BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RETAIL MARKETS WORKING GROUP

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE
ON DRAFT REFERRAL PROGRAM
OF JANUARY 5, 2010

I. INTRODUCTION

The Office of Consumer Advocate (OCA) welcomes the opportunity to submit Comments on the Proposed Guidelines for EGS Referral Programs (Straw Proposal) issued by the PUC Staff (Staff) to the Retail Markets Working Group (RMWG) on January 5, 2010. The OCA's Comments reflect its views both on Referral Programs generally and on the specific Straw Proposal for a Referral Program reflected in the Staff's January 5th proposal. Under the Straw Proposal, residential and small commercial customers that contact an Electric Distribution Company (EDC) are to be solicited for participation in a referral program where the EDC will enroll the customer with participating EGSs that offer an introductory discount of 7% off the EDC's default service rate for a period of two months. After the introductory discount, the EGS may charge the customer a price that it sets and may change its prices with 15 days notice. While some form of narrowly tailored information program may be reasonable and appropriate, the OCA strongly urges that the program contained in the Straw Proposal with "teaser" prices and requirements on EDCs to solicit and enroll customers not be entertained by the RMWG.

In general, it is the OCA's view that electric generation suppliers (EGSs) carry the primary role and responsibility for attracting customers to their specific products and services. The EGS has various means to make its products and services known to customers, through advertising, press releases, website postings, and the like. In contrast, the role of the electric distribution company (EDC) should be one of an unbiased provider of information to and educator of its customers about customer choice, including how to make an informed choice. The OCA submits that it is critical that the role of the EDC not be intertwined with the advertising and marketing of EGS products and services. Resulting customer confusion, complaints and dissatisfaction could quickly derail all efforts at fully educating customers or encouraging customers to consider choice. The role of the customer, then, is to consider the education, information and advertising presented and to make an informed choice. That choice, based on the customer's own circumstances, could be to choose an EGS that is offering pricing or services that meet their needs, to choose to remain with the default service provider, or to do nothing at all.

Within these parameters, if it is necessary, tailored customer information programs could be developed to try to assist in encouraging customers to make a choice and to facilitate that choice. The goal of these programs should not be to make a choice for the customer, but to make it as easy as possible for the customer to obtain the necessary information and respond to that information. The Straw Proposal put forth for the consideration of the Retail Market Working Group (RMWG), however, falls far outside of these parameters. The Proposal places the EDC into the role of performing EGS functions, including the solicitation of customers, rather than allowing the EDC to serve its role of providing education and information. Moreover, the Straw Proposal is inconsistent with the Commission's regulations regarding customer choice and switching of suppliers, and could impose additional costs on all customers with no demonstrated benefit. In the OCA's view, the Straw Proposal should be set aside and the RMWG efforts should be focused on a directed customer information program that is consistent with the roles identified above, the Commission's regulations, and the principles of competitive markets.

II. GENERAL COMMENTS

A. Experience With Referral Programs Should Be Considered In Determining A Cost-Effective And Reasonable Approach

Customer referral programs have been implemented, specifically in New York, but have not resulted in significantly more shopping by residential customers than what has been achieved in states that have not implemented such programs. Before considering the development of a program, particularly the type of program considered in the Straw Proposal, and before seeking to impose additional costs on customers, the RMWG should consider the experience in both Pennsylvania and other states.

In Pennsylvania, approximately 16.9% of PPL Electric's residential customers have switched to an EGS as of January 16, 2010. Additionally, in Duquesne Light Company's service territory, which has been out from under its generation rate cap for some time, about 20% of residential customers are currently served by an EGS. There has been no Referral Program in either service territory but there has been this high level of customer choice activity. While EGSs may question whether switching rates of around 20% is "high" for residential customers, the OCA submits that for residential customers this represents significant choice activity that is in line with or exceeds activity in most other states.[1]

In New York, many of the EDCs operate, or have operated referral programs for several years. While there is no published source that summarizes the details and costs associated with these programs, it appears that at least several New York utilities operate programs that offer to enroll customers in the utility's referral program and then allow the customer to specifically select an EGS or be assigned an EGS at random. Furthermore, offering an introductory 7% discount for at least two months is typical.[2] It would useful to obtain additional details on the New York utility disclosure obligations under these programs, whether certain contract terms are mandated, and the costs incurred to implement these programs and whether these costs are imposed on the utility's ratepayers.

