

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048  
800-684-6560 (in PA only)

IRWINA. POPOWSKY  
Consumer Advocate

FAX (717) 783-7152  
consumer@paoca.org

February 1, 2012

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

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

Dear Secretary Chiavetta:

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

If you have any questions, please feel free to contact me at the number listed above.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Tanya J. McCloskey".

Tanya J. McCloskey  
Assistant Consumer Advocate  
PA Attorney I.D. # 50044

Enclosure

cc: Office of Competitive Market Oversight  
Retail Markets Investigation (E-Mail only)  
Dan Mumford, BCS (E-Mail & Hand Delivery)  
Kirk House, OSA (E-Mail & Hand Delivery)

143808

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation of Pennsylvania's  
Retail Electricity Market

:  
:

Docket No. I-2011-2237952

---

REPLY COMMENTS OF THE OFFICE OF CONSUMER  
ADVOCATE ON THE COMMISSION'S TENTATIVE  
ORDER ENTERED DECEMBER 16, 2011

---

Darryl Lawrence  
PA Attorney I.D. # 93682  
E-Mail: [DLawrence@paoca.org](mailto:DLawrence@paoca.org)  
Aron J. Beatty  
PA Attorney I.D. # 86625  
E-Mail: [ABeatty@paoca.org](mailto:ABeatty@paoca.org)  
Jennedy S. Johnson  
PA Attorney I.D. # 203098  
E-Mail: [JJohnson@paoca.org](mailto:JJohnson@paoca.org)  
Assistant Consumer Advocates  
Tanya J. McCloskey  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 50044  
E-Mail: [TMcCloskey@paoca.org](mailto:TMcCloskey@paoca.org)

Counsel for:  
Irwin A. Popowsky  
Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152

Dated: February 1, 2012

## TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	REPLY COMMENTS ON THE PROPOSED INTERMEDIATE WORK PLAN.....	4
	A.	Consumer Education.....4
	B.	Accelerated Supplier Switching Timeframes.....5
	C.	Customer Referral Programs.....5
	1.	Introduction.....6
	2.	Reply Comments on Customer Referral Programs.....7
	a.	Types of Calls.....7
	b.	Statewide Call Center.....8
	c.	Product Type and Offer Presentation.....8
	d.	Treatment of Customers at the End of the Standard Offer Period...9
	e.	Assignment of Undecided Customers to an EGS.....10
	f.	Cost Recovery.....11
	D.	Retail Opt-In Auction Programs.....12
	1.	Customer Eligibility.....13
	2.	EGS and EDC Participation.....14
	3.	Pilot Programs.....14
	4.	Program Length/Term.....15
	5.	Timing.....15
	6.	Customer Participation Caps.....16

7.	Supplier Participation Load Caps .....	18
8.	Composition of Customer Offer – Product.....	18
9.	Customer Options upon Program Expiration .....	19
10.	Opt-In Auction Structure.....	20
11.	Creditworthiness and Security.....	20
12.	Other Topics .....	20
E.	Default Service Price to Compare .....	21
F.	Coordination Between EDCs And EGSs.....	23
1.	EDC Supplier Charges.....	23
2.	Sample Bills.....	23
3.	Creditworthiness Standards .....	24
III.	CONCLUSION .....	25

## I. INTRODUCTION

On January 17, 2012, numerous stakeholders, including the Office of Consumer Advocate (OCA) filed Comments to the Commission's Tentative Order of December 16, 2011 that set forth an Intermediate Work Plan to enhance retail choice in Pennsylvania. While the stakeholders have differing opinions as to the details of some of the programs laid out by the Commission, in general, the stakeholders supported the Commission's efforts to implement programs to enhance the retail electricity markets in Pennsylvania. As always, though, "the devil is in the details" for many of these programs and the Comments present many positions for the Commission's consideration regarding the actual implementation of the proposed competitive enhancement programs. As discussed in its Comments to the Tentative Order (OCA January 17 Comments), the OCA urges the Commission to ensure that the programs provide benefits to consumers who take advantage of them and that each element of any program that moves forward is properly designed to be consistent with current law and to educate, inform and facilitate retail choice. Also of key importance is implementing programs without causing harm to participating customers and without adversely affecting either the provision of default service or the retail competitive market.

The Comments filed by the stakeholders are extensive and it is not the purpose of these Reply Comments to address all of the positions taken by the various stakeholders. The OCA will focus these Reply Comments on some key design issues or recommendations. The OCA recognizes that many of the details of these competitive enhancements will need to be worked out on an individual electric distribution company (EDC) basis through each EDC's default service proceeding. The OCA submits, however, that the Commission can provide important guidance at this time regarding the framework for these programs, and in particular, as

to the necessary elements to ensure that consumers who enter the retail competitive market as a result of these programs receive a positive benefit.

