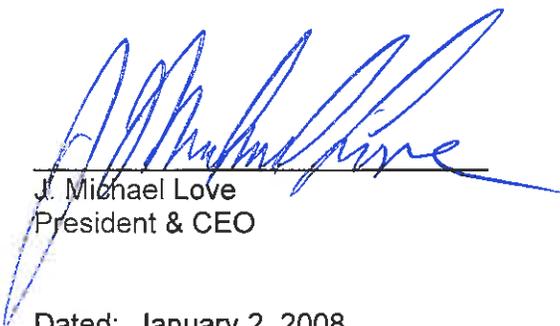
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<sup>9</sup> See discussion at page 10, *Proposed Rulemaking Order for Retail Choice Activity Reporting*, order entered April 17, 2007, at Docket No. L-00070184.

## Conclusion

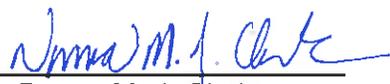
The Association commends the Commission for its thoughtful response to comments provided to its initial Order Requesting Comments<sup>10</sup> and believes that, if the Association's proposed changes are adopted, the information requested will not pose an undue burden on EDCs and EGSs. The Association strongly encourages the Commission to strive for consistency between existing reporting requirements and the reporting requirements that will be developed as a result of this rulemaking. By maintaining consistency in reporting time periods and categories among the various reports currently provided to the PUC, the Commission will be able to effectively meet its goal of using information provided by EDCs and EGSs to monitor Pennsylvania's retail electric generation market for sales activity and consumer behavior. The Association urges the Commission to provide for a twelve-month implementation period after the Final Rulemaking goes into effect to allow for the information system programming necessary to accommodate the change in reporting by the new rules.

Respectfully Submitted,



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J. Michael Love  
President & CEO



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Donna M. J. Clark  
Vice President & General Counsel

Dated: January 2, 2008

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<sup>10</sup> Order Requesting Comments on Development and Production of Retail Electricity Choice Activity Reports, entered April 12, 1006, at Docket No. M-00061939.

**Pennsylvania Retail Electricity Choice Activity Report: Electric Distribution Company (EDC) Survey  
Reported By EDC Territory**

**EDC Name:**

**Reporting Period Date:**

<b>Data from EDC</b>	<b>Residential</b>	<b>Sm C&amp;I</b>	<b>Med C&amp;I</b>	<b>Large C&amp;I</b>	<b>Total</b>
<b>1. Number of Customer Accounts by Service Type</b>					
Total Number of Customer Accounts Served by EGSS					
Total Number of Customer Accounts Served by EGSS & EDC					
Percent of Customer Accounts Served by EGSS	%	%	%	%	%
<b>2. MWh Sales by Service Type</b>					
MWh Sales of EGSS					
MWh Sales of EGSS & EDC					
Percent of MWh Sales of EGSS	%	%	%	%	%
<b>3. Total Number of EGSS Serving Customer Accounts by Class</b>					
<b>4a. Time of Use (Different prices for usage at different times during week days or every day. i.e. rate has peak period &amp; off-peak prices)</b>					
Total Number of TOU Customer Accounts Served by EGSS					
Total Number of TOU Customer Accounts Served by EGSS & EDC					
Percent of TOU Customer Accounts Served by EGSS	%	%	%	%	%
<b>4b. MWh Sales: Time of Use Customer Accounts</b>					
MWh Sales of EGSS					
MWh Sales of EGSS & EDC					
Percent of MWh Sales of EGSS	%	%	%	%	%
<b>5a Number of Customer Accounts on Hourly/Real Time Priced Service</b>					
Total Number of Hourly/Real Time Priced Customer Accounts Served by EGSS					
Total Number of Hourly/Real Time Priced Customer Accounts Served by EGSS & EDC					
Percent of Customer Accounts Served by EGSS	%	%	%	%	%
<b>5b. MWh Sales: Hourly/Real Time Priced Customer Accounts</b>					
MWh Sales of EGSS					
MWh Sales of EGSS & EDC					
Percent of MWh Sales of EGSS	%	%	%	%	%



**Pennsylvania Retail Electricity Choice Activity Report: Electric Generation Supplier (EGS) Survey  
Reported on a Statewide Basis**

**EGS Name:**

**Reporting Period Date:**

<b>Data from EGS</b>	<b>Residential</b>	<b>Small C&amp;I</b>	<b>Medium C&amp;I</b>	<b>Large C&amp;I</b>	<b>Total</b>
<b>1. Total Number of Customer Accounts Served</b>					
<b>2. Number of Customer Accounts- Flat Rate*</b>					
<b>3. Number of Customer Accounts- Seasonal Rates*</b>					
Seasonal rates differ in summer/non-summer.					
<b>4. Number of Customer Accounts- Time of Use Rates*</b>					
Different prices for usage at different times during week days or every day. Example-rate has peak period & off-peak prices Monday-Friday in summer.					
<b>5. Number of Customer Accounts-Hybrid Rate Schedule*</b>					
Includes any pricing arrangement which incorporates hourly rates and block rates.					
<b>6. Number of Customer Accounts-Other Categories*</b>					
(Do not include Customers in #2-5 or #8.) Please Specify:					
<b>7a. Number of Customer Accounts in #2-6 on 1 year fixed term contract</b>					
<b>7b. Number of Customer Accounts in #2-6 on 2 year fixed term contract</b>					
<b>7c. Number of Customer Accounts in #2-6 on 3 year fixed term contract</b>					
<b>8. Number of Customer Accounts- Hourly/Real Time Rates*</b>					
Includes any pricing arrangement based on hourly or daily energy prices. Example: LMP based rate or rate based on prior-day announced price.					
<b>9a. Number of Customer Accounts-Mandatory Curtailable</b>					
<b>9b. Number of Customer Accounts-Voluntary Curtailable</b>					
<b>10. Number of Customer Accounts- Green Power</b>					
Defined as electric supply that has been promoted as having greater than required renewable content & exceeds existing minimum renewable content requirements for retail power. Products offered to customer when customer requests specialized service.					
<b>11. Number of Customer Accounts-Supplier Billing</b>					
Includes all customers who are not billed by the utility for the supplier's services. Includes customers billed by a billing service other than the utility.					
<b>12. Number of Customer Accounts- Auto Payment</b>					
Includes customers indicated in #11 who are billed automatically on credit cards or other automatic payment arrangement. (i.e. bank transfer)					
<b>13. Number of Customer Accounts- Budget Billing</b>					

\* Do Not Include A Customer Under More Than 1 Rate Schedule in #2-6 & 8.