Even with these referral programs in place, the statewide migration to alternative suppliers by residential customers has risen very slowly since 2007, from approximately 14% to approximately 16% as of January 2009.[3] The switching rate varies among the various electric utilities in New York, reflecting other factors that impact customer switching or migration rates in New York.[4] For example, Consolidated Edison's residential migration rate is 17.9% as of January 2009 even with a well advertised referral program that offers a 7% discount for two

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1 The only state that shows a higher level of residential customers being served by alternative providers is Texas. Texas, however, has followed a different restructuring model where there is no default service provider.

2 See, e.g., the Consolidated Edison referral program called PowerYourWay (http://www.coned.com/customercentral/energyrespower.asp#first) and the Central Hudson Gas & Electric's referral program called EnergySwitch (http://www.centralhudson.com/energy_choice/energy_switch.html).

3 See, http://www.dps.state.ny.us/Electric_RA_Migration.htm.

4 It is likely that the fact that suppliers in New York are exempt from sales taxes that utilities are required to include in their prices contributes to the ability of the suppliers to offer lower prices to their customers.

months to customers for agreeing to switch to an alternative supplier.[5] However, Central Hudson Gas and Electric Company offers the same program on its website, but its residential migration rate is much lower, approximately 5%.[6]

By contrast, in Connecticut, where there is no referral program, the most recent switching rate information available shows that 13% of Connecticut Light and Power's residential customers and 18% of United Illuminating's residential customers had switched to an alternative supplier as of November 30, 2009.[7] This level of switching was obtained without any formal Referral Program.[8]

It appears from the information in both Pennsylvania and other states that residential switching rates may not be increased in any substantial way by customer referral programs, including referral programs of the type included in the Straw Proposal. This suggests that a more tailored and cost-effective approach should be considered.

B. Approaches That Maintain The EDC's Role In Consumer Education Should Be Considered

As will be discussed in more detail below, the Straw Proposal suffers from significant problems and should not form the basis of any further discussions. The OCA submits, however, that there are initiatives that should be considered and further discussed in the RMWG. As noted above, in the OCA's view, the proper role of the EDC is to inform and educate customers of their right to choose their generation supplier and to refer customers to

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5 http://www.poweryourway.com/choosing_esco_residential.asp

6 http://www.centralhudson.com/energy_choice/energy_switch.html

7 See, http://www.dpuc.state.ct.us/electric.nsf/22bd353cdb8843d985257615005b5bcc/4d19e927ef8972d285257616005c73bf?OpenDocument

8 There is no information about supplier discounts or "referrals" on the Connecticut Light and Power website, but rather customers are informed generally about customer choice and referred to a statewide website that maintains supplier pricing information. See, http://www.cl-p.com/home/aboutclp/electricrestructuring/energychoices.aspx which refers customers to CT Energy Info at http://www.ctenergyinfo.com/

information or websites that would allow customers to compare offers and contact an EGS to enroll. The Commission has recognized this key role and directed EDCs to implement customer education programs to achieve a number of objectives and education about customer choice. One of the key objectives of this education initiative is to educate customers about their ability to choose an EGS for generation supply. The Commission has already approved EDC-specific education plans and a means for cost recovery of incremental education costs.[9] The OCA submits that these regulatory obligations, and the costs currently incurred by EDCs to implement their approved consumer education plans, should provide the foundation for any further discussion of EDC obligations concerning customer choice programs.

Enhancements in the consumer education messages and materials delivered by EDCs, enhancements to the links provided on EDC websites to websites with comparisons of offers, the further development of easy and rapid means of switching suppliers that maintain the essential protection of individual customer authorization, and the further development of information by the Commission on offer comparisons should all be discussed by the RMWG.

By way of example, the OCA currently maintains a website that presents residential customers with EDC default service prices and EGS prices and offers for each EDC service territory. This website reflects EGS data that is voluntarily provided to the OCA. The information is updated at least quarterly, but is updated more often if suppliers provide updated offers to the OCA. Since the end of the PPL rate cap, the PPL webpage has been updated almost

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[9] On May 10, 2007, the Commission approved a Final Order at Docket No. M-00061957 (entered on May 17, 2007) regarding policies to mitigate potential electricity price increases that follow the expiration of generation rate caps. The EDC consumer education plans must conform to eight education objectives, including two that directly relate to customer choice:

> …(6) Customers may reduce the size of their electric bills, or receive service options more suited to their needs, by purchasing generation service from an alternative electric generation supplier; (7) Current information that will allow customers to make informed choices about competitive generation alternatives is readily available. In territories where there are not competitive offerings currently, more choices may be available once rate caps expire.

daily. Because this website is only a reflection of residential customer shopping information, the RMWG may want to explore the development of a generic website that would include offers made to all customer classes and would be sponsored by the Commission or another entity. The OCA submits that exploring these options, and including any EGS offers for discounts or incentives to first-time customers in such presentations, could be an efficient and useful endeavor.