As many of the Comments recognize, Pennsylvania already has taken significant steps to facilitate retail choice and these efforts have encouraged many customers to seek benefits in the retail competitive markets. In particular, the Comments recognize the Commission's significant consumer education efforts and encourage the Commission to continue these efforts. The OCA agrees that the Commission should continue these efforts as they will be critical both in the long term and in achieving the goals of the Intermediate Work Plan. The OCA also continues to recommend, as do several other stakeholders, that the Commission consider the results and feedback of the most recent consumer education initiative before making a final determination about certain additional steps. As the retail markets evolve, and more programs are implemented, follow up discussions on the effectiveness of the messages will be useful in ensuring that each subsequent round of consumer education is properly designed and targeted.

The two key initiatives set forth in the Tentative Order concern the customer referral program and the retail opt-in auction for residential customers. As to the Commission's customer referral program proposals, several of the comments urged the Commission to move directly to a "standard offer" referral program without first implementing the new/mover program proposed by the Commission. The OCA submits that as a first step, the Commission should work toward the implementation of the new/mover program. Through this program, enhanced call center scripts would be used to ensure that customers first initiating service with a utility or moving within the utility's service territory are aware of customer choice and can be served by an electric generation supplier (EGS) if they so choose. The OCA submits that as this

program can move forward in 2012 and can complement the Commission's on-going consumer education initiatives, the program can provide much value that may not have been fully appreciated by some stakeholders. The program can bridge a gap that currently exists while other programs are more fully developed and can provide the Call Center script platform for the introduction of subsequent programs.

The OCA, however, is concerned about moving directly to a standard offer referral program when such a move would coincide with the implementation of the retail opt-in auction for residential customers. The OCA is of the view that a reasonably designed and appropriately sized retail opt-in auction could provide benefits for residential customers and should be considered. The OCA submits, however, that the introduction of a standard offer referral program and a retail opt-in auction at the same time may not be workable. Other stakeholders have also expressed concern about the simultaneous implementation of the multiple initiatives, many with overlapping features. Concurrent implementation of these programs could be confusing for customers and customer service representatives who must explain these programs. The simultaneous implementation of programs with similarities in design and purpose could compromise the success of both programs. The OCA continues to recommend that consideration be given to the proper timing and sequencing of the implementation of programs. As an interim measure, though, the OCA submits that the new/moving customer referral program can provide benefits to customers.

The OCA also supports the proposal put forth by RESA regarding the implementation of a direct mail referral program as a measure that could go forward in 2012. The direct mail referral program already has been implemented in the service territories of Metropolitan Edison Company and Pennsylvania Electric Company. Coordinating a direct mail

referral program with the on-going consumer education initiatives provides another avenue to pursue as the details and timing of the other competitive enhancements are developed.

The OCA addresses some key issues below regarding the competitive enhancements set forth in the Intermediate Work Plan.<sup>1</sup> The OCA will not address all comments and positions of the stakeholders. Silence on any position or issue should not be taken to indicate agreement. The OCA will also continue to address these issues and many of the detailed design issues in the default service proceedings of the EDCs. The OCA looks forward to the further development of the design, costs and benefits of the initiatives contained in the Intermediate Work Plan.

## II. REPLY COMMENTS ON THE PROPOSED INTERMEDIATE WORK PLAN

### A. Consumer Education

The stakeholders were generally supportive of the Commission's efforts regarding consumer education. Pennsylvania Energy Marketers Coalition (PEMC) pointed out that care must be taken so as to not create unreasonable expectations about cost savings and to ensure that consumers understand other innovative products and services that may be offered. PEMC Comments at 3. The OCA agrees with these Comments and will continue to work with the stakeholders on these messages. Several stakeholders also identified the need to review the effectiveness of the mailings as further rounds of education go forward and to coordinate the Commission's education efforts with other mailings of the Commission and EDCs. See PECO Comments at 2-3; Duquesne Comments at 3-5; FirstEnergy Comments at 2-5. The OCA also agrees with these Comments.

---

<sup>1</sup> Wal-Mart Stores East, LP and Sam's East, Inc. (collectively, Walmart) raised issues as to which entity should serve in the default service role in their comments regarding the retail opt-in auction. Since these issues are the subject of another phase of this proceeding, the OCA respectfully submits that the Commission should not address them here.

In the customer referral program section of its Comments, RESA has suggested that the Commission consider a direct mail referral program as an interim measure. RESA Comments at 7-8. The direct mail program described by RESA is similar to the one deployed by Metropolitan Edison Company and Pennsylvania Electric Company where the EDC periodically mails supplier offers to customers. The OCA agrees with RESA that a direct mail program could be a valuable measure to deploy in 2012. Such a program should be coordinated with the Commission's on-going consumer education efforts to be most effective. The OCA recommends that the Commission consider this program as part of its 2012 consumer education initiatives.

