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July 13, 2011

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Interim Guidelines for Eligible Customer Lists, Docket No. M-2010-2183412
PPL Electric Utilities Retail Markets, Docket No. M-2009-2104271
Petition of Duquesne Light Company for Approval of Default Service Plan for the Period
January 1, 2011 through May 31, 2013, Docket No. P-2009-2135500

Dear Secretary Chiavetta:

On behalf of the Retail Energy Supply Association enclosed for filing is the original of its
Comments along with the electronic filing confirmation page with regard to the above-referenced
matter.

Sincerely yours,



Deanne M. O'Dell, Esq.

DMO/lww
Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Interim Guidelines	:	
For Eligible Customer Lists	:	Docket No. M-2010-2183412
	:	
PPL Electric Utilities Retail Markets	:	Docket No. M-2009-2104271
	:	
Petition of Duquesne Light Company for	:	
Approval of Default Service Plan for the	:	Docket No. P-2009-2135500
Period January 1, 2011 through	:	
May 31, 2013	:	

**COMMENTS OF
RETAIL ENERGY SUPPLY ASSOCIATION**

I. INTRODUCTION AND BACKGROUND

In this proceeding, the Commission has sought comment regarding customer privacy issues raised by the Office of Consumer Advocate (“OCA”) and the Pennsylvania Coalition Against Domestic Violence (“PCADV”) during their recent appeal of the Commission’s current Interim Guidelines for Eligible Customer Lists (“ECL”) adopted on November 12, 2010. At the Commission’s request, the Commonwealth Court remanded the issues raised by the appeal to the Commission for further consideration. In its Reconsideration Order, the Commission stated that it is interested in implementing a new order on reconsideration “that strikes an appropriate and lawful balance between customer privacy and the Commission’s obligations under Chapter 28 of the Public Utility Code.” *Reconsideration Order* at 7.

The Retail Energy Supply Association (“RESA”)¹ is a trade association of electric generation suppliers (“EGSs”) that support the creation and advancement of competitive electric

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess

markets in Pennsylvania and throughout the country. RESA's members represent the interests of a broad and diverse group of retail energy suppliers and are licensed to sell electric energy in the markets of Pennsylvania's major electric distribution companies ("EDCs"). To sell energy, EGSs must work with EDCs to gain access to essential customer information which enables EGSs to more effectively identify potential customers, to communicate with and educate them about available products, and to design products and pricing options that satisfy a person's individual desires and budgets.

The privacy concerns raised by OCA and PCADV that are to be addressed in this proceeding involve two issues. The first is the type of information that consumers are able to restrict from release to the ECL and the second is the manner in which consumers may restrict release of this information. *Reconsideration Order* at 4. As explained further below, RESA can support permitting all consumers to restrict the release of all information only if the current opt-out method by which consumers are able to restrict the release of their information is not disturbed.

As the Commission is aware, the ECL is an important part of ensuring the development of a properly functioning competitive retail market because it addresses the exchange of customer information between EDCs and EGSs. Importantly, the Commission's current Interim Guidelines address a significant number of issues regarding the ECL that are not implicated by the privacy concerns raised during the appeal and RESA urges the Commission to not take any action in this proceeding to uproot those already established protocols and decisions.

Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant Energy Northeast LLC and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

II. COMMENTS

A. The Ability To Restrict All Information

The chart below shows what information customers can currently restrict based on their status as an endangered person:

Type of Information	Can non-endangered person restrict release to ECL?	Can endangered person restrict release to ECL?
Account Name	No	Yes
Telephone Number	Yes	Yes
Account Address	Yes	Yes
Historic Billing Data	Yes	Yes
All other account information	No	Yes

RESA understands the OCA and PCADV position to be that all customers should be able to restrict the release of all information regardless of their “endangered person” status. Even though RESA is willing to compromise and accept this position, RESA does not agree that such change is necessary as a matter of principle. The information contained on the ECL is not widely publicized or distributed, rather it is only given by EDCs to licensed EGSs that have been certified to provide service in the respective EDC’s service territory. By Commission regulation, EGSs are prohibited from releasing private customer information to third parties or publicly.² The EGSs do **not** publish directories or broadcast customer information in any format that imposes on the privacy rights of individuals or endangers the disclosure of the physical location of domestic violence victims or shelters. EGSs do not release the data to their employees or