C. Deficiencies In The Straw Proposal

1. Introduction

While there are many significant problems with the Straw Proposal, the OCA will highlight here the five key problems with the Proposal: (1) the proposal dramatically changes the role of the EDC in a manner that detracts from its role in performing unbiased education; (2) the proposal conflicts with the Commission's regulations and the Public Utility Code regarding switching and customer choice; (3) the proposal presents practical problems for implementation; (4) the proposal is likely to increase costs to customers without any discernible benefit; and (5) the proposal may conflict with the development of a competitive market rather than enhance it.

2. The Straw Proposal Improperly Alters The Role Of The EDC As An Unbiased Education Provider

The Straw Proposal results in a dramatic and improper change in the role of the EDC. Under the straw proposal, the EDC would: (1) actively solicit a customer's interest in switching to an approved list of EGSs that offer a specific type of temporary discount, (2) offer to enroll the customer with a specific EGS or (3) offer to allow the EDC to enroll the customer with an EGS that is selected randomly.[10] This insertion of the EDC into the role of marketing for

[10] In the third proposal, the EDC would also implement the enrollment, issue certain disclosures, both orally and in writing to the customer, and supervise certain contract terms that must be offered by the EGSs participating in the Referral Program.

the EGS and assumption of the EGS's obligation to solicit and enroll customers is not appropriate.

To avoid customer confusion and to properly educate and inform customers, the EDC must be an unbiased educator. The OCA submits that the EDC should maintain a neutral role and inform customers through its website and newsletters that customers may obtain generation supply from a licensed EGS. Included within this information could be the educational message that some EGSs may provide discounts and bill credits to switch. Also included with this information could be a referral to any statewide website or the OCA's Shopping Guide where the suppliers' ongoing prices and other terms and conditions important to customers can be found.

The OCA submits, however, that the Straw Proposal goes too far. The Straw Proposal engages the EDC in "selling" the program and in essence, acting as a marketer or broker for the EGS. If a customer feels as if they have been sold on a program by the EDC, and then that program or service turns out badly for the customer, the EDC may lose credibility with the customer for all future messages. Removing the EDC from the role of unbiased educator may harm efforts to get valuable information to customers.

Moreover, the Straw Proposal could be read to require a discussion, or referral, in all customer contacts with the EDC. Such a requirement would be highly inappropriate. A utility customer should be able to call the EDC and discuss any matter relating to this essential service without being subjected to referral or discussions that they do not seek and that may not be in their best interests. While information regarding customer choice may be appropriate when a customer sets up new service or transfers service, any requirement that an EDC initiate these discussions or that a customer be randomly assigned based on a contact such as outage reporting, bill complaints or payment arrangements, would be highly improper. Not only would it potentially discourage customers from contacting the EDC, it would hamper the EDC's ability to resolve the issue that prompted the contact.

These additional duties would also impose significant additional burdens on utility call centers. This will slow down utility answering times and/or require additional personnel at customer expense.

3. Aspects Of The Straw Proposal May Violate The Public Utility Code And The Commission's Regulations

The OCA submits that certain provisions of the Straw Proposal threaten well-established customer protections found in the Public Utility Code and Commission regulations. In addition, the proposal to offer customers a "teaser" price (communicated by the EDC) to get customers to select an EGS raises significant concerns. When customers find out more detailed information about EGS charges and the price that goes into effect at the end of the discount period, these "teaser prices," and the use of such a mechanism communicated by the EDC, could leave a negative opinion about retail competition that could be hard to overcome.

The heart of the Straw Proposal is a requirement that the EDC assign a customer to an EGS participating in the approved program. This approach conflicts with the statutory and regulatory policies that require that a customer must affirmatively select an EGS. 66 Pa.C.S. § 2807(d)(1) and 52 Pa. Code § 57.173. Section 2807(d) states:

> CONSUMER PROTECTIONS AND CUSTOMER SERVICE-- The electric distribution company shall continue to provide customer service functions consistent with the regulations of the commission, including meter reading, complaint resolution and collections. Customer services shall, at a minimum, be maintained at the same level of quality under retail competition.
>
> (1) The commission shall establish regulations to ensure that an electric distribution company does not change a customer's electricity

> supplier *without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier*.

