

COMMONWEALTH OF PENNSYLVANIA

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**Comments before the
House Consumer Affairs Committee
on Pennsylvania's Retail Electricity Market**

Thank you for the opportunity to present comments regarding the retail electricity market. In summary, the Office of Small Business Advocate ("OSBA") recommends that neither the Public Utility Commission nor the General Assembly change the current default service model at this time.

1. Measuring Success

The success or failure of retail competition should be measured by whether customers have a reasonable opportunity to shop and not by how many customers take advantage of that opportunity.

There already is a significant amount of shopping by small business customers. For example, the Commission has calculated that more than 30% of Small Commercial and Industrial ("Small C&I") customers are shopping. That represents more than 55% of the Small C&I load.¹

¹ These numbers are from the "Weekly PAMeter Switch Update" on the Commission's web site. The Weekly PAMeter Switch Update divides customers into three categories: "Residential," "Commercial," and "Industrial." However, an analysis of the data reported by individual electric distribution companies indicates that "Commercial" on the web site actually includes small *industrial* customers and that "Industrial" actually includes large *commercial* customers.

Small C&I customers range from small shops and offices to large box stores, warehouses, and light manufacturers. As a result, generalizations are difficult. However, shopping is more prevalent among Small C&I customers that use large quantities of electricity than among Small C&I customers that resemble residential customers in the amount of electricity they use. There are two overriding reasons.

First, shopping requires a commitment of time and effort. The larger the customer's electric bill, the greater the incentive the customer has to look for savings.

Second, the larger a customer's electric bill, the more cost-effective it is for an electric generation supplier ("EGS") to market to that customer.

Unfortunately, data is not publicly available to analyze exactly which Small C&I customers are shopping, how many competitive offers they received, and how much (if any) money they are actually saving.

Some local chambers of commerce have been offering their members a chance to aggregate their loads in the hope of receiving a rate from an EGS for all members of the group that is lower than the default service rate. In addition, some individual business associations have at least explored the possibility of offering a similar service to their members. Furthermore, some chains (such as Sheetz) have aggregated the load of their various retail outlets in the hope of getting a bulk discount from an EGS. Therefore, before reaching a conclusion about the need for additional incentives to shop, the Committee should consider seeking comments directly from local chambers and from other business associations regarding their members' experiences with shopping.

2. “Leaving Money on the Table”

One of the principal arguments by proponents of changing the default service design is that non-shoppers are “leaving money on the table.” However, the evidence to support that argument with regard to Small C&I customers is unclear.

It is possible to find public information about the market share, prices, and demographics for products like automobiles and electronics. However, EGSs typically treat information about market share and customer demographics as confidential. The claim of confidentiality is especially prevalent with regard to non-residential customers. As a result, it is impossible for the OSBA to determine if certain-sized customers have the choice of only one EGS, multiple EGSs, or none at all.

Publicly available information about the rates charged by EGSs to non-residential customers is also hard to find. An EGS tends to offer the same products and prices to the residential customers of an electric distribution company (“EDC”). In fact, the competitive offers are posted on the Commission’s web site and sometimes are reported in the newspaper. However, there is no comparable release of information for Small C&I customers. Therefore, it is impossible for the OSBA to determine whether a particular EGS is offering a lower rate to some Small C&I customers than to others.

The Commission *may* have data regarding market share, price, and customer demographics for EGSs, but that data has not been shared with the OSBA. Consequently, the OSBA is severely handicapped in responding to the assertions by the Commission and EGSs that Small C&I customers are “leaving money on the table.” Without that information, it is also impossible for the General Assembly to conclude how

many Small C&I customers are “leaving money on the table.” There should be no redesign of Small C&I default service unless such data is made much more transparent.

