

COMMONWEALTH OF PENNSYLVANIA



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November 3, 2011

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17101

RE: Investigation of Pennsylvania's Retail
Electricity Market
Docket No. I-2011-2237952

Dear Secretary Chiavetta:

Enclosed for filing please find the Comments of the Office of Consumer Advocate in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Darryl Lawrence".

Darryl Lawrence
Assistant Consumer Advocate
PA Attorney I.D. # 93682

Enclosure

cc: Office of Competitive Market Oversight
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation of Pennsylvania's
Retail Electricity Market

:
:

Docket No. I-2011-2237952

COMMENTS OF THE OFFICE OF CONSUMER
ADVOCATE ON THE COMMISSION'S
TENTATIVE ORDER OF OCTOBER 14, 2011

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Dated: November 3, 2011

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I. INTRODUCTION

On October 14, 2011, the Pennsylvania Public Utility Commission (Commission) issued a Tentative Order in its Investigation of Pennsylvania's Retail Electricity Market. Through the Tentative Order, the Commission set forth recommendations provided by the Commission's Office of Competitive Market Oversight (OCMO) related to Electric Distribution Companies' (EDC) future default service plans. The Tentative Order provided recommendations regarding the default service plans and a number of competitive enhancements that could potentially be achieved during the next default service time period. In particular, the Tentative Order provided recommendations regarding the default service time period, the contract durations for default service purchases, the possible implementation of a retail opt-in auction, the possible implementation of referral programs, establishment of time of use rates, the default service rate adjustment structure, and the use of hourly priced default service for medium commercial and industrial customers.

Through its recommendations, the Commission sought to achieve three goals: (1) to ensure that the upcoming default service plans do not hinder the ability of the Commission to implement changes that will be addressed within the Investigation; (2) to advise EDCs and other parties that they will be expected to amend proposed default service plans when possible to incorporate changes which may arise out of the Investigation; and (3) to provide guidance on default service plan components that the Commission believes can better facilitate the competitive marketplace. Tentative Order at 3. The Commission states that its recommendations are intended to provide EDCs the flexibility to craft default service plan filings in a manner which they see appropriate. Tentative Order at 4.

The OCA welcomes this opportunity to provide comments on the Commission's Tentative Order and recommendations. The OCA's Comments will address the Tentative Order and recommendations as they impact residential customers in Pennsylvania and the provision of residential default service under Act 129 of 2008 (Act 129). The OCA appreciates the Commission's intention to provide flexibility to EDCs in crafting their default service plans. Of paramount importance is the ability of each EDC to develop a default service plan that meets the goals and requirements of Act 129 to provide stable, reliable, affordable, efficient and environmentally sustainable electric generation service at the least cost over time. See, Preamble to Act 129, 2008 Pa. Laws 129.

The Commission has recently had occasion to promulgate its regulations and Policy Statement for default service plans to carry forward the requirements of Act 129. The regulations and Policy Statement form the basis for default service procurement plans in meeting Act 129. The OCA submits that each EDC should have the ability to put together the best plan to meet the requirements of Act 129 and the Commission's regulations as the law now requires.

While the Commission has indicated that it intends to provide flexibility to each EDC to develop a default service plan to meet the goals and requirements of Act 129, the OCA respectfully submits that adoption of some of the Commission's recommendations may not accomplish that goal. As discussed in more detail below, the OCA remains concerned about limiting the types of contracts and the contract durations that an EDC may enter into to meet its default service obligation. The recommendations of the Commission to limit the contract durations and, in essence, create a hard stop to almost all energy purchases on May 31, 2015, would eliminate many of the benefits of procuring a prudent mix of contracts over time as the default service providers now do. Such a hard stop creates the potential that the EDC would be

required to purchase significant supply during a very compressed period of time, perhaps under singular market conditions. Indeed, it was this lack of layering in, or laddering of supply purchases leading up to the post rate cap period in Pike County Light and Power and in Maryland that led to the significant price increases for customers. This is the very type of situation that Act 129 seeks to avoid by requiring a prudent mix of contracts intended to provide the least cost over time.

To best align the goals and requirements of Act 129 with the Commission's desire to forward necessary competitive enhancements, the OCA recommends that each EDC generally continue to follow the approach in its currently approved default service plan for the two year period proposed by the Commission. A continuation of the currently approved purchasing plan approach that has been found to comply with Act 129 would reduce controversy. In addition, it would allow the stakeholders to work toward the implementation of competitive enhancements that can be integrated into these procurement plans.¹ Some minor modifications or adjustments may be necessary as the plans will be for 24 months rather than the original 29 months, but using these approved plans as the starting point would be a reasonable approach.

From this starting point, the OCA supports the consideration of various competitive enhancements that are designed to educate, inform and facilitate customer choice. The OCA submits that there are several competitive enhancements discussed in the Commission's Tentative Order, and that have been discussed in the Investigation, that have the potential to achieve these goals within the strictures of current law and without disrupting default service plans. The OCA continues to work in various subgroups and through the Investigation to

¹ West Penn Power may need to file a new plan as its procurement plan was approved prior to the passage of Act 129 and its purchases all end on May 31, 2013. Indeed, West Penn should soon file a plan so that it can layer in purchases over time rather than make singular purchases under one set of market conditions.

determine those competitive enhancements with the most potential to benefit customers and to determine how best to roll out any new initiatives.

In its work, the OCA is guided by some key principles. While there are many factors that are important to the success of any competitive enhancement initiative, the OCA will highlight some key principles for consideration. First, the OCA supports enhancements and solutions that are consistent with existing law on customer choice and default service and that will not disrupt default service. Also paramount to the OCA's consideration is that programs recognize that it is the customer's choice as to whether to engage the market and switch suppliers. Closely related to this, though, is that no harm should come to a customer who chooses to engage the market through participation in a Commission-sponsored or directed program. Additionally, the OCA submits that competitive enhancements or programs should not harm the overall competitive market through programs that favor one competitor over another or support one business model over another. Finally, the OCA submits that the costs of any initiative should be considered and it should be ensured that there will be customer benefits commensurate with any costs. In this same regard, the OCA seeks to ensure that a fair contribution towards these initiatives is made by all impacted stakeholders.

The OCA would note that the Commission has identified a number of initiatives in its Tentative Order. The OCA will provide comments on these different initiatives, but the OCA urges caution in determining whether every initiative is needed and whether every initiative should go forward at the same time. Some of the initiatives under consideration have overlapping features and may actually have interactions that could counter one another. Not every initiative may be needed or justified. In addition, if it is determined that multiple initiatives should proceed, great care must be taken in determining how to implement such

multiple initiatives on a coordinated basis. It may not be good for customers or competition to have several different programs competing for consumer attention, advertising time, and the attention of customer service representatives.

Of particular concern among the initiatives identified in the Tentative Order would be the potential for a simultaneous implementation of a customer referral program and a retail opt-in auction program. These programs share many similarities in design and purpose and could become confusing for customers and call center representatives if implemented at the same time. It also may be confusing for customers to have several different Commission-sponsored programs with different risks and benefits seeking their attention. This lack of attention to one clearly defined program could in essence compromise the success of all programs. Multiple initiatives can also be more costly to implement, raising issues of whether the overall benefits support the programs. If multiple initiatives are to be implemented, the OCA recommends that consideration be given to the proper timing and sequence of the implementation of such initiatives.²

The OCA would also note that many of the programs under consideration are not typical of a competitive market but are a means to jump start a market. In the OCA's view, the retail competitive market in Pennsylvania has been steadily growing and has done so in a manner that allows for any detected problems to be resolved quickly without having a large, negative impact on consumer perceptions of the market. It is important not to implement programs that distort the market, create unreasonable expectations, make promises that cannot be kept, or raise overall prices.

² Similarly, the timing and extent of consumer education initiatives should not overwhelm customers and possibly detract from education about other programs that may be offered for a short time. While not part of this Tentative Order, the OCA recommends that the Investigation continue to consider the proper timing and extent of consumer education initiatives.

In its Comments, the OCA will discuss each of the recommendations of the Commission in turn. While the OCA will provide a discussion on each of the competitive enhancements proposed in the Tentative Order, the OCA has not yet reached a conclusion as to whether all of these initiatives should be pursued or as to which initiatives would best facilitate retail choice by a customer. The subgroup work continues and the development of further details on the design, cost, benefit and implementation of each program is necessary information to this assessment. The OCA will continue to work with the subgroups and the Commission's Investigation to determine how best to educate, inform, encourage and facilitate customer choice.

II. COMMENTS ON SPECIFIC SECTIONS

A. Default Service Time Period.

In the Tentative Order, the Commission issued guidance with regard to the length of the next filing of default service plans. For most EDCs, the current default service plan is scheduled to expire on May 31, 2013. The Commission recommends that each EDC file a default service plan that will commence on June 1, 2013 and end on May 31, 2015. Tentative Order at 4. The Commission stated that the plans should remain on the PJM Energy Year (June 1 through May 31) and that two year plans will provide a reasonable amount of time to allow for implementation of any long term changes proposed in the Investigation. Tentative Order at 4.

The OCA agrees that a two year period for the next round of Default Service Plans is reasonable in light of the Investigation and that those plans should continue to coincide with the PJM Energy Year. The OCA recognizes that some of the initiatives under consideration to enhance retail choice may need to be integrated into default service plans and pricing in the future. The two year time frame will allow these issues to be developed.

As the Commission noted, the recommendations contained in the Tentative Order are intended to provide EDCs with the flexibility to craft filings in a manner that they see as appropriate. Tentative Order at 4. The OCA supports each EDC's ability to design a two year default service plan that meets the needs of its default customers while remaining consistent with the requirements of Act 129 and the Commission's regulations. It has been the OCA's view throughout this investigation that a general continuation of the approach used in the currently approved Default Service Plans would be the most appropriate and reasonable approach. The OCA discusses this issue at greater length in the next section. The OCA submits that the development of appropriately designed two year default service plans can be accomplished in a

manner that allows for meeting the requirements of Act 129 and allows all stakeholders to work toward the implementation of reasonable competitive enhancements.

B. Energy Contract Durations.

1. Introduction.

In the Tentative Order, the Commission stated that it does not want to hinder the ability of EDCs and other interested parties to formulate a portfolio of energy contracts that satisfy statutory requirements. Tentative Order at 4. The Commission did, however, set forth a series of recommendations for default service providers to follow when constructing their upcoming default service plans. Tentative Order at 5. The two primary recommendations act to limit the purchase of additional energy supplies beyond the proposed two year plans that will run from June 1, 2013 to May 31, 2015. For the reasons set forth below, the OCA would not support such a limitation on the EDCs' ability to develop a portfolio of resources that will provide least cost to consumers over time as required by Act 129.

Currently, the EDCs procure power through a mix of different products with different terms that include full requirements contracts and block energy purchases of various lengths, alternative energy credits and spot market purchases. These various energy portfolios have created a wide array of approaches. As the OCA has argued in multiple default service proceedings, the development of the various approaches currently found throughout the Commonwealth will provide valuable data that will help in the establishment of "best practices" for meeting the goals and requirements of Act 129 in future proceedings. By continuing the general approach of existing default service plans, each EDC will continue to gain valuable price

information that will benefit future default service providers as they develop plans designed to achieve reliable default service at least cost to customers over time.³

The OCA respectfully submits, however, that certain recommendations in the Commission's Tentative Order are inconsistent with the goals of Act 129. The Commission recommends that EDCs not enter into any short term contracts that would run past the end of the two year plan period. The Commission also recommends that EDCs limit the proportion of long term contracts in their energy portfolio. To meet this goal, the Commission recommends that EDCs only use existing long term contracts to meet the requirements of Act 129. Tentative Order at 5. The OCA respectfully submits that these recommendations would impose unreasonable restrictions on Default Service Providers as they develop plans to meet the requirements of Act 129.

2. Limiting the Length of Short Term Contracts is Not a Reasonable Approach to Meeting the Default Service Obligation.

The Commission's recommendation that default service providers limit their purchases of short term contracts beyond the end of their upcoming default service plans will inhibit default service providers in their obligation to procure power through a prudent mix of purchases that will provide least cost over time. While not mandating any set procurement practice for the upcoming Default Service Plans, the Commission recommended that EDCs eliminate any short term energy contracts that would extend past the end date of the default service plan time period. Tentative Order at 5. In essence, the Commission recommends a "hard

³ In its materials provided in the Investigation Working Group, PECO submitted an excellent example of how an extension of its current default service plan should work. http://www.puc.state.pa.us/electric/PDF/RetailMI/DDD-PECO_Ext_DSP_Illustration.pdf. PECO's proposal would incorporate the principles guiding its current purchasing practices to extend its default service plan. While the materials provide an example of a one year extension, the same principles could be applied for the two year extension recommended by the Commission.

stop” to purchases and supply on May 31, 2015 (but for the amount of long term contracts that have already been procured).

At the outset, it should be noted that the great majority of default service power is currently supplied under what is considered a short term contract under the definitions contained in Act 129. Every contract of 4 years length or less is considered a short term contract under Act 129.⁴ The OCA is concerned with the recommendation that all short term contracts end on May 31, 2015 for the following reasons.

First, the ending of all short term contracts on May 31, 2015 presents significant issues for default service providers on June 1, 2015 and beyond. Creating such a hard stop is likely to result in an extraordinarily compressed time frame for any purchases to meet the post June 1, 2015 default service need. The Commission’s Policy Statement specifically calls for the purchasing of supplies at multiple dates to ensure that customers’ exposure to unexpected market disruptions is minimized. This “laddering” concept has been the foundation of the default service plans and avoids the potential catastrophic consequences of making a single large purchase at the exact wrong time as happened in Pike County. By laddering the procurement dates of contracts to require purchases throughout the year and by ensuring that contracts end at different times, default service customers receive the benefit of paying rates that reflect market conditions over a longer period of time. The key benefit experienced by customers as a result of laddering is price stability.

By simultaneously ending supply procurements for 100% of the short term contracts at the end of the two year period, it is virtually assured that Default Service Providers

⁴ The Act requires default service providers to acquire a prudent mix of long term contracts (defined as contracts greater than four years), spot market purchases (priced on a real time basis), and short term contracts. 66 Pa.C.S. § 2807(e)(3.2). All of the 12 month, 24 month, and 48 month full requirements and block energy purchases that make up the vast majority of default supply purchases are considered “short term contracts.”

will have to purchase significant supply at the end of the period under a singular market condition. Spreading those purchases over three or four months, for example, would not adequately protect default service customers from the risk of purchasing under adverse market conditions. To avoid this drastic market timing risk, OCA submits that the default service providers should continue to purchase contracts of varying lengths over varying time frames and should continue to use the laddering approach.

Second, the OCA is concerned that limiting contract terms to coincide with the end of a two year plan (i.e., May 31, 2015) would effectively prohibit the purchase of three and four year contracts. Contracts of this duration have been a part of default service plans for residential consumers and add value to the portfolio. The OCA submits that inclusion of three and/or four year contracts may be critical to meet the prudent mix requirements of Act 129 for residential customers.

As such, the OCA does not support the Commission's recommendation on this issue. Rather, the OCA supports extending the purchasing approach that is used in the existing default service plans for a period of two years. The extension of these purchasing plans for two years will not result in a hard stop on May 31, 2015, and would allow for the continued purchase of contracts of various lengths to meet the requirements of Act 129.⁵

⁵ The OCA further notes that it is not possible at this point to bring all default service procurements to a clean close on May 31, 2015. As mentioned below, Companies such as PPL Electric Utilities have contracts that already extend beyond that date. Should competitive enhancements need to be integrated into default service plans that would impact purchasing, these issues will already need to be addressed. The OCA submits that it is not necessary to attempt to create a clean "break" on May 31, 2015 because such an attempt would not eliminate the need to address transition issues. Moreover, attempting to create a clean break for a potential change that is not consistent with the law is not reasonable.

3. Restricting Long Term Contracting May Not Be Consistent With the Requirements of Act 129.

The Commission also recommends that each EDC limit the amount of long term contracts in their energy portfolio. Tentative Order at 5. The OCA submits that there should be no pre-determined limitation on long term contracts, which are defined by Act 129 as those greater than four years and not greater than 20 years. 66 Pa.C.S. § 2807(e)(3.2)(iii). By law, the default service provider is required to obtain a prudent mix of contracts designed to ensure adequate and reliable service at the least cost to customers over time, taking into account price stability. 66 Pa.C.S. § 2807(e)(3.4); Appendix to Title 66: Supplementary Provisions of Amendatory Statutes (Preamble, 2008, October 15, P.L.1592, No.129).

The OCA submits that the General Assembly clearly expressed a requirement that Default Service Providers design their procurement to achieve rate stability and reliability. With that framework, the OCA does not support a recommendation that Default Service Providers “limit the proportion of long term contracts that make up their default service plan energy portfolio.” Tentative Order at 5. Long term contracts provide a valuable stabilizing effect on default service rates, consistent with the requirements of Act 129. In addition, long term contracts provide reliability and additional value in that they support the development of long term traditional and renewable generation.

The OCA further submits that it is not possible at this time to know whether additional long term contracts may be appropriate to meet the requirements of Act 129. For example, the OCA would note that recent long term procurements for AECs appear to be generating reasonable and stable results. In addition, PPL’s procurement of a 10 year 50 MW block of energy resulted in a reasonable price that will add stability to default customers’ rates for years to come. It would be inappropriate to recommend that Default Service Providers

disregard market opportunities for long term contracts in their upcoming default service plans where such opportunities would allow the default service provider to meet its statutory obligations.

4. Conclusion.

The Commission clearly stated that it does not want to hinder the ability of EDCs and other parties to formulate a portfolio of energy contracts that satisfy statutory requirements. Tentative Order at 4. For this reason and as detailed above, the OCA submits that the Commission should not recommend that default service providers design their purchases to end on a specific date or to limit the amount of three year, four year, and longer contracts included in each default service provider's portfolio. Rather, each Default Service Provider should continue to purchase supplies in a manner that best helps it meet its obligations under the law. The OCA supports continuing the approach to purchasing that is used in the existing default service plans for a period of two years as a means to allow time for the Investigation process to conclude.

C. Retail Opt-In Auction.

1. Introduction.

The Tentative Order provides a discussion on the potential use of a retail opt-in auction as a further means of raising customer awareness as to their ability to choose an electric generation supplier, and as a means for customers to take advantage of shopping opportunities. Tentative Order at 5. The Tentative Order provides the following description of this program:

In a retail opt-in auction, an EGS bids to provide competitive retail service to a group of residential and/or small commercial customers within a specific EDC territory who have affirmatively decided to have their accounts included in this group.

Tentative Order at 5. In the Tentative Order, "the Commission recommends that EDCs incorporate an opt-in auction program within their default service plans." Tentative Order at 5.

The OCA submits that a reasonably-structured, opt-in retail auction program of appropriate size may provide benefits to consumers and should continue to be considered.

In the OCA's view, there should be at least two key benefits for participating in an opt-in retail auction program: (1) consumers receive assured, identifiable benefits, and (2) consumers are able to "get their feet wet" as to the switching experience without risk of harm. As to the first part, consumers must be able to respond to an offer that provides something like a specified savings compared to the utility default rate, a specified sign on lump sum amount, or some reasonable combination thereof. The bottom line is that consumers who elect to participate in an opt-in retail auction conducted under the auspices of the Commission should be able to conclude from that experience that they ended up better off than they would have been had they elected to stay on default service, and that they experienced no harm as a result of participating in the program.

The OCA is also mindful of the fact that some consumers will not choose to switch to an alternative supplier for their generation service. These default service customers have that right, as guaranteed by the General Assembly and embodied within Act 129. It is of equal importance here, not only to create a successful opt-in retail auction model that provides benefits to participating customers, but also to ensure that such programs do not harm default service customers. The OCA submits that through a thoughtful and reasoned approach, it should be possible to implement an opt-in retail auction successfully in accordance with the law and yet not harmful to existing default service.

At the same time, the OCA recognizes that the implementation of an opt-in retail auction is no small undertaking and there are certain risks. The sanctioning of a particular business model for use in the competitive markets could pre-determine winners and losers

among market participants. Moreover, the implementation of an opt-in retail auction could cause unintended market disruption and distortion. In determining whether and when to move forward with a retail opt-in auction under the Commission's auspices, due consideration must be given to the insertion of such an administrative program into a competitive market. The OCA is not aware of any other state that has utilized a retail opt-in auction as a means to implement customer choice.

That stated, the OCA submits that a retail opt-in auction, appropriately structured, could work to provide a positive jumpstart for retail shopping activities while at the same time not harming default service. The OCA submits that certain elements should be included in any program of this type to ensure that the costs, benefits and risks of such a program are properly aligned in order to provide the best opportunity of success for all stakeholders. In accord with the Tentative Order's provision for public comment, the OCA provides the following discussion on retail opt-in auctions.⁶

2. Necessary Elements of a Retail Opt-In Auction Model.

The OCA submits that a retail opt-in auction format could serve to facilitate shopping, especially in areas where current switching levels indicate light shopping activity. For such a program to be successful, certain elements should be included as a framework in the EDCs' future default service plans. The Retail Opt-In Auction Working Group has developed some high-level principles. The OCA is in general agreement with many of these high-level principles and recommends their use as a general guide in designing a retail opt-in auction. The OCA would like to highlight certain essential elements of an opt-in retail auction model for these

⁶ As the Tentative Order notes, the OCA is currently part of a group of stakeholders (Retail Auction Working Group) working to provide a potential format for a retail opt-in auction. Tentative Order at 5. The OCA does not believe, however, that this group will complete its work prior to the November 3, 2011 date for filing initial comments to the Tentative Order. Accordingly, the OCA submits these comments in order to ensure compliance with the Commission's timeline as to these issues.

comments, some of which remain open issues in the Retail Auction Working Group. The elements that the OCA will highlight in these Comments are as follows:

- Compliance with the Public Utility Code and Commission regulations;
- Establishing the size/scale at reasonable levels;
- Addressing the timing issues;
- Targeting customers who have not switched and ensuring identifiable, tangible benefits;
- Excluding cancellation fees;
- Structuring as a one-time event with a definitive end;
- Requiring the winning bidder to serve all opt-in customers, at the specified price, for the duration of the contract; and
- Properly addressing the treatment of customers at the end of the program.

The OCA submits that it may be possible to craft a workable opt-in retail auction model that contains these elements and meets the high level principles developed by the Working Group. The OCA submits that participation in a program of this type should allow consumers to have a positive, learning experience. Proper education and communication are key in this regard, as consumers should readily understand and appreciate what they are being offered and how the program will operate. In the following section, the OCA will briefly discuss each of the elements as set out above.

3. Discussion of Elements.

a. Legal Requirements.

Any opt-in retail auction must comply with the Public Utility Code, Act 129 and the Commission's regulations. The OCA submits that the "opt-in" provision of the auction format currently being considered is an absolutely essential element of any such program in

order to meet these legal requirements. Section 2807 of the Public Utility Code provides, in relevant part:

The Commission shall establish regulations to ensure that an electric distribution company does not change a customer's electricity supplier without direct oral confirmation from the customers of record or written evidence of the customers consent to a change of supplier.

66 Pa.C.S. § 2807(d)(1). The opt-in format allows for this requirement to be met.

Equally important is the ability of customers to clearly understand what it is that they are being asked to agree to. Section 2807 of the Public Utility Code provides, in relevant part:

The Commission shall establish regulations to require each electric distribution company, electricity supplier, marketer, aggregator and broker to provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services offered by that provider. Information shall be provided to consumers in an understandable format that enable consumers to compare prices and services on a uniform basis.

66 Pa.C.S. § 2807(d)(2).⁷ It is a basic tenet of contract law that parties to a contract must have a "meeting of the minds" – a clear understanding of what is being bought and sold. The OCA submits that the terms and conditions of any retail opt-in auction offers should contain certain elements in order to dispel any potential misunderstandings and must be properly presented to customers so that they can make informed choices about whether to participate in the program.

The implementation of any opt-in retail auction must also comply with the many requirements of Act 129. As set forth in the Preamble of Act 129:

The General Assembly recognizes the following public policy findings and declares that the following objectives of the Commonwealth are served by this act:

⁷ The Commission has promulgated regulations in order to implement these Sections of the Public Utility Code, as found in Chapters 54 and 57 of the Pennsylvania Code.

(I) The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account any benefits of price stability over time and the impact on the environment.

Preamble to Act 129, 2008 Pa. Laws 129. The OCA submits that it is of paramount importance that a retail opt-in auction not disrupt default service procurements in any manner. Programs that result in large risk premiums, higher prices or the loss of wholesale suppliers would not meet the statutory requirements.

The OCA submits that it should be possible to format an opt-in retail auction model that complies with the law and provides consumer benefits. The OCA is continuing its work with the Retail Auction Working Group in order to collaborate on an auction model that could be designed within these parameters.

b. Size/Scale.

A maximum cap on participation should be established in order to make the program manageable, orderly, and potentially successful at the end of the day without disruption to default service. The OCA submits that a cap for the number or percentage of customers should be established and that customers should opt-in on a first-come, first-served basis until the cap is reached. There are two potential methods for establishing a cap – either specifying a set number of customers or establishing a target percentage of total shopping customers for each EDC. In specifying a set number of customers, for example, the program could be open to a pre-determined number of customers and closed when the number is met. Alternatively, the program could open on a date certain and close when a certain market percentage of total customers – both those in the program and those switching individually – has been achieved. In either case,

eligible customers would opt-in on a first-come, first-served basis until the cap was reached. It is critical though, that the appropriate scale for participation levels is established at a level that does not disrupt existing default service contracts or introduce a large risk premium into future default service procurements. In the OCA's view, these caps will likely need to be established on an EDC by EDC basis depending on prior switching levels, with significant input from the EDCs.

It is important that the scale of this initiative be reasonable in the context of the need to preserve both individual shopping and reasonably-priced default service. This program should not seek to switch such large volumes of customers so as to disrupt the market. Excessive percentages or numbers of potential opt-in auction consumers could cast a negative light on shopping activities. Those consumers who chose to be first-movers and are already engaged in the market could view an expansive program as a disincentive to shop in the future, especially if the opt-in auction appears to produce better one-time offers than current shoppers are experiencing. Larger percentages of customers switching also will have a significant impact on default service causing problems from purchasing to reconciliation. The OCA submits that many reasons exist that favor the adoption of manageable programs, sufficient to provide a jolt to light switching areas and yet not so expansive as to call into question the merits of seeking out the most suitable EGS offers on a one-by-one basis.

c. Address the Timing Issues.

As with the proper size/scale of opt-in auction programs, timing is also a critical element. The operation of any retail opt-in auction must not harm default service customers who choose not to participate. The timing of any such program must also be structured in such a way that no harm is inflicted on pre-existing contracts of wholesale power suppliers due to any

sudden and unexpected exodus of customers from the default service provider (DSP) or by any unexpected, large return of customers to the DSP.

The implementation of opt-in retail auctions should be structured in such a way that the timing of these auctions does not negatively affect the wholesale power contracts of the DSP. Currently, much of the power that is supplied to default service customers is procured by the EDCs through the use of full requirements contracts. Simply put, the wholesale power provider in a full requirements contract is assuming the risk that the load they bid on to serve for that EDC is roughly the load that is going to be there to serve. Customers who switch to an EGS after a full requirements contract has been put in place tend to change the default service load profile for that EDC and lower the amount of power that the wholesale provider must provide. Under normal conditions, the market is already expecting a certain amount of “churn”, or turnover of customers. The large scale implementation of an opt-in retail auction, however, if not properly timed could cause significant market disruption and lead to higher wholesale bids in the future.

The OCA submits that any opt-in auctions should be conducted at such times and scales that the possibility of market disruptions or distortions can be significantly lessened, or even eliminated. Timing the opt-in retail auctions to occur in advance of significant wholesale power auctions to serve default service customers in the same service territory could significantly lessen the possibility that the wholesale market would be disrupted by the opt-in retail auction programs. The timing issue is an important consideration to ensure that default service customers who choose not to participate in the auctions do not suffer due to escalated wholesale risk premiums or other costs.

d. Target Current Default Service Customers and Ensure Identifiable, Tangible Benefits.

The percentage of consumers who are currently receiving their generation service from an EGS varies significantly among different EDC service territories in Pennsylvania. Offering an opt-in retail auction program could jumpstart those areas where the current number of consumers who have switched is light. In the OCA's view, consumers who are currently receiving default service should be the target. This should be an opportunity to experience shopping with a minimal amount of time, effort and a guarantee of benefits. Accordingly, the OCA submits that current default service customers should be the focus of any opt-in auction solicitation and advertising efforts.

To be clear, however, the OCA submits that any customer, whether initially targeted or not, that meets the entry level guidelines should be able to participate in the auction process if they so choose. It may be difficult, if not discriminatory, to turn away a customer from a Commission-approved program. Those customers who do participate, however, should be assured of some identifiable and tangible benefits from their choice. In the OCA's view, an offer that includes a guaranteed percent off the EDC's Price to Compare for a period certain, for example, 12 months, is one possibility. Customers should be able to come away from their auction experience with a positive outlook towards retail electric competition. The OCA submits that such an outcome is much more likely when customers can readily identify benefits that they would not have received had they not participated.

e. No Cancellation Fees.

One of the goals of the opt-in retail auction should be to stimulate shopping by providing participating customers with real, guaranteed benefits while at the same time allowing those participants to venture into the competitive market for the first time – with no harm.

Presumably, customers will come away from the experience with a positive outlook towards shopping and will be receptive to future EGS offers for generation service. Consistent with this view, the OCA submits that no cancellation fees should be included as a part of the EGS' offers for this activity.⁸

f. Require the Winning Bidder to Serve All Opt-in Customers at the Specified Price for the Duration of the Contract.

The OCA submits that contracts for the auction offers must not contain clauses that allow EGSs to drop customers from the program. Customers who participate and switch suppliers should not be turned down or dropped along the way because they turn out to be not as profitable as the EGS estimated. All customers who choose to participate in the qualifying rate class must be accepted regardless of usage or load factor considerations. In the OCA's view, situations where contract language causes customers to be sent packing back to the default service provider do little to promote the merits of shopping and choosing an alternative supplier.

g. A One-Time-Only Event.

Any program of this type should be structured as a one-time-only event, as a means to jumpstart retail shopping activities, especially in those areas where current participation is light. In the OCA's view, a one-time-only auction is best suited to arrive at this outcome, for several reasons.

First, by implementing this auction, the Commission is picking a particular method of choosing winners and losers in the competitive marketplace. The opt-in retail auction format may not be the best business model for many of the EGSs who are currently competing in Pennsylvania, or for those who hope to do so. That said, however, the OCA submits that this

⁸ The OCA understands that certain EGS offers may contain benefits for consumers that can only be acquired after the contract is in place for a certain time period. The OCA submits that this situation, an early cancellation resulting in a customer not receiving a certain benefit, is different from extracting a monetary penalty for early cancellation.

venture could stimulate consumer interest in shopping and acceptance of EGS offers for generation service, could be beneficial to consumers, and if done on a reasonable, one-time basis, may provide a shot-in-the-arm for service territories where switching has been light. As a singular event, such extraordinary measures are more easily discernible as reasonable actions under the circumstances. Additional reasons exist why the programs should be done on a one-time basis.

Consumers who have already entered the market and are being served by an EGS are likely to take some notice of a limited, one-time-only auction event. Unless the auction produces truly memorable offers, however, the OCA submits that the level of “buyer’s remorse” among this group, if any, is likely to be relatively low and short-lived. On the other hand, the prospect of continuing, future opt-in retail auctions poses a threat to large scale individual competition going forward. In such an environment, consumers not only have to think about the utility’s price to compare, but also the prospect that another auction could come along at any time and provide a better deal. One thing is fairly certain – a greater level of complexity for consumers as to future shopping opportunities does not bode well for increased customer participation. Well-designed, one-time-only programs should be capable of providing a jumpstart for shopping activities without disrupting the market going forward.

h. How the Program Ends.

Prior to the end of the aggregation period, the EGS must clearly notify the customer that the opt-in auction program is coming to an end. The customer must be clearly informed of the next steps – that they will be receiving new offers from the EGS for continuing service with that EGS. Each successful EGS in the auction should be required to offer the customer a fixed-rate option for another 12-month term at the end of the initial auction period.

The EGS must provide the notices required by the Commission's Regulations. See, 52 Pa.Code § 54.5(g)(1).

There has been discussion as to the treatment of customers at the end of the program if the customer does not respond to the notices of new terms and conditions. At this juncture, given the opt-in nature of the programs, and assuming full education about the program as well as adequate notice of the program end, the OCA recommends the use of the approach found in the natural gas regulations related to the treatment of an NGS customer that has not responded to the notice of new terms and conditions for the new fixed rate contract at the end of an existing contract term. In relevant part, the regulation provides:

A fixed term agreement may be converted to another fixed term agreement as long as the new agreement includes a customer initiated cancellation provision that allows the customer to cancel at any time for any reason and contains no cancellation penalties, in the event that the customer does not respond to the notice.

52 Pa.Code § 62.75(g)(2).

Under the OCA's recommended approach, each EGS would be required to offer the customer a fixed term agreement that allows the customer to cancel at any time for any reason with no cancellation penalties. If the customer does not respond to the notice, the EGS may continue to serve the customer under this fixed term agreement. The EGS is also free to make other offers to the customer with different terms and conditions, but the customer must affirmatively select those offers. The customer is also free to return to the default service provider or another EGS if the customer does not wish to continue to be served by the assigned EGS from the retail opt-in auction program.

There must be some definitive end, where the one-time auction process terminates and new offers for service begin. The OCA submits that providing a clear path for customers as

they transition out of the auction process will greatly enhance the likelihood of a positive shopping experience.

4. Conclusion.

The OCA appreciates the opportunity to provide comments on the creation of opt-in retail auction programs for the major EDC service territories. The OCA submits that such programs, properly constructed and with reasonable safeguards, could provide benefits to consumers without the downside of possible harms. The OCA looks forward to the continuing opportunity to work with other stakeholders and the Commission on this important topic.

D. Referral Program.

1. Introduction.

In its Tentative Order, the Commission recommends that EDCs incorporate a referral program within their default service plans. Tentative Order at 6. While the Commission does not propose a specific format for the referral program, it recommends that EDCs use the proposal being discussed in the stakeholder group as a starting point. Id.

The OCA submits that a properly designed referral program could serve as a reasonable method to further educate customers about choice. In some forms, a referral program could also offer customers an easy method to make a choice and gain some experience with alternative electric generation suppliers. As the Commission notes, these programs can be viewed on a sliding scale. Tentative Order at 6. At one end are programs where the EDC customer service representative advises the customer of choice, provides a welcome kit with educational materials or supplier offers, and directs the customer to a website such as the Commission's PaPowerSwitch.com or the OCA's Electric Shopping Guide at www.oca.state.pa.us. These types of programs can be achieved at a relatively low cost and with

minimal additional training. At the other end are programs where a customer can be enrolled in some form of standard product offered by EGSs as part of the program. These programs may require significant infrastructure changes with commensurate cost impacts. The OCA has been participating in the working group that has been considering different initiatives along this sliding scale.

Through the RMI subgroup and the earlier Retail Markets Working Group (RMWG) where referral programs were addressed, the OCA was able to examine a wide array of referral programs ranging from education initiatives to those that enroll new customers in a standard EGS product. As a result, the OCA has developed a series of key elements, discussed in detail below, that allow for education and entrance into retail choice while ensuring customers are not harmed. As a first step, the OCA submits that certain processes of the EDC be reviewed, and improved if needed. For example, EDC call center scripts should be reviewed and modified if necessary to introduce customers to choice during appropriate contacts such as service initiation contacts and moving customer contacts. In addition, the EDC Welcome Kit provided to new customers should be modified to include additional information on retail choice and potentially to include supplier offers. EDC call center processes could also be developed to assist customers who have already selected an alternative generation supplier in completing the enrollment process when they initiate new service. Once these first steps are completed, the OCA would suggest that the Commission work toward longer term referral programs for specific customer contacts that allow customers to engage the retail market through a standard product and benefit without being harmed. The OCA will refer to these types of longer term programs as a standard product referral program in these Comments.

If a standard product referral program is implemented, such a program must be carefully tailored to ensure that customers are both adequately informed about their options and protected from potential harms. In order to ensure this, the OCA submits that a series of key elements must underlie any standard product referral program. Further, the customer contacts during which the program is discussed must be clearly delineated. The OCA also submits that the Commission should review the costs that may arise from the implementation of a wider scale referral program to ensure that such a program is cost-justified and that the costs are allocated appropriately among stakeholders.

2. Call Center Scripts and Welcome Kits.

In its Comments filed in June, the OCA recognized that specific customer contacts with the EDC, namely calls from new or moving customers, offer an opportunity to provide education on retail choice. New customers should be advised that Pennsylvania is a retail electric choice state and moving customers should be reminded about their retail choice options. The OCA supports the initiative to review and revise EDC call center scripts to ensure that electric choice information is introduced at every appropriate opportunity.

Another area that provides a good opportunity to inform new customers about retail choice is through the Welcome Kit. The Welcome Kit should include educational materials about retail choice and could potentially be modified to include EGS information or EGS offers. This would assist new customers in understanding their options, and if EGS offers could be included, it could facilitate a customer's choice.

Revising current call center scripts to include information on choice and developing educational information, even including supplier offers, to be included with customer Welcome Packets are efficient changes that can be made in a short timeframe. The RMI

collaborative subgroup on new and moving customers has been reviewing call center scripts and welcome kit materials to improve the messaging regarding retail choice. These changes can aid customers in reviewing all aspects of electric choice and can facilitate customer shopping. The OCA supports continuing to work on these call center scripts and Welcome Kits as a means to further educate customers.

3. Key Elements for Standard Product Referral Programs.

The RMI customer referral subgroup, in which the OCA is a participant, was charged with reviewing referral programs in the context of calls from new or moving customers. As the Commission has not expressed a preference for any of the varying referral programs, and as several different approaches remain under discussion, the OCA submits that a series of key elements should be developed to guide in the formation of any particular program that may be found to be needed. In the OCA's view, a standard product referral program should offer the customer a simple and easy opportunity to make a choice to engage in the market without any resulting harm. The goal of these programs should not be to make a choice for the customer, but to make it as easy as possible for the customer to obtain the necessary information and respond to that information. The standard product referral program should initially be targeted at the new customer initiation and moving customer processes as these contacts provide the best opportunity to introduce retail choice.

Although the structure of any standard product referral program must be further detailed, the OCA identifies the following as key elements underlying any referral program:

- Dissemination of program information should be done in a brief but thorough manner with program details to follow in writing;
- Customers should not be required to enroll in the referral program during the initial contact (but may do so if they wish);

- Specific customer contacts during which the referral program can be offered should be carefully delineated and should initially be limited to new and moving customer contacts;
- Customers should be offered rates with guaranteed benefits of at least four months;
- Customers must affirmatively select a product or EGS service at the end of the introductory period or be returned to default service;
- Customers should be offered, at least, a fixed rate product at the end of the initial term; and
- The costs of the referral program should be shared by participating EGSs.

Each of these principles will be discussed in further detail below.

Traditionally, when a customer calls to start new service, he or she goes through an information submission process. This data collection process could be broken into two components. After the customer enrolls in distribution service, he or she would then be given the option to select a generation service provider if the customer so chooses.⁹ This second step could be further expanded to include an explanation of the standard product referral program offered. These additions will lengthen the time of the call, perhaps substantially, if not properly designed. The goal of the referral program is to assist customers in making an informed decision about entering the retail generation supply market. The longer the call, the more likely customers are to become frustrated with the process and form a negative opinion about the process. Therefore, the OCA submits that dissemination of referral program information must be done in a brief, but thorough manner. Further, as the amount of information disseminated increases, the less likely a customer is to fully grasp or remember that information. It is critical, therefore, that all customers be provided with written educational materials about shopping as

⁹ As was discussed on Section 2 above, the OCA supports a review and revision of call center scripts for these types of contacts.

well as a clear explanation of the referral program. Such documentation should serve to expand customer confidence in the shopping process as a whole.

For similar reasons, the OCA submits that customers should not be required to enroll in the referral program during their initial contact unless they so choose. Customers need to feel confident in their decision to shop for generation service and, for some, such confidence will only occur after they have the opportunity to review the educational materials and program details. Customers must also be given the opportunity to determine if they would prefer to shop with an EGS who is not a participant in the standard product referral program. Failure to allow for this customer-driven determination may have a stifling effect on both customer and EGS participation in the market. Therefore, the OCA submits that customers should not be forced to make a decision during their initial contact and should, instead, be given a 30-day period in which to enroll in any standard product referral program.

Next, a utility customer should be able to call the EDC and discuss any matter relating to essential service without being subjected to referral or discussions that they do not seek and in which they may not be interested. While information regarding customer choice may be appropriate when a customer sets up new service or transfers service, any requirement that an EDC initiate these discussions, for example, based on a customer contact for outage or service quality reporting would be highly improper. Not only would it potentially discourage customers from contacting the EDC, it would hamper the EDC's ability to resolve the issue that prompted the contact. Accordingly, the OCA recommends that unless the customer specifically requests it, information relating to customer choice should be limited to calls from new or moving customers.

The OCA proposes a sufficiently long introductory period, of at least four months with a guaranteed benefit for that period.¹⁰ A four month period addresses practical concerns regarding the length of time required to switch to a different EGS or to return to default service if the customer does not wish to remain with the EGS. The introductory period must be sufficiently long for the customer to actually see the benefits of shopping before having to make any further decisions about his or her generation service. Therefore, the OCA submits that any introductory rates that provide benefits must apply, at a minimum, for four months.

Similarly, customers should not automatically be switched to any product at the end of the introductory period nor should the customer automatically remain with the EGS. As was explained above, discussion of the program information must be done in a brief but thorough manner. Customers will already have gone through the process of enrolling for distribution service and will then have to make a decision about entering the referral program. It may be difficult for customers to process all of the information they are receiving. Further, the terms and rates that will apply to the customer after the introductory period may vary dramatically depending on the EGS to whom the customer is referred. Given all of these factors, customers may not understand what impact the expiration of the introductory rate may have on their bill. This is especially problematic given the large swing in price that can occur when moving from a fixed-price discounted rate to a variable rate if that is what the EGS is offering. For these reasons, customers should revert back to the Default Service Provider at the expiration of the introductory rate period unless the customer affirmatively chooses to stay with its current EGS or move to another EGS.

¹⁰ The OCA does not support the application of “teaser” discounts that last for only two months. Such discounts can result in customers reacting negatively to the shopping experience and could work against the goals of the referral program. Such short-term discounts, which typically result in customers automatically paying a higher price after the short period, can lead to customer confusion and dissatisfaction.

For these same reasons, the OCA submits that participating EGSs should be required to offer customers a fixed rate product for the remaining period of the program year.¹¹ Customers should not just be offered a variable rate product at the end of the introductory period when they have entered the market through this type of program.

Finally, the additional duties required to conduct a referral program will likely impose additional burdens on utility call centers and could slow down utility answering times and require additional personnel. The OCA submits that referral programs are a method by which participating EGSs acquire new customers. Therefore, participating EGSs should bear the costs of any program. At least one other jurisdiction has supported this treatment. In the Proceeding on Motion of the Commission to Review Policies and Practices Intended to Foster the Development of Competitive Retail Markets, the New York Public Service Commission ordered suppliers (called energy service companies or ESCOs) to bear the cost of any promotional efforts beyond the utilities' basic outreach and education program that are intended to assist customers seeking to participate in retail access. Case 07-M-0458, Order Determining Future of Retail Access Programs at 2 (October 27, 2008) (NY Order).¹² The Commission terminated some retail access programs that are subsidized by ratepayers and encouraged utilities to continue existing referral programs, but conditioned such programs on supplier funding. Id. at 13. Only those suppliers that fund the program would be eligible to participate in it. Id.

¹¹ For example, if the introductory period is for four months, the customer would be offered a fixed rate for the remaining eight months. An EGS could also offer the customer a variable rate product if it so chooses, but each EGS should be required to offer a fixed-priced product.

¹² The New York Commission's order is available on the PSC website: www.dps.state.ny.us

4. Central Hudson Gas & Electric Approach.

As was mentioned above, the Commission does not propose a specific format for the referral program in its Tentative Order. Tentative Order at 6. Through its participation in both the RMI subgroup addressing Referral Programs and the Retail Markets Working Group, the OCA was able to examine a wide array of referral programs ranging from education initiatives to those that are mandatory for all new customers. It is the OCA's belief that its key elements are best embodied in Central Hudson Gas & Electric's (Central Hudson) "EnergySwitch" referral program in New York. Central Hudson's program incorporates an initial discount, but is "no risk" because the customer receives an introductory period discount (discussed below) and returns to Central Hudson for generation supply if the customer rejects the supplier's offer or takes no action, i.e., does not affirmatively sign up for the EGS offer.

The Central Hudson referral program operates as follows. When a customer enrolls in EnergySwitch, Central Hudson assigns the account to one of their approved suppliers.¹³ Beginning with the next meter reading, the customer's introductory period begins and continues for two billing cycles (4 months).¹⁴ During that time, the supplier contacts the customer to discuss the products available. The customer then decides if he or she wants to continue to be served by that supplier. The customer receives a one-time credit on his or her first bill equal to 7% of the customer's average energy supply charge. After the first bill, the

¹³ More information on the EnergySwitch program is available at: http://www.centraaludson.com/energy_choice/energy_switch.html.

¹⁴ Central Hudson bills its customers on a bimonthly basis.

customer is charged Central Hudson's energy supply price and remains a Central Hudson supply customer unless he or she affirmatively decides to take service from the assigned supplier.¹⁵

Central Hudson's approach allows a customer to interact with generation suppliers in a no-risk environment. This structure would avoid the pitfalls of "teaser" rates and would incent the EGS to "sharpen its pencil" and make its best offer to the customer at the end of the introductory period. Finally, and most importantly, the customer would be making the final choice and can compare the offer made by the assigned EGS to others in the market to determine if he or she want to shop for the generation portion of their utility bill.

5. Conclusion.

The OCA agrees with the Commission that a properly designed referral program could serve as a method to further educate customers about choice and facilitate customer choice. As an initial matter, the OCA submits that call center scripts should be developed to introduce customers to choice, the EDC Welcome Kit should be modified to include additional information and possibly EGS offers, and EDC call center processes should be developed to assist new and moving customers who have already selected an alternative generation supplier in completing the service process. Once these initiatives are in place, the OCA would suggest that the Commission work toward longer term standard product referral programs, utilizing the OCA's key elements, that allow customers to benefit without being harmed.

E. Time of Use Rates.

In the Tentative Order, the Commission stated that the majority of stakeholders participating in the Investigation prefer that default service offerings be made as simple as possible. The OCA agrees and shares that view. Under Act 129, however, the default service

¹⁵ After the introductory period, customers who opt to shop with their assigned EGS also receive a small kWh discount on each bill. The discount is currently \$.004/ kWh, which equals \$5.00 on a 1250kWh (bimonthly) bill.

provider is required to submit a proposed optional time of use (TOU) rate plan and a real time price plan for customers with smart meters. 66 Pa.C.S. § 2807(f)(5). To address concerns regarding future time of use rate programs, the Commission recommends that EDCs contemplate securing a competitive bid for the provision of TOU service. The Commission states that bidding out the TOU rate warrants serious consideration in future default service proceedings. Tentative Order at 7. The OCA agrees that such an approach warrants further consideration.

The OCA is well aware of the recent troubles that EDCs have encountered in attempting to meet the TOU requirements of Act 129. The OCA submits that the problems stem largely from EDC's use of fixed average price/kWh full requirements contracts to supply a portion of their non-shopping customers' load, including those on time of use rates. Full requirements providers supply a percentage of every non-shopping customer's supply (including all TOU customers) at a fixed average price.

Each full requirements supplier provides a percentage, or "tranche," of every non-shopping customer's usage. For example, if full requirements "Supplier A" supplies a default service provider with a tranche of supply that equals 10% of their default load, that supplier will provide 10% of the energy consumed at the fixed price whether the customer is a TOU customer or a regular residential customer. Where full requirements contracts are used to supply non-shopping customers with power, it is impossible for the default service provider to match a TOU customer's behavior based wholesale price savings with the costs incurred to meet that customer's usage. The benefit of customers shifting load in response to TOU rates goes to the full requirements provider who would be required to provide that customer with less "on peak" higher cost power. A TOU customer that responds to the time differentiated price signal will lower their average price/kWh below that being charged by the full requirements supplier. This

“savings” is what is sought to be achieved for the customer and the system, but under a full requirements purchase, the supplier is still paid the fixed average price/kWh. In the end, through the reconciliation process of default service, it is other default service customers who pay for these “savings” and it is the full requirements supplier that receives the benefit.

