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INDEPENDENT REGULATORY
REVIEW COMMISSION

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OFFICE OF SMALL BUSINESS ADVOCATE
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

William R. Lloyd, Jr.
Small Business Advocate

(717) 783-2525
(717) 783-2831 (FAX)

September 4, 2008

HAND DELIVERED

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Dear Secretary McNulty:

I am delivering for filing the original plus fifteen copies of the Answer to Retail Energy Supply Association's Petition for Reconsideration, on behalf of the Office of Small Business Advocate, in the above-captioned matter.

Copies of the Answer have been served on Charles Covage and Patricia Krise Burket, via hand-delivery and electronic mail, as well as the parties listed on the enclosed Certificate of Service. If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink that reads "William R. Lloyd, Jr." in a cursive style.

William R. Lloyd, Jr.
Small Business Advocate
Attorney ID No. 16452

Enclosures

cc: Certificate of Service
Charles Covage
Patricia Krise Burket

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF THE
OFFICE OF SMALL BUSINESS ADVOCATE
TO RESA'S PETITION FOR RECONSIDERATION**

By Final Rulemaking Order entered August 8, 2008, the Pennsylvania Public Utility Commission ("Commission") adopted regulations to require electric distribution companies ("EDCs") and electric generation suppliers ("EGSs") to report shopping data. On August 25, 2008, the Retail Energy Supply Association ("RESA") filed a Petition for Reconsideration ("Petition") of the Final Rulemaking Order. Pursuant to Section 5.572(e) of the Pennsylvania Code, 52 Pa. Code §5.572(e), the Office of Small Business Advocate ("OSBA") answers the Petition as follows:

1. Admitted.
2. The OSBA is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 2. Therefore, those averments are denied and strict proof thereof is demanded.
3. It is denied that the Commission entered its Proposed Rulemaking Order in the above-captioned proceeding on April 13, 2007. The Proposed Rulemaking Order was actually entered on April 17, 2007. It is admitted that RESA provided comments and that the Commission did not accept reply comments. The remaining averments in Paragraph 3 are based on RESA's comments. As writings, those comments speak for themselves.

Therefore, no response to the averments regarding the substance of those comments is required.

4. Admitted.

5. The averments in Paragraph 5 constitute argument and a request for relief to which no response is required. If, and to the extent that, a response may be required, the averment that the requirement that EGSs report data regarding shopping customers based on specific EDC rate groups would be costly, burdensome, time consuming, and inconsistent with the Commission's stated goals is denied and strict proof thereof is demanded. Although RESA avers that this requirement would be costly, burdensome, and time consuming, RESA has provided no estimate of the costs or time involved. If the shopping statistics are to be meaningful, someone (the EGS, the EDC, or both) will have to incur costs. It is now nearly 32 months since the Commission adopted its Order Requesting Comments in this proceeding. The gathering of shopping statistics should not be further delayed on the basis of generalized, and unsupported, assertions about the "burden" EGSs will face. By way of further response, because the market price of default service electricity is likely to vary somewhat from rate group to rate group, an EGS's decision whether or not to compete for a particular customer is likely to rest, at least in part, on the default service rate available to that customer. Similarly, in order to convince a customer to shop, an EGS will likely need to provide that customer with a comparison of the rate the EGS would charge and the default service rate that customer would pay. Therefore, it is questionable whether requiring an EGS to report on the basis of the EDC rate group in which the customer is situated (for purposes of default service)

would require that EGS to gather significantly more data than the EGS would already be gathering as part of its normal business activities.

6. The averments in Paragraph 6 are admitted, except for the averment that the summary cited in the Petition appears on pages 12 and 13 of the Commission's Proposed Rulemaking Order. That averment is denied, in that the cited summary actually appears on pages 12-14.

7. It is admitted that the Commission invited comments on the Proposed Rulemaking Order. It is also admitted that the Commission did not accept reply comments and that, as a result, RESA did not have an opportunity to respond to the comments of other parties. The remaining averments in Paragraph 7 are based on the written comments of parties other than RESA. As writings, those comments speak for themselves. Therefore, no response is required regarding the substance of those comments.

8. The averment that the Commission failed to address the reason that the revised EGS reporting requirement is appropriate and the averment that the Commission provided no analysis of the impact of the revised reporting requirement would have on EGSs are denied. The Commission summarized its reasoning and addressed the cost impact on EGSs as follows:

The Commission concludes that this adjustment to the reporting requirements will provide relevant data for the analysis of the impact of default service on electric customer shopping without requiring costly programming changes or imposing additional administrative burden on EDCs or the EGSs. The EDCs are already using these rate schedules and should have readily available data on customer counts, shopping, etc. Likewise, the EGSs already know the applicable EDC rate schedule for each of their commercial and industrial customers, and will have this data

readily available so that only minimal costs will be incurred in reporting this data to the Commission.

Final Rulemaking Order, p. 5. The remaining averments in Paragraph 8 are admitted.

9. It is denied that “the Commission reversed the policy goals articulated in the Proposed Rulemaking Order.” Although the Commission departed from the goal of “a standard classification to be used ‘across the board,’” the Commission did not reverse its fundamental policy goals. Those policy goals were set forth in Section 54.201 of the proposed regulations and were adopted with minimal change in Section 54.201 of the final form regulations. The remaining averments in Paragraph 9 are admitted.

10. The averments in Paragraph 10 constitute argument, a conclusion of law, and a request for relief to which no response is required. If, and to the extent that, a response may be required, the averments are denied. By way of further response, the OSBA is opposed to reconsideration of the Commission’s August 8, 2008, Final Rulemaking Order, primarily because granting the Petition would delay the collection of important shopping data while the Commission considers possible revisions and (presumably) seeks additional public comments.

11. Admitted. By way of further response, the averments in Paragraph 11 imply that modifying customer databases would be costly and burdensome for EGSs. However, RESA has provided no estimate of the costs or time involved. Therefore, RESA should not be permitted to frustrate, or further delay, the gathering of shopping statistics by making generalized, and unsupported, assertions about the “burden” EGSs will face.

12. The averments in Paragraph 12 are admitted, except for the averment that the recently approved default service plan for Allegheny Power, i.e., West Penn, “does not utilize a peak demand cut-off” to divide “small non-residential” customers. That

avermment regarding West Penn's default service plan is denied and strict proof thereof is demanded. By way of further response, the small non-residential customers in West Penn are actually divided into non-residential customers with a peak load of up to 100 kW and non-residential customers with a peak load of 100 kW to 500 kW. See 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 the Restructuring Transition Period, Docket No. P-00072342 (Order entered July 25, 2008), p. 10.

13. The OSBA is without knowledge or information sufficient to form a belief as to the truth of the averments in the first two sentences in Paragraph 13. Therefore, those averments are denied and strict proof thereof is demanded. The averments in the third and fourth sentences in Paragraph 13 constitute argument to which no response is required. If, and to the extent that, a response may be required, the averments in the third and fourth sentences are denied and strict proof thereof is demanded. By way of further response, the EGS reporting requirement adopted in the Final Rulemaking Order will provide meaningful data. For example, in advocating for default service procurement contracts of less than one year in length, EGSs have on occasion argued that frequent default service rate changes will lead commercial and industrial customers to adjust their consumption in order to save money and conserve electricity. In response, the OSBA has suggested that volatile default service rates are simply a marketing tool for EGSs and that commercial and industrial customers have responded to hourly pricing by purchasing fixed price service from EGSs (without changing their consumption in any significant way). By reporting the number of its customers in each rate group by the type of product

sold to those customers, each EGS will be providing information to assist the Commission in evaluating the competing arguments of the EGSs and the OSBA.

14. The averments in Paragraph 14 constitute argument and a request for relief to which no response is required. If, and to the extent that, a response may be required, adopting the customer classifications proposed by RESA would cause considerable confusion. For example, an EDC would report its shopping statistics by customer classification (i.e., either the customer classes on which generation rates are capped or the customer classifications approved in the EDC's most recent default service proceeding). However, under RESA's proposal, EGSs would report on an entirely different basis. Consequently, it would be very difficult (if not impossible) to determine the portion of each EDC classification which is being served by each particular EGS and what product type is being purchased by a substantial number of the customers in each classification. Without that information, it would be difficult to respond to the arguments of a particular EGS in favor of so-called "pro-competition" proposals in a default service proceeding.

15. The averments in the first sentence in Paragraph 15 are admitted. The averments in the remaining sentences in Paragraph 15 constitute argument and a request for relief to which no response is required. If, and to the extent that, a response may be required, adopting the customer classification proposed by RESA would cause considerable confusion and would make it very difficult to address the need for, and merits of, "pro-competition" proposals offered by individual EGSs in default service proceedings.

