

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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July 21, 2014

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

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

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Comments, in the above-referenced proceeding.

Should you have any questions, please contact our office at the number above.

Sincerely,

A handwritten signature in black ink that reads "Hobart J. Webster".

Hobart J. Webster
Assistant Consumer Advocate
PA Attorney I.D. # 314639

Enclosures

cc: Megan G. Good, TUS
H. Kirk House, Office of
Competitive Market Oversight

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Proposed Guidelines Requiring Triennial :
Updates to the Electric Eligible Customer : Docket No. M-2010-2183412
List :

COMMENTS OF THE
OFFICE OF CUSTOMER ADVOCATE

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DATED: July 21, 2014

I. INTRODUCTION

On June 19, 2014, the Pennsylvania Public Utility Commission (Commission) announced its intention to establish guidelines to require triennial company-wide solicitations of residential and small commercial customers by the Electric Distribution Companies (EDCs) in order to update the electric Eligible Customer Lists (ECL), which are made available to Electric Generation Suppliers (EGSs). The guidelines propose the triennial update to be consistent with the procedures for the natural gas retail market.

On January 16, 2014, the Commission's Office of Competitive Market Oversight (OCMO) requested informal comments concerning the electric ECL. OCMO issued the request for informal comments in response to concerns expressed by Commissioners Cawley and Witmer in their August 15, 2013 Joint Motion in the Commission's Docket M-2012-2324075, Interim Guidelines for Natural Gas Distribution Company Eligible Customer Lists, (Order entered September 27, 2012). In Commissioner Cawley and Commissioner Witmer's Joint Motion, the Commissioners noted that the natural gas ECL Order contained reauthorization requirements but there was no similar re-authorization requirement for the electric retail market ECL. As a result, the Commissioners referred the issue to OCMO to "explore the necessity of such a requirement for EDCs."

The Commission requires that Natural Gas Distribution Companies (NGDC) "refresh" their ECLs on a triennial basis. The Commission required "NGDCs to re-solicit their entire residential and small commercial customer base every three years for the purpose of opting out of disclosing information on the ECL." Interim Guidelines for Natural Gas Distribution Company Eligible Customer Lists, Docket No. M-2012-2324075 (Final Order entered September 23, 2013, slip op. at 15). The Commission specifically held that a customer that "opts out" from

the natural gas ECL would need to “opt out” every three years in order to restrict access to that customer’s account data as found on the natural gas ECL. The OCA filed comments regarding the natural gas ECL and made various recommendations. In particular, the OCA expressed its concern with, and objections to, the requirement that customers opt out every three years. The OCA continues to be concerned with this requirement and its inclusion in the electric ECL process. The OCA discusses this issue and others in the comments below.

II. COMMENTS

A. Summary of the OCA’s Comments

The Office of Customer Advocate (OCA) appreciates the opportunity to respond to the Commission’s proposed guidelines. In its informal Comments regarding these guidelines, the OCA expressed concern regarding triennial ECL (Informal Comments of the Office of Consumer Advocate Regarding The Treatment Of Customers Who Have Opted Out Of The Electric Eligible Customer List, February 28, 2014). Specifically, the OCA submitted that a change to the current refresh policies for EDCs is unnecessary given the scope of the retail electric choice market, the existence of robust EGS marketing, and because customers may find the new procedure confusing and unsatisfactory. Although the OCA appreciates the incorporation of some of its proposals in these proposed guidelines, several areas of concern remain. The OCA submits that it would be particularly counterproductive to require customers that have already opted-out of the electric ECL to respond to additional mailings that serve no purpose other than to make the customer take another action to maintain the customer’s affirmative choice to opt out. Once a customer has opted out of providing their information, that preference should be maintained unless and until the customer takes an affirmative action to change that preference. The OCA is also concerned with the costs associated with company-wide solicitations, and the

OCA submits that EDCs should recover the costs associated with ECL solicitation directly from the EGSs as the beneficiaries of the program. Finally, the OCA supports the Commission's adoption of suggestions regarding the use of multiple mediums for asserting participation in the ECL program. Providing multiple mediums for selection of preferences will afford customers better opportunity to make a choice regarding whether to participate in the ECL.

B. Frequency of Company-wide Solicitations

The Commission proposes a triennial company-wide requirement for EDCs to "refresh" their ECLs. Although "refresh" suggests updating, what the Commission proposes is to require EDCs to reverse the stated, affirmative choice of customers to opt out of participating in the ECL unless they continue to affirmatively opt out of sharing their account information with third parties. Generally, such opt-out procedures used by other industries, such as credit card and banking institutions, maintain a customer's preferences unless and until the customer changes his or her preference. Likewise, electric customers that choose to opt out of including their personal information on the electric ECL should have their preferences maintained unless and until the customer takes the affirmative step to change the preference. The OCA supports giving consumers notice that they may not be receiving EGS offers that they may be eligible for because they have opted out of the ECL, but reversing a stated preference is not the best way to encourage customers to engage in the market. Rather, the OCA supports providing customers with easy methods to change their stated preference with periodic reminders would be a better approach. Once a customer takes the step of choosing to opt out, the OCA submits that the decision should be honored until the customer decides otherwise.

