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VIA ELECTRONIC FILING

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

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

Dear Secretary Chiavetta:

Pursuant to the Commission's Tentative Order dated December 16, 2011 in the above-referenced proceeding, enclosed herewith for filing are the Reply Comments of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company.

Please contact me if you have any questions regarding this matter.

Very truly yours,



Tori L. Giesler

dln
Enclosures

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY COMMENTS OF METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER
COMPANY AND WEST PENN POWER COMPANY**

I. INTRODUCTION AND BACKGROUND

On December 16, 2011, the Pennsylvania Public Utility Commission ("Commission") entered a Tentative Order ("Tentative Order") in the above-captioned docket addressing the intermediate work plan from the Commission's Office of Competitive Market Oversight ("OCMO"). On January 17, 2012, parties submitted comments on the Tentative Order. Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power") and West Penn Power Company ("West Penn") (collectively, "the Companies") respectfully submit the following reply comments in response to the Tentative Order and certain initial comments that were filed on January 17.

II. COMMENTS

As a general matter, the Companies continue to support the implementation of certain programs in order to foster the development of the retail electric market in Pennsylvania. However, the Companies believe that the proper procedural method to implement many of the proposals set forth in the Tentative Order would be through a rulemaking proceeding or through

the development of a full evidentiary record in a docketed proceeding, rather than a directive to implement such programs through Tentative and Final Orders. The establishment of such “binding norms” may only be done by an agency through a rulemaking or adjudication.¹ Therefore, directing the implementation of such programs would appropriately be developed through the revision of the Commission’s existing regulations rather than through Tentative and Final Orders. Establishing revised regulations would also serve to remove the possibility of any inconsistencies between existing regulations and any proposed requirements to implement such programs through Tentative and Final Orders.

A. Commercial Customer Eligibility

Several parties filed comments continuing to support the eligibility of small commercial customers to participate in enhancements such as the customer referral program and opt-in auction program. The Companies reiterate their position that it is inappropriate to direct these programs to small commercial customers due to administrative concerns voiced in their earlier comments. Further, recent Pennsylvania shopping statistics illustrate that commercial customers are already shopping significantly more than residential customers. As of January 25, 2012, PaPowerSwitch shows that 62.4% of statewide commercial load is being served by an EGS in comparison to 27.2% of residential load. These figures support the argument that the focus of customer referral and opt-in auction programs should be on residential customers.

B. Customer Referral Programs

Many parties expressed varying concerns regarding the implementation of multiple programs simultaneously, citing concerns with confusion for both customers and call center

¹ See, *Pennsylvania Human Relations Commission v. Norristown Area School District*, 374 A.2d 671 (Pa. 1977).

representatives, as well as potentially competing or conflicting program results.² This concern is all the more valid considering that some EGSs have questioned the effectiveness of such programs, generally. The Commission should utilize one customer referral program and evaluate its effectiveness independently before initiating a second customer referral program.

Several parties also commented in support of pilot programs to be implemented in 2012, with the intent that the pilots inform the full-scale referral programs to be deployed in 2013. These same comments, however, illustrate that an attempt to implement a customer referral program in 2012 is implausible, as this simply does not provide enough implementation time. In its comments, RESA puts forth the following schedule to implement a Customer Referral Program:

- Commission Order March 1, 2012 directing EDCs to file plans implementing customer referral programs
- 45 day period for stakeholder meetings to develop EDC plans (April 16, 2012)
- EDCs submit individual plans by May 16, 2012
- Commission approves plans by June 7, 2012
- EDC implementation between September 2012 and November 2012³

This schedule is aggressive, unrealistic, and may not allow for the proper administrative procedure to be followed in order to ensure due process. The Retail Market Investigation (“RMI”) stakeholder groups have met for several months on this issue and have not reached consensus, making it likely that the EDC plan will be a non-consensus document as well. This schedule anticipates a Commission decision in the span of three weeks based upon a non-consensus plan, with no means to provide evidence in support of or against the plan. Assuming that the Commission could make such a decision based upon no evidentiary record, the schedule

² Comments of Exelon Generation Company (“Exelon”) at 2; Comments of PECO Energy Company (“PECO”) at 5-6; Comments of AARP, the Pennsylvania Utility Law Project (“PULP”) and Community Legal Services, Inc. (“CLA”) at 13-14; Comments of the Office of Consumer Advocate (“OCA”) at 3.

³ Comments of the Retail Energy Supply Association (“RESA”) at 6.

for the EDC to implement the customer referral program between September 2012 and November 2012 is inconsistent with the type of implementation time needed by the EDCs following a Commission order.⁴ The Commission's approval of a customer referral plan in June 2012 would result in an implementation date, even using one EDC's six-month implementation timeframe, of no earlier than the end of 2012 or beginning of 2013. For these reasons, the Commission should deny the suggested implementation of customer referral programs in 2012 as unreasonable due to the limited timeframe available for EDC evaluation, regulatory approval, and EDC implementation.