Some of the assertions about “leaving money on the table” are likely to be based on the unique experience of PPL. Unlike PECO, MetEd, Penelec, and West Penn, PPL’s rate caps expired at the end of 2009 rather than at the end of 2010. In an effort to mitigate rate shock when the caps expired at midnight on December 31, 2009, PPL spread the purchase of electricity for 2010 over 2007, 2008, and 2009. For 2007 and 2008, PPL’s competitive procurements equated to retail rates for generation of more than \$.10 per kWh. However, when the economy collapsed in late 2008, wholesale electricity prices plunged. As a result, PPL’s competitive procurements in 2009 equated to retail rates for generation that were significantly lower.

Because PPL’s 2010 default service rates were based on an average of the procurements in 2007, 2008, and 2009, PPL’s Small C&I default service rate in 2010 was above \$.10 per kWh even though the market price of electricity equated to a retail price closer to \$.09 per kWh. If an EGS could not, or would not, compete for all types and sizes of Small C&I customers in the PPL service territory in 2010, it is questionable whether that EGS can, or will, ever compete for all types and sizes of Small C&I customers.

It is possible that Small C&I customers that did not shop in the PPL service territory in 2010 “left money on the table.” However, because they did not enter contracts as far in advance of delivery in 2011 as PPL did for 2010, the default service rates of the other EDCs were much closer to the market price of electricity than were PPL’s. Furthermore, because PPL is now contracting for electricity much closer to the

delivery date, its procurement prices are much closer to the market price. Therefore, the amount of money Small C&I customers may be “leaving on the table” in 2011 is likely to be far smaller than in the PPL service territory in 2010.

3. Magnitude of the Savings

Because their load profiles vary considerably, it would be incorrect to assume that all Small C&I customers (or even most of them) would save money if they shopped for electricity.

The market price of electricity is significantly higher on-peak, *i.e.*, when usage is highest, than off-peak. That means the market price of electricity is typically higher during the day than at night, during the work week than on the weekends, and during air conditioning season than during non-air conditioning season. Default service rates for Small C&I customers are based on the average consumption pattern of all Small C&I customers for which the EDC is buying electricity. Consequently, a Small C&I customer could *waste* money by shopping if the percentage of its usage on-peak is more than the average for its default service procurement group.

Furthermore, the argument that more Small C&I customers should shop ignores the competing demands for their time and attention and their need to concentrate on those aspects of their business operations that are most likely to improve profitability. The municipal aggregation agreement FirstEnergy Solutions (“FES”) negotiated with the City of Meadville illustrates that point.

FES promised a 4% discount from the default service rate for Small C&I customers with maximum peak loads of 25kW or below. A Penelec customer with a 25

kW maximum peak load would have saved \$31.26 per month. A Penelec customer with a maximum peak load of only 5 kW would have saved only \$3.13 per month.

It is questionable whether potential savings of that magnitude are sufficient motivation for the smallest of the Small C&I customers to devote the time and effort required to shop.

4. Opt-Out Assignment to EGS

EGSs frequently propose that shopping be stimulated by assigning Small C&I customers to EGSs through some type of auction process. In theory, such assignments would significantly reduce an EGS's marketing costs and lower the rate offered by the EGS. However, assigning Small C&I customers to an EGS on an *opt-out* basis would require amendments to the Public Utility Code.

Under current law, a customer automatically receives default service if the customer does nothing. Therefore, the Commission lacks the legal authority to force customers to act affirmatively to receive default service. In that regard, the Commission has already decided that opt-out municipal aggregation would violate the statutory prohibition against slamming.

PECO's Market Share Threshold ("MST") Program illustrates why the General Assembly should not amend the statute to allow the assignment of Small C&I customers to service from an EGS on an opt-out basis. Although Small C&I customers initially received a discount off PECO's default service rate, that discount disappeared for at least some customers over time. Unfortunately, many of those customers apparently overlooked or did not understand their contract renewal notices and, as a result, were unaware how their new contract rates would compare to the default service rate or to the

market price. Therefore, these customers allowed their contracts to be renewed simply by failing to opt out.

