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July 13, 2011

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA HAND DELIVERY

RE: Interim Guidelines For Eligible Customer Lists; Docket No. M-2010-2183412

PPL Electric Utilities Corporate 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:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the original and five (5) copies of the Comments of the Industrial Energy Consumers of Pennsylvania ("IECPA"), Duquesne Industrial Intervenors ("DII"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Coalition ("PICA"), Penn Power Users Group ("PPUG"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customers Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customer Groups") in the above-referenced proceedings.

As shown by the attached Certificate of Service, all parties to these proceedings are being duly served. Please date stamp an extra copy of this transmittal letter and Comments, and kindly return it for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By

Patrick L. Gregory

Counsel to the Industrial Customer Groups

PLG/sds

Enclosures

c: Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

COMMENTS OF THE INDUSTRIAL CUSTOMER GROUPS

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Dated: July 13, 2011

I. INTRODUCTION

On November 12, 2010, the Pennsylvania Public Utility Commission ("PUC" or "Commission") issued an Order ("November 12 Order") establishing interim guidelines designed to produce greater uniformity in the type of customer information provided by Electric Distribution Companies ("EDCs") in their Eligible Customer Lists ("ECLs") to be made available to Electric Generation Suppliers ("EGSs") licensed to market to consumers in Pennsylvania.¹ The Commission acted upon a recommendation from its Office of Competitive Market Oversight ("OCMO") pursuant to discussions held by stake-holder committees in 2010. November 12 Order at 2-3. The November 12 Order followed the PUC's July 15, 2010, Tentative Order, in which the Commission proposed adoption of specific elements to be included in a uniform, statewide ECL, and called for comments on such elements.

The Commission addressed two issues raised by commenters concerning the release of customer information. First, the PUC stated that victims of domestic violence or similarly endangered customers "should have the unfettered ability to restrict all of their customer information." November 12 Order at 7. Second, the Commission addressed consumer protections available to the general public, providing guidance that a customer may restrict the release of its telephone number, address, and historic billing data. November 12 Order at 8. In doing so, the Commission relied on its finding in *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2011 through May 31, 2013*², in which it found that "[c]ustomers may restrict the release of all historical billing data consistent

¹ See *Interim Guidelines for Eligible Customer Lists*, M-2010-2183412, at 18.

² *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).

with 52 Pa. Code §54.8(a)(2)."³ November 12 Order at 7-8. The Commission also delineated a minimum list of customer information and data points to be included in the ECL, including customer account number, customer name, customer telephone number, service address, billing address, tariff rate class and schedule, rate sub-class and sub-code, meter read cycle, load profile group, monthly consumption, on-peak and off-peak consumption and monthly peak demand.⁴

On December 29, 2010, the Pennsylvania Coalition Against Domestic Violence filed an Application ("PCADV") for Supersedeas with the Commonwealth Court, seeking to stay the November 12 Order due to concerns about the right of customers to safeguard their information.⁵ The Office of Consumer Advocate ("OCA") supported the request for a stay, due to similar privacy concerns.⁶ The Commonwealth Court granted the request for a stay on January 28, 2011. On March 8, 2011, the Commission asked the Court to remand jurisdiction back to the PUC, so that it could reconsider its determinations and "produce a new order that strikes an appropriate and lawful balance between customer privacy rights and the Commission's obligations under Chapter 28 of the Public Utility Code." The Court granted the application and remanded jurisdiction back to the Commission on April 28, 2011.

The Industrial Energy Consumers of Pennsylvania ("IECPA") is an association of energy-intensive industrial companies operating facilities across the Commonwealth of Pennsylvania. IECPA's members consume in excess of 25% of the industrial electricity in Pennsylvania and employ approximately 41,000 workers. Also sponsoring these Comments are coalitions of industrial customers receiving service from most of the Commonwealth's Electric

³ "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. Specifically, a customer may restrict the release of ... (1) The customer's telephone number (2) The customer's historical billing data." 52 Pa. Code § 54.8(a)(2).

⁴ See Appendix A to the Commission's June 13, 2011, Notice of Reconsideration in this proceeding.

⁵ See the Commission's June 13, 2011, Notice of Reconsideration in this proceeding at 5.

⁶ *Id.*

Distribution Companies ("EDCs"): Duquesne Industrial Intervenors ("DII"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customer Groups").

As customers, the Industrial Customer Groups are concerned about safeguarding customer information. Because the Industrial Customer Groups use substantial volumes of electricity in their manufacturing and operational processes, they are particularly concerned about safeguarding their usage data, the release of which could put them at a competitive disadvantage. The Industrial Customer Groups submit these Comments in order to highlight these areas of concern to Large Commercial and Industrial ("C&I") customers with respect to the Commission's reconsideration of its determinations made in the November 12 Order.

II. COMMENTS

A. Customers' Affirmative Consent Should Be Required Before Customer Information is Released

The Industrial Customer Groups recognize that the Commission has previously addressed customer information disclosure, and has endorsed an "opt out" or "negative check-off" approach, which means that a customer's information will be released unless the customer takes steps to restrict access. Nonetheless, the Industrial Customer Groups respectfully urge the Commission to reconsider its holdings and find that affirmative consent should be obtained as a necessary precondition to the release of any customer information. The Industrial Customer Groups note that affirmative customer consent is already required by Act 129 for meter data, as it states:

Electric distribution companies shall, with customer consent, make available direct meter access and electronic access to customer meter data to third parties, including electric generation suppliers and providers of conservation and load management services.

