



800 North Third Street, Suite 205, Harrisburg, Pennsylvania 17102
Telephone (717) 901-0600 • Fax (717) 901-0611 • www.energypa.org

May 26, 2015

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

**Re: Submission of the Electronic Data Exchange Working Group's Web Portal
Working Group's Solution Framework for Historical Interval Usage and Billing
Quality Interval Use, Docket M-2009-2092655**

Dear Secretary Chiavetta:

Enclosed for filing please find the comments of the Energy Association of Pennsylvania to the Tentative Order at the above-referenced docket.

Sincerely,

A handwritten signature in blue ink that reads "Terrance J. Fitzpatrick".

Terrance J. Fitzpatrick
President & CEO

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Submission of the Electronic Data Exchange : M-2009-2092655
Working Group's Web Portal Working Group's :
Solution Framework for Historical Interval Usage :
and Billing Quality Interval Use :

**Comments of the
Energy Association of Pennsylvania
To the Tentative Order entered on April 23, 2015**

I. Introduction

On April 23, 2015, the Commission entered a Tentative Order at the above-captioned docket, with comments due within thirty days. The Tentative Order is based upon a recommendation from the Bureau of Technical Utilities Services (TUS) and the Office of Competitive Market Oversight (OCMO) and is designed to establish a general policy under which electric distribution companies (EDCs) would provide third parties such as electric generation suppliers (EGSs) and conservation/curtailment service providers (CSPs) with access to "historical interval usage" (HIU) and "billing quality interval use" (BQIU) data via a secure web portal. Among other things, the Tentative Order proposes to establish a mandate that EDCs subject to smart meter mandates provide "system-to-system" functionality (described below) to allow EGSs to access the interval usage data of consenting customers. This functionality must be provided within twelve months of the entry of the Final Order. The Energy Association of Pennsylvania respectfully submits these comments on behalf of its EDC members.¹

¹ Citizens' Electric Company; Duquesne Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; Pennsylvania Power Company; Pike County Light & Power Company; PPL Electric Utilities; UGI Utilities, Inc.-Electric Division; Wellsboro Electric Company; and West Penn Power Company.

The Tentative Order arises from a “solution framework” submitted to the Commission under cover letter dated February 17, 2015 by the Web Portal Working Group (WPWG), which is a subgroup of the Electronic Data Exchange Working Group (EDEWG). As stated in the cover letter, the solution framework included:

- Consensus minimally required standards for the required secure web portals, including an associated downloadable file format in Appendix A.
- Considerations for “system-to-system” solutions (Appendix B), based upon stakeholder interest.
- Positions regarding whether the enclosed “System-to-System Considerations” are expected to be mandatory components of EDC implementation plans (Appendix C).

In issuing the solution framework, the WPWG was responding to the Commission’s Order at this docket entered December 6, 2012 which directed WPWG to develop standardized solutions for providing access to this type of data via an EDC provided, secure web portal. The WPWG reported in its submission that a consensus was reached among its members that the minimum required standard should be a “single user – multiple request” (SU-MR) structure under which an authorized user² could log into the portal and submit and receive data for more than one account as part of a single request. The WPWG also described a non-consensus “system-to-system” (StS) approach which would allow a user to communicate with the web portal of an EDC without logging in to the web portal itself. StS could involve the use of file transfer protocols or web services to transmit and satisfy requests. The positions of members of the WPWG supporting and opposing StS as a mandatory approach were set out in Appendix C to the solution framework.

² The solution framework recommended that use of the web portal be restricted to EGSs and to CSPs acting as agents of EGSs. (pp. 4-5). The Tentative Order does not on its face mention this restriction regarding CSPs. The Commission should resolve this ambiguity by clarifying that it is adopting the restriction.

Following the WPWG's submission of the solution framework to the Commission, a number of EGSs and the Retail Energy Supply Association (RESA) filed letters with the Commission arguing that the consensus SU-MR approach was insufficient and that the Commission should impose a mandate that EDCs implement a StS solution. These letters were not filed in response to any type of notice from the Commission seeking comments, and the letters were not served on representatives of EDCs or other interested parties.

II. In Order to Establish a Legally-Binding Policy Mandating "System-to-System" Functionality, the Commission Must Either Promulgate Regulations or Adjudicate the Issue in the Context of Smart Meter Implementation Plans of Individual EDCs.

In the comments below, EAP will address only procedural concerns with the Tentative Order's mandate that EDCs provide StS functionality within twelve months. EAP requests that the Commission consider the comments of individual EDCs regarding substantive issues with the Tentative Order.

