

**BEFORE THE
PENNSYLVANIA PUBLIC SERVICE COMMISSION**

**Investigation of Pennsylvania’s
Retail Electricity Market**

I-2011-2237952

**COMMENTS OF BLUESTAR ENERGY SERVICES, INC. d/b/a/ BLUESTAR ENERGY
SOLUTIONS**

INTRODUCTION

BlueStar Energy Services, Inc., d/b/a BlueStar Energy Solutions (“BlueStar”) welcomes and appreciates the opportunity to comment on the Commission’s above-referenced investigation to “ensure that a properly functioning and workable competitive retail electricity market exists in the state.”¹ BlueStar is an independent retail electricity supplier – unaffiliated with any utility – supplying electricity to residential and business customers. One of the fastest-growing independent energy suppliers in the United States, BlueStar provides a wide array of energy solutions including retail electricity supply and is operating in Illinois, Pennsylvania, Delaware, Maryland, New Jersey, Ohio and Washington, D.C. BlueStar also provides energy efficiency services nationwide. BlueStar, based in Chicago, is now providing residential electric service in Illinois and Pennsylvania. Consistent with the legislative mandate that “competitive market forces are more effective than economic regulation in controlling the cost of generating electricity²,” the Commission is correct in trying to identify and remove barriers that hinder the development of a competitive retail electric market for the benefit of all Pennsylvania residents. The legislature has indicated the current monopoly-based market design is transitional in nature and should be replaced with “end-state” market design that is based on competition, consistent with a stated preference for consumers to receive their generation services from the competitive

¹ Investigation of Pennsylvania’s Retail Electricity Market, Docket No. I-2011-2237952 (April 28, 2011)(“Order”)

² See 66 Pa. C.S. § 2802(5).

market.³ At its April 28, 2011 public meeting, the Commission adopted an Order⁴ in the above-captioned proceeding to begin a statewide investigation “with the goal of making recommendations for improvements to ensure that a properly functioning and workable competitive retail electricity market exists in the state.”⁵ The genesis of this investigation grew out of the FirstEnergy – Allegheny Power merger.⁶ According to the Order, the investigation will be conducted in two phases with the first phase assessing the state of the current retail market and determining what, if any, changes are needed to expand the benefits of competition. In this regard, the Order seeks comments on eleven questions designed to assess the current state of the retail electric market. Phase two will use work groups organized by the Commission Staff to resolve the issues identified in phase one. BlueStar applauds the Commission for undertaking this timely investigation. Fortunately, transforming the retail electric market is not new for Pennsylvania. The shift in the regulatory paradigm began in 1996 with the adoption of the Electricity Generation Customer Choice and Competition Act.⁷ When Act 129 was adopted, the General Assembly adopted a model based on competition and customer choice. Specifically, the General Assembly concluded:

...

(3) Because of advances in electric generation technology and Federal initiatives to encourage greater competition in the wholesale electric market, it is now in the public interest to permit retail customers to obtain direct access to a competitive generation market as long as safe and affordable transmission and distribution service is available at levels of reliability that are currently enjoyed by the citizens and businesses of this Commonwealth.

...

(5) Competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.

³ Id. at § 2802

⁴ Investigation of Pennsylvania’s Retail Electricity Market, Docket No. I-2011-2237952 (April 28, 2011)(“Order”)

⁵ Order at 2 (citing the Merger Order at 46).

⁶ Joint Application of West Penn Power Company d/b/a/ Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company and Trans-Allegheny Interstate Line Company, Docket Nos. A-2010-2176520 and A-2010-2176732 (Order entered March 8, 2011) (“Merger Order”)

⁷ 66 Pa C.S. §§ 2801-2812. Act 129 of 2008 subsequently amended Chapter 28 of the Public Utility Code and added Sections 2813-2815, (“Act 129”).

...

(7) This Commonwealth must begin the transition from regulation to greater competition in the electricity generation market to benefit all classes of customers and to protect this Commonwealth's ability to compete in the national and international marketplace for industry and jobs.⁸

...

As a result of Act 129, the retail electric market in Pennsylvania changed from a single integrated utility offering bundled services regulated by the Commission, to one based on a competitive market. By embracing this new approach, the promise of multiple suppliers offering consumers a variety of products and services has started to materialize with consumers being the ultimate beneficiary of this new approach. Now, fifteen years later, the Commission is asking itself what improvements are required to “ensure that a properly functioning and workable competitive retail electricity market exists in the state.”⁹

The challenge before the Commission is to determine what changes are required to further enhance the consumer benefits of a competitive retail electricity market. Parties will provide a mountain of data to support their position. However, intelligent individuals will review the same data and come away with differing points of view. For example, in the May 16, 2011 edition of MEGAWATT DAILY, an article documented the difference of opinion between Chairman Powelson and Commissioner Christy: “[W]hile Powelson sees the number of customers who have not switched and wonders why so many are paying a higher price for power, Christy sees the number who have switched as proof that customers in Pennsylvania have the best of both worlds. They have the opportunity to switch while having good protections in place if they choose not to leave their utility.”¹⁰

As it undertakes this important analysis, BlueStar encourages the Commission not to lose sight of the goals of Act 129 and the corresponding benefits consumers have obtained as a result of competitive retail electricity market. Historically, customer interaction with their utility was limited to ordering service, reporting an outage and paying their bill. Customers are now engaged, researching various supplier offerings and price points and are receptive to new services and pricing options. While some customers are only concerned with a low price for

⁸ *Id.* at § 2802

⁹ Order at 2.

