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August 4, 2014

Via Electronic Filing

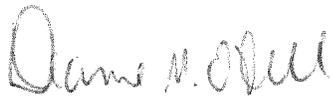
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Comments of the Retail Energy Supply Association ("RESA") to the Tentative Order Entered June 19, 2014 with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell

DMO/lww
Enclosure

cc: Cert. of Service w/enc.
Office of Competitive Market Oversight (via email only)
Megan Good (via email only)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's Comments to the Tentative Order dated June 19, 2014 upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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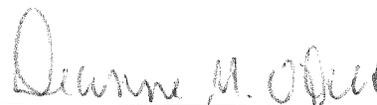
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Dated: August 4, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION
TO TENTATIVE ORDER ENTERED JUNE 19, 2014**

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I. INTRODUCTION

In its Tentative Order entered June 19, 2014, the Commission proposes to require triennial company-wide solicitations of residential and small commercial customers by the Electric Distribution Companies (“EDCs”) to update the electric Eligible Customer List (“ECL”) which is utilized by Electric Generation Suppliers (“EGSs”) as part of their provisioning of competitive retail electric generation service to customers. The current guidelines regarding the electric ECL were finalized on November 15, 2011 after a multiyear process that involved informal stakeholder processes, proceedings at the Commission and an appeal to the Commonwealth Court. These current guidelines do not require on-going triennial solicitations of customers. In contrast, the final guidelines that apply to the ECLs of the Natural Gas Distribution Companies (“NGDCs”), which were finalized on August 15, 2013, do require an on-going triennial solicitation of customers. Based on this, the Commission sought comments in its Tentative Order on its proposal to align the electric ECL and the gas ECL regarding triennial solicitations. Comments were filed on July 21, 2014. As explained further below, the Retail Energy Supply Association (“RESA”)¹ offers these Reply Comments to respond to the comments submitted by the Office of Consumer Advocate (“OCA”); the Office of Small Business Advocate (“OSBA”); and, the Pennsylvania Utility Law Project (“PULP”). Specifically, RESA urges the Commission to reject the proposals to: (1) revise or discontinue the current opt-out process; and, (2) require EGSs to pay for the costs of the ECL. While RESA does not oppose the Commission’s stated purpose in the Tentative

¹ RESA’s members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent only those of RESA as an organization and not necessarily the views of each particular RESA member.

Order to require triennial solicitations of electric customers for inclusion on the ECL, RESA vehemently opposes the attempts of some of the commentators to use this proceeding as a venue to reopen fully vetted and legally sound determinations regarding the ECL or to impose additional costs on EGSs.

II. THE SCOPE OF THIS PROCEEDING SHOULD NOT BE USED AS A SPRINGBOARD TO RE-LITIGATE THE COMMISSION’S USE OF AN OPT-OUT PROCESS

Both OCA and PULP take the position that the Commission should not pursue its proposal to require a triennial solicitation of customers for the ECL. While RESA recognizes the Commission’s desire to implement a triennial solicitation and does not oppose it, RESA does oppose the suggestions of: (1) PULP to embark upon an evidentiary proceeding “to factually explore the benefits and risks of the ECL” including “whether the opt-out provision is a meaningful protection against potential customer harms;”² and, (2) both OCA and PULP do not require customers who have previously opted out to reaffirm their desire to remain off the ECL during the triennial solicitation.³

A. PULP’s Request For An Evidentiary Hearing Is Nothing More Than An Effort To Undo What Has Already Been Correctly Decided

The Commission’s regulations state that “[a]n EDC or EGS may not release private customer information to a third party unless the customer has been notified of the intent and has been given a convenient method of notifying the entity of the customer's desire to restrict the release of the private information.”⁴ At the time these regulations were implemented, concerns about the release of information unless the customer provides notice that he or she does not want

² PULP Comments at 2-3.

³ OCA Comments at 4-6; PULP Comments at 7-9.

⁴ 52 Pa Code § 54.8

the information released were addressed on appeal to the Commonwealth Court and the Court concluded that the Commission's regulations "preserve the delicate balance between a viable and competitive marketplace and customer privacy."⁵

In subsequent decisions, the Commission has concluded that an opt-out approach is not prohibited by 66 Pa.C.S. § 2807(d)(1) of Public Utility Code.⁶ In the context of the ECL for both NGDCs and EDCs, the use of the opt-out process was directly challenged and, in both instances, the Commission consistently maintained its reliance on this process and its view that it is "a reasonable and efficient means by which customers can exercise their right to withhold confidential information."⁷ As this precedent and the Commission's practice for fourteen years now make clear, the Commission has taken numerous opportunities to consider the use of the opt-out process and has consistently concluded that it is a reasonable way to fulfill the goals of the Competition Act while also balancing consumer privacy concerns. There is no reason to justify reopening this sound determination in the context of this narrowly focused proceeding.

Even if the Commission were to seriously consider PULP's request, which it should not, it is important to note that PULP has not cited to any relevant or persuasive information to justify granting its request. Rather, PULP cites to information related to data breaches that have occurred for a wide variety of industries and the only specifically named energy company referenced by PULP in its comments involved two electric distribution companies in New York regarding a breach of information that had nothing to do with the ECL for these electric utilities. The

⁵ *The Mid-Atlantic Power Supply Association v. PUC*, 746 A.2d 1196, 1201 (Pa Cmmwlth. 2000).

⁶ *Petition of Direct Energy Services, LLC for Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike County Light and Power Company*, Docket No. P-00062205, Final Opinion and Order entered April 20, 20016 at 14.

⁷ *Interim Guidelines For Eligible Customer Lists*, Docket No. M-2010-2183412, Final Order on Reconsideration entered November 15, 2011 at 15. *See also, Interim Guidelines for Natural Gas Distribution Company Eligible Customer Lists*, Docket No. M-2012-2324075, Final Order entered September 23, 2013 at 15.

information contained on the ECL is not widely publicized or distributed, rather it is only given by EDCs to licensed EGSs that have been certified to provide service in the respective EDC's service territory. PULP has not offered anything showing that any person to date has been harmed by the existence of the ECL even though the ECLs produced under the current process have been in place for over four years now and prior versions of the ECL have been available since the EDCs' initial restructuring plans.⁸

While RESA recognizes that certain customer-specific information contained on the list, such as phone number and service address, could be utilized by ill-intentioned individuals for nefarious purposes, the theoretical possibility that someone may illegally obtain this information for illegal purposes is not sufficient reason to discontinue use of the ECL or to eliminate the current opt-out process. If this were the applicable standard for the compilation and release of any form of customer information, then many well established information sources would present the same level of harm as the ECL. The publication of phone books, on-line white pages, state and county real estate databases, and countless other sources of information all present certain customer-specific information that could theoretically be used for unlawful purposes, but this is not reason alone to discontinue the publication of this information.

In conclusion, the Commission should reject PULP's request for an evidentiary hearing to explore the benefits and risks of the ECL as there has been no showing that such a process is necessary or would produce meaningful information. The current ECL is functioning

⁸ The order governing PPL was entered in October 2009. Implementation of this order began promptly because the generation rate caps for PPL's service territory ended December 31, 2009. *PPL Electric Utilities Corporation Retail Markets*, Docket No. M-2009-2104271, Final Order entered October 22, 2009. Likewise, the order governing Duquesne was entered on July 30, 2010. Implementation began immediately in preparation for the default service plan implementation date of January 1, 2011. *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2011 through May 31, 2013*, Docket No. P-2009-2135500, Order entered July 30, 2010.

appropriately, there have been no reported instances of any issues here in Pennsylvania regarding the ECL and embarking on a fishing expedition would simply waste the Commission and parties' resources with likely no benefit to consumers in the end.

B. OCA & PULP's Proposal To Exclude Customers From ECL Who Do Not Reaffirm Their Prior Opt-Out Selection Should Be Rejected

After considering the comments offered by various stakeholders in the development of the ECL for the NGDCs, the Commission determined that "once a customer chooses to 'opt out' from the ECL, that customer will need to periodically re-affirm that choice in future solicitations if they wish to continue having their customer information withheld."⁹ Despite this clear determination for natural gas customers, both OCA and PULP request that the Commission require that EDCs maintain a customer's opt out selection until the customer affirmatively chooses to reverse that decision.¹⁰ Adopting OCA and PULP's recommendation for electric customers would be confusing and is unwarranted.

First, the Commission has made clear its view that "consistencies in actions between the natural gas and electricity retail markets, where possible, are beneficial to all parties."¹¹ As the Commission has already decided this issue in the context of the NGDC ECL, applying the same process for the EDC ECL is consistent and less confusing for all parties.

Second, requiring customers to reaffirm their intent to opt out does not impact the numerous consumer protections already in place. By Commission regulation, EGSs are prohibited from releasing private customer information to third parties or publicly.¹² The EGSs do not

⁹ Final Order NGDC ECL at 15.

¹⁰ OCA Comments at 4-5; PULP at 7-9.

¹¹ Tentative Order at 6.

