

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation of Pennsylvania’s Retail Electricity Market Intermediate Work Plan	: : : :	Docket No. I-2011-2237952
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**COMMENTS OF
CONSTELLATION NEWENERGY, INC. AND
CONSTELLATION ENERGY COMMODITIES GROUP, INC.**

I. INTRODUCTION

On April 28, 2011, Chairman Robert F. Powelson and Vice Chairman John F. Coleman, Jr., respectively the Chairman and Vice Chairman of the Pennsylvania Public Utility Commission (“Commission”), issued a *Joint Motion*¹ in which they announced that the Commission is conducting a statewide investigation “with the goal of making recommendations for improvements to ensure a properly functioning and workable competitive retail electricity market exists in the state” (“Investigation”).² Since that time, stakeholders have been engaged in a number of workshops, technical conferences, and a variety of conference calls to discuss a wide range of issues.

Constellation NewEnergy, Inc. (“CNE”) and Constellation Energy Commodities Group, Inc. (“CCG”) (collectively, “Constellation”) appreciate the opportunity to provide comments on the Commission’s Investigation. With the continuing work of the Commission and stakeholders, Constellation looks forward to a competitive retail electric market where customers are

¹ *Investigation of Pennsylvania’s Retail Electricity Market, Joint Motion of Chairman Robert F. Powelson and Vice Chairman John F. Colman, Jr.*, issued on April 28, 2011 (“Joint Motion”)

² *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, Opinion and Order at 46.

provided more thorough and better-tailored information about competitive electric service options which, coupled with the Commission's initiatives, will lead to a more robust retail electricity market.

II. BACKGROUND ON CONSTELLATION

CCG and CNE are indirect, wholly-owned subsidiaries of Constellation Energy Group, Inc., a FORTUNE 500 North American energy company with several merchant subsidiaries in addition to CCG and CNE. CCG and CNE have been granted market-based rate authority by the Federal Energy Regulatory Commission ("FERC") and are buyers and sellers of wholesale electricity and capacity.

CNE is an electric generation supplier ("EGS"), licensed by the Commission to serve Residential, Commercial and Industrial customers in all utility territories in the Commonwealth. CNE is the largest provider of competitive retail electric supply to Commercial, Industrial and Governmental customers throughout the United States. In addition, CNE has a growing presence serving residential customers in Illinois, the District of Columbia, Maryland, New Jersey, and Ohio and has begun to serve residential customers in the Commonwealth. CCG, meanwhile, is one of the largest suppliers of wholesale electric power to utilities, municipalities and cooperatives throughout the United States, including the provision of electric power and energy to the Commonwealth's utilities under current default service plans and programs.

This combination of CNE's and CCG's broad and thorough experience and interests affords Constellation unique and valuable perspectives on the future of Pennsylvania's retail electricity market, including both the Default Service structures and the retail market

enhancements that may be considered by the Commission. As one of the largest suppliers of retail and wholesale electric power in the Commonwealth, the Commission's Investigation presents important issues which affect Constellation's business interests in Pennsylvania.

III. CONSTELLATION'S COMMENTS

Constellation commends the Commission for issuing this Intermediate Work Plan ("IWP") as part of the investigation into the retail electric market. The Commission's IWP once again recognizes that competitive retail and wholesale markets continue to represent the best way to ensure that Pennsylvania consumers receive reliable electric power and have access to innovative products and services from a broad pool of suppliers that may best meet each customer's individual needs, while simultaneously assuring the affordability and reliability of supply as competitive markets continue to grow.

Constellation supports, generally, the Commission's identified initiatives in the Investigation, if carefully developed and coupled with appropriate customer education, as they will lead to greater opportunities for retail customers' access to the growing competitive retail marketplace. However, despite the Commission's acknowledgment of the sanctity of existing default service contracts and upcoming procurements for default service, Constellation remains concerned that certain aspects of the IWP could compromise, put at risk, and potentially abrogate existing default service wholesale supply contracts and existing approved default service plans ("DSPs"). In order to reduce or eliminate any unintended uncertainty regarding the sanctity of wholesale contracts, the Commission should make clear that wholesale DSP contracts will be fully honored even if the Commission orders changes to previously approved DSPs.

A. Consumer Education

The Commission's IWP clearly recognizes that enhanced consumer education is a critical pillar of a vibrant competitive retail market for electricity in Pennsylvania. A comprehensive program should help educate consumers and lead to greater understanding about competitive retail markets and the choices available to consumers. Constellation also supports increased education efforts to small business customers, in particular those with a peak demand of 25 kW or less.