¹⁰ *PA Regulators at Odds Over Retail Competition*, MEGAWATT DAILY, at 9, May 16, 2011.

electricity, others are becoming socially-conscious about the environment and are therefore interested in the source of power generation or fuel type, preferring renewable resource power (even if it costs more than traditional sources). Still others are excited about new programs and services such as net-metering, pre-pay options, on-bill financing, electric vehicles, and in-home energy management devices and services.

Consumers have seen the initial benefits of competition and are demanding different products and services from suppliers. However, the retail electric market is a relatively nascent one and the Commission must continue to adopt measures to systematically tear down barriers to competition. Some of these measures, which are discussed below, include:

- Establishing a plan whereby electric distribution companies (“EDCs”) no longer provide default service or serve in the merchant generator function;
- In the interim, modify the existing procurement process;
- Develop streamlined processes to deal with emerging competitive issues;
- Review and modify existing rules and regulations governing the interaction between regulated EDCs and their competitive EGS affiliates.

By adopting these measures the Commission will promote the policy objectives of Act 129 and customers will ultimately benefit through lower prices and increased choices.

An extremely informative survey was recently completed by Ecoalign¹¹ that BlueStar recommends the Commission review as it contemplates the current state of its retail electric market. This survey examined customer perceptions and attitudes with respect to customer choice. Some of the conclusions are:

- Americans are not particularly well informed about the prevalence or existence of electricity restructuring and over half are not aware that several states allow customer choice. This is especially true of younger Americans (18-54 years) and renters.
- When asked to indicate the response that was more important to them – “greater variety of choices” or “more competition,” men, older Americans and homeowners preferred “more competition. Women, younger Americans, and renters prefer “more choices.”

¹¹ *Resurgence for Retail Electricity Choice and Competition*, Survey Report, Issue 11, Ecoalign, April 2011.

- When asked what new services they would choose, half stated a strong preference for solar programs. Other services listed (by order of preference include): energy efficient lighting, budget billing and green pricing. A further breakdown shows that budget billing was more appealing to renters than homeowners and women more interested in green pricing than men.
- Americans would pay a little extra for electricity if they received the following (in order of preference): new and better products and services; faster restoration after outages; a more diverse fuel supply; convenience and no hassles; excellent customer service; and new payment and communications channels.
- With respect to their greatest concern about the electric industry, more than half stated that “electric rates increase too often.”
- Finally, the survey concluded that consumers prefer value over discounts; and, energy management over budget management.¹²

This survey demonstrates that consumers are interested in something more than basic electricity from a utility. The best way to satisfy these varied customer preferences is to rely on the competitive marketplace. This survey confirms BlueStar’s belief in the competitive market and the link between competition, technology innovation and environmental benefits. Any discussion of meeting consumer needs should not be viewed from the traditional monopoly perspective; but, rather from the perspective that competition will provide desired environmental, economic and technological benefits that consumers demand.

Below are BlueStar’s responses to the Commission’s questions. BlueStar notes from the onset, however, that its approach to this investigation is from the perspective of an electric generation supplier (“EGS”) unaffiliated with an EDC. First, as a competitive unaffiliated retail supplier, BlueStar is not under the protection of a large, multi-billion dollar corporation, whose funding has primarily been derived from guaranteed returns resulting from government regulation. Second, BlueStar must compete against affiliated EGSs and EDCs that have significant brand name recognition resulting from EDCs having access to every customer, stemming from 100 years of government protected monopoly service. Third, BlueStar’s risk is not cushioned by ratepayers. While EDCs have the legal right to seek and receive rate increases

¹² *Id.* at 3-4.

from customers to ensure that revenues cover their costs, BlueStar does not have a guaranteed revenue stream and must therefore work to assure that its investment will be recovered under competitive conditions. Finally, due to sharing of corporate resources, affiliated EGSs and EDCs are able to allocate excessive costs to monopoly services thereby subsidizing the costs of providing competitive services.

The Commission should fully analyze the EDCs competitive advantage resulting from their default service and their affiliated EGSs. A cursory review of suppliers in the United States reveals that a majority of commercial and residential customers are either a supplier affiliated with a utility or a Texas incumbent.¹³ These market realities raise discrimination and market power concerns that cannot be ignored by the Commission as it removes remaining barriers to competition.

BLUESTAR'S RESPONSES TO THE COMMISSION'S QUESTIONS

1. What is the present status of competition for retail electric generation for customers, by class and service territory, and for alternative suppliers?

BlueStar has been offering green and traditional products and services in various Pennsylvania territories to all customers since January, 2010 using a variety of pricing options including: fixed price all inclusive; seasonal fixed price for accounts >400kW; seasonal fixed price for accounts <400kW; index price; and a combination of both fixed and index price. Based on BlueStar's experience, the restructuring of the retail electric market in Pennsylvania has been a success. Pennsylvania has many suppliers, offering a variety of products at different price points to consumers. Published statistics as of May 25, 2001 from PAPowerSwitch website validates initial success of Pennsylvania's retail electric market:

- As shown on PAPowerSwitch, over 20% of total customers have migrated or 49.4% of total load.
 - This represents approximately 18.4% residential migration rate;
 - a 29.1% migration rate of commercial customers; and
 - A 59.5% migration rate for industrial customers.

¹³ See list of approved suppliers on Commission's website.