¹² 52 Pa. Code § 54.8(a) ("An EDC **or EGS** may **not** release private customer information to a third party **unless** the customer has been notified of the intent and has been given a convenient method of notifying the entity of the customer's desire to restrict the release of the private information.") (emphasis added).

publish directories or broadcast customer information in any format that imposes on the privacy rights of individuals. EGSs do not release the data to their employees or lawful agents unless and until such persons agree to adhere to information restriction rules. In addition, customers included on the ECL are still protected by the federal “Do Not Call” law¹³ and Pennsylvania’s Telemarketer Registration Act.¹⁴ An additional assurance that consumer information is protected is the fact that many EGSs maintain their own “Do Not Call” and/or “Do Not Write” lists so that consumers who do not wish to receive these communications are not solicited. All of these safeguards and compliance measures with the Commission’s regulations ensure that consumer information receives adequate protection from disclosure while balancing the positive impact of allowing customers to receive competitive offers.

Finally, not requiring that customers reaffirm their intent to opt out during the triennial solicitation would reduce the number of customers who would authorize the release of the information and would similarly reduce the efficacy of any information provided to EGSs. Reducing the number of customers releasing their data – by maintaining a decision made three years prior to not be included on the ECL – would not only seriously hamper residential and small business customer switching, but will rob customers remaining on the default service provided by the EDC of the ability to save money on their electric bill by electing to receive, or in many cases failing to even become aware of competitively priced service offers from EGSs. The lack of availability of this information could lead to service disruptions for customers that have already chosen to take supply from an EGS, and could drive up costs for all customers by making it more costly and cumbersome for EGSs to obtain the data necessary to run their operations.

¹³ Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 et seq.

¹⁴ See 73 P.S. §§ 2241-2249.

Such a result is neither reasonable nor necessary as the Commission's decision to require customers to triennially reaffirm their desire to opt out of the ECL strikes the appropriate balance between privacy concerns and the requirements of the Competition Act.

III. IMPOSING ADDITIONAL COSTS ON EGSS TO EFFECTUATE TRIENNIAL CUSTOMER SOLICITATIONS IS INAPPROPRIATE, UNREASONABLE AND MUST NOT BE IMPLEMENTED

OCA, PULP and OSBA all advocate that EGSs should be required to pay for any additional costs incurred to implement the Commission's proposed triennial solicitation of customers.¹⁵ Generally, all three claim that EGSs benefit financially from the ECL and should pay for it while OCA also argues that customers choosing to opt out of the ECL do not receive a benefit from it and therefore should not have to pay. The ECL is unfairly characterized as a "marketing tool" for the EGS. Rather, it plays an important role in ensuring a properly functioning competitive market which benefits all customers in a number of ways. Therefore, RESA supports permitting the EDCs to recover the costs of the ECL either through base rates or a surcharge mechanism under 66 Pa. C.S. § 1307(a) and urges the Commission to reject the alternate suggestions of OCA, PULP and OSBA.¹⁶

¹⁵ OCA Comments at 7; PULP Comments at 9-12; OSBA Comments at 1-2.

¹⁶ OSBA's primary position is that the costs of the ECL should be recovered from EGSs through a discount on purchased EGS receivables or, alternatively, that EGSs should be solely responsible for the costs of the ECL. OSBA Comments at 1-2. RESA opposes this approach for several reasons. First, the POR proposal violates the principle of cost recovery following cost causation. The purpose of the POR discount is to recover an EDC's POR program implementation costs, administrative costs and/or the uncollectible costs associated with the purchased accounts. None of this relates to the purpose of the ECL. Second, utilizing POR would result in the unintended consequence of exempting those suppliers who do their own billing (through dual billing) and could encourage those utilizing POR to no longer do so because they are receiving less value for their purchased accounts. Either consequence would not be in the public interest. Lastly, any POR-based assessment would unfairly and disproportionately assess competitive suppliers based on market share because those EGSs with the greater portion of customers in POR would be paying a higher percentage of the costs of the ECL.

The Competition Act envisions consumers receiving their generation from the competitive market through EGSs.¹⁷ The development of the ECL has been an important part of the process of implementing customer choice because it provides information to EGSs that is fundamentally necessary to ensure a proper functioning competitive retail market in Pennsylvania.¹⁸ The information presented on the ECL enables EGSs to effectively complete the enrollment process, to develop accurate pricing offers for customers, and to maximize efficiency in providing service to a customer once he or she is enrolled. Without access to such information – which includes the customer’s account number with the EDC, the customer’s historic usage and consumption data, the customer’s load profile group indicator, customer meter data, customer name and billing address – the process of switching a customer to the electric service of an EGS, as requested by the customer, will be extremely impaired. The following examples illustrate the benefits and uses of the information on the ECL to facilitate customer choice:

- The customer list provides EGSs with usage and account attribute data that allows EGSs to continually refine their offers and provide the most competitive prices to customers. The availability of historical usage data for a large set of customers enables suppliers to refine their load forecasting assumptions which can result in more economic wholesale purchase decisions and lower retail offers for customers.
- The customer list provides information necessary to allow suppliers to complete the enrollment process. Operational protocols in Pennsylvania require EGSs to have a customer account number to effectuate an enrollment through the use of electronic data exchange transactions sent to the EDC. Customers enrolling with an EGS often mistakenly present an incorrect account number or an account number with a missing digit. The ECL is an essential quality control tool that EGSs utilize to

¹⁷ 66 Pa. C.S. § 2806(a).

¹⁸ *See, eg,* 66 Pa.C.S. § 2802(7)(“This Commonwealth must begin the transition from regulation to greater competition in the electricity generation market to benefit all classes of customer”); (12)(The purpose of this chapter is to modify existing legislation and regulations and to establish standards and procedures in order to create direct access by retail customers to the competitive market for the generation of electricity. . .); (13)(“ . . . The procedures established under this chapter provide for a fair and orderly transition from the current regulated structure to a structure under which retail customers will have direct access to a competitive market for the generation and sale or purchase of electricity.”)

verify account numbers provided by customers to ensure accurate and timely enrollment.

- The customer list provides necessary information to enable suppliers to efficiently provide service to customers. In addition to customer contact information and historical usage data, the ECL contains other vital information that EGSs need in order to continue to provide service to customers. For example, in some cases the ECL is the sole source of existing and future capacity and network service Peak Load Contribution values associated with customer accounts. These data values are used to determine wholesale capacity and transmission cost obligations attributable to individual customer accounts and are a necessary data element used in EGS business operations.

Claims that these costs only benefit EGSs¹⁹ or simply represent an EGSs' marketing toll are akin to arguing that EDC shareholders alone should pay 100% of the costs of the EDC's billing and collection system because those systems inure to the financial benefit of the EDC. Rather, allocating 100% of the costs of the ECL to all customers through distribution rates or a Section 1307(a) mechanism is fair and reasonable.

In conclusion, information systems and availability benefit all customers – even those who may choose to exercise their option to opt out of being included on the ECL. EDCs have a mechanism to appropriately recover incremental costs for this service, whereas EGSs would have to recover them through their commodity pricing, putting them at a competitive disadvantage relative to the EDC's default service rates and again potentially raising the cost of EGS service for

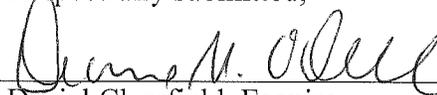
¹⁹ PULP's apparent claim that Pennsylvania is profitable for competitive suppliers and, therefore, they can afford to pay for the ECL is unavailing. PULP Comments at 10. PULP cites to the profits of NiSource and NextEra Energy as set forth in a report about corporate taxes. Even if the numbers cited in the report were relevant to this proceeding, NiSource does not operate a competitive gas supplier in Pennsylvania but rather its operations in Pennsylvania consist primarily of Columbia Gas of Pennsylvania – an NGDC, and Columbia Gas Transmission - a regulated interstate pipeline company. Therefore, any profits attributable to NiSource for Pennsylvania have nothing to do with the competitive market. Similarly, NextEra Energy, Inc. operates a portfolio of companies including Florida Power & Light Company which is one of the largest rate-regulated electric utilities in the United States, and NextEra Energy Resources, LLC which, together with its affiliated entities, is the largest generator in North America of renewable energy from the wind and sun. Just one of NextEra Energy's companies is a licensed electricity supplier in Pennsylvania (NextEra Energy Services Pennsylvania, LLC, i.e. "NES"). Therefore, the data does not provide any data about any profits made by NES attributable to its Pennsylvania operations.

customers. Further, imposing data access fees on EGSs may force customers to pay for the same data systems twice (i.e. once to the EDC through distribution rates and again to an EGS through its commodity price). Finally, use of the opt-out procedure including the requirement that a customer reaffirm his or her opt out decision during the triennial solicitation should lead to reduced administration costs for the EDC because it keeps the majority of customers eligible for competitive offers.

IV. CONCLUSION

The ECL is a vital element of ensuring a successful competitive retail market and RESA appreciates all of the time and effort the Commission has devoted to this issue to date. Consistent with these Reply Comments, RESA urges the Commission to reject the proposals of OCA, OSBA and PULP to revise or discontinue the opt-out process and to require competitive suppliers to pay the costs of the ECL.

Respectfully submitted,



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