66 Pa.C.S. § 2807(d)(1) (emphasis added). Section 57.173 states:

> Customer contacts with EGSs-- When a contact occurs between a customer or a person authorized to act on the customer's behalf and an EGS to request a change of the EGS, *upon receiving direct oral confirmation or written authorization from the customer to change the EGS*, the contacted EGS shall:
>
> (1) Notify the EDC of the customer's EGS selection by the end of the next business day following the customer contact.
>
> (2) Upon receipt of this notification, the EDC shall send the customer a confirmation letter noting the proposed change of EGS. This letter shall include notice of a 10-day waiting period in which the order may be canceled before the change of the EGS takes place. The notice shall include the date service with the new EGS will begin unless the customer contacts the EDC to cancel the change. The 10-day waiting period shall begin on the day the letter is mailed. The letter shall be mailed by the end of the next business day following the receipt of the notification of the customer's selection of an EGS.

52 Pa.Code § 57.173 (emphasis added).

The provisions of 52 Pa. Code Subchapter M, Standards for Changing a Customer's Electricity Generation Supplier, and the provisions of 52 Pa. Code Chapter 54, Electricity Generation Customer Choice, govern the enrollment process and the disclosure obligations of the EGS. Pursuant to 52 Pa. Code § 57.172, when a customer contacts an EDC to request a change of EGS, the EDC is required to notify the customer to contact the EGS. Pursuant to 52 Pa. Code § 57.173, it is the EGS's obligation to obtain the customer's authorization to switch to the EGS and to notify the customer of the required contract disclosures pursuant to 52 Pa. Code § 54.5. When notified by the EGS, the EDC must also issue a notice to the customer and inform the customer of the 10-day period during which the selection can be cancelled pursuant to 52 Pa. Code § 57.173(2). Clearly, the Straw Proposal is inconsistent with these regulatory requirements as many of these EGS duties are shifted to the EDC under the proposal.

The Straw Proposal also appears to adopt specific contract terms and disclosures that would alter the EGS's obligations under the regulations. The Straw Proposal includes "EGS Contract Option Requirements" that are specifically addressed in Section III, below. Generally, the OCA submits that the individual EGS's contract with the customer should govern whether (1) price changes are allowed under the contract and (2) the manner in which customers will be informed of those price changes. See, e.g., 52 Pa. Code § 54.3, 52 Pa. Code § 54.5, and 52 Pa. Code § 54.43, which govern the disclosures obligations and contract term requirements for an EGS. Specifically, the OCA is strongly opposed to the proposal that an EGS can change the customer's price upon 15 days notice as it is inconsistent with the fundamental consumer protections found in the Code.

As can be clearly seen, the Straw Proposal is inconsistent with both the statutory basis of customer choice and the Commission's regulations. The statute and regulations require that a different model be considered.[11]

4. The Straw Proposal Does Not Adequately Address Customer Choice Procedures

Along with the statutory and regulatory problems, there are some practical problems that make the Straw Proposal unworkable. For example, the Straw Proposal allows an EGS to change its prices upon 15 days notice. Besides being inconsistent with the regulations, due to the time required to effectuate a change of service providers, this portion of the proposal

[11] The Commission has approved programs, such as the Market Share Threshold Program for PECO and the Competitive Default Service Programs that were based on an assignment of customers to participating EGSs. Those programs, however, were very different than the referral program in the Straw Proposal. Those programs were Commission-supervised and were based on fixed prices that had to be lower than the default service rate for the entire term. These programs did not use "teaser" prices where the customer could suddenly be charged more without their affirmative consent.

assures that the customer will pay the new price for at least a month whether they want to or not. If a customer is assigned to an EGS and is dissatisfied with the EGS's customer service or the subsequent price changes, the process of leaving the EGS and returning to the EDC's Default Service (or to another EGS) is time-consuming. A customer may have to wait 45 days (and even 60 days) for any switch order to be reflected on the monthly bill. This time frame does not account for the time it may take the customer to reach the EGS to cancel the service and the time needed for the EGS to submit the switch order. Furthermore, the customer may be obligated to pay termination fees included in the EGS contract if the customer attempts to cancel the service.