- Migration levels in PECO's territory were 306,697 total customers PPL's switching statistics lead the state with over 37% of residential customers, and 82% of commercial and 95.7% of industrial customer switching load to competitive suppliers;

While these metrics show the success of restructuring in Pennsylvania, they are simply numbers without any context and as such do not tell the whole story. For example, they do not show what could be achieved if the Commission, in conjunction with the General Assembly, undertook the next step in structural reform as contemplated in the law.¹⁴ Texas, on the other hand, has undertaken this type of reform and now is 100% competitive within the ERCOT areas. In this respect, it is instructive to compare the results of Pennsylvania with Texas, the most successful example of a competitive retail electric market. When compared to the undisputed industry leader, it is clear that Pennsylvania has a long way to go to achieve the policy goals established by the General Assembly in Act 129. As of January 1, 2011 Texas and Pennsylvania PUC revealed the following comparative statistics:

Reviewing the Texas Commission's website's Performance Measure Data, it is easy to see why the Texas ERCOT area is cited as the most active and advanced competitive retail market in the nation. Whether measured by number of competitors, migration levels or total load, Texas is by far the most competitive market. These statistics have been achieved largely because the restructuring model is unique from all other restructured states. Important differences include:

- **Business Separation.** Incumbents were separated into three legally and structurally separate entities. In some cases the incumbent companies were completely separated.
- **Default service pricing.** For the first 5 years, default service pricing was set through the Price to Beat, which enabled competition. Upon termination of the Price To Beat, the market was fully deregulated, which is unique in the U.S
- **PUCT Jurisdiction.** The Public Utility Commission is the only state commission that has primary jurisdiction over both the wholesale and retail electricity markets.

¹⁴ See Section §§ 2803, 2802(14) and 2806.

- **Single retailer model.** Texas law requires that the delivery companies effectively sell wires services to retailers that then re-sell the service to customers. Transmission and distribution companies in the Texas market have very limited interaction with customers. Consequently, the wires companies do not create competitive barriers in Texas, unlike other U.S. markets

While Pennsylvania has been successful with restructuring, Texas has achieved superior results, with more suppliers, greater number of residential products and higher switching rates. For these reasons, BlueStar recommends that the Commission closely evaluate the Texas model, including Texas’s approach to default service and procurement.

2. Does the existing retail market design in Pennsylvania present barriers that prevent customers from obtaining and suppliers from offering the benefits of a fully workable and competitive retail market? To the extent barriers exist; do they vary by customer class?

There are fundamental market design issues that must be addressed before consumers realize the benefits of a fully competitive market. Ultimately the EDC should exit the merchant generation and default service functions. In fact, Sections 2803, 2802(14) and 2806 recognize that “default service provider” explicitly includes “alternative supplier[s]” and “[t]he generation of electricity will no longer be regulated as a public utility function.” The Commission already has the authority to take these necessary next steps. Towards this end, the Commission should closely examine the Texas model where the EDC no longer serves in the commodity merchant role nor acts as the default service provider.

3. What are the economic and managerial costs associated with electric distribution companies (EDCs) fulfilling the default service role? Are the EDCs accurately passing those costs along to default service customers? Do default service rates include any elements that are not cost-based? Is an examination of distribution rates needed to ensure proper cost allocation? Are there barriers to competition as a result of having EDCs provide default service?

Section 69.1818 accurately defines default cost elements. However, BlueStar is reluctant to offer any opinion as to the accuracy or fairness of specific EDC cost allocations associated with individual cost elements. Short of a full unbundling

examination, it is impossible to know whether such costs have been fully and properly allocated so that consumers are not paying hidden cross-subsidies that ultimately harm customers and the development of competition. Requiring the utility to exit from the merchant and default service function would greatly mitigate such concerns.

4. Are there unintended consequences associated with EDCs providing default service, and related products, such as time-of-use rates?

As noted above, a default service function is not consistent with a fully competitive market. A successful retail market design requires market based rates that truly reflect underlying costs. As long as the utility remains in the merchant generation and default function will result in unintended consequence for the future structure and performance of the industry. Pressure for industry restructuring will continue to mount with calls for divestiture of utility assets to further diminish the high degree of vertical integration within the electric industry. In fact, whether the public utility industry can be vertically integrated and competitive at the same time has been a hotly debated issue among regulatory experts. As evident throughout the history of regulation, serious economic distortions have been caused when monopoly arrangements coexist with emerging competition.

At this juncture it is critical for the Commission to ask whether it envisions a world of competitive structure or merely competitive rivalry. Without a clear view of where we are going, it is impossible to predict how the future will unfold or to measure progress. A cloudy view could result in similar unsettling precedents found in airlines, gas, and telecommunications industries, where the country experienced a growing dominance of utility affiliates and the growth of convoluted corporate structures.¹⁵ Effective competition requires structural competition rather than mere competitive rivalry among suppliers.¹⁶ The end goal should be sustained equilibrium of competition that does not lapse back toward situation of monopoly abuse. In fact, history has shown that structural competition is the best way to mitigate consequences of market power.

¹⁵ See “Electric Utilities Learning to Compete,” Electric Utilities Moving Into the 21st Century (Arlington, VA: Public Utilities Reports, January, 1994), p. 51.

¹⁶ Id. At 49

- 5. Should default service continue in its current form? Does default service impede competition or otherwise prevent customers from choosing electricity products and services tailored to their individual needs? Does default service provide an advantage to the incumbent EDC and/or its generation affiliates?**

As discussed in more detail below, allowing utilities to remain in default service function is not sustainable long term; it inherently distorts the competitive playing field and stifles competitors' ability to offer innovative products and services at competitive prices. As result of the procurement process, the EDC's default service rate does not reflect current market conditions and therefore distorts the underlying cost to serve.