B. Accelerated Supplier Switching Timeframes

As set forth in its January 17 Comments, the OCA continues to support the retention of the confirmation letter process with a shortening of the confirmation period. Several other stakeholders have also supported the continued use of the confirmation letter process with a shorter response period. See, e.g., Dominion Energy Comments at 2-4; Duquesne Light Comments at 4-6; PECO Energy Comments at 3-4. Dominion Energy perhaps best summarized the reason for maintaining the confirmation letter process as follows:

While it may be true that the current ten (10) day period has resulted in some consumers missing the window of opportunity to be switched more quickly, DES believes that on balance the level of dissatisfaction that is likely to occur with consumers who may be switched under questionable circumstances will far outweigh the dissatisfaction of the few customers who may not meet the deadline with a shortened waiting period.

Dominion Energy Comments at 3.

The OCA submits that the confirmation letter process provides credibility to the switching process and should be maintained.

C. Customer Referral Programs

1. Introduction

The OCA has reviewed the Comments of the parties regarding the Commission's proposals for customer referral programs. In general, the stakeholders appear to agree that referral programs can be of assistance to consumers and to EGSs, but there is less agreement on the type of referral program that should be implemented. As to the standard offer referral program proposed by the Commission, there is also less agreement on the design of that program, *i.e.*, whether it is to be an introductory offer or a longer term product offering.

Initially, the OCA would note an issue presented by a number of stakeholders. Several stakeholders recommended that the Commission forego the implementation of the new/mover referral program and move straight to the standard offer referral program. See Direct Energy Comments at 2; RESA Comments at 5; Dominion Energy Comments at 4; PEMC Comments at 5. The OCA submits that a properly designed new/mover program that develops enhanced customer call center scripts could be a valuable and timely means of introducing customer choice to consumers. A service initiation contact, or transfer of service contact, is the ideal time to provide direct information to consumers about choice. During this process, the consumer is already thinking about service options and may be looking for savings as they face the costs of relocation. In the OCA's view, this contact is the time when information about electric choice can be most useful to the consumer.

The OCA submits that enhanced call center scripts, when combined with a call transfer process and the development of procedures to allow customers to seamlessly sign up with an EGS or to retain their EGS when moving, could provide benefits to customers and to EGSs. The OCA submits that this program should not be overlooked. A new/mover program

provides a sound interim measure that can move forward promptly and provide a platform for the implementation of a fully developed standard offer program when the time is right.

The OCA submits, however, that the Commission should not decide now to move quickly to a standard offer referral program, particularly when other initiatives with common features, such as the retail opt-in auction, are also being developed and deployed. The retail opt-in auction will have many similar features to a standard offer referral program and will seek to achieve many of the same goals. With the retail opt-in auction designed to be a one-time event early in the next default service period, care should be given to the proper sequencing and timing of the standard offer referral program so as not to cause confusion or detract from the effectiveness of the retail opt-in auction.

In the remainder of this section, the OCA will address key points raised by the Comments of the stakeholders. Since most of the points apply to both the New/Moving Customer Program and the Standard Offer Program, the OCA will address the issues by topic.<sup>2</sup>

2. Reply Comments on Customer Referral Programs

a. Types of Calls

Several stakeholders suggested that all calls to the EDCs, except emergency calls, include a discussion of retail choice. As set forth in the OCA's January 17 Comments, the OCA submits that contacts should be limited, at this time, to those customers calling for new service or to transfer existing service, or for those calls where the customer specifically requests the information. The OCA opposes expanding the list of appropriate contacts to include other calls as 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

---

<sup>2</sup> In its Comments, Pike County Light and Power (PCL&P) requests that, due to its unique characteristics, it be exempt from instituting any customer referral program. The OCA agrees that PCL&P should be exempted from any such requirements.

may not be interested. EDC initiation of shopping discussions in all non-emergency calls could prove counter-productive and could hamper the EDC's ability to resolve the issue that prompted the contact. See also Constellation Comments at 6 (recommends limiting to new/mover calls); PECO Comments at 7 (recommends limiting to new/mover calls and customer request for information on choice calls).

b. Statewide Call Center

Several EDCs have recommended that the Commission direct that a statewide call center be developed to handle customer choice calls and referral programs. PECO Comments at 8; Duquesne Comments at 9; FirstEnergy Comments at 10-11. The EDCs make this recommendation out of concern for the impact on call center response times if call center responsibilities are increased and out of concern for ensuring that call center representatives are not placed in the position of having to describe or explain EGS offers. Id. While the OCA understands the reasons for these recommendations, the OCA submits that there is insufficient information at this time to make a determination about the need for, or cost of, a statewide call center. The OCA recommends that this issue not be decided at this time, but that information be collected so that an informed decision on the need for such a proposal can be made at a later date.

c. Product Type and Offer Presentation

There were many positions presented in the Comments as to the appropriate product to be included as part of a standard offer referral program. Some stakeholders supported the use of an introductory price approach, while others recommended a longer term product such as a 12-month term. In its Comments, the OCA recommended that the product have a term of at least four months. A four month introductory period allows a customer to see the benefits on

their bill and allows time for the EGS to send the required notices of the post-introductory pricing terms to the customer.