66 Pa.C.S. § 2807(f)(3). The Industrial Customer Groups note that a mere "opt-out" procedure would not be sufficient to meet Act 129's requirement of "customer consent." Under such a procedure, one cannot be certain whether a customer actually consented to the release of its meter data. A customer might not receive notice of its opportunity to opt-out, or the person receiving this notice may not understand the importance of restricting this data because they are responsible for "bill processing" rather than energy management decisions. Such failure to opt-out cannot be considered "consent."

The OCA has aptly pointed out the concerns raised by the emergence of smart meters and the Smart Grid.⁷ As noted by OCA, the United States Department of Energy has expressed concern regarding the privacy issues raised by such technology:

[T]he Smart Grid also presents new challenges. In particular, many of its benefits could be reduced or delayed and avoidable harms caused unless the Smart Grid adequately respects consumers' reasonable – and often widely differing – expectations of privacy, expectations that could be compromised if detailed household energy consumption data is made too readily available, too inaccessible, or incorrectly anonymized.⁸

These concerns also apply to larger users, whose energy information can be used for competitive purposes. The Smart Grid provides the ability to access, analyze and respond to much more detailed and precise information from the electric grid than was previously available. Given that the Smart Grid can provide data and data extrapolations associated with individual consumers or locations, it is crucial that customers be protected from the potential privacy risks created by this

⁷ See *Comments of the Office of Consumer Advocate* filed in this proceeding on August 4, 2010.

⁸ *Id.* at 10, quoting 75 Fed. Reg. 26203 (May 11, 2010) (Request for Information).

technology.⁹ These risks are in addition to other privacy risks, such as the risk of identity theft, and general privacy concerns. The Industrial Customer Groups therefore urge the Commission to require affirmative consent before release of any customer information.

B. At a Minimum, Customers Should Be Permitted to Restrict Load Data, Because It is Competitively Sensitive Information

It is imperative that the Commission allow customers an opportunity to restrict competitively sensitive information such as usage or load data. As noted by OCA, the United States Department of Commerce National Institute of Standards and Technology has stated concerns about smart meter technology and competitively sensitive information:

Frequent meter readings may provide not only a detailed timeline of activities occurring inside a metered location ... they could also lead to knowledge being gained about specific equipment usage or other internal business processes.¹⁰

As provided in 52 Pa. Code § 54.8(a)(2), a customer must have the ability to restrict release of its "billing data." The Industrial Customer Groups classify "billing data" to include all information related to a customer's usage.

The competitive harm that could occur from release of usage information is enhanced given that some holders of EGS licenses are energy services affiliates of end users in Pennsylvania. This creates a risk that an EGS could use an ECL in order to obtain information about competitors of its affiliate. For example, Linde Energy Services, Inc. is an EGS affiliate of industrial gas supplier Linde Group. Air Products and Chemicals Inc. ("Air Products"), which is a competitor of Linde Group, should be able to ensure that all of its load data is restricted to eliminate the possibility of Linde Group obtaining competitively sensitive information regarding Air Products' accounts. Similarly, ArcelorMittal USA LLC is an EGS affiliate of steel company ArcelorMittal. Competitors

⁹ See *Id.* at 11, quoting National Institute of Standards and Technology Draft Report on Smart Grid Cyber Security Strategy and Requirements, DRAFT NISTIR 7628.

¹⁰ *Id.*, quoting National Institute of Standards and Technology Draft Report on Smart Grid Cyber Security Strategy and Requirements, DRAFT NISTIR 7628.

of ArcelorMittal such as U.S. Steel should have no doubts as to their ability to guarantee that ArcelorMittal does not use the ECL to obtain usage data. The industrial gas industry and steel industry are very energy intensive. For example, energy can constitute 60-80% of the operating costs of an industrial gas facility. Although the Industrial Customer Group members are confident that Linde Group and ArcelorMittal will abide by the Commission's directives, an after-the-fact remedy would be inadequate for the harm that would occur if they did not or if their competitors were not able to fully restrict all access to load data.

In addition to maintaining the right of a customer to restrict its telephone number, therefore, customers should be permitted to restrict the following information currently listed in the ECL Customer Data Elements attached as Appendix A to the November 12 Order:

- Rate Subclass/Rate Subcode
- Load Profile Group per Tariff
- Transmission Obligation (PJM)
- POLR/Shopping Status
- Monthly Consumption
- On Peak/Off Peak Consumption
- Monthly Peak Demand
- Load Factor

Further, because the ECL represents the minimum information that the EDC must provide, if any other usage or load related data is or becomes available, a customer should be notified of the additional types of data that may be made available to EGSs through the ECL or otherwise, and should be permitted to restrict release of such information.

III. CONCLUSION

While the Industrial Customer Groups recognize that the Commission has previously considered privacy issues related to ECL information, the Industrial Customer Groups urge the Commission to reconsider and require that a customer's affirmative consent be given before any customer information is released. In addition, it is crucial that customers be able to restrict all usage and load data to ensure protection of competitively sensitive information.

WHEREFORE, the Industrial Energy Consumers of Pennsylvania, Duquesne Industrial Intervenors, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Comments.

Respectfully submitted,

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Dated: July 13, 2011

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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