Pike County Light & Power Co.

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Honorable Rosemary Chiavetta
Secretary
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, Pennsylvania 17105-3265

Re: Revisions to Code of Conduct at 52 Pa. Code § 54.122
Docket No. L-2010-2160942

Dear Secretary Chiavetta:

In its Proposed Rulemaking Order entered August 25, 2011 ("Order") in the above-referenced Docket, the Pennsylvania Public Utility Commission ("Commission") issued *Revisions to Code of Conduct at 52 Pa.Code § 54.122* in which the Commission seeks to revise the Competitive Safeguards subchapter of its customer choice rules. The proposed changes are intended to establish additional safeguards for a properly functioning competitive market.. The Commission has requested comments on the proposed changes to the regulations. Pike County Light & Power Company ("PCL&P" or the "Company") respectfully submits the comments set forth below.

1. Background

PCL&P is an electric distribution company ("EDC") serving approximately 4,700 residential and commercial customers in Pike County, Pennsylvania. For calendar year 2010, the electric requirements of PCL&P's customers were 79,000 MWH, with a peak demand of approximately 18 MW.

A significant portion of PCL&P's customers participate in the retail electricity market. Currently, approximately 67% of the customers in PCL&P's service territory take generation services from an electric generation supplier ("EGS"). This is the highest penetration rate in the state. The majority of customers who take EGS service are served by Direct Energy Service, LLC ("Direct Energy"). Most of these customers took service from Direct Energy pursuant to an aggregation program ("Aggregation Program")

initially approved by the Commission at Docket No. P-00062205[1] and remained customers of Direct Energy upon the Aggregation Program's expiration on May 31, 2011.[2] Today, only three EGSs offer service in PCL&P's service territory, one of which, Con Edison Solutions ("Solutions"), is affiliated with PCL&P through the companies' ultimate corporate parent, Consolidated Edison, Inc. ("CEI").[3] Solutions, which began providing competitive services in the PCL&P service territory in 2006, currently serves approximately *2%* of the customers in PCL&P's service territory. To the Company's knowledge, no EGS, customer or other party has complained to either the Company or the Commission that the Company has discriminated in favor of Solutions.

2. General Comments

The current regulatory framework, as set forth in the Competitive Standards at 52 Pa.Code §§ 54.121-123, is adequate to prevent an EGS that is affiliated with an EDC from gaining a competitive advantage over a non-affiliated EGS. Even if the Commission determines to implement additional safeguards, the proposed changes in the revised Code of Conduct appear overly broad and seek to address problems that have not been demonstrated to exist. To date, neither the Commission nor any other party has demonstrated that EGSs and their affiliated EDCs are engaging in patterns of behavior that would justify the significant restrictions contemplated by the revised Competitive Safeguards. As noted above, the Order's goal of preventing discrimination by an EDC in favor of its affiliated EGS is addressing a problem that does not exist in PCL&P's service territory. In the Company's view, the Commission would be better served by addressing those specific, documented occurrences of abuse.

In attempting to level the playing field, the proposed regulations will impose an unnecessary burden on affiliated EGSs. More important, by increasing the cost and difficulty for affiliated EGSs to do business in Pennsylvania, the proposed regulations risk causing these affiliated EGSs to curtail their activities in Pennsylvania, or exit the Commonwealth entirely. Implementing regulations that will serve to decrease the competitive options available to Pennsylvania customers hardly seems contrary to the Commission's long standing commitment to *increase* competition.

Overall, the Competitive Standards should apply solely to transactions and relationships between an EDC and an EGS that is owned either by that EDC or the EDC's immediate corporate parent. The fact that the EDC's corporate parent and the EGS are owned by the same company does not establish, in and of itself, a sufficient relationship to warrant the treatment of that EGS as affiliated.

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[1] *Petition of Direct Energy Services, LLC for Emergency Order Approving a Retail Aggregation Bidding Program for Customers in Pike County Light & Power Company's Service Territory*, Docket No. P-00062205 (Order entered April 20, 2006).

[2] *Petition of Pike County Light & Power Company for Expedited Approval of its Default service Implementation Plan*, Docket No. P-2008-2044561. The Commission determined that customers in Direct Energy's Aggregation Program at the conclusion of the second renewal term should remain customers of Direct Energy unless they affirmatively choose either another supplier or PCL&P's default service program.