² 52 Pa. Code § 54.8(a)(“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.”)

lawful agents unless and until such persons agree to adhere to information restriction rules. Thus, supplying the information to EGSs is no different than permitting the EDC to possess the data – both types of regulated companies are under the same legal restrictions in terms of use and release. Accordingly, implications that the current guidelines somehow make available private customer information on a public basis and, therefore, expose consumers to potential harm are not factually accurate. Furthermore, the above listed procedures have been in place for PPL Electric Utilities Corporation and Duquesne Light Company for over a year and RESA is unaware of any complaints filed by consumers regarding the release of their information or the process those two companies use.³

Notwithstanding this and as noted, RESA is willing to compromise on this issue. To the extent that permitting all customers to restrict all information satisfactorily addresses the concerns of OCA and PCADV, RESA will agree to accept such a change on the condition that there are no changes to the existing rules, reflected in Commission’s currently effective regulations, which permit the transmission of customer data (including telephone number and historical billing data) unless a customer opts out of having his or her data conveyed to EGSs.⁴

³ The order governing PPL was entered in October 2009. Implementation of this order began promptly because the generation rate caps for PPL’s service territory ended December 31, 2009. Thus, the operating rules and guidelines related to PPL’s ECL have been in place for approximately eighteen months. *PPL Electric Utilities Corporation Retail Markets*, Docket No. M-2009-2104271, Final Order entered October 22, 2009. Likewise, the order governing Duquesne was entered on July 30, 2010. Implementation began immediately in preparation for the default service plan implementation date of January 1, 2011. *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2011 through May 31, 2013*, Docket No. P-2009-2135500, Order entered July 30, 2010.

⁴ 52 Pa. Code § 54.8.

In other words, the customer's lack of action would not constitute consent to restrict the information consistent with Commission precedent on this issue.⁵

If the Commission adopts this new approach, then three other issues should be considered. First, while RESA supports the Commission's effort to harmonize the ECL requirements for all EDCs, care should be taken regarding the operational integration of any "new" requirements for PPL or DLC. As noted above, these two EDCs have established rules and procedures in place regarding their current ECLs. The EGSs in those service territories are familiar with those rules and have adjusted their systems accordingly. If PPL and DLC are going to be required to change their current processes, then RESA recommends that the Commission permit a reasonable amount of time to implement such change and ensure that such changes are implemented in a smooth and efficient way that does not unduly prejudice the competitive marketplace.

Second, changes to the current status quo should be effectuated through the next regularly scheduled customer solicitation date. Requiring the EDCs to undertake an additional solicitation of all its customers – especially if the solicitation occurred recently – may be confusing and unnecessarily costly. Customers likely will not understand the difference between the solicitation they recently received and any new one. Further, as noted above, the rules in place currently have not resulted in any complaints or problems regarding customer privacy of which RESA is aware and, therefore, do not justify undertaking any unscheduled solicitations. Therefore, any changes to the current rules that may be effectuated as a result of this proceeding should be implemented through each EDC's next regularly scheduled customer solicitation.

⁵ See, eg, *Petition of Direct Energy Services, LLC for Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike County Light & Power Company*, Docket No. P-00062205, Final Opinion and Order entered April 20, 2006 at 14-15.

Finally, the EDCs should include language in their opt-out notices to customers informing them of the impact of opting off of the list. More specifically, the notice should inform customers that removal from the list will prevent them from receiving potential money-saving or other innovative supply offers from EGSs.

