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2648.

August 25, 2008

VIA HAND DELIVERY

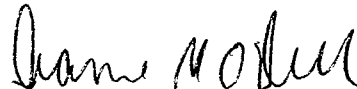
James McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
2nd Fl., 400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Retail Electricity Choice Activity Reports,
Docket No. L-00070184

Dear Secretary McNulty:

On behalf of Retail Energy Supply Association ("RESA"), enclosed for filing please find an original and three copies of its Petition for Reconsideration with regard to the above-referenced matter. Copies have been served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell
For WolfBlock LLP

DMO/lww
Enclosure

cc: Certificate of Service w/enc.

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing Petition for Reconsideration upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

VIA EMAIL & FIRST CLASS MAIL

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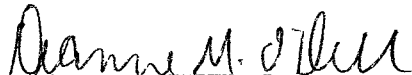
Kim Kaufman
Executive Director
Independent Regulatory Review Comm.
333 Market Street, 14th Fl.
Harrisburg, PA 17101

INDEPENDENT REGULATORY REVIEW COMMISSION

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Dated: August 25, 2008



Deanne M. O'Dell, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Retail Electricity Choice Activity :
Reports : **Docket No. L-00070184**

**PETITION FOR RECONSIDERATION OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

Pursuant to 52 Pa. Code § 5.572(a), the Retail Energy Supply Association (“RESA”)¹ asks the Commission to reconsider its August 8, 2008 Final Rulemaking Order which requires electric generation suppliers (“EGSs”) to report data regarding commercial and industrial (“C&I”) customers based on the rate schedules listed in the electric distribution company’s (“EDCs”) tariff or, for those EDCs without generation rate caps, based on the rate classification structure established by the Commission pursuant to a default service proceeding.²

In support of this Petition, RESA states as follows:

Background

1. On August 8, 2008, the Commission adopted a final rulemaking order to establish reporting requirements for electric distribution companies (“EDCs”) and electric generation suppliers (“EGSs”). The final rules were the result of a two and half year proceeding initiated by the Commission in April 2006 for the purpose developing reporting requirements to provide the Commission with timely information regarding sales activity in Pennsylvania’s electric

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 Retail Electricity Choice Activity Reports, Docket No. L-00070184, Final Rulemaking Order entered August 8, 2008 at 3-5; 52 Pa. Code § 54.203(a)(5) at Annex A, p. 5 (“*Final Rulemaking Order*”).

generation market. The information is intended to 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.

2. RESA has been active throughout the Commission's rulemaking processes under the *Electricity Customer Choice and Competition Act*³ 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.

3. In response to the proposed rulemaking which was entered on April 13, 2007,⁴ RESA provided comments advocating that: (a) the Commission ensure that EGS information be kept strictly confidential, even on an aggregate basis, (b) EDCs be required to provide EGSs with PLC values in billing usage data, (c) the Commission give EGSs flexibility in categorizing customers by product type, and (d) the Commission include reporting requirements regarding smart meter information, non-default service products, alternate billing customers and RFP procurement bid/process information.⁵ No reply comments were accepted.

4. On August 8, 2008, the Commission adopted the *Final Rulemaking Order* which set forth the final rules regarding the retail electricity choice sales activity reports. The rules will

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

⁴ Retail Electricity Choice Activity Reports, Proposed Rulemaking Order adopted April 13, 2007 (37 Pa.B. 5895) ("*Proposed Rulemaking Order*").

⁵ Comments of the Retail Energy Supply Association, Docket No. L-00070184 dated January 2, 2008.

now be submitted to the legislative standing committees, the Independent Regulatory Review Commission and the Attorney General for final approval.

Basis for Reconsideration

5. RESA respectfully requests that the Commission reconsider one issue in its final rules. That issue is requiring EGSs to classify C&I customers based on the EDC's rate classification or, where applicable, the default service plan classifications.⁶ Requiring EGSs, who report on a state-wide basis, to modify their systems to classify customers based on the specific EDC classifications would be costly, burdensome and time consuming and is not in accord with the Commission's stated goals regarding this issue.