[3] Con Edison Solutions and Orange and Rockland Utilities, Inc. ("O&R") are both wholly-owned subsidiaries of CEI. PCL&P is a wholly-owned subsidiary of O&R.

Should the Commission feel compelled to apply the Competitive Safeguards to all EDCs and their affiliated EGSs (no matter how distant the common ownership), these standards certainly should not apply when an EGS provides service in territories outside of its affiliated EDC's service territory. In such a situation, this affiliated EGS should be treated similar to EGSs that are not affiliated with an EDC.

In determining whether an EGS is affiliated with an EDC for purposes of applying the Competitive Standards, the relationship between the EGS and the EDC itself should be examined. The ultimate corporate parent of a combined group of companies should not be treated as an EDC for purposes of the regulations unless that parent is itself a Pennsylvania EDC. To do otherwise would expand the reach of the proposed regulations so that an affiliated EGS is now at a competitive disadvantage vis-à-vis a non-affiliated EGS any time both the affiliated EGS and the EDC belong to a combined group of companies. This would particularly be the case for example if the costs allocation manual requirements, discussed below, are applied to an affiliated EGS and the EDC that have no business relationship although the same ultimate corporate ownership.

3. EDC Identifier

Proposed regulation §54.122(3)(iv) would prohibit the use by an EGS of an EDC identifier, as defined in that section, that identifies or is owned by an EDC, unless the EGS provides a disclaimer and enters into a licensing agreement with the EDC. In determining what constitutes an EDC identifier, words, names, symbols, and marks of the EDC itself, and not of its corporate parent, are restricted. Solutions should not fall within the parameters of this section because it does not use an EDC identifier of either PCL&P or PCL&P's parent, O&R. Solutions, however, does make limited use of the name and registered mark of O&R's parent, Consolidated Edison, Inc. This tangential relationship, which doubtless has little or no impact on most Pennsylvania electric customers, should not trigger the requirements of this provision.

4. Same or Substantially Similar Name

Likewise, proposed regulation § 54.122(3)(v) prohibits an EGS's use of the same or substantially similar name as the EDC or its corporate parent. This prohibition should not apply to Solutions since it does not have the same or substantially similar name as PCL&P, the EDC, or O&R, PCL&P's corporate parent. As with §54.122(3)(iv) discussed above, there is no evidence that the relationship of Solutions and the Company to CEI has had, or will have, any impact on Pennsylvania customers or in any way disadvantage other EGSs. Solutions's miniscule share of the Company's retail electric market provides compelling evidence that the Company is not discriminating in favor of Solutions. Accordingly, the Commission should revise the wording of the first sentence of this section so that it reads as follows: "An electric generation supplier may not have the same or substantially similar name or fictitious name as the electric distribution company or its ***immediate*** corporate parent."

5. Cost Allocation Manual

Proposed regulation §54.122(4)(ii) requires an EDC and its affiliated EGS to document the business relationship between them in a cost allocation manual, which

should include contractual agreements; including the sharing of employees, and a log of business transactions between the EDC and EGS. However, an EGS that is not owned by the EDC is not strictly speaking affiliated to the EDC. This position is bolstered when, as is the case with PCL&P and Solutions, even though both ultimately are owned by the same entity (i.e., CEI), there is no business relationship that can be documented in a cost allocation manual. This is because there are no contractual agreements, shared employees or business transactions between the two companies.

As the Commission is aware, there currently exists, and has existed for decades, a Joint Operating Agreement ("JOA") between PCL&P (which has no operating employees), and its corporate parent, O&R, which sets forth in detail how various corporate services are to be provided by O&R to PCL&P. The JOA is on file with the Commission and was reviewed as part of the most recent PCL&P management audit. The JOA between PCL&P and O&R cannot create a business relationship between PCL&P and Solutions when Solutions is not a party to the JOA (or any other similar agreement with PCL&P).

6. Conclusion

For the reasons set forth above, PCL&P respectfully requests that the proposed regulations be revised, and their interpretation clarified, in the manner described above.

Thank you for your attention to this matter. Please contact me if you have any questions regarding this matter.

Very truly yours,

John L. Carley

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