Several EGSs also continue to tout the successful nature of a Standard Offer Customer Referral Program, similar to the program used in New York, as a reason why the program should be implemented in Pennsylvania. A number of the parties pointed out, however, that the New York experience is not as successful as those EGSs might argue.⁵ According to PA PowerSwitch, 25.7% of Pennsylvania's residential customers, a number exceeding the same figure in New York, are shopping as of January 25, 2012 -- only one year following the expiration of generation rate caps across Pennsylvania -- *without any intervention* from market enhancements.

Parties have also alluded to the fact that the New York model has resulted in volatile prices after the teaser rate period.⁶ Concerns over the need to protect customers from such volatility stemming from unspecified variable monthly rates following such a short introductory period have been raised by many parties,⁷ which concerns the Companies share. The conversion

⁴ It has been commented that at least one EDC would require six months to implement such a program. Comments of RESA at 7; Comments of Direct Energy Services LLC ("Direct Energy") at 5. The Companies project that they will each need no less than nine months to implement such a measure, which implementation timeframe is consistent with the implementation period they have targeted for implementation of a similar program under their proposed default service plans for 2013-2015.

⁵ Comments of Met-Ed, Penelec, Penn Power and West Penn at 16; Comments of AARP, PULP and CLS at 6-7.

⁶ Comments of the National Energy Marketers Association ("NEMA") at 7.

⁷ Comments of OCA at 12; Comments of Dominion Retail, Inc. ("Dominion") at 5; Comments of FirstEnergy Solutions Corp. ("FES") at 7.

to a variable rate product that would inevitably occur following the expiration of any administratively-determined discount rate after such a short discount term could financially harm a customer who is not fully educated about such a product or where the EGSs' consumer communication is confusing or misleading. Customers, and the market, would be better served through a competitively-sourced fixed-rate product that lasts for a longer term. Such a product would better represent true market conditions, while ensuring that those EGSs that bid to offer such a product are not seeking to take advantage of customers with a "bait and switch" type offering. To impose such an ineffective and misleading model and its associated responsibilities on EDCs and their customers is simply not in the best interests of Pennsylvania's ratepayers, particularly in light of other available and better alternatives.

C. Opt-In Auction

(1) Pilots

Contrary to the Commission's recommendation, several parties have supported the use of a pilot. Not only is an attempt to hold a pilot during 2012 unrealistic, it is in direct conflict with the reasoning that some parties use to exclude shopping customer participation. Numerous EGSs object to allowing shopping customers to participate in the opt-in auction because they consider it "tampering" with existing contracts. Interestingly, several EGSs appear to believe it is okay to "tamper" with *wholesale* contracts, but *retail* contracts are strictly off-limits. Surprisingly, Direct Energy claims that "there is not a service territory in Pennsylvania where a small pilot of 25-50,000 customers per service territory would have any effect on current...default service contracts,"⁸ while simultaneously touting the beneficial effects on shopping percentages that a small pilot will create. If a pilot would have noticeable and substantial effects on shopping percentages, then there is no other logical result except that a pilot would likewise have

⁸ Comments of Direct Energy at 12.

noticeable and substantial effects on current default service contracts. Therefore, the Commission should adhere to the recommendation in its Tentative Order to exclude opt-in auction pilots.

As with the customer referral program, the RMI stakeholder groups have met for several months and have not reached consensus on the implementation of an opt-in program or its components. In fact, there has been very vociferous objection to the inclusion of any pilot program prior to the expiration of the current default service programs. Therefore, to expect interested stakeholders could present a consensus to the Commission regarding an opt-in auction pilot is unreasonable. Further, the same timeframe limitations discussed related to customer referral program implementation in 2012 apply here, resulting in an implementation date of no earlier than early 2013.

It has also been suggested that the record in the Companies' Proposed DSP proceeding could be reopened or a subsequent comment proceeding could be held so that the PUC could adjust the opt-in auction to reflect the "lessons learned" from the pilot.⁹ An early 2013 implementation date would leave a scant two months for operation of the program before the Companies' full-scale opt-in auction, proposed to take place in March 2013, certainly leaving no time to obtain, report, and utilize "lessons learned." Therefore, the end result of such a pilot would be an expenditure of significant resources and money without the realization of any meaningful "lessons learned" prior to the implementation of a full scale opt-in auction.

(2) Eligibility

Several EGSs have commented about the sanctity of existing retail contracts. The Companies agree that a customer should adhere to the terms of wholesale or retail contracts. It is, however, a customer's choice to absorb a cancellation penalty to enter the opt-in auction,

⁹ Comments of Direct Energy at 11.

which choice is permitted by such clauses in EGS terms of service. Comments did not consider those customers that have fulfilled the term of their contract and are under no early termination threat. To exclude these customers would effectively punish them for remaining in the market as opposed to receiving default service, and would not be fair or consistent with the goals of the RMI.