When the market price of electricity spiked in 2008, the OSBA began receiving complaints from Small C&I customers that had been assigned to EGSs through PECO's MST program. In fact, one of the Small C&I customers who complained to the OSBA was being charged \$0.28 per kWh in mid-2008, a rate that was more than twice the market price.

5. Unregulated EGS Rates

Most consumers are familiar with so-called "teaser rates," which offer a bargain price for a limited period of time but later turn into something other than a bargain. It is likely that some Small C&I customers ignore solicitations from an EGS on the assumption that those solicitations are just another "teaser rate." Ignoring those solicitations may be fortuitous.

Unlike default service rates, the rates charged by EGSs are not regulated by the Commission. Consequently, after the initial bargain-rate period, an EGS is free to charge whatever the market will bear. In theory, competitive alternatives, *i.e.*, buying from a different EGS or returning to default service, will hold the EGS's rates in line. However, the evidence suggests otherwise.

When the rate caps were still in effect, it was alleged to the OSBA on numerous occasions that a significant number of Small C&I customers assigned to EGSs through PECO's MST program could save money by leaving their EGSs and returning to PECO's capped default service rates. Although some of those customers did return to default service, many did not. The OSBA brought these allegations to the Commission's

attention, but the Commission declined to intervene, presumably because the customers assigned to EGSs through the MST program were now deemed to be shoppers whose rates were beyond the Commission's jurisdiction.

Assigning a customer to an EGS will not ultimately benefit that customer if, after the introductory period, the EGS can set the rate at whatever the market will bear. EGSs frequently point to "status quo bias" as a principal reason why some customers do not shop even if shopping could produce lower rates. However, as shown by PECO's MST Program, inertia is likely to keep an EGS's customer from shopping for a better deal from another EGS, or from returning to default service, unless the EGS's rates spike, thereby causing the customer to inquire into those rates. In effect, the *EGS* will be the beneficiary of "status quo bias."

Small C&I customers can also be misled by EGS marketing tactics. For example, the OSBA was contacted by a call center in Florida on behalf of an EGS. Apparently, the OSBA appeared on the list to be called because of the words "Small Business" in the office's name. The woman to whom I spoke claimed that PPL's default service rates were going up significantly in January 2011. When I asked her the basis for that claim, she faxed me a one-year-old PPL press release announcing the significant increase for January 2010 (with the expiration of rate caps), not for January 2011. The OSBA has no way to determine how many Small C&I customers decided to shop because they had no reason to question the accuracy of the EGS's representation. Once again, the OSBA brought this problem to the Commission's attention, but the Commission took no apparent action.

6. Goal of Competition Act

The Commission and the EGSs base much of their argument on what they claim to have been the General Assembly's intent when it enacted the Electricity Generation and Customer Choice and Competition Act ("Electric Competition Act") in 1996.

However, as someone who voted for the Competition Act, I believe most legislators were more interested in lower electric rates for their constituents than they were in the specific mechanism by which those lower rates would be achieved. For example, the Electric Competition Act made clear that the choice to shop, or not to shop, rested with the consumer.

Because of concerns about the end of rate caps, the General Assembly made a major effort to negotiate and pass Act 129 just three years ago to amend the original Electric Competition Act. Despite occasional claims to the contrary, Act 129 placed more emphasis on stable rates and on wholesale competition than had the original Electric Competition Act.

Act 129 protects a customer's right to shop but also protects the customer's right not to shop. However, the law also guarantees that the customer will receive default service at a competitive rate if the customer consciously chooses not to shop or if the customer simply overlooks or ignores the bill inserts, media messages, and telephone calls promoting shopping as a way to save money.

It is likely that some Small C&I customers are unaware of their shopping opportunities, are confused by the process, or both. The solution is to improve customer education. The solution is *not* to pressure those customers into shopping by ending

default service, by making default service rates “ugly,” or by assigning customers to service by an EGS on an opt-out basis.

The political mandate is to *reduce* the role of government. It would be inconsistent with that mandate to force customers to shop for electricity because the government has decided that shopping would be “good for them.”

I would be happy to answer any questions you may have.