Default service also provides an inherent advantage to the incumbent EDC because the utility is placed as "gate keeper" between supplier and its customers. Today the utility is the interface between the supplier and the customer to effect customer change requests, billing and many other related customer information requests. Such a structure places an inordinate amount of control in the hands of the utility. Ideally, the competitive suppliers should have the primary interface with its customers while the utility has a limited role.

- 6. Can/should the default service role be fulfilled by an entity, or group of entities, other than the EDC? If the default service role should be filled by an entity other than an EDC, what mechanisms could be employed to transition the default service role away from the EDC and to competitive electric generation suppliers (EGSs)? Are different approaches appropriate for different customer classes? What criteria should be used to ensure that EGSs are qualified to assume the default service role and maintain reliable service?**

BlueStar recommends that default service should ultimately be provided by competitive suppliers. As noted earlier, the merchant function is already a competitive function, which suppliers provide today. Until this transition takes place, however, default services offerings should reflect more market-based rates so that consumers are provided an accurate basis to evaluate competing energy offerings.

- 7. How can Pennsylvania's electric default service model be improved to remove barriers to achieve a properly functioning and robust competitive retail electricity**

market? Are there additional market design changes that should be implemented to eliminate the state quo bias benefit for default service?

BlueStar does not accept the premise of this question. Perpetuating the *status quo* is not sustainable long term and mere tweaking of the existing default mechanism will not result in a robust competitive market.

8. What modifications are needed to the existing default service model to remove any inherent procurement (or other cost) advantages for the utility?

As mentioned earlier, BlueStar is an unaffiliated EGS and therefore comes to this proceeding with no inherent bias one way or the other with respect to default service; however, after reviewing the results from Texas, BlueStar recommends that the Commission should closely evaluate the Texas model and consider moving away from a default structure service. To the extent that elimination of default service is too extreme in the short run, BlueStar recommends that the Commission as a transitional measure should change the current procurement process and work to eliminate long-term procurement requirements.

The design and implementation of default service is a major issue that will impact the success of retail electricity industry. The Texas approach to default service is completely different than Pennsylvania's approach. In Texas, default service (called Provider of Last Resort "POLR" service) is provided by an entity chosen by the commission after a bidding process and is considered to be a short-term backstop service. POLR service is relatively high-priced, due to the costs associated with planning and the risk of serving an uncertain number of customers with uncertain electricity loads.¹⁷ The service is also a basic service offering and does not include any competitive service offerings, innovative rate structures, or options other than basic service. There is no procurement mandate for POLRs. Finally, EGS have the sole contact and retail relationship with customers. As a result, they perform all customer contact and billing functions, an issue that is discussed later in these comments.

Utilities in Pennsylvania procure default service supply using auctions, RFPs and bilateral contracts to procure a mix of spot, short-term, and long-term contracts spread over different time periods. This approach is designed to achieve the least cost to customers. While socially and politically acceptable, procurement requirements that include long -term contracts

¹⁷ Public Service Commission of Texas website.

are a barrier to competition. If the Commission hopes to expand consumer benefits in the short term, this type of default service pricing must be addressed. Long-term procurement requirements are the antithesis of market-based rates and are usually used to advance a political agenda (i.e., sustaining the renewable industry) or to mitigate residential and small commercial price changes (as the costs are spread over different time periods). In addition, since this type of default pricing has no relationship to competitive pricing, it does not result in innovation and new products and services. At the same time, EDC prices for default service have the effect of fixing the retail electric price for the entire market for a certain period of time. In order to be competitive, EGSs must meet or beat the EDC's retail default price. However, since prices charged by EGSs are established using market-based rates, as opposed to long-term EDC contracts, the EGS's ability to compete can be a hit-or-miss proposition. If the EDCs enter into long-term contracts that are substantially higher than the current market-based rate, EGSs will have success. On the other hand, if the EDCs enter into long-term contracts that are at or below the market-based rate, the EGS will be shut out and unable to compete until new contracts are negotiated. This seems to be the case in Allegheny, MetEd and Penelec where significant mass migration has not resulted, which, in part, is likely a result of procurement policies that are reflected in default pricing. See PAPowerSwitch.

A quick review of the utilities procurement plans demonstrates that 2-year contracts (or longer) are used to procure supply for residential and small commercial customers actual procurement process.

PECO

- Residential load is procured 75% with 12 and 24 month contracts. The remaining quarter is served on blocks of competitively procured power of 1, 2, and 5 years in length (80%) and spot purchases (20%).
- Small commercial is procured 70% 1-year contracts, 20% on 2-year contracts and 10% secured via contracts containing day-ahead pricing.

PPL

- Residential contracts are laddered over two years and include a carve-out that constructs a portfolio of blocks of power, including 200 MW from one-year blocks, 100 MW from 5 year blocks, and 50 MW from a 10-year entitlement.
- Small Commercial – 90% of supply is procured with half of the contracts for one-year, and half for two-year terms. The remaining 10% procured from the spot market.

West Penn Power (d/b/a/ Allegheny)

- ST 10 Customers – 30% of supplies are procured through 29-month contracts; 50% through 17 month contracts (which will be renewed with 12-month contracts); with the remaining 20% purchased on the spot market.
- ST 20 customers – 64% of supplies procured on one-year; 27% supplied by two-year contracts; and 9% supplied through spot market purchases.