B. Acceleration of Supplier Switching Timeframes

Constellation supports the Commission's desire to shorten the timeframe to allow customers to begin taking service from an EGS. Constellation recommends that the Commission adopt the Retail Energy Supply Association's ("RESA") proposal to utilize a stakeholder process to address a number of key-related issues, including the switching deadline, the necessary operational and EDI changes, and other issues. Moving to a uniform statewide account transfer process will reduce transaction costs for EGSs, customers, and electric distribution companies ("EDCs").

C. Customer Referral Programs

Constellation supports carefully developed and well-planned customer referral programs. In the IWP, the Commission recommends the adoption of two (2) separate and distinct customer referral programs:

- The **New/Moving Customer Program** in which any time a new customer or customer moving within a service territory contacts an EDC's call center, that customer will be advised of competitive EGS alternatives and market information; and
- The **Standard Offer Customer Referral Program** which involves voluntary participation by EGSs who agree to provide a standard offer (typically a percentage off an EDC's PTC for a stated period of time).

Before addressing the Commission's specific questions on these programs, Constellation notes that, if it may prove too complicated or take too much time to implement both programs in 2012 as envisioned by the Commission, it may be more appropriate to focus only on adoption of the more robust standard offer customer referral program. Constellation supports "a simple, easy-to-explain customer referral program," designed so that "reluctant" customers understand that their competitive supply options can commence as soon as possible after taking into account operational concerns, and that such options will not delay their utility service connection/re-connection.

1. The New/Moving Customer Program

In response and in addition to the Commission's identified issues and questions, Constellation comments that the New/Moving Customer Program:

- If cost effective or not cost-prohibitive, would be best managed by an independent, third-party call center;

- Should include and be directed only to the types of calls that specifically address the referral program – i.e., calls for new service, or for moved service;
- Should include both residential customers and small business customers, consistent with each EDC's smallest general service nonresidential rate class;
- Should allow CAP customers to participate as long as such customers are eligible for service under existing purchase of receivables ("POR") programs;
- Should provide protocols for a "hot transfer" from the program call center to the EGS, if a customer is prepared to exercise the option to select such an EGS at the time of the call, including, but not limited to, a mechanism through which the EDC/program call center will provide to the EGS the customer's account number at the time of the hot transfer, in order to effectuate the switch;
- Should not require or allow the EDCs to provide information regarding existing EGS product offerings during a customer referral call; and
- Should instead direct for program scripts to refer customers to PAPowerSwitch.com, where current offers are displayed or, alternatively, have such scripts ask the customer if they have a preference of supplier and, (a) if so, transfer them directly to that supplier, or (b) if not, transfer such customer to the next supplier in a specified order from a list of participating suppliers.

Finally, on a related topic to those above, as part of this Investigation, the Commission should consider whether new customers must take service from an EDC, or whether customers may be assigned to an EGS in the first place without having first taken default service from the EDC.

2. The Standard Offer Customer Referral Program

In order to provide for appropriate competition and opportunities for customers, any standard offer customer referral program developed and implemented through this Investigation or otherwise should have the following minimum criteria:

- Voluntary for customers, as well as participating EGSs (*i.e.*, both customers and EGSs should be required to “opt-in” to the program);
- Require that each EGS provide a fixed percentage discount off of the then-known EDC price-to-compare (“PTC”) for a minimum term of three months;
- Uniform within an EDC’s service territory;
- Allow for customers to either choose to be assigned to a particular EGS or request a random assignment to an eligible EGS;
- Limit the eligible customer base only to residential customers on default service at the time of contact;
- Allow customers to exercise their options to select EGSs at the time of the calls, and facilitate the ability of customers electing such an option to switch in an expeditious manner;
- Include no termination penalty or fee from the new program EGS; and
- Provide that, at the conclusion of the standard offer period, if the customer does not either take *affirmative* action to enter into a new contract with its program EGS or another competitive EGS, or make an *affirmative* choice to return to default service, then the customer will remain with the program EGS on a month-to-month basis, without the imposition of early termination penalties.

D. Retail Opt-in Auction Programs

Constellation continues to be concerned that opt-in auctions would have an adverse impact on existing and/or future DSP procurements, as effective wholesale procurement for a subset of customers (through retail opt-in programs) would cannibalize the wholesale procurements for default service supply for the EDCs. This would cause the wholesale DSP procurements to have unduly high prices to account for such potential risk, to the detriment of those customers that remain on default service.