At the outset, EAP recognizes the value that the informal, collaborative EDEWG process, employed here by the WPWG, has provided in making retail competition possible. This informal, consensus-based process has allowed EDCs and EGSs to find solutions to a host of technical issues that are critical to the functioning of competition. When a consensus cannot be reached on an issue in the EDEWG process; however, the Commission is obligated to comply with the procedures established in Pennsylvania law before it imposes a solution on the parties. The Tentative Order process used here does not comply with these requirements.

It is clear that the Tentative Order proposes to establish a legally-binding norm of conduct on EDCs related to provide StS functionality. The Tentative Order "propose[s] that the

StS option be mandatory” and proposes a “standard implementation date” of twelve months after entry of the Final Order. (Tentative Order, pp. 10-12)

The Courts of Pennsylvania have held that administrative agencies may establish such “binding norms” only by rulemaking or adjudication.³ The Tentative Order process used here to attempt to establish binding policies regarding StS is neither a rulemaking nor an adjudication, and the procedures used to arrive at a Final Order do not comply with the procedural requirements for rulemaking or adjudication. Accordingly, if the Commission wishes to establish a mandatory policy regarding StS, it must either promulgate regulations or adjudicate the issue in the context of the smart meter implementation plans of individual EDCs.

First, it is clear that the Tentative Order process used here does not constitute or arise from an adjudication. The term “adjudication” is defined in the Administrative Agency Law as:

"Adjudication." Any final order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding in which the adjudication is made. The term does not include any order based upon a proceeding before a court or which involves the seizure or forfeiture of property, paroles, pardons or releases from mental institutions.⁴

In adjudicating cases, agencies use their quasi-judicial powers to render decisions on specific disputes and cases.⁵ As it relates to the issue involved here – access to interval usage data, an adjudication could be a decision on a filing related to an EDC’s smart meter implementation plan, and it would involve procedural protections such as creation of a record, referral to an ALJ to hear evidence on any disputed factual issues, compliance with rules prohibiting *ex parte* communications, etc.⁶

³ See e.g., *Pennsylvania Human Relations Commission v. Norristown Area School District*, 374 A.2d 671 (Pa. 1977)

⁴ 2 Pa.C.S. Sec. 101 (definition of “adjudication”)

⁵ See generally, *Insurance Co. of North America v. Commonwealth, Insurance Dept*, 327 A.2d 411 (Pa. Cmwlth. 1974).

⁶ See 66 Pa.C.S. §§ 332, 334.

Plainly, the Tentative Order process does not constitute an adjudication. The Tentative Order proposes a prospective across-the-board policy on EDCs; it does not resolve a specific case or dispute, such as when a customer files a complaint against a utility or a utility files a proposed revision to its tariff. This conclusion is buttressed by the fact that procedural protections related to adjudication were not applied here. Among other things, the Tentative Order relies on letters that would constitute *ex parte* communications if this were an adjudication.⁷ Conversely, the lack of required procedural protections would mean the Tentative Order (and Final Order) would be invalid even if they were construed as an adjudication.

Second, the Tentative Order process used here is not a valid rulemaking proceeding. In substance, the conclusion that EDCs must provide access to interval usage data via a StS protocol by a date certain appears to be in the nature of a regulation (albeit an unpromulgated regulation) in that it seeks to establish a broad, prospective, mandatory policy. However, the Commission did not attempt to follow the procedural requirements for issuing regulations set forth in the Commonwealth Documents Law,⁸ so the Tentative Order cannot be defended on the basis that it is a valid regulation.

In summary, because the Tentative Order (and the Final Order, if it upholds the Tentative Order) does not constitute or arise from an adjudication or a valid rulemaking proceeding, it may not establish binding norms of conduct.

III. Conclusion

EAP respectfully requests that the Commission consider these comments and that it not issue a Final Order mandating that EDCs provide StS functionality.

⁷ See 66 Pa.C.S. § 334 (c).

⁸ See 45 P.S. § 1201.

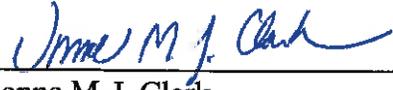
Respectfully submitted,



Terrance J. Fitzpatrick
President & CEO
tfitzpatrick@energypa.org

Energy Association of Pennsylvania
800 N Third Street, Suite 205
Harrisburg, PA 17102

Date: May 26, 2015



Donna M.J. Clark
Vice President & General Counsel
dclark@energypa.org