Duquesne Light

- Residential customers have a fixed price of 7.86 cents/kWh under a managed portfolio.
- Small Commercial customers use 12-month fixed price using full requirements contracts obtained through laddered, semi-annual RFPs.

Met-Ed and Penelec

- Residential customers -- Effective June 1, 2011, supply is split between full requirements contracts and a portfolio of term block purchases and spot adjustments; 75% is served through 10 separate descending clock auctions for 12 or 24 month terms, anywhere from 3 to 13 months before delivery. The remaining 25% sourced through RFPs for block energy products balanced by spot purchases with the remainder procured via spot market. As part of the

portfolio, in January 2010, Met Ed and Penelec solicited a 50 MW around-the-clock block energy product for residential customers with a term of 48 months for delivery beginning June 2011.

Penn Power

- Residential customers – 75% is procured through descending clock auctions for full requirements service using a mix of 12- and 24-month contracts. The remaining 25% of supply is composed of block energy and spot purchases.

Default service should meet the basic needs of consumers, not to resolve policy objectives. By using long-term contracts, EDCs are able to spread costs (and therefore risk) over long periods of time and across all customers. The resulting default price will not be market-based and retail suppliers may not be able to compete in the market. Towards this end, default service should track the cost of power in the wholesale power market. If procurement for default service is done through competitive wholesale procurements, then multiple, short-term auctions are preferred for each group. This will ensure that appropriate pricing signals are sent to customers to allow them to better select their electric service product and to efficiently manage their energy usage. Market-based pricing for default service is also the most environmentally friendly model and will enhance Pennsylvania's energy efficiency programs. A market-based price for power reveals the true cost of electricity. For example, with market-based pricing, customers will have real-time information to make an informed decision about whether to run the air conditioner during the most expensive time of the day. Default service based on long-term procurement contracts robs customers of this important information. The resulting flat-rates charged to customers dilute the economic signals of the true cost of electricity.

Given its overwhelming success, BlueStar recommends that the Commission seriously evaluate the Texas model as a tested template. Until this can be accomplished, the Commission should overhaul the procurement process and work to achieve prices that reflect the regular changes in the wholesale market.

9. What changes, to Regulations or otherwise, can the Commission implement on its own under the existing default service paradigm to improve the current state of competition in Pennsylvania?

As explained in greater detail below, BlueStar believes there continues to be barriers in Pennsylvania's retail electric market that prevent customers from obtaining and suppliers from offering the benefits of a fully competitive market. In BlueStar's opinion, other identified barriers include the EDC's reluctance to embrace change or innovative ideas. Taking advantage of their unique position, EDCs do not hesitate to employ tactics that frustrate, delay, or otherwise impose substantial costs on EGSs. BlueStar and other EGSs have raised issues before the Committee Handling Activities for Retail Growth in Electricity ("CHARGE") only to have the EDCs object. EDCs tend to object to any proposal that may require a change to a business practice. They also demand assurances from the EGSs of full cost recovery. Sometimes they just object due to general "policy-related" reasons. The net result is that EGS proposals are rarely adopted thus requiring the EGS to either file a formal petition or go without. Since BlueStar is a small EGS with limited funding, filing petitions is not an attractive option. More importantly, these issues are within the Commission's authority to resolve without any change to the existing default service paradigm. As a result, BlueStar seeks assistance from the Commission to neutralize recalcitrance on the part of the utility.

There is no doubt that effective regulation resulting in efficient markets is largely dependent upon regulatory predictability. As suggested above, the lack of regulatory certainty to resolve competitive related issues will stifle market growth. Towards this end, there is a definite need for a streamlined process for competitive matters. BlueStar strongly believes that the easiest way to ease regulatory uncertainty is for the Commission to resolve competitive issues as expeditiously as possible. The existing CHARGE process has served the market well in jump starting the process and getting basic issues resolved; however, as suppliers raise competitive concerns, the current process may not be well suited to expeditiously resolve such issues.

Competitive stakeholders can usually live with any given result; it is the uncertainty that may exist for more than a year while a matter goes unresolved that has a paralyzing effect on business plans. Indeed, it is ironic that utility rate cases, which have historically been viewed as the most complex, are often resolved within a year, while comparatively narrow issues involving competitive matters can fester for more than a year without substantive action. BlueStar believes that the Commission should implement an expedited process for matters directly related to competitive issues. Given the Commission's ability to handle complex rate cases within eleven months, BlueStar sees no reason why competitive issues cannot be resolved within a much

shorter time frame. Just knowing that a venue for timely resolution of competitive matters existed would go a long way to reduce regulatory uncertainty. Below are a few examples of competitive issues that would benefit from such a process.

a. Supplier Consolidated Billing

The Commission should require all EDCs to work with the EGS community to implement Supplier Consolidated Billing (“SCB”) before the end of 2011. SCB is an optional billing service whereby the EGS produces and distributes a single bill to customers containing both EDC and EGS charges. With the exception of PPL,¹⁸ EDCs in Pennsylvania do not offer SCB to EGSs. While BlueStar has been an outspoken advocate in Pennsylvania for SCB, considerable efforts by the EDCs are still needed to bring SCB to fruition.