Nevertheless, and in an attempt to be responsive to the Commission's request for comments on the specifics outlined in the IWP, Constellation offers the following Comments:

1. Customer Eligibility

Constellation supports limiting eligibility for such programs only to the residential customer class, and those residential customers that are on default service. To be clear, Constellation agrees that such programs and all marketing activities should be targeted towards non-shopping, default service customers. Finally, Constellation supports inclusion of CAP program customers in the programs, provided that such customers are eligible for POR and do not lose their eligibility to participate in the CAP program by virtue of participation in the retail opt-in auctions.

2. EGS and EDC Participation

Constellation supports the voluntary nature of EGS participation and exclusion of the three smallest EDCs (Citizen's Electric, Wellsboro, and PCL&P) from this opt-in auction process.

3. Program Length/Term

Constellation supports a term of 12 months for contracts resulting from the retail opt-in auction structures.

4. Timing

Constellation commends the Commission for recognizing that such opt-in structures should not commence until, or after, June 2013 in order to avoid tampering with current default service supply contracts and DSPs. However, due to the fact that the current DSP supply contracts and plans of PECO Energy Company and PPL Electric Corporation have supply contracts that extend beyond June 1, 2013, implementation of a Retail Opt-In Auction in those territories will in fact harm, tamper, and interfere with such DSPs' contracts. As a result, the Commission should allow for individual EDCs to have separate start dates for the retail opt-in program, which should begin no earlier than the end dates of contracts under the existing DSPs.

Timing is also of concern to the EGSs that may bid to serve customers pursuant to such opt-in auction structures. To that end, it would make sense to have customers opt into a retail auction program prior to such auction so that EGSs have a clear understanding of the size of the load they are bidding on, and are able to better develop their bids accordingly. Customers will still benefit from such a program as any resulting auction price would need to beat the PTC, and as customers would not be stuck paying a premium for EGSs having to manage and price in quantity uncertainty in the auction. With respect to beating the PTC, EGSs should be required to make a specific price discount commitment – e.g., at least 10% off of the known default

service PTC. Using such a minimum discount percentage, the retail opt-in auction could then be held and set the final, actual discount price.

5. Customer Participation Caps

Constellation can support the 50% customer participation cap in the Commission's IWP. However, while the Commission indicates that its proposed 50% cap is an attempt to provide wholesale suppliers with some certainty as to their load obligations, Constellation notes that a 50% cap is too high to provide any meaningful certainty. Without a lower cap, customers who choose not to shop or otherwise remain on default service will end up having to pay a premium for the uncertainty caused by retail opt-in programs. Finally, Constellation agrees that this cap should be set at a date certain prior to the auction, in order to provide participating EGSs with an indication of the potential number of customer participants.

6. Supplier Participation Load Caps

Constellation agrees that setting an EGS participation cap of 50% of the customer class default service accounts for each EDC service territory is high enough to provide the necessary economies of scale to deliver a reasonable price while making it impossible for one supplier to capture the entire load.

7. Composition of Customer Offer - Product

Constellation does not support inclusion of a bonus as part of either product composition. In addition, Constellation would prefer that there only be a single auction product – a fixed rate product with no bonus as the product for the Retail Opt-in Auction. In addition, the fixed-price Retail Auction Product should result in a specific percentage discount of the

then-effective PTC for the 12-month term of the product. Nevertheless, if the Commission adopts an auction product that includes a bonus payment, it is reasonable to deny the bonus if the customer fails to remain in the pool for a minimum period not to exceed three (3) months.

8. Customer Options Upon Program Expiration

Constellation agrees that program participants should be treated no differently than any other shopping customer when the program ends, and that the Commission's renewal notice guidelines should be fully applied.

9. Opt-In Auction Structure

Either a sealed bid process or a descending clock auction would work well to provide a single clearing price. Customer load should be bid by allocating specific customers to "bid groups" in advance of each bid, so that EGSs know exactly what they are bidding on.

10. Creditworthiness and Security

Creditworthiness of the EGS and appropriate security in relation to provision of service are critical to a successful auction. As the Commission recited in its Tentative Order, security theoretically should cover the EDC's obligations incurred due to non-performance by a participating EGS.

11. Other Aspects

In order to be successful, any retail opt-in auction structure must provide to potential EGSs well in advance of any bid ample data for customers who have elected to opt-in, including,

but not limited to three-years of historic hourly load data, peak load contribution (“PLC”) and NSPL data, and other similar data that is provided under current DSP structures.

E. Default Service Price to Compare (PTC) on Bills

More information for customers is an important facet, but such information must be presented in a format that educates and does not further confuse customers. Constellation, like the Commