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January 2, 2008

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA HAND DELIVERY

James McNulty
Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
2nd Fl., 400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

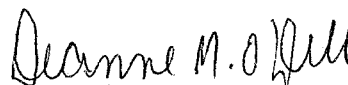
Re: Development and Production of Retail Electricity Choice
Activity Reports
Docket No. L-00070184

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INDEPENDENT REGULATORY
RENEW COMMISSION

Dear Secretary McNulty:

On behalf of the Retail Energy Supply Association enclosed for filing please find an original and 15 copies of its Comments with regard to the above-referenced matter.

Sincerely,



Deanne M. O'Dell

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DMO/lww
Enclosure

cc: Charles Covage w/enc. (via email)
Patricia Krise Burket w/enc. (via email)
Cyndi Page w/enc.(via email)

HAR:77708.1/MID051-249127

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Development and Production of Retail Electricity Choice Activity Reports : Docket No. L-00070184

**COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

On April 13, 2007, the Commission adopted a proposed rulemaking order to establish reporting requirements for electric distribution companies ("EDCs") and electric generation suppliers ("EGSs") to provide the Commission with timely information regarding sales activity in Pennsylvania's electric generation market. The information concerning electric generation market activity will enable the Commission to fulfill its duties to monitor the development of Pennsylvania's competitive retail electricity market and to take steps to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power. The Retail Energy Supply Association ("RESA")¹ has been active throughout the Commission's rulemaking processes under the *Electricity Customer Choice and Competition Act*² generally and in this matter particularly. RESA strongly supports the Commission's efforts to develop methods to measure the level of effective competition in the retail electricity market. RESA applauds the Commission's efforts to actively monitor Pennsylvania's market to ensure that all of the policies the Commission establishes foster a truly competitive marketplace for the ultimate benefit of consumers, and RESA offers these comments to suggest additional ways to refine the process.

¹ RESA's members include Commerce Energy, Inc; Consolidated Edison Solutions, Inc; Direct Energy Services, LLC; Gexa Energy; Hess Corporation; Integrys Energy Services, Inc.; Liberty Power Corp.; Reliant Energy Retail Services, LLC; Sempra Energy Solutions; Strategic Energy, LLC; SUEZ Energy Resources NA, Inc. and US Energy Savings Corp. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

² 66 Pa. C.S. §§ 2801-2812 ("*Electric Competition Act*").

First, the Commission should be very cautious about its release of information gathered from EGSs to ensure that competitively sensitive information, such as individual EGS market share, cannot be ascertained from data that appears competitively neutral. Second, because of the differences between EGS competitive offerings and the different structures of the EDCs' Default Service rates, the Commission should permit EGSs flexibility in determining how to classify the information provided in their reports. Finally, the Commission should require EDCs to report: (1) information about smart meter deployment; (2) the same information as EGSs when the EDC is providing a product in addition to Default Service; (3) customers enrolled in various alternate billing programs; and (4) information regarding Default Service RFP procurement bids and processes after a reasonable cooling off period has passed.

I. EGS Information Must Be Kept Strictly Confidential, Even On An Aggregate Basis

The Commission proposes Section 54.204 under which the "Commission will make available to the public on an aggregated basis information contained in sales activity reports that does not disclose individual EGS market shares." RESA supports this approach. However, to ensure that the EGS market share information is kept confidential, the Commission should implement the following suggestions. First, the EGS reporting form, unlike the second page of the EDC form, is not specifically marked "Confidential." The Commission should add this notation directly to the form and make clear in the regulations that the EGS specific information will be kept confidential. Second, the Commission should be careful not to release aggregate information that permits ascertainment of EGS market share information. Aggregating the EGS data for one EDC service territory with only a few active EGSs primarily serving different market segments, i.e., residential, small business, and large industrial, may disclose the customer/product make-up of each EGS. For example, if it is widely known that there are only three active EGSs serving customers in a service territory and that only one of those EGSs

actively serves residential customers, then it would be possible with a great degree of certainty to ascertain the market share and customer/product make-up of the single EGS that markets to residential customers. Therefore, the Commission should add language to Section 54.204 which makes clear that where aggregation of information could reasonably permit determination of the market share of individual EGSs, the Commission will not publicly disclose that information or will disclose it in a manner that does not permit the market shares or customer/product type(s) of individual EGSs to be determined. By making clear that highly sensitive business information of EGSs is not disclosed, the Commission will safeguard the competitive interests of EGSs while gathering the information necessary to monitor the development of competition in retail electric marketplace.