Regardless of the length of the standard offer product, the OCA agrees with the proposal of FirstEnergy Solutions (FES) regarding the presentation of any referral program offers. FES recommends that if the Commission approves the use of short term introductory offers, customers should be told of the post-introductory period offer terms at the time of enrollment. FES Comments at 7. The OCA agrees that all pertinent terms, including what will happen at the end of the introductory period and how the price will be established, should be provided to the customer before he or she enrolls in the program.

Further, when an introductory period expires, both FES and Dominion Energy support the use of a fixed-price product for the remainder of the year. FES Comments at 7, Dominion Energy Comments at 5. The OCA supports these proposals as a way to ensure that the customer is not exposed to a potentially volatile variable rate at the end of the introductory period. As FES further explains, a variable rate will not assure savings and is not familiar or widespread in Pennsylvania. FES Comments at 7. The OCA agrees that placing customers on a variable rate at the end of the post-introductory period would not be beneficial to consumers or to the retail market.

d. Treatment of Customers at the End of the Standard Offer Period

With respect to the way in which the standard offer period ends, the OCA agrees with the request of FES that the Commission reconsider its tentative endorsement of a referral program under which customers who take no affirmative action remain with their assigned EGS on a month-to-month basis. See FES Comments at 7; Tentative Order at 21. The OCA submits that in the case of short-term referral programs with introductory pricing, customers should not

automatically remain with the EGS at the end of the introductory period. While a customer may wish to participate in a short-term introductory program with assured savings, it should not be presumed that the customer wishes to become a permanent customer of the EGS without their affirmative consent. In addition, the potential for a dramatically different EGS offer at the end of the introductory period weighs in favor of having a customer make an affirmative choice of a specific EGS offer at the end of the introductory period.

The OCA submits that a customer who receives an introductory referral price should be returned to default service unless the customer affirmatively chooses to stay with the EGS or select another alternative supplier. As discussed in the OCA's January 17 Comments and its November 3 Comments, this treatment is similar to the "EnergySwitch" program of Central Hudson Gas & Electric Company in New York.<sup>3</sup> Under the "EnergySwitch" program, customers in the referral program that do not affirmatively select an offer made by the EGS at the end of the introductory period are returned to default service. This process should be implemented in Pennsylvania.

e. Assignment of Undecided Customers to an EGS

In its Comments, Direct Energy recommends that the Commission order a permanent solution to the problem of new/movers being placed first on default service. Direct Energy Comments at 3. Constellation and Washington Gas Energy Services (WGES) also address this issue. Constellation Comments at 6; WGES Comments at 3. The OCA agrees that a process should be developed that will allow customers the option of choosing an EGS immediately when they sign up for service or move within the service territory and to have that service begin on Day 1. The OCA also agrees that a process should be developed that will allow

---

<sup>3</sup> See Central Hudson Gas & Electric's "EnergySwitch" Program, available at [www.centralhudson.com/energy\\_choice/energy\\_switch.html](http://www.centralhudson.com/energy_choice/energy_switch.html).

a customer who moves within the service territory, or otherwise transfers service, to remain with an EGS that is already serving the customer.

The OCA is concerned, however, with certain aspects of the Direct Energy proposal. Direct Energy first proposes that a process be established that would allow an undecided customer additional time in which to choose a competitive provider. Direct Energy Comments at 3-4. Direct Energy then provides the following example:

For example, if the customer did not affirmatively choose an EGS within a specified time window, he/she would be assigned randomly to a participating EGS who agreed to provide service via some standard offer (e.g., a plain vanilla three-month offering with standard end-of-term contract renewal rules applicable).

Direct Energy Comments at 3-4.

The OCA is unclear as to what Direct Energy is suggesting here. If Direct Energy is suggesting that any customer who was undecided and has not made an affirmative decision as to whether to be served by an EGS or the default service provider should be assigned to an EGS, the OCA submits that this proposal would be contrary to law. Act 129 is clear that customers “who do not choose an alternative electric generation supplier” are to be served by the default service provider. 66 Pa.C.S. § 2803. Indeed, the very name of the service makes it clear that it is the “default,” *i.e.*, the service provided to a customer who has not made a choice of an alternative supplier. Customers have that right as guaranteed by the General Assembly and embodied within Act 129 and Chapter 28 of the Public Utility Code.

f. Cost Recovery

A number of the Comments addressed the issue of from whom the costs of these programs should be recovered. The OCA submits that while some initial costs may be borne by the ratepayers, the bulk of the costs, including the cost of maintaining the referral programs once

they are put into place, should be the responsibility of the participating EGSs. See PECO Comments at 9. As the OCA explained in its January 17 Comments, if the referral program merely provides brief, educational information then these costs can probably be included as part of normal call center expense. If, however, more detailed information is provided or a referral is made that benefits participating EGSs by saving them acquisition and advertising costs, then participating EGSs should bear at least some of the costs. OCA January 17 Comments at 13.

The OCA would also note the proposal by PECO to recover the costs of the programs through the discount on the Purchase of Receivables (POR) that is charged to EGSs serving customers. PECO Comments at 9. This method ensures that EGSs support programs that will provide them with benefits and does so in a manner that is proportional to the EGSs' customer shares.

D. Retail Opt-In Auction Programs

The Commission's Intermediate Work Plan provided specific proposals as to the organization and implementation of retail opt-in auction programs. In accord with the Tentative Order, on January 17, 2011, the OCA and many other parties provided comments on retail opt-in auction programs. The OCA submits the following Reply Comments as to several of the issues surrounding opt-in auction programs.

The OCA submits that a retail opt-in auction, if appropriately structured and sized, could work to provide a positive impetus for retail shopping activities while at the same time not harming default service or other methods of retail competition. 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 and in order to provide the best opportunity of success for all stakeholders. The OCA agrees with many of the Comments received on January

17, 2012. The OCA does, however, have some concerns with a few of the proposals and will provide clarifying comments in those areas as part of the following.

1. Customer Eligibility

For the residential class, the Commission proposed that current, non-shopping default customers be the target. In order to avoid any appearance of discrimination, the Tentative Order also provided that no customer who wishes to participate should be turned away – with some potential exceptions. The Tentative Order specifically requested comment on how CAP customers and other customers in unique rate classes, such as time-of-use (TOU), net-metering, electric heating, off-peak and residential thermal storage should be treated.

Several parties addressed the issue of targeting only default residential service customers for opt-in auction participation. Specifically, Washington Gas Energy Services, the Pennsylvania Energy Marketers Coalition, Spark Energy, RESA and the National Energy Marketers Association proposed that only default customers should be solicited and that current shopping customers should not be eligible to participate in the opt-in auctions.

The OCA agrees that only default service customers should be solicited for opt-in auction participation. The OCA would clarify, however, that any residential customer who wants to participate should be allowed to do so. In the OCA's view, to bar residential customers who are currently shopping would raise concerns of discrimination for this Commission-sponsored program and could cast a negative light on the opt-in auction program. The OCA submits that the Commission's recommendations on this issue as found in the Tentative Order are reasonable and should be applied.

As to the issue of customers in unique rate classes participating in the opt-in auction, including CAP customers, several parties provided comments. As the OCA noted in its

January 17 Comments, many of the special heating rates and off-peak rates will be phased out by 2013. This should allow these customers to participate in any retail opt-in auction. Default service customers on time-of-use rates and customers with net metering will need to be provided additional information so that they can make an informed choice as to whether the retail opt-in auction is a program that they should participate in given their unique circumstances.

Several stakeholders, including FirstEnergy Solutions, Duquesne, PPL, Constellation, PEMC, and FirstEnergy, recommended that CAP customers be allowed to participate, and if necessary, the EDCs' CAP programs should be amended in order to allow this. The OCA submits that a "no harm" standard for both the CAP customer and the cost of the CAP program should be adopted. If CAP customers can participate in the opt-in auction program, with assurance that neither they or the CAP program will suffer economic harm as a result of the program, then that is a situation that the Commission should consider. The OCA submits, however, that amending every EDC's CAP program to ensure such results is not practical within the scope of this Retail Market Investigation. As the OCA provided in its January 17 Comments, this issue should be referred to the Universal Service Working Group in order to discuss possible solutions prior to June 2013. See OCA January 17 Comments at 16-17.

2. EGS and EDC Participation

The Tentative Order provided that the three (3) smallest EDCs, Citizen's Electric, Wellsboro and PCL&P be excluded from participating in the opt-in auction process. In its Comments, UGI Utilities, Inc. – Electric Division (UGI) asked to be included in the group of small EDCs that would be exempted from the opt-in auction process. UGI Comments at 1-2. The OCA agrees with and supports UGI's request on this issue.

3. Pilot Programs

The Tentative Order addressed the issue of whether pilot opt-in auction programs should be used as a learning tool prior to the implementation of full-scale opt-in auction programs. The Tentative Order provided that, based on the questionable usefulness and appropriateness of pilot opt-in auctions, such programs should be excluded from consideration as part of any retail opt-in auction program. In their Comments, several parties addressed the pilot program issue.

Specifically, Direct Energy, the Pennsylvania Energy Marketers Coalition and RESA support the idea of having pilot programs for the opt-in auctions. The OCA agrees with the recommendations provided in the Tentative Order that pilot programs should not be further considered as part of the opt-in auction program. The OCA submits that there is little time and little benefit that could be obtained from a pilot program between now and June 2013. In addition, the utility of creating and implementing pilot programs for an opt-in auction process that is slated to be a one-time event must be seriously questioned. See OCA November 3 Comments at 22-23.

4. Program Length/Term

The OCA remains of the view that a 12-month term appears to be most reasonable for this type of program.