Another practical problem involves the potential for quarterly changing default service prices. While a 7% discount off of the default service price may seem simple to implement, if the discount period spans a quarterly price change period, there will need to be an adjustment in the billing. Additionally, quarterly price changes will make the comparison of any offers after the discount period much more complicated for the customer. In many, if not most, instances, the customer will not know the default service "price to compare" at the end of the guaranteed discount period when the referral is made. This will lead to difficulty in assessing the referral and the new service.

Further, now that the Commission appears to support the termination of essential electric service for unpaid EGS charges, even when those charges are higher than the default service rates, assigning customers through a referral program presents even greater problems. The chance that the EGS price will exceed the default service price at the end of the two month discount period is significant under this program, and as noted, the challenges of returning to default service can leave a customer subject to higher prices for more than a month. Customers may incur arrearages and face termination of essential utility service just from having been assigned to an EGS under this program. Such a result would be unconscionable.

These practical problems and others are likely to give rise to complaints and disputes that will threaten the customer acceptance of or interest in retail competition.

5. There Is No Basis To Impose An Unknown Amount Of Additional Costs On Customers For A Referral Program

The Straw Proposal calls for customers to bear an unknown amount of additional costs of this initiative even though there are no identified benefits for customers resulting from these efforts. Such an approach appears to conflict even with the referral program policies recently adopted in New York. For example, while the New York Commission originally approved utility-specific settlements in which the utility assumed some of the costs associated with the short-term discounts or incentives offered by the supplier, a more recent order by the New York Commission has ended that practice and required that the supplier fund the incremental costs associated with the utility implementation of referral programs.[12]

The OCA submits that in these difficult economic times, and with the rate increases already being imposed due to the expiration of the rate caps, the Energy Efficiency and Conservation Plans and the Smart Meter Plans, charging customers additional costs for such a referral program is wholly unreasonable.

6. The Proposed Referral Program Does Not Comport with Competitive Market Principles

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[12] Proceeding on Motion of the Commission to Review Policies and Practices Intended to Foster the Development of Competitive Retail Markets, Case 07-M-0458, Order Determining Future of Retail Access Programs (October 27, 2008). In this Order the Commission ordered suppliers (called energy service companies or ESCOs) to bear the cost of any promotional efforts beyond the utilities' basic outreach and education program that are intended to assist customers seeking to participate in retail access. Order at 2. The Commission terminated some retail access programs that are subsidized by ratepayers. The Commission encouraged utilities to continue existing referral programs, but conditioned such program on the supplier funding for the program, with only those suppliers that fund the program eligible for participation. Order at 13. The Commission's order is available on the PSC website: www.dps.state.ny.us

The OCA submits that any attempt by the RMWG or the Commission to standardize a particular amount or type of EGS discount or other marketing device designed to solicit first-time customers, is contrary to the principles of a competitive market. In a competitive market, it is up to the individual EGS to determine the proper level of marketing incentive to achieve its goals. The competitive market may produce a wide variety of discounts and potential bill credits designed to attract first-time customers. Yet, the Straw Proposal contains a specific type of marketing incentive—a 7% discount for a two-month period. This approach may limit, rather than enhance, the competitive market.

D. Conclusion

The OCA supports continued customer education and development of informative websites and materials to educate customers about electric shopping opportunities. The OCA strongly urges, however, that the program contained in the Straw Proposal (with "teaser" prices and requirements that EDCs solicit and enroll customers) not be entertained by the RMWG. This is because an EDC's role should be one of an educator; EGSs, not EDCs, have the primary responsibility for attracting customers to their specific products and services. The Straw Proposal will also cause customers to bear an unknown amount of additional costs even though there are no identified benefits for customers from these efforts. Additionally, aspects of the Straw Proposal may violate the Public Utility and the Commission's Regulations. For these reasons, plus those explained in detail below, the OCA requests that the Straw Proposal not form the basis of future discussions.

II. SPECIFIC COMMENTS ON THE PROPOSED GUIDELINE FOR EGS REFERRAL PROGRAMS

In this Section, the OCA will address its specific concerns with Straw Proposal. Any comments regarding individual portions of the proposal should be considered in conjunction with the OCA's general comments in Section I. In this Section, each Straw Proposal section will be listed in its entirety (in italics) with the OCA's specific comments immediately following.

PROPOSED GUIDELINES FOR EGS REFERRAL PROGRAMS

1.) *Effect of EGS Participation.*

An EGS's participation in an EGS referral program shall not restrict its freedom to continue making offers and enrolling customers outside of the requirements of the program.

The OCA submits that this provision would allow an EGS to make different offers to customers than what it is currently offering in the referral program. The OCA is concerned that this could create customer confusion if the EGS has two or more different offers extended to the same customer group. If, for example, an EGS is marketing to residential customers and offers a specific benefit to first-time customers who enroll through the program, it is the OCA's view that the EGS should not also market to the same residential customer group (i.e., first-time enrollees) in the EDC's service territory for the same service either without such a benefit or with a different benefit. To avoid unnecessary customer confusion, the OCA recommends that the Commission require that each EGS provide consistent incentives if they participate in any referral program.

2.) *Selection of an EGS.*

Customers participating in a referral program shall be permitted to affirmatively choose a specific EGS. Customers that do not express a preference will be assigned at random, on a rotating basis, to an EGS drawn from the list of participants in the program.

The OCA does not support the Straw Proposal wherein the EDC enrolls a customer with an EGS, whether specifically chosen by the customer or assigned at random. Additionally, the OCA does not support any obligation imposed on the EDC to promote specific suppliers or specific discounts and bill credits associated with switching. Rather, as was mentioned above, each EDC should maintain a neutral role and inform customers through its website and newsletters that customers may obtain generation supply from a licensed EGS and that some of these suppliers may provide discounts and bill credits to switch. (See also 4., below). Switching to the supplier, including the obligations for disclosure and proper enrollment, should remain with the EGS as required by the regulations. 52 Pa.Code §§ 57.172-57.174.

3.) Eligibility

Eligible customers for the program shall be those customers under utility rate schedules for residential and small commercial.

The OCA is unsure why customer referral programs would be limited solely to residential and small commercial customers.

4.) Enrollment.

Utilities shall enroll customers into a referral program on behalf of EGSs, and may accomplish enrollment through a telephonic process implemented by their call centers. Utilities shall retain, for a period of six months, a recording of the conversation where the customer agrees to participate in the program. Utilities may also accomplish this enrollment via a dedicated webpage to the referral program. For customers who do not have internet access, those customers may be offered an available hard copy mailing providing the options available under the programs. Within three days of enrollment, utilities shall send the customer a letter, drafted in conformance with the standards established in the Referral Program Enrollment Letter, confirming enrollment, and shall, in an EDI transaction, notify the EGS of the enrollment.

The OCA submits that a program in which the EDC enrolls customers with an EGS is inconsistent with Commission regulations. Pursuant to 52 Pa. Code § 57.172, when a customer contacts an EDC to request a change of EGS, the EDC is required to notify the customer to contact the EGS. Pursuant to 52 Pa. Code § 57.173, it is the EGS's obligation to obtain the customer's authorization to switch to the EGS and notify the customer of the required contract disclosures pursuant to 52 Pa. Code § 54.5. When notified by the EGS, the EDC must issue a notice to the customer and inform the customer of the 10-day period during which the selection can be cancelled pursuant to 52 Pa. Code § 57.173(2).

The OCA supports educational initiatives by the EDC to inform customers about customer choice and, where available, inform customers in these materials about the potential for obtaining a one-time discount or other benefit from an EGS if a first-time customer enrolls with an EGS. The EDC should also inform its customers about the availability of the OCA's Residential Customer Shopping Guide and provide a direct link to the OCA's website (or to a Commission-run website) for this information.

The OCA also submits that an EDC should be limited to providing information in specific circumstances. The OCA recommends that the utility offer customers the option to learn about customer choice when a customer contacts the utility to: (1) initiate new service or move to a new location, or (2) make an inquiry regarding rates or how to lower their utility bill. In addition, the utility's website should prominently provide a link for customers to learn about customer choice. When a customer calls to report an outage or service problem, or calls with billing problems or payment problems, they should not be subjected to referral or mandated discussions on customer choice. Therefore, the OCA would not support any requirement that the EDC specifically engage in discussions of its referral programs or EGS offers in the context of conducting such contacts with customers. Such obligations are likely to increase EDC costs and hamper the customer's ability to conduct the transaction or obtain the information for which the customer initiated the call. The OCA submits that consideration could be given to having the

EDC insert an option in its automated calling systems for the customer to select to learn about customer choice options and how to obtain additional information.