(3) Timing

Comments vary regarding the timing of the opt-in auction, with some parties expressing a wish to limit the uncertainty to bidders in such an auction. The Companies continue to support the position that customers should be offered a specific rate with specific terms and conditions of service at the time of the opt-in solicitation. The Companies' opt-in auction proposal, as included in their 2013-2015 default service programs filed on November 17, 2011,¹⁰ is separated into tranches, allowing EGSs to limit their participation exposure simply by limiting the number of tranches they are willing to bid, consistent with the Commission's recommendation in its Tentative Order. Because customers are under no obligation to be bound to an offer until after the opt-in auction concludes and the final price is known, EGSs are bidding on an uncertain population in any instance. EGSs are more adept than customers at managing risks in the electric market, thus suppliers should bear the primary risk for such programs, as opposed to customers.

There are several comments presented by Spark Energy that the Commission should outright reject, namely the suggestion that protective mechanisms be built in the auction and enrollment window¹¹ and that unchosen enrollees be wait-listed or denied service.¹² Under no circumstances should the Commission allow an awarded EGS to alter the amount of customers it

¹⁰ Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-2011-2273670.

¹¹ Comments of Spark Energy at 2.

¹² Comments of Spark Energy at 9.

is obligated to serve; nor should the Commission permit customers to be excluded from the opt-in auction after they have been determined eligible.

(4) Product

Some commenting parties have suggested that the percentage off rate with no bonus should not be utilized due to uncertainty for EGSs and because this turns the auction into a “garden variety” price discount offer.¹³ The Companies’ opt-in auction outlined in their Proposed DSP is scheduled to occur after the last default service auction, which allows the bidder to reasonably estimate the price-to-compare (“PTC”) during the entire term of the opt-in service period. Pairing this information with over two-year’s worth of history of the reconciliation rate and its effect on the PTC will allow bidders to not only reasonably estimate the PTC, but also reasonably estimate what effect the reconciliation may have on the PTC. The end result provides customers a guaranteed savings (as compared to default service) for a full two years. The Companies do not know of any price discount offers from EGSs that guarantee a savings over two years as compared to default service, although percentage off products have historically been offered by competitive natural gas suppliers in other jurisdictions. A “garden variety” price may be a free month of electricity or other signing bonus, but is certainly *not* a guaranteed saving regardless of the movement of the PTC.¹⁴

(5) Auction

The Companies continue to support an auction as opposed to a sealed bid for the opt-in program. The Companies are unique in that they will be soliciting four products, one for each EDC simultaneously. A one-shot sealed bid process does not provide for a price discovery process as effective as an auction when products are characterized by common value such as the

¹³ Comments of RESA at 14; Comments of Direct Energy at 15.

¹⁴ Met-Ed’s and Penelec’s direct mail of EGS offers has included EGS offerings of one free month of electricity, as well as at least one offering of a \$50 signing bonus.

products in the opt-in auction. Because the opt-in auction is a multiple product auction in which the products are related in value, one-shot sealed bids do not perform as well as an auction to obtain the best price for customers.

(6) Credit

The Companies do not believe that security in excess of the existing requirements provided for through their respective supplier coordination tariffs for day-to-day operations upon commencement of the opt-in program term in June 2013 is necessary; however, an EGS must post security in order to participate in the opt-in auction. This should not be viewed as additional security in the same way that security is required under the coordination tariffs, but simply a means to ensure that a winning EGS will follow through with its commitment to sign the opt-in agreement and that it has not violated any of the auction rules. As such, this security is held only until contracts are executed with the winning EGS(s) or a determination is made that a participant was not a winning bidder.

III. CONCLUSION

As noted above, while the Companies do not oppose the implementation of retail market enhancements consistent with their comments submitted in response to the Commission's RMI activities, they do have concerns with the potential for EDCs to incur significant costs associated with modifying their systems, perhaps multiple times, as well as an increased risk exposure. To the extent the nature of the procedural method by which these programs are being proposed (and potentially adopted) is found to be procedurally defective, and the directives contained therein are subsequently overturned or reversed, any costs which EDCs incur to modify their systems again must be fully recoverable. Also, to the extent that additional risk or responsibility is

imposed upon the EDCs, a full evidentiary record should be developed to support any binding obligations.

Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company appreciate the opportunity to provide reply comments on these important issues and request that the Commission consider these reply comments in its development of any final order regarding the intermediate work plan.

Respectfully submitted,



Dated: February 1, 2012

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Plan :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

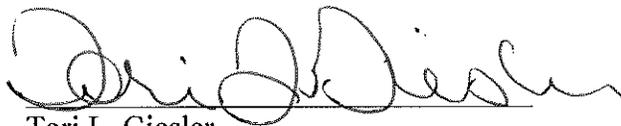
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