5. Timing

The Tentative Order addressed several issues in regard to the appropriate timing of any opt-in auction programs. For purposes of these Reply Comments, the OCA focuses on the conclusion that customer participation levels in the opt-in auctions will likely be higher if customers know the actual offer price at the time of enrollment. Accordingly, the specific proposal is that the auctions for EGS generation offers should occur first in order to establish

retail prices, followed by customers enrolling at that offer point. Several parties provided comments on this issue.

Specifically, several EGSs propose that the various types of enrollment processes occur first, then the auctions would be held, and then customers would be given the chance to opt-out if they chose to do so. The OCA does not agree with these proposals, but rather supports the recommendation provided in the Tentative Order that a price offering must be established first, and then customers can be solicited.

The OCA submits that the type of multi-step process being proposed by some of the EGSs would not only lead to additional expense, but also further confusion on the part of customers. The time element, for one, needed to operate such a process is problematic. Customers would have to be solicited on their willingness to participate, with some reasonable amount of time to respond. Then the auction process would run in order to establish prices. Then customers would have to be re-contacted to affirm their continued participation at a specific price point, with again some reasonable time to respond. In the OCA's view, this process could easily consume several months. In that period of time, the price to compare could change, adding further difficulty and confusion for customers. The OCA submits that the Tentative Order's recommended process is cleaner, more efficient, and will likely garner a larger number of participants than more complex and time consuming methods.

#### 6. Customer Participation Caps

The Tentative Order addressed the issue of whether some upper limit should be placed on the number of customers who can participate in each EDC opt-in auction program. The specific proposal is that no more than 50% of an EDC's default service customer base can participate in an opt-in auction program. Several parties provided comments on the participation

cap issue. Specifically, FirstEnergy, PPL, First Energy Solutions, the Pennsylvania Energy Marketers Coalition and Dominion Retail advocate for no limit on the number of customers who can participate and accept an auction offer.

The OCA agrees with the Tentative Order's recommendation of establishing a participation cap for the number of customers who would enroll in an opt-in auction process. To be clear, the OCA has viewed the participation cap as the maximum number of customers allowed to enroll – to actually accept an auction offer and begin receiving their generation service from an EGS. The OCA has not proposed a limit on the number of customers who should be solicited to participate in the auction. The OCA submits that a reasonable enrollment cap would be 20% of current non-shopping customers. See OCA January 17 Comments at 19-20; OCA November 3 Comments at 13-19. The OCA does not object to asking all default residential service customers if they wish to participate, but there must be a maximum number that are allowed to enroll. The OCA submits that this should be done on a time-limited, first-come, first-served sign up basis. See OCA November 3 Comments at 18-19; OCA January 17 Comments at 19-20.<sup>4</sup>

As the OCA has stated in its prior Comments, a 50% participation cap is too high. Such a large number of customers switching at one time may have a significant impact on default service operations, causing problems from purchasing to reconciliation. The OCA submits that a 20% participation cap of non-shopping customers is a more reasonable and manageable level for

---

<sup>4</sup> As to the issue of what is meant by a participation cap, Duquesne Light provided some comments. In Duquesne's view, the 50% cap may be acceptable if it includes both current shopping customers and new auction participants. For example, if 25% of residential customers were already shopping in an EDC's service territory, then an additional 25% would be allowed to enroll in the auction. While this approach may work for EDCs where there has been significant shopping, this approach would not work in all service territories.

a program of this type. See OCA November 3 Comments at 13-19; OCA January 17 Comments at 19-20.

The Tentative Order also discussed the pros and cons of subsequent opt-in auctions, as a follow-up to the process currently being considered. The Tentative Order proposed that the opt-in auctions would be a one-time event. The OCA agrees with the Tentative Order's recommendation that the opt-in auction is a one-time event. 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. The repetition of this particular business model may unfairly disadvantage a certain segment of EGSs. As to this issue, the OCA shares the concerns expressed by Exelon Generation that a continuation of the opt-in auction process could harm Pennsylvania's competitive electric market. Exelon Generation Comments at 3. In addition, the prospect of repeat auctions may tend to dim the enthusiasm of customers to participate in retail choice and end up drawing fewer participants. The OCA submits that a one-time event is more likely to produce positive results for all stakeholders. See OCA November 3 Comments at 22-23.

7. Supplier Participation Load Caps

The OCA has no further comment on this topic.

8. Composition of Customer Offer – Product

The Tentative Order addressed the issue of what type of product should be offered to customers who participate in the opt-in auctions. The specific proposal is that the offering should be one of the following: (1) a fixed rate product with a \$50-\$100 bonus; or (2) a guaranteed percent off the price-to-compare with no bonus. In its Comments, Direct Energy advocated for a single product offering that would include a sign-on bonus. The OCA

recommended that a third option be available, where the product would be guaranteed to be less than or equal to the price to compare, coupled with a bonus. See OCA January 17 Comments at 21. The OCA submits that the Commission should consider the OCA's third product option in its continued deliberations on this issue.