Before discussing BlueStar’s experience with SCB in Pennsylvania, it is important to understand why SCB is important. In order for customers to derive the true benefits of deregulation and competition, EGSs need to deliver customer service, innovation, and pricing competitiveness. A system in which the primary (and repeated) source of interaction with customers continues to be owned by the EDCs stifles the development of those goals. The flexibility allowed by SCB enhances the customer experience and ultimately best serves the goals of deregulation. Instead of simply being a small logo or a name on a customer’s utility bill, SCB allows EGSs to communicate directly with customers, and requires EGSs to have a relationship with those customers. EGSs must therefore provide customers with a value proposition that extends beyond simply a lower price or budget certainty – customers are empowered to demand not just competitive economics but also quality customer service and innovation. Absent SCB, EDCs will continue to monopolize the customer relationship, creating a significant impediment to the development of a truly deregulated market with all of its concomitant benefits. SCB also allows for a unique relationship with customers by providing monthly information about other products and services such as green-energy based products. Indeed, this Commission has previously recognized the value of SCB in a competitive electricity market, having mandated its availability to EGS in Docket No. M-00960890, issued April 13, 2000. The time has come to back this mandate with action. A truly competitive market requires multiple billing options including SCB.

¹⁸ PPL has an SCB “work around” that BlueStar has been using. However, this is not an EDI-based solution.

In 2010, the Pennsylvania Electronic Data Exchange Working Group (“EDEWG”) convened a subgroup to develop business practices and technical standards to support SCB. The EDEWG submitted its *Final Report of the Supplier/EGS Consolidated Billing [SCB] EDEWG Sub-Team* to the CHARGE. The *Final Report* identified many areas of consensus but also included a series of policy questions that needed to be addressed before full implementation of SCB could occur. These policy questions covered an extremely broad range of topics and issues such as:

1. How should past-due accounts be handled;
2. Should EGSs pursue termination for unpaid charges;
3. What are the payment obligations between EDCs and EGSs;
4. How should utility hardship fund donations be handled;
5. What are EGS obligations to provide PTC information;
6. What happens if the customer submits payment to the EDC instead of the EGS;
7. How will SCB impact customer eligibility for LIHEAP;
8. How should customer notices and regulatory inserts be handled;
9. How will billing disputes be handled;
10. How will payment agreements be handled?

These policy questions were circulated to the CHARGE and as a result of a September 30, 2010 conference call, BlueStar agreed to provide responses based on their experience in Illinois; a state that has had SCB for over 10 years. On October 25, 2010 BlueStar provided answers to these questions and concluded that these were not new or unique issues. BlueStar and other suppliers in Illinois have addressed these over the last five to ten years of using SCB in Illinois. BlueStar encouraged the CHARGE to move quickly to address these issues so that all billing options, including SCB could be available to EGSs.

On or about January 7, 2011, CHARGE sent a survey to EGSs to gauge their interest in SCB and would also be used by Staff to help prioritize this issue. On February 3, 2011, CHARGE published the results of its survey which concluded that;

“Of the 18 EGSs who responded, 10 noted that they currently use SCB in Pennsylvania or another state; 9 said they are definitely interested and would probably utilize SCB if it

were available in Pennsylvania; 2 are possibly interested; and as to timing, 6 indicated they might use it within the next year.”¹⁹

The level of interest in SCB by the EGSs was significant and BlueStar was confident that the issue would move forward. On the February 17, 2011 CHARGE call, Staff reported that they were seeking guidance from the Commission to gain a sense of the priority nature of this issue as well as the preferred avenue for addressing this issue. On March 24, 2011, Staff reported that the Commission’s preference was for an interested party to file a formal petition and, as a result, SCB would not be further pursued by the CHARGE. While not stated by Staff, it was clear to BlueStar that in spite of the high EGS interest, SCB was not a priority for the Commission.

However, the competitive significance of SCB was not lost on Commissioner (then-Chairman) Cawley when he chose this issue as one to be prominently mentioned in his dissenting statement of the FirstEnergy – Allegheny merger. In his dissenting statement Commissioner Cawley concluded that, “[T]he Committee Handling Activities for Retail Growth in Electricity (CHARGE), or a separate working group established under CHARGE, should have been required to establish an appropriate process and timeline to establish standards for this billing mechanism.”²⁰ Commissioner Cawley went on to say that as a condition of the merger, “[F]irstEnergy should have been directed to accommodate EGS consolidated billing on a manual basis when requested initially, to develop statewide EDI-based EGS consolidated billing standards, and to implement these standards when economically efficient to do so.”²¹

Finally, Texas EGSs have the sole contact and retail relationship with customers, including billing. To the extent the Commission agrees with BlueStar that Pennsylvania should move toward the Texas model, then EGSs must be in a position to perform their own billing.

Given the overwhelming support by the EGS community and the strong statements by Commissioner Cawley, BlueStar recommends that the Commission, either within the context of this proceeding or another, expedite this process.

b. Last In Rule

The “Last In” rule involves a situation where the EDC receives multiple enrollments for the same customer. In this situation, the EDC must determine which supplier has the right to

¹⁹ CHARGE summary notes, February 3, 2011

²⁰ Merger Order, Dissenting Statement of Chairman Cawley, at 10.

²¹ *Id.*

switch the customer. With the exception of First Energy, all EDCs process the last enrollment received. Based on this process, if BlueStar and another supplier submit an enrollment request for the same customer, the request “last received” by the EDC is processed. BlueStar understands that the “Last In” rule is based on the contract signed date, not the date the 814 enrollment is received by the utility. In other words, BlueStar submits an enrollment to an EDC with a September, 2011, flow date and a contract date of August 15, 2011. Prior to the 16-day cut-off, another supplier submits an enrollment request for the same customer, with the same flow date but with a contract date of August 20, 2011. Based on the “Last In” rule, the customer is switched to the second supplier because it had the most recent contract date. The “Last In” rule is another issue that has been before the CHARGE for some time. This issue was first raised on the April 29, 2010 call and was subsequently discussed through June, 2010 but to date there has been no resolution.²²

BlueStar opposes “Last In” since it ignores a valid contract and encourages slamming. After the customer signs a valid contract, another supplier can then contact the customer and submit another enrollment with a later contract date. This results in the customer being slammed since the first enrollment request is valid but not processed by virtue of an earlier contract date. It also exposes the supplier who first signed the customer to financial risks if, based on the contract, power had been secured.