5.) The Introductory Period.

EGSs participating in a referral program shall offer all customers referred to them the introductory discount of 7% for the introductory period of two months. This discount will be based on the existing default service rates of the utility. Customers may withdraw from the program during the introductory period upon notice. Customers shall be eligible for one introductory offer every three years.

The OCA strongly opposes this provision and approach. The use of such "teaser" discounts are clearly contrary to consumer protection laws and principles. Such discounts, which typically result in customers paying a higher price after the short period, are not something that EDCs should promote or encourage. Additionally, the specification of a discount by the Commission is contrary to the notion of a competitive market. Each EGS should be able to conduct its own marketing research, develop its own program and determine the kind or quality of benefit that it will choose to offer new customers.

6.) The EGS Contract

The utility will enroll the customer and the EGS will, within five days of utility notice of enrollment, provide the customer with a sales agreement governing both the introductory and post-introductory periods. That contract must conform to the principles established in the EGS Contract Option Requirements, and will take effect unless rescinded telephonically, electronically, or in writing, by the customer by the end of the first month of service under the EGS. The deadline date for a decision to rescind the contract must be conspicuously listed on the sales agreement

The provisions of 52 Pa. Code Subchapter M, Standards for Changing a Customer's Electricity Generation Supplier, and the provisions of 52 Pa. Code Chapter 54, Electricity Generation Customer Choice, regarding the enrollment process and the disclosure obligations of the EGS should be adhered to. Additional disclosure requirements may be necessary based on the form of any referral program adopted, but at a minimum, the requirements in the regulations must be met. The Straw Proposal appears to allow the EGS to avoid these regulatory requirements.

7.) EDI Confirmation of Transactions.

Under the EGS Contract approach, at the time the EGS sends the utility an EDI price change, the EGS will be deemed to affirm and represent that it has given its customer proper notice of the price change.

The EGS contract should govern whether price changes are allowed under the contract and the manner in which customers will be informed of those price changes. The Commission's regulations detail disclosure obligations and contract term requirements for an EGS and should not be modified. See, e.g., 52 Pa. Code § 54.3, 52 Pa. Code § 54.5, and 52 Pa. Code § 54.43. The Straw Proposal appears to modify these requirements.

8.) Incremental Costs

Costs for the administration of this program by the utilities shall be recovered through a Retail Markets Surcharge. This charge shall be non-bypassable and shall applicable to all customers within the residential and small commercial rate classes.

The OCA objects to any additional costs being imposed on customers for this program other than the already-approved EDC consumer education plan costs and the cost recovery mechanisms approved in those individual EDC plans. The Straw Proposal would result in additional administrative costs of an unknown and potentially significant amount for implementation and maintenance of these programs that should not be borne by customers. There is no research supporting a finding that such a referral program would, in fact, increase shopping. Especially in these economic time, and given the additional non-bypassable expenses of the Act 129 Energy Efficiency and Conservation Plans and Smart Meter Plans and the expiration of the rate cap, customers are or will soon face significant increases in their monthly electric bills. To add an additional and unsupported expense is wholly unreasonable.

9.) Website

Utilities shall create and run a dedicated webpage for the referral program. This webpage shall contain utilities' existing rates (or PTC), a list of the EGSs participating in the referral program, the EGSs' introductory discount rate, and post-introductory period rate offerings for each EGS. The website shall be technologically sufficient to enroll customers into the referral program online, including the ability to randomly assign customers to an EGS who do not desire to pick a specific supplier.

The OCA submits that the requirement that each EDC develop their own website to inform their customers of EGS offers being made to their customers is not appropriate. Besides being inefficient and potentially costly, such an approach would put the EDC into the position of obtaining accurate and up-to-date lists of supplier offers and various components of their pricing offers may cause the EDC to be the subject of complaints or accusations should an error be made or a supplier offer inadvertently not be included. In addition, supplier offers can change rapidly and any list of offers and prices could easily be out-of-date within days of its issuance.

The OCA suggests that residential customers be referred to the existing website maintained by the OCA in which EGS offers to residential customers are maintained for each utility and updated regularly. The EDC website should contain well marked and easily located direct links to the OCA website. In addition, written education material provided by the EDC on customer choice should contain the OCA's website address and toll free telephone number.