The OCA is concerned that customers may find a requirement that they re-authorize their decision to opt out of the ECL both confusing and unsatisfactory. Once customers have taken

the time to affirmatively opt out, it is reasonable for them to assume that an affirmative action should be necessary for them to allow restricted data from being provided to unknown third parties. The OCA submits that customers have the right not to be continually imposed upon to do so again. For these customers, it can only have a negative impact on their impression of retail choice. Rather than serve as a reminder, reversing their choice undermines the important protection that has been afforded.

Moreover, the OCA submits that a change to the current “refresh” policies for EDCs is unnecessary given the scope of the retail electric choice market and the many avenues being used to market EGS products to customers. The retail electric market is considerably more developed than the natural gas retail market where the triennial procedure is used. A residential customer that opts out of the ECL will still be exposed to substantial advertising efforts for EGS services. Resources such as PaPowerswitch and the OCA Shopping Guide continue to gain traction among residential customers. Customers receive EGS marketing information from many forms of advertising, including direct mailings, telemarketing, and door-to-door solicitations. Customers who opt out of the electric ECL do not shut out the retail electric market – they merely restrict private account information they prefer not to share from being provided to marketers with which they have no relationship.

If the Commission determines to use a triennial update procedure, it should do so in a manner that honors the stated preference of customers that are on file, rather than overturning their choices. The OCA submits that rather than continually requiring customers to opt out, EDCs should provide initial and ongoing education to customers about the electric ECL in order to provide them with a meaningful opportunity to determine whether to include their information on the electric ECL. Adopting this approach would affirm the critical role that customer choice

plays in the retail electric market. The OCA maintains its concerns for the natural gas ECL and does not support its expansion to the electric market.

C. Company-wide Solicitations for Dual-Service Customers

The Commission proposes to allow companies with dual-service customers (i.e. a customer receiving natural gas and electricity service from the same utility) to provide a single solicitation to such customers. The OCA does not oppose this proposal, provided that all pertinent information regarding the electric and natural gas ECLs be included in such solicitations. However, the OCA submits that a dual-service customer must be allowed to restrict or allow information independently for each ECL.

For example, a dual-service customer should be allowed to restrict the inclusion of usage information on the electric ECL, but allow its inclusion on the natural gas ECL. This should apply to each category of information as well as all information. Such requirements would be consistent with the principal that customers are given the opportunity to make individual choices about which products or services they wish to receive information on.

D. Content of Company-wide Solicitations

The Commission proposes the inclusion of language outlining the methodologies through which a customer can respond with his or her preferences regarding whether to include his or her information on the ECL, such as through the mail, a website process or a telephone contact with an EDC customer service representative. The OCA supports the Commission's proposal to allow customers to make their determination regarding participation in the electric ECL through multiple mediums.

The Commission also proposes that EDCs be required to include seven types of information in the initial solicitation of customers in order for customers to choose their preferences regarding the release of information through the ECL that the Commission has

previously required NGDCs to include. Those seven pieces of information are: (1) what the ECL is; (2) what information is to be included on the ECL; (3) what the more detailed information represents; (4) how this information is to be used by NGSs; (5) how the information is to be safeguarded by NGSs; (6) how widely the information will be disseminated; and (7) the potential benefits to the customers of having their information included on the ECL. Additionally, the Commission proposes that the EDCs work in consultation with the Commission's Office of Communications in developing those solicitations to ensure that the solicitations do not create a negative impression of electric choice which will ultimately harm the competitive electric generation market. The OCA requests that it too be allowed to assist in the development and evaluation of ECL related customer communications. The OCA supports the inclusion of this information and looks forward to reviewing these materials.

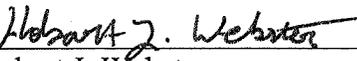
E. Costs and Cost Recovery

The Commission also requests comments regarding how EDCs should recover the costs associated with this triennial solicitation. The OCA submits that EDCs recover the costs of soliciting customers for the electric ECL from EGSs. EGSs are the party that universally benefits from the electric ECL and should therefore bear its costs. Not all customers participate in the ECL program and not all customers will receive solicitations or benefits from being on the ECL. EGSs use the ECL to target marketing and reduce marketing costs. As such, EGSs should bear any costs associated with these solicitations.

III. CONCLUSION

The OCA appreciates the opportunity to respond to the Commission's proposed guidelines and fully supports the Commission in its efforts to improve the competitive retail electric generation market. The OCA submits that if a triennial update is required customers that have already opted-out of the electric ECL should not be required to respond to additional mailings to maintain the customer's stated preference. The OCA submits that EDCs should recover the costs associated with ECL solicitation directly from the EGSs who are the beneficiaries of the program. Finally, the OCA submits that its recommendations contained herein should be adopted.

Respectfully Submitted,


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DATED: July 21, 2014

CERTIFICATE OF SERVICE

Proposed Guidelines Requiring Triennial :
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I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 21st day of July 2014.

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