16. The averments in Paragraph 16 constitute argument and a request for relief to which no response is required. If, and to the extent that, a response may be required, it is

denied that requiring EDCs to report on the same basis RESA is proposing for EGSs would “provide the Commission with the information it needs.” Adoption of the RESA proposal (especially if extended to EDCs) would result in the reporting of shopping data which matches up with neither an EDC’s current classes on which rates are capped nor the customer classifications approved in the EDC’s default service proceeding.

Furthermore, extending the RESA proposal to EDCs would inevitably lead to a request from one or more parties to litigate future default service proceedings on the basis of the RESA classifications rather than on the basis of the Commission’s default service regulations or on the basis of Commission precedent (set in individual default service proceedings). In addition, adopting the RESA proposal (with or without extending it to EDCs) would further delay the gathering of shopping data correlated to load profile.

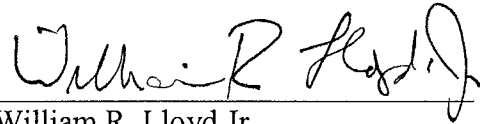
Such granulated shopping data is needed in order to enable the Commission to determine the need for, or merits of, “pro-competition” proposals offered by individual EGSs in default service proceedings. In its April 17, 2007, Proposed Rulemaking Order, p. 9, the Commission explained that point as follows:

More detailed reports would provide the information necessary for this Commission to monitor which EGSs and which customer classes are participating in retail markets. This information may also be used to gauge whether EDC and Commission policies and practices are fostering or hindering the development of competitive markets.

To delay the filing of that granulated data would not be in the public interest, especially in view of the failure of RESA to provide anything other than generalized, and unsupported, assertions about the “burdens” EGSs will face under the reporting requirement set forth in the final form regulations.

WHEREFORE, the OSBA respectfully requests that the Commission deny RESA's Petition and proceed with the promulgation of the regulations as adopted by the August 8, 2008, Final Rulemaking Order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William R. Lloyd Jr.", written over a horizontal line.

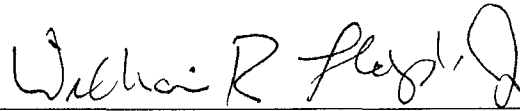
William R. Lloyd Jr.
Small Business Advocate
Attorney ID No. 16452

Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
(717) 783-2525

Dated: September 4, 2008

VERIFICATION

I, William R. Lloyd, Jr., hereby state that the facts set forth herein above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).



(Signature)

Date: September 4, 2008

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Certificate of Service

I certify that I am serving two copies of the Answer to Retail Energy Supply Association's Petition for Reconsideration, on behalf of the Office of Small Business Advocate by e-mail and first class mail (unless otherwise noted) upon the persons addressed below:

Jennifer L. Walker, Esquire
PECO Energy Company
2301 Market Street - S23-1
P. O. Box 8699
Philadelphia, PA 19101-8699
(First-class Mail only)

Donna M. J. Clark, Esquire
Energy Association of Pennsylvania
800 North Third Street - #301
Harrisburg, PA 17102
(First-class Mail only)

David T. Evrard, Esquire
Office of Consumer Advocate
555 Walnut Street - Fifth Floor
Harrisburg, PA 17101-1923
(717) 783-5048
(717) 783-7152
devrard@paoca.org
(Hand Delivery and E-Mail)

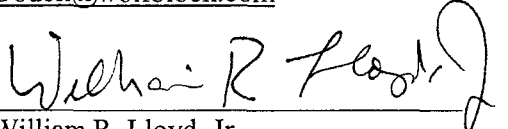
Mark C. Morrow, Esquire
UGI Utilities, Inc. - Electric Division
460 North Gulph Road
King of Prussia, PA 19406
(First-class Mail only)

Charles Covage
Bureau of CEEP
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-3835
ccovage@state.pa.us
(Hand Delivery and E-Mail)

Patricia Krise Burket
Law Bureau
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-3464
pburket@state.pa.us
(Hand Delivery and E-Mail)

Kim Kaufman
Executive Director
Independent Regulatory Review Commission
333 Market Street - 14th Floor
Harrisburg, PA 17101
(First-class Mail only)

Deanne M. O'Dell, Esquire
Wolf Block, LLP
213 Market Street - 9th Floor
P. O. Box 865
Harrisburg, PA 17108-0865
(717) 235-3744
(717) 237-7314 (fax)
Dodell@wolfblock.com


William R. Lloyd, Jr.
Small Business Advocate
Attorney ID No. 16452

Dated: September 4, 2008