The OCA submits that there may be a number of ways to address the TOU rate problems referenced in the Tentative Order that would satisfy the requirements of Act 129. The OCA supports the Commission’s recommendation that EDCs explore fulfilling the TOU requirement through a competitive bid process as one possible way to address this problem.¹⁶ It is important to note in this regard that the statutory language regarding TOU rate plans is somewhat unique. The statute requires as follows:

[A] default service provider shall submit to the commission one or more proposed time-of-use rates and real-time price plans. The commission shall approve or modify the time-of-use rates and real-time price plan within six months of submittal. The default service provider shall offer the time-of-use rates and real-time price plan to all customers that have been provided with smart meter technology under paragraph (2)(iii). Residential or commercial customers may elect to participate in time -of-use rates or real-time pricing.

66 Pa.C.S. § 2807(f)(5).

Notably, the obligation of the default service provider to provide electric generation supply service is found under the “obligation to serve” provision in Section 2807(e). 66 Pa.C.S. § 2807(e). The TOU rate mandate is not found under Section 2807(e), but rather under Section 2807(f) Smart meter technology and time of use rates. 66 Pa.C.S. § 2807(f)(5). The Act requires that the default service provider offer the TOU rates but, in contrast to the

¹⁶ TOU rates can also provide value as an energy efficiency or demand response measure for an EDC. Some time-differentiated rate plans, such as peak time rebate programs, have been supported through energy efficiency plans while also making available time differentiated pricing to default service customers. These areas require further exploration as well.

default service provisions of Section 2807(e), the Act does not address the manner in which this offer is made. The OCA submits that the mandated TOU option does not necessarily have to be supplied through energy that is procured to meet the default service obligation.

By definition, “default” service is not the same as an “optional” TOU service that must be affirmatively selected by consumers. These two products are established for different purposes, and default service providers may need to employ different procurement methods to provide for this different service. The optional TOU program is a voluntary offering “submitted” by the default service provider. This voluntary offering could be supplied through a competitive supplier (either retail or wholesale) through a plan submitted by the default service provider for Commission approval. By utilizing an alternative supplier to provide TOU service, the EDC, as the default service provider, avoids the reconciliation and subsidization problems that have been seen to date in the EDC programs.

The OCA submits that each EDC should explore all reasonable avenues to provide a TOU rate offering. For these reasons, the OCA submits that the Commission’s recommendation that EDCs consider fulfilling the TOU requirement through a competitive bidding process is reasonable.

F. Default Service Rate Adjustment Structure—Residential and Small Commercial.

The Tentative Order provides that the Commission is interested in examining the potential benefits of changing the current default service rate quarterly energy cost and reconciliation adjustments to a semi-annual adjustment. Tentative Order at 7. The Tentative Order also provides that “the Commission recommends that EDCs contemplate the incorporation of semi-annual default service rate adjustments within their next default service plans.” Tentative Order at 7. The OCA agrees that it may be reasonable and beneficial to the EDCs and

consumers alike to adjust the default service energy cost on a semi-annual basis as provided in the Tentative Order. Given the potential length of time needed to effectuate a switch to an EGS, and a quarterly adjustment process, a customer's decision to switch based on a current price can be quickly overcome by the new Price to Compare (PTC), perhaps making the customer think that they have made a bad choice.

Under the current practice of adjusting energy costs on a quarterly basis, the PTC changes every 3 months. This situation would be of little consequence if there were no alternatives, but in a market where EGSs are making a variety of offers, it can pose challenges for consumers who wish to accept an EGS offer. The short cycle of a PTC may act as a detriment to those consumers looking to take advantage of longer-term EGS offerings, certainly those contracts which lock the price in for six months or more. The PTC could actually change before the customer's new EGS service is even initiated. The OCA submits that a PTC that changes every six months or longer would tend to make shopping decisions a bit less complex for those consumers wishing to enter the market and to fairly evaluate different EGS offerings.

In addition, the OCA submits that a semi-annual energy cost adjustment should track the seasonal changes in the cost of supply. Specifically, the summer months tend to exhibit higher energy costs due to a multitude of reasons, such as air conditioning load, pool pumps and other warm-weather activities. A PTC that reflects the seasonality of costs could be easier for consumers to understand and react to as needed. The OCA submits that several methods could work in this regard, for example a May through October PTC followed by a November through April PTC. In that way, all winter months and all summer months are contained in the same period. Other similar methods and dates are possible. To that end, however, the OCA submits that January to June, July to December time frames should not be adopted. The seasonal

blending of costs during those time periods would likely end up sending confusing price signals to customers.

Along with changing the current time frame for the energy cost adjustment, the OCA submits that implementing a 12-month reconciliation method should also tend to smooth the PTC. Over and under collections happen for a variety of reasons, many of which bear no correlation to the spot market cost of energy. The reconciliation process should be examined to ensure some uniformity across the EDCs as well as the most appropriate method of reconciling costs without sending incorrect price signals to customers. A 12-month reconciliation method should have the effect of smoothing out the reconciliation, as a longer time frame is being averaged out.

Less volatility in the PTC, and less frequent changes as discussed above, should lead to greater consumer confidence in accepting EGS' offers that provide savings over a current PTC. The 12-month reconciliation method is currently used in natural gas cost reconciliations for the major natural gas distribution utilities, and should be a relatively simple changeover for the EDCs to accomplish. Of course, the OCA looks forward to continuing the conversation on these issues and looks forward to the comments of the other stakeholders in this process.

G. Hourly-Priced Default Service for Medium Commercial and Industrial Customers.

The OCA has no comment on this section.

H. Future Issues Identified Within the Investigation.

In this Section of the Tentative Order, the Commission reminds EDCs that any issues resolved in the Investigation may be directed for incorporation within pending or approved default service plans. Tentative Order at 8. The Commission notes that it does not want the filing of upcoming default service plans to inhibit the ability of stakeholders to

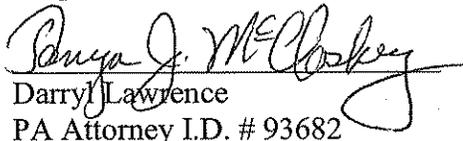
recommend or develop changes that can foster a more dynamic and robust retail electricity market. Tentative Order at 8-9. The OCA agrees that EDCs will need the flexibility to incorporate initiatives into their default service plans just as they must now incorporate the impact of the changing number of switching customers into their default service plans. The OCA would caution, though, that default service plans must always be in accord with Act 129 and the Commission's regulations implementing the requirements of Act 129. So too, any competitive enhancement initiatives that come out of the process must be in accord with the requirements of Act 129 and the requirements of the Public Utility Code.

The OCA will continue to work on competitive enhancements and initiatives that are within the Act, the Commission's regulations and the Commission's Policy Statement. No matter the type or timing of approved competitive enhancements, there will be transition issues to be dealt with. The OCA submits that it is best to address these transition issues within the current requirements of the law.

III. CONCLUSION

The OCA thanks the Commission for this opportunity to comment on these important issues. The OCA looks forward to continuing to work on these issues to find ways to educate, inform and facilitate a customer's choice in accordance with the law.

Respectfully Submitted,


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