B. The Current Opt-Out Manner Permitting Restriction Must Not Be Altered

As explained above, RESA can support permitting all customers to restrict the release of all customer data on the condition that the Commission continue to utilize an opt-out process for customers to register their desire to restrict their information. The data provided to EGSs on the ECL (data which has been released to EGSs via an opt-out process for over a decade) are fundamentally necessary to ensure a proper functioning competitive retail market in Pennsylvania which is required by Chapter 28 of the Public Utility Code.⁶ The information presented on the customer list, which is not merely used for “marketing” purposes, enables EGSs to complete the process of enrolling a customer, to develop accurate pricing offers for customers, and to maximize efficiency in providing service to a customer once he or she is enrolled. Without access to such information – which includes the customer’s account number with the EDC, the customer’s historic usage and consumption data, the customer’s load profile group indicator, customer meter data, customer name and billing address (all of which is covered by the Commission’s Order) – the process of switching a customer to the electric service of an EGS, as requested by the customer, will be extremely impaired.

⁶ See, eg, 66 Pa.C.S. § 2802(7)(“This Commonwealth must begin the transition from regulation to greater competition in the electricity generation market to benefit all classes of customer”); (12)(The purpose of this chapter is to modify existing legislation and regulations and to establish standards and procedures in order to create direct access by retail customers to the competitive market for the generation of electricity. . . .); (13)(“ . . . The procedures established under this chapter provide for a fair and orderly transition from the current regulated structure to a structure under which retail customers will have direct access to a competitive market for the generation and sale or purchase of electricity.”)

The following examples illustrate the benefits and uses of the information on the ECL to facilitate customer choice:

- The customer list provides EGSs with usage and account attribute data that allows EGSs to continually refine their offers and provide the most competitive prices to customers. The availability of historical usage data for a large set of customers enables suppliers to refine their load forecasting assumptions which can result in more economic wholesale purchase decisions and lower retail offers for customers.
- The customer list provides information necessary to allow suppliers to complete the enrollment process. Operational protocols in Pennsylvania require EGSs to have a customer account number to effectuate an enrollment through the use of electronic data exchange transactions sent to the EDC. Customers enrolling with an EGS often mistakenly present an incorrect account number or an account number with a missing digit. The ECL is an essential quality control tool that EGSs utilize to verify account numbers provided by customers to ensure accurate and timely enrollment.
- The customer list provides necessary information to enable suppliers to efficiently provide service to customers. In addition to customer contact information and historical usage data, the ECL contains other vital information that EGSs need in order to continue to provide service to customers. For example, in some cases the ECL is the sole source of existing and future capacity and network service Peak Load Contribution values associated with customer accounts. These data values are used to determine wholesale capacity and transmission cost obligations attributable to individual customer accounts and are a necessary data element used in EGS business operations.

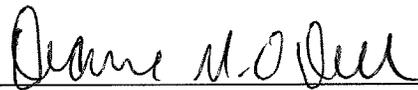
Requiring that customers consent via an affirmative action (i.e., “opt-in”) before any of this information is released is not only contrary to the Commission’s longstanding rule, but would drastically reduce the number of customers who would authorize the release of the information and would similarly reduce the efficacy of any information provided to EGSs. Generally, requiring an affirmative action (rather than consenting by lack of action) reduces the number of participating customers substantially due to a behavioral phenomenon known as “status quo bias.” It has been estimated that requiring affirmative action can reduce the number of participating customers from around 90% to 25-30% or less. Such a reduction in the number of customers releasing their data would not only seriously hamper residential and small business

customer switching but will rob customers remaining on the default service provided by the EDC of the ability to save money on their electric bill by electing to receive, or in many cases failing to even become aware of competitively priced service offers from EGSs. The lack of availability of this information could lead to service disruptions for customers that have already chosen to take supply from an EGS and could drive up costs for all customers by making it more costly and cumbersome for EGSs to obtain the data necessary to run their operations.

III. CONCLUSION

The ECL is a vital element of ensuring a successful competitive electricity market. For that reason, RESA appreciates all of the time and effort the Commission has devoted to this issue to date. While RESA may not have agreed with every aspect of the Interim Guidelines, it did support their adoption as a good step forward. While RESA is willing to offer a compromise in this proceeding to address the privacy concerns of raised by the OCA and PCADV, RESA urges the Commission to ensure that any changes to the current guidelines are narrowly tailored and, most importantly, that the manner by which consumers are able to exercise their right to restrict information is not altered.

Respectfully submitted,



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