BlueStar supports a “First In” rule whereby the first enrollment request received by the utility is processed, irrespective of the contract date. This process holds the customer accountable for signing one contract. But more importantly, this process protects against slamming since the first, and only, valid contract is processed by the EDC.

BlueStar recommends that the Commission, either within the context of this proceeding or via an expedited process, replace the “Last In” rule with a “First In” rule.

c. Other Operational Issues

BlueStar requests that PECO, Met-Ed and Penelec institute a process whereby EGSs have the ability to cancel an enrollment and a drop request. There are times when an enrollment request contains an error or maybe the customer simply changed their mind. In any event, BlueStar is unable to cancel these types of requests, and the customer must remain on BlueStar’s supply for at least one billing period at which time a drop request can be processed.

²² See CHARGE Recap notes, January 20, 2011.

Like SCB, PPL does allow EGSs to cancel an enrollment and drop a request, but it is done via email. BlueStar believes that relying on a manual process whereby an EDC representative must submit the cancel request is suboptimal. A more secure process that uses EDI transactions would be far superior and would allow EGSs to monitor and check on all requests.

BlueStar requests that the Commission order PECO, MetEd and Penelec to implement EDI transactions to allow for the cancelation of enrollments and drop requests via this proceeding or the EDEWG.

d. Safeguards

Competitive safeguards are vitally important to the success of Pennsylvania's retail electric market due to the unique relationship between regulated EDCs and their unregulated affiliated EGSs. This relationship can give rise to anti-competitive behavior including improper cost allocations, cross subsidies, and discrimination. As a result, competitive safeguards are an essential tool used to discourage and facilitate detection of anti-competitive behavior. After reviewing the existing safeguards, BlueStar recommends that they be strengthened by adding:

1. Metrics to verify whether an affiliated EGS is receiving preferences from the EDC over unaffiliated EGSs.
2. Penalties for violations of the safeguards.
3. Periodic audits by an independent third party to ensure that EDCs have developed, maintained and implemented sufficient documentation, processes and procedures and to verify EDC compliance with the safeguards.

The need for competitive safeguards was expressed by Commissioner Cawley when he stated that, “[a]nticompetitive and/or discriminatory conduct is virtually certain to occur if this merger is approved without the imposition of significant conditions ... Additional conditions are necessary so as to foster development of a properly functioning competitive market with the goal of delivering competitive benefits to customer, including lower, more competitive prices and innovative services.”²³

Competitive safeguards are found in Chapter 54, Subpart E, of the Pennsylvania Administrative Code and purport to prevent discrimination, prevent cross-subsidies and to forbid

²³ *Id.* at 1.

unfair or deceptive practices.²⁴ Section 54.122 contains the “Code of Conduct” which details the requirements that EDCs must follow. While BlueStar supports these objectives, it is not entirely clear that these requirements are sufficient to prevent or detect anti-competitive behavior. BlueStar is also concerned that there is no Commission enforcement process to verify and validate whether EDCs are in compliance with these requirements. Enforcement is limited to a dispute resolution process that EGSs must invoke.²⁵ The problem with this approach is that it places EGSs in the position of monitoring and enforcing these requirements. It is also an “after-the-fact” enforcement methodology. In addition, the burden of proof is misplaced with this dispute process. Since the EGS must bring forth a dispute under the existing rules, the EGS must prove an allegation of anticompetitive conduct when, in fact, the EDC should prove that they are in compliance with the requirements. Of equal importance is the fact that there are no penalties if an EDC has been found to be in violation of these requirements.

Here are but a few examples to demonstrate how much latitude EDCs have with respect to these requirements:

-Section 54.122 (1) states that EDCs may not give an EGS any “preference or advantage” over other EGSs in processing enrollment requests; however, BlueStar is unaware of any review of the documents, processes and procedures used by EDCs to ensure there is no preference or advantage given to an affiliated EGS, nor are there any metrics which could be used to validate EDC compliance. This would provide assurances that an EDC is not manipulating enrollment requests to the benefit of the affiliated EGS. In addition, paragraph (2) states that EDCs may not give any preferences or advantage to an EGS with respect to the disclosure of customer information including usage patterns. EGSs should know what documents, processes and procedures are used by EDCs to assure that affiliated EGSs are not receiving any preferential treatment in the disclosure of customer-specific information.

-Paragraph (9) requires EDCs to provide “equal and nondiscriminatory” access to EGS information when requested by customers. BlueStar recommends that metrics be developed and audited to verify whether affiliated EGS’s information is provided more frequently than other EGSs. This paragraph also requires the EDC to provide the address and telephone number of a specific EGS if requested by the customer. However, what is there to prevent a customer

²⁴ 52 Pa Code §54.121

²⁵ Id. at §54.122(4)

representative from simply mentioning the name of the affiliated EGS, thus prompting the customer to request the address and telephone number? Also, EDCs should be prevented from implementing a “hot transfer” whereby the customer representative automatically transfers a potential customer directly to the affiliated EGS.