The OCA would also note that Pennsylvania may want to develop and sponsor a state-wide website, such as that operated in New York (where the Commission maintains a Power to Choose website that allows gas and electric customers to see current offers by customer class and by utility)[13] and Connecticut[14] which allow the customer to see which suppliers are making offers in their area. The Connecticut website allows the customer to see the price differential and savings, if any, based on a calculation of average bills. Such a website could include up-to-date information on prices and other key aspects of supplier offers, such as termination fees, security deposits, and other recurring or non-recurring charges that the EGS includes in its contracts.

10.) Promotion

Utilities and EGSs shall promote referral programs by providing customers with accurate information through the Internet, a dedicated toll-free telephone line, media advertising, direct mailings and other appropriate means. All informational materials promoting a referral program must conspicuously disclose that the savings offered during the introductory period are not guaranteed beyond that period.

The OCA does not object to continued education by EDCs and the Commission concerning customer choice and how to find additional information about specific EGS offers, including the potential for discounts for first-time customers. EDCs should not be required to "promote" introductory offers or referral programs as this conflicts with the EDC's role in educating consumers.

REFERRAL PROGRAM ENROLLMENT LETTER

A utility's enrollment confirmation letter to a customer participating in a referral program shall include the following:

1. *The effective date of the enrollment, and the name of the EGS that will provide the service.*

2. *A description of the introductory discount, including the method of calculation, and the length of the introductory period.*

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13 http://www3.dps.state.ny.us/P/PTCNY.nsf

14 http://www.ctenergyinfo.com/display_rates.htm

3. *Identification of the location of the discount on the customer's bill, and a notice that utility budget billing arrangements for residential customers will continue or can be initiated.*

4. *A notice informing the customer that the EGS will contact the customer soon to offer it a sales agreement, and describing the effect of the sales agreement under the EGS Contract approach to the referral program, including the provisions for return to utility service.*

5. *A notice informing the customer of its right to withdraw from the program during the introductory period upon notice.*

6. *A description of the utility's roles and responsibilities as the delivery service provider and the utility's contact information.*

7. *A description of the Commission's consumer complaint procedures available to EGS customers, and information on contacting the Commission with a complaint about an EGS.*

The OCA submits that requiring the EDC to issue this enrollment letter to a customer of an EGS is inappropriate and at odds with plain language of the Commission's regulations. Pursuant to 52 Pa. Code § 57.173 and 52 Pa. Code § 54.5, that obligation rests solely with the EGS.

EGS CONTRACT OPTION REQUIREMENTS

The contract the EGS provides the customer under the EGS Contract approach must provide for the option to rescind service (past the 2 month introductory period) by the end of the first month of service under the EGS, conform to the provisions of the utility enrollment letter that are effective during the introductory period, and reflect the following principles for the period after the introductory period ends.

1. *The term of the sale agreement shall be month-to-month, allowing either party to cancel upon notice consistent with that term.*

2. *The price for electric commodity service shall be set under an "open price" provision allowing the EGS to change its price upon 15 day's notice to the customer, with that notice provided at least 30 days prior to the customer's next scheduled meter read.*

3. *Notwithstanding any other provision of the contract, the customer shall be allowed to cancel the contract within the 15 day notice period of a price change from an EGS.*

4. *The customer may cancel the contract without payment of a penalty or termination fee to the EGS. If notice of cancellation is not given at least 15 days prior to the next scheduled meter reading, the customer may request a special meter reading, which is typically subject to a service charge.*

5. *The EGS must give 30 days notice, provided 30 days before a meter read, before it may assign a customer's contract to another service provider.*

6. *Any change to the contract, other than to the open price provision, shall require the customer's affirmative consent, documented either by telephone, electronically or in writing.*

The OCA does not support the suggestion that the Commission should establish certain contract terms for an EGS that chooses to offer a discount or other benefit to first-time customers. Furthermore, the OCA is strongly opposed to the proposal that an EGS can change the customer's price upon 15 days notice. This notice provision is contrary to 52 Pa. Code. § 54.6, which sets forth the disclosure obligations of an EGS for fixed and variable price agreements. See, e.g., subsection (g) which requires the EGS to make certain disclosures to customers with fixed price agreements in the event there is a change of terms.

III. CONCLUSION

The OCA appreciates the opportunity to provide its initial position on this series of proposals. The OCA remains extremely concerned about the practical and financial impacts of these proposals on residential utility customers and requests that the RMWG reject the Straw Proposal and consider alternative methods of informing and educating customers about electric choice.

Respectfully Submitted,

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Dated: January 26, 2010
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