6. In the *Proposed Rulemaking Order*, the Commission recognized that it has been unable to reach a uniform solution in various proceedings about grouping retail customers into categories based on rate classes or consumption. This inconsistency in consumption-based customer classification, according to the *Proposed Rulemaking Order*, adds to confusion and may increase the burden on companies in complying with regulatory directives. Consequently, the Commission concluded that a "standard classification should be established for use across the board" and adopted the use of a customer's Peak Load Contribution ("PLC") for determining how EDCs and EGSs should classify customers for reporting purposes. The PLC was chosen because it is uniform through the PJM.⁷

7. Comments were invited on the *Proposed Rulemaking Order*. In some EDC comments, they reported their concerns about their ability to use PLC classifications stating that

⁶ *Final Rulemaking Order* at 3-5; 52 Pa. Code § 54.203(a)(5) at Annex A, p. 5

⁷ *Proposed Rulemaking Order* at 12-13.

it would require costly programming changes and impose administrative burdens on the EDC.⁸ The comments of the EDCs did not recommend changes to the proposed PLC classifications for EGS reporting requirements nor did the EDCs address how their proposal would affect the ability of EGSs to comply with EGS reporting requirements. The Commission did not permit the filing of reply comments to address comments to the *Proposed Rulemaking Order* so RESA did not have an opportunity before now to provide input to the Commission regarding the suggestions of the EDCs on this issue.

8. Based primarily on the comments of the EDCs, the Commission's final rules abandon use of the PLC and require EDCs and EGSs to classify customers based on the EDC's tariff rate classification or, if applicable, the default service plan approved classification. The Commission did not address why requiring the change to EGS' reporting requirements was appropriate nor did the Commission provide any analysis about how the change would impact the ability of EGSs to comply with the new requirement.

9. Moreover, by making this change, the Commission reversed the policy goals articulated in the *Proposed Rulemaking Order*, i.e., to establish a standard classification to be used "across the board."⁹ Rather, the Commission's final rules require classifications based on the eleven different classifications of the eleven EDCs in Pennsylvania.

⁸ Comments of the Energy Association of Pennsylvania, Docket No. L-00070184 filed January 2, 2008 at 4-6. PECO supported use of the PLC but sought additional time to update its internal systems. Comments of PECO Energy Company, Docket No. L-00070184 filed December 21, 2007 at 5-6.

⁹ *Proposed Rulemaking Order* at 13.

10. For these reasons, reconsideration of the Commission's *Final Rulemaking Order* regarding the classification of C&I customers for EGS reporting purposes is appropriate in accordance with the standards for granting petitions for reconsideration.¹⁰

RESA's Concerns About the Final Rules and Proposed Alternative

11. The Commission's final rules impact the reporting requirements of the EGSs even though the change was made at the request of the EDCs. Under the final rules, the Commission requires EGSs to report information on a statewide basis. However, EGSs are required to classify customers on the basis of tariff rate schedules (for its customers located in those EDC service territories where rate caps have not yet expired) or default service plan customer groupings (for its customers located in those EDC service territories where rate caps have expired).¹¹ For EGSs who may operate in multiple EDC service territories, they will need to modify customer databases to account for multiple EDC-specific classifications for purposes of reporting.

12. In some cases, the regulations require EGSs to report on the basis of customer groupings approved under the EDC's default service plan.

Section 54.203 (a) (4): "An EGS serving customers in an EDC service territory that does not have capped generation rates shall report information for residential, commercial and industrial customers by rate class as defined by the default service program approved by the Commission."¹²

¹⁰ See *Duick v. Pennsylvania Gas and Water Co.* 56 Pa. P.U.C. 553 (1982).

¹¹ *Final Rulemaking Order* at 3-5; 52 Pa. Code § 54.203(a)(5) at Annex A, p. 5.