II. EGSs Should Be Given Flexibility In Reporting

One of the benefits of a competitive market is the wide range of services and products that are available. RESA members, for example, provide service in the various EDC service territories with a variety of different products. While this diversity benefits consumers, it complicates the ability of EGSs to provide information on a standardized basis. Therefore, the more narrowly the Commission defines the EGSs' reporting requirements, the more practical difficulties the EGSs will have in supplying the information. For this reason, RESA requests that the Commission clarify that it will permit EGSs wide discretion in determining how to report customers/product type(s) and under which categories. Some examples of the difficulties that may be created by the proposed narrowly defined reporting requirements are discussed below.

A. Peak Load Contribution

The Commission created a standard classification of Peak Load Contribution ("PLC") based on the reasoning that a customer's PLC is uniform throughout PJM. However, not all

EDCs provide PLC values in billing usage data. Therefore, the Commission should require that EDCs provide PLC values so that EGSs can correctly assign customers to the correct customer class. In the absence of such requirement, the EGS should be permitted to determine how to assign these customers to the customer class based on other factors, such as annual kWh.

B. Categorizing Customers by Product Type

Categorizing customers by product type in the predetermined reporting fields will be difficult for EGSs. For example, EGSs have a variety of ways of pricing their products that do not neatly fit into the "flat rate" category. EGSs may offer a "pass through" product where one portion of the rate is fixed but another is subject to change (i.e. the energy price may be fixed but the capacity or transmission charge may be passed through to the customer.) Some EGSs offer pricing programs where a price is benchmarked against an index or some other market based rate for some time period until the customer elects to convert to a fixed price (i.e. strike price products). Technically, these products/customers could be reported as fixed price, time-of-use or hybrid. The EGS form also identifies fixed term contracts of 1 year, 2 years or 3 years. However, EGSs may structure their contracts in other time intervals, such as 18 months or 6 months. Finally, the EGS form requires EGSs to report the number of customer accounts according to "Green Power." In providing guidance as to the meaning of this term, the form indicates that this includes "electric supply that has been promoted as having greater than required renewable content and exceeds existing minimum renewable content requirements for retail power." This explanation, however, does not address whether an Alternative Energy Credit ("AEC") product is considered a Green Power product. Further, this explanation does not address how to treat a carbon neutral product or some type of carbon off-set product.

RESA is mindful of the difficulties for the Commission in attempting to standardize the information that is reported so as to gather data that will provide meaningful information for comparison and analysis. As the above examples illustrate, the Commission is not able to identify on a standardized, uniform basis all the various business models and business plans that EGSs currently employ or may employ in the future. Therefore, RESA suggests that the Commission focus on the purpose of the information, and establish broad rather than narrow EGS reporting requirements and give EGSs the flexibility to provide their company-specific information to the Commission in a meaningful way. By taking these steps, the Commission will assure that it receives the information it needs to fulfill the goals of this rulemaking.

III. RESA Supports EDC Quarterly Reporting Requirements And Recommends That Reports Also Include Smart Meter Information, Non-Default Service Products, Alternate Billing Customers, And RFP Procurement Bid/Process Information After A Reasonable Cooling-Off Period

The main purpose of these reporting requirements is to provide the measurement tools necessary for the Commission to monitor development of competitive retail electric markets, and to enable the Commission to identify measures it can take to further the development of the electric market as envisioned by the Electric Competition Act. The information that the Commission requires EDCs to report is critical to the success of these goals. To this end, the Commission proposes to require EDCs file reports on a quarterly basis.³ RESA supports the quarterly filing frequency for all EDCs whether or not a particular EDC continues to operate under rate caps. Those EDCs still under rate caps may not have many statistics to report, therefore requiring all EDCs to report quarterly prior to expiration of all rate caps will not be

³ See proposed 52 Pa. Code § 54.203(a)(5).

burdensome, and all of them will soon be operating without rate caps. RESA also recommends that Commission consider the following suggested changes to the substance of the EDC reports.

First, EDCs should be required to report information regarding smart meters. Smart metering will play a pivotal role in the advancement of the competitive retail market and in the ability of Pennsylvanians to conserve energy and reduce peak demands, which will exert downward pressure on electricity prices generally. The more information customers have about their consumption, the better they will be able to manage their energy usage with products and service brought to them by EGSs. It is imperative that the Commission monitor the deployment of smart metering technology and require EDCs to report the information necessary to do so. Similar to Texas, EDCs should be required to provide information regarding the number of advanced meters installed, listed by electric service identifier (i.e. specific location), as well as any other available information including county, city, zip code, distribution feeder numbers or other easily discernable geographic identification available to the EDC.⁴

Second, pursuant to 52 Pa. Code § 54.187(b), EDCs can only offer Default Service customers a single rate option. RESA supports this requirement and believes that the goal of establishing a truly competitive retail electric market will not be advanced if an EDC is allowed to offer products and services other than Default Service. However, in one recent case, the Commission waived this section and permitted an EDC to offer products in addition to its Default Service product.⁵ In the event that the Commission may choose to waive this regulation

⁴ 16 Tex. Admin. Code § 25.130(d)(9)(A). Available at <http://www.puc.state.tx.us/rules/subrules/electric/index.cfm>

⁵ *Pennsylvania Public Utility Commission v. UGI Utilities, Inc.*, Docket No. P-00072334, Order entered October 25, 2007. (UGI to provide residential default customers with several options for purchasing greater amounts of green energy). The Commission had previously approved an EDC-offered renewable product: *Pennsylvania Public Utility Commission v. PECO Energy*

in the future and permit EDCs to offer products in addition to their Default Service product, these EDCs should be required to report the same information that is required of EGSs offering similar products. Likewise, while EGSs are required to provide information regarding customers who are on different payment arrangements, such as auto-bill payments, EDCs are not required to report this information under the proposed regulations. However, this information should be reported by the EDCs for comparative purposes and because the more information that is provided by the EDCs about their customer base and customers, the more and better information is available to the Commission to assess market development. The Commission will get an accurate picture of the competitive marketplace only when the same information is reported by both EDCs and EGSs.

Finally, the Commission should require EDCs to provide information about Default Service RFP procurement bids to allow the Commission, as well as customers and retail marketers, to better understand the relative cost components that determine the Default Service Price. While RESA is sensitive to the confidential nature of the RFP process and does not favor disclosure of bid-related documents that contain proprietary information, bid and process information could be made available after a reasonable cooling-off period, such as 3 months. Alternatively, RESA suggests that Commission staff assume responsibility to calculate and make public, at the end of each bidding process, the effective impact of the awarded contracts for the applicable delivery season. For example, the calculations should disclose the weighted supply

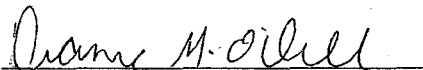
Company, Docket No. R-00016938, Green Mountain Energy v. PECO Energy Company, Docket No. R-00016938C0001, Orders entered January 24, 2002, and July 18, 2003, respectively (renewable energy product ("wind blocks") available to PECO's residential, commercial and industrial POLR customers). See also, West Penn Power Application for Voluntary Wind Energy Program, Docket No. P-00072349, Petition filed November 26, 2007 (West Penn Power seeking approval to partner with Community Energy Inc., to implement and market a wind energy program.).

price of both the current round of bidding and the most previous procurement, such as PPL did after the second round of its RFP procurement for 2010.⁶ The availability of this information will enhance the competitive marketplace by enabling EGSs to develop the best products suited for particular customers and customer classes.

IV. Conclusion

RESA requests that the Commission establish final regulatory reporting requirements as suggested by these comments to permit the Commission to fulfill its obligation to monitor and track the development of the competitive retail electric markets in Pennsylvania while safeguarding competitively sensitive EGS business information.

Respectfully submitted,



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Date: January 2, 2008

Counsel for the Retail Energy
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⁶ See PPL Press Release dated October 4, 2007.