-Paragraph (10) attempts to mitigate the marketing effects of an affiliated EGS using the name and/or logo of the EDC by requiring a disclaimer to be used with all marketing and communications materials. This disclaimer indicates that the affiliated EGS is not the same company as the EDC, that prices charged by the affiliated EGS are not regulated by the Commission, and that the customer is not required to purchase electricity from the affiliated EGS. BlueStar believes that a disclaimer is wholly insufficient to counter the brand recognition and decades-long customer relationship of an EDC. Customers will always gravitate to a known and trusted utility irrespective of a disclaimer. In BlueStar’s opinion, this disclaimer is nothing more than “fine print” that is commonly found at the bottom of many advertisements and commercials; in print so small as to be almost illegible.

-Paragraph (10) also requires that an affiliated EGS may not “state or imply” that its delivery service is inherently superior to other EGS by virtue of its relationship to the EDC. This is a hollow requirement. It is BlueStar’s experience that customers already have a predisposition toward the affiliated EGS or the EDC by virtue of their brand recognition resulting from years of service to customers. BlueStar routinely finds itself telling customers that restoration of service during an outage will not be faster with an affiliated ESP or with an EDC’s default service.

-Paragraph (11) requires that employees of affiliated EGSs and EDCs function independently of each other. In a similar context, paragraph (6) states that EDCs may not provide any preference or advantage to any electric generation supplier in the disclosure of information about the operational status and availability of the distribution system. BlueStar believes that this is an insufficient safeguard. Nothing prevents an employee from the affiliated EGS from calling a “friend” at the EDC to acquire about an outage or disruption in the distribution network. This is especially obvious since there are likely transfers of employees between the affiliated EGS and the regulated EDC with knowledge of processes and procedures that is unavailable to unaffiliated EGSs.

-Finally, paragraph (8) requires EDCs and affiliated EGSs to “take appropriate steps to train and instruct its employees” with respect to these requirements; however, it is not clear to

BlueStar if these “steps” have ever been reviewed by the Commission or audited by an independent third party auditor. In other words, there is no verifiable proof that EDCs and affiliated EGSs are abiding by these requirements. Therefore, BlueStar recommends that an independent third party auditor, under the direction of the Commission staff, be retained at the expense of each EDC to conduct a thorough audit of each EDC and affiliated EGS to review and verify compliance with these requirements. The Commission should also seek the opinion of the auditor on modifications required to detect and prevent anti-competitive conduct.

11. Are there, or could there be potential barriers begin created by the implementation of the EDC Smart Meter plans?

Smart meters provide customers with real-time access to pricing information as well as two-way communication to their supplier. With real-time access, customers can make an informed decision about whether to consume energy based on the current price. One can only imagine the various pricing-packages, demand side management products, energy efficiency programs and other services to avoid using electricity at peak-price periods. As with any new innovation, the Commission must be concerned with consumer usage data. At a minimum, the Commission will need to develop well-defined rules with respect to data accessibility, consumer privacy issues and data security. Ownership and protection of consumer usage data is paramount and the Commission must address these issues.

Competitive retail electric suppliers have and will play a critical role in implementing and providing innovative energy solutions. The Commission's plan should make clear from the onset that communications must be made on a competitively neutral basis and that no market participant is favored over the other. Retail electric suppliers will be key contributors to creating awareness of the potential of the smart grid. Requiring access to real-time customer information, competitive suppliers can play a key role in educating consumers about their energy usage.

Access to the smart grid infrastructure must be provided in a manner that avoids the creation of new information-related monopolies. Open, non-discriminatory access to the smart grid and related infrastructure and smart meters must be provided to competitive retail electric suppliers authorized by consumers to receive and manage their energy usage information. This data should be provided to market participants on a real-time basis. By prohibiting the creation

of utility information monopolies, the Commission will do much to ensure a competitively neutral playing field when smart grid technologies are deployed.

In fact, the Federal Communications Commission recently recommended that,
*"Consumers, and their authorized third parties, must be able to get secure, non-discriminatory access to energy data in standardized, machine-readable formats. Customers should have access to their data in the same granular form in which it is collected, and in as close to real-time as possible."*²⁶

BlueStar also agrees with the FCC's further suggestion that,

*"PUCs should mandate data accessibility as a part of Smart Grid rate cases, especially smart meter deployments. Consistent with EISA [The Energy Independence and Security Act], these policies should mandate secure consumer accessibility to real-time energy consumption data, time-series consumption and billing data and dynamic pricing data."*²⁷

In this vein, BlueStar urges the Commission not to allow the utilities to monopolize the smart grid or smart meters as it relates to the PEV market. In particular, the meter is the gateway to the consumer's home - appliances, in-home displays as well as PEV charging stations. These are all integral components that could determine the success or failure of smart grid initiatives as well as the PEV market in general. By allowing the smart meter a utility-only program, the Commission would discourage the very innovation and new competitive entry in this field that smart grid and PEV charging stations are intended to yield. Behind-the meter competition must be allowed to flourish.

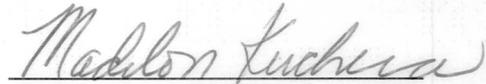
²⁶ FCC, National Broadband Plan, Energy and the Environment, Chapter 12, at page 274.

²⁷ Id.

CONCLUSION

BlueStar thanks the Commission for the opportunity to offer its perspective in this important area and looks forward to continued participation in the process.

Respectfully submitted,



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