The Tentative Order also addressed the issue of a customer's ability to terminate service after accepting an EGS-auction offer. The specific proposal is that customers could do so with no early termination fee, but the customer would not be eligible for a bonus payment if the customer left within the first three (3) months. Exelon Generation and Washington Gas Energy Services provided comments on this issue. Specifically, Exelon Generation suggested that the Commission consider "exit fees" for customers who choose to leave early, and Washington Gas Energy Services recommended a minimum time period of 6 months that customers would have to stay with the winning EGS. Exelon Generation Comments at 4; WGES Comments at 6.

The OCA agrees with the recommendations in the Tentative Order on this issue. The opt-in auction program should be viewed as an opportunity for customers to engage in the competitive market with no fear and no risk of harm. It should be designed to create a positive experience and to serve as a stepping stone to enhanced acceptance of shopping for a generation supplier in the future. Harsh terms, early termination fees, penalties and the like will not promote such an atmosphere. See OCA November 3 Comments at 21-22. The OCA agrees, however, that customers leaving the EGS within the first three (3) months may not be eligible for a bonus payment if one was included in their offer.

#### 9. Customer Options upon Program Expiration

The Tentative Order also addressed the issue of how the auction program ends for customers. The specific proposal is that EGSs must follow the Commission's renewal notice

guidelines and provide two (2) notices to customers prior to the end of their auction contract term. A customer who does not respond to the notices can be renewed on a new month-to-month basis with the existing supplier, with the ability to cancel at any time without any termination/cancellation fees. It was further proposed that customers who do not respond to the notices can be placed on either a fixed or variable rate contract with their existing supplier.

Initially, the OCA submits that there should be three (3) notices – first, a notice that the auction program is ending, followed by the two (2) notices from the EGSs in accordance with the Commission’s renewal notice guidelines. See OCA January 17 Comments at 22. As to customers who “do nothing” in response to these notices, the OCA submits that these customers must be provided a fixed-rate product from the EGS that can be terminated by either the customer or the supplier on a month-to-month basis. Authorizing EGSs to continue service at variable rates for customers who do not respond to the notices has the potential to create confusion, misunderstanding, mistrust, heightened complaints to the Commission and the EDCs and lack of incentive for customers to shop in the future. See OCA January 17 Comments at 22-23.

10. Opt-In Auction Structure

The OCA has no further comment on this topic.

11. Creditworthiness and Security

The OCA has no further comment on this topic.

12. Other Topics

The Tentative Order invited comment on any other aspect of opt-in auctions that was not specifically set out. Several parties provided comments in this area. The OCA will address those comments here.

In its Comments, Direct Energy recommended that all opt-in auction costs should be borne by ratepayers. Direct Energy Comments at 14, fn 22. The OCA submits that EGSs should be responsible for their fair share of all reasonable auction structure/implementation costs. The opt-in auction structure will provide EGSs with access to large groups of customers with very little marketing investment and/or significant barriers to entry. See OCA January 17 Comments at 23-24. PECO has proposed that these types of costs could be included in the Purchase of Receivables discount so that the costs are recovered from the EGSs. The OCA agrees that this is an approach that could be used. At a minimum, EGSs participating and winning in this process should bear a share of the costs.

In its comments, Spark Energy recommended that EGSs should be able to reduce the number of customers contained within a winning EGS' tranche, in the event of an unforeseen market shock or event. The OCA disagrees with this approach. The OCA understands and appreciates the need for *force majeure* clauses in contracts, which protect the parties from events that would make performance impossible. Here, however, as the OCA understands the proposal, if market prices increased beyond a certain level then the EGS could limit its exposure by trimming the number of customers it originally bid to serve. The OCA would respectfully request the Commission to reject such a proposal in this matter.

E. Default Service Price to Compare

In the Tentative Order, the Commission addressed the treatment of the Price to Compare (PTC) and the language that should be placed on each customer's bill. Tentative Order at 42-45. The OCA generally supports the Commission's recommendation and further supports the inclusion of a reference to the OCA's shopping guide website where space is available. See OCA January 17 Comments at 25-26. A number of parties agree with the Commission that

customers should have more information to make an informed choice when shopping and support the Commission proposal to include the PTC on bills. FES Comments at 17; Constellation Comments at 12; AARP/PULP/CLS Comments at 3; NEMA Comments at 10; Duquesne Comments at 31; FirstEnergy Comments at 29-30; PECO Comments at 12. PPL notes that it is already providing the PTC, but would need to add language to meet the Commission's recommendation and as a result, would remove the existing reference to the OCA's website.<sup>5</sup> PPL Comments at 21.

Several parties argue that EDC bills should not contain the PTC. WGES Comments at 8; PEMC Comments at 15; RESA Comments at 16-17; Dominion Retail Comments at 9. Constellation argues that the Commission's PTC proposal is appropriate, but should be limited to default service customer invoices only. Constellation Comments at 12. NEMA and UGIES argue that the proposed bill language should be modified to indicate that the PTC "will" change, rather than "can" change, on a quarterly basis. NEMA Comments at 10; UGIES Comments at 13. NEMA and UGIES further argue that the term "price to compare" should be re-named the "default service rate." NEMA Comments at 10; UGIES Comments at 13.