¹² *Id.*

However, the default service plans approved thus far have resulted in widely varying criteria for the different customer classifications. Under Duquesne's current default service plan ("POLR IV"), non-residential customers are broken into three groups: customers with peak demand over 300 kW, customers with peak demand between 25 kW and 300 kW, and customers with peak demand under 25 kW (in all cases the peak demand categories align with Duquesne's tariff rate schedules).¹³ However, in Allegheny's recently approved default service plan, non-residential customers are divided according to different characteristics: small non-residential (which includes customers on certain tariff rate schedules, but does not utilize a peak demand cut-off), medium non-residential (which includes customers on certain rate schedules with peak demand below 500 kW), and large non-residential (which includes all customers over 500 kW).¹⁴ For PPL, the default service plan customer classes are all based on existing tariff rate schedules.¹⁵ Therefore, to comply with these reporting requirements an EGS' systems and databases must be capable of sorting customers on the basis of different criteria for each EDC—in some cases based on peak demand, in some cases based on tariff rate schedule, and in some cases a combination of both.

13. Such data gathering and sorting will be very costly, logistically cumbersome, and potentially impossible for EGSs, many of which operate on a national basis and each of which generally categorizes their customers based on their own individual criteria. This cumbersome

¹³ Petition of Duquesne Light Company for approval of a Default Service Plan for the Period January 1, 2008 Through December 31, 2010, Docket No. P-00072247, Order entered June 22, 2007.

¹⁴ Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Retail Electric Default Service Program and Competitive Procurement Plan for Service at the Conclusion of Restructuring Transition Period, Docket No. P-00072342, Opinion and Order entered July 25, 2008.

¹⁵ Petition of PPL Electric Utilities Corporation For Approval of a Competitive Bridge Plan, Docket No. P-00062227, Opinion and Order entered May 17, 2007.

reporting requirement could also present a barrier to entry for some EGSs that may not have the information technology capability to meet the requirements. Moreover, this reporting structure will not provide the Commission with any meaningful data on the status of competition in Pennsylvania since the “commercial” and “industrial” reporting buckets will vary drastically from one EDC to the next, resulting in an “apples to oranges” categorization. Any enlightening trends in customer or EGS behavior will be hidden rather than revealed by the fractured nature of this kind of reporting.

14. As an alternative to the Commission's final rules requiring EGSs to classify customers based on the EDC's specific classifications, RESA proposes that the Commission require EGSs to classify customers into the following categories: “small non-residential,” “medium non-residential,” and “large non-residential.” For each category, RESA recommends that the Commission require EGSs to report on a volumetric basis, i.e. kWh basis rather than on a demand, i.e. kW basis, as follows:

Small Non-Residential	0 to 120,450 kWh annual usage (25kW * 55% load factor * 8760 hours in the year)
Medium Non-Residential	120,451 to 2,409,000 kWh annual usage (500 kW * 55% load factor * 8760)
Large Non-Residential	2,409,001 kWh annual usage and greater

15. Since all energy companies use kWh to determine the amount of energy used by a home or business for billing purposes, this information is readily available to all EGSs (and EDCs as well). The specific categories were calculated to generally capture how the Commission has classified customers in its policy statement.¹⁶ Therefore, a customer with 0 to

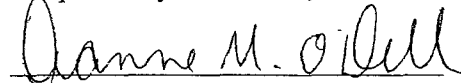
¹⁶ 52 Pa. Code § 69.1805.

120,450 kWh annual usage is intended to generally encompass nonresidential customers with less than 25 kW in maximum registered peak load. Likewise for the other two proposed classifications.

16. By adopting RESA suggestions, the Commission will be creating a manageable way for EGSs to report data on a statewide basis to provide the Commission with the information it needs. The Commission could also require the EDCs to report in this manner as they would also have the volume data easily available. In doing so, the Commission will accomplish the goal set forth in the proposed rulemaking to create a standard classification for use across the board. Further, the costs to implement this proposal would be minimal to both EDCs and EGSs and provide the Commission with the meaningful data necessary to monitor the competitive markets in Pennsylvania.

WHEREFORE, RESA respectfully requests that the Commission reconsider its August 8, 2008 Final Rulemaking Order which requires EGSs to report data regarding commercial and industrial customers based on the rate schedules listed in the EDC's tariff or, for those EDCs without generation rate caps, based on the rate classification structure established by the Commission pursuant to a default service proceeding. Rather, RESA recommends that the Commission adopt the approach set forth herein which is based on a customer's volume usage.

Respectfully submitted,



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Supply Association

Date: August 25, 2008