The OCA supports the Commission's existing proposal, with the possible addition of the OCA's website to the information included on the bill. The OCA submits that listing the PTC on all customer bills (both default service customers and shopping customers) will help to ensure customers are as well informed as possible.<sup>6</sup> The OCA does not support NEMA and UGIES' recommended language change. While it is true that the quarterly adjustments will

---

<sup>5</sup> The OCA encourages PPL to find a way to retain the OCA website reference when complying with the Commission's Order.

<sup>6</sup> The OCA submits that it is important for shopping customers to know the PTC in case they are considering other offers.

usually result in price changes, those changes are often modest and do not significantly impact the PTC. The existing language captures the essence of the issue when informing customers that the price can change.

In addition, the OCA does not support any recommendation to change the name of the PTC. The PTC terminology is thoroughly entrenched in Commission literature and in all of the Commission's consumer education efforts. The NEMA and UGIES' proposal that Pennsylvania move away from this language would cause customer confusion and work to the detriment of competition. Additionally, the OCA opposes the argument of PEMC that the PTC should be removed from the bill because it is a "backstop or last resort." PEMC Comments at 16. Customers have the statutory right to receive default service under Act 129, and there is no legal basis for keeping the PTC off the bills out of fear that customers may take default service.

F. Coordination Between EDCs And EGSs

1. EDC Supplier Charges

The OCA has no comments on this issue.

2. Sample Bills

The Commission addressed the issue of whether actual customer bills should be made available to a customer's EGS. Tentative Order at 47-48. The OCA submits that the release of an actual customer bill to an EGS is only appropriate if a customer has explicitly authorized the release of their actual bills. To the extent the current Letters of Authorization (LOAs) do not make it clear that actual bills will be released, the LOAs should be modified. See OCA January 17 Comments at 26-27.

Duquesne Light states that its existing LOA would have to be clarified to make clear to customers the nature and extent of any disclosure of any customer's entire bill.

Duquesne Comments at 33. The FirstEnergy EDCs and PECO state that the existing LOA is insufficient to release customer bills. FirstEnergy Comments at 31; PECO Comments at 13. After a review of some LOA's, the OCA agrees that the current language of the LOAs is not sufficient for the release of actual bills.

Several parties argued in Comments that the existing LOAs provide sufficient authorization for the release of customer bills. For example, Constellation, FES, RESA, NEMA, and PEMC recommend that the Commission should find that any current customer authorization provided through an LOA is sufficient to release actual bills. Constellation Comments at 13-14; FES Comments at 18; RESA Comments at 18; NEMA Comments at 11; PEMC Comments at 17.

The OCA submits that the parties supporting the release of the actual bills have not addressed concerns regarding the sensitive data that can exist on a bill. As noted in the OCA's January 17 Comments, actual individual customer bills can provide information that a customer might not choose to share with an EGS. Specifically, customer bills can provide past due amounts accrued prior to developing an EGS relationship that a customer might want to keep private. In addition, bills could show the receipt of LIHEAP grants and emergency fuel fund grants that are not relevant to an EGS relationship going forward. See OCA January 17 Comments at 26-27. For these reasons, the OCA maintains that the release of an actual customer's bill to an EGS should only be permitted if the customer has explicitly authorized the release.

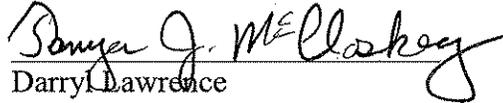
### 3. Creditworthiness Standards

The OCA has no comments on this issue.

### III. CONCLUSION

The OCA submits that an Intermediate Work Plan that sets forth a framework to educate, inform and facilitate a customer's choice in accordance with the law is a reasonable approach to achieving the Commission's goals. The Intermediate Work Plan put forth by the Commission, with the recommendations of the OCA as set forth in its Comments and these Reply Comments, provides a sound framework for developing competitive enhancements that can bring benefits to both customers and electric generation suppliers.

Respectfully Submitted,



Darryl Lawrence

PA Attorney I.D. # 93682

E-Mail: [DLawrence@paoca.org](mailto:DLawrence@paoca.org)

Aron J. Beatty

PA Attorney I.D. # 86625

E-Mail: [ABeatty@paoca.org](mailto:ABeatty@paoca.org)

Jennedy S. Johnson

PA Attorney I.D. # 203098

E-Mail: [JJohnson@paoca.org](mailto:JJohnson@paoca.org)

Assistant Consumer Advocates

Tanya J. McCloskey

Senior Assistant Consumer Advocate

PA Attorney I.D. # 50044

E-Mail: [TMcCloskey@paoca.org](mailto:TMcCloskey@paoca.org)

Counsel for:

Irwin A. Popowsky

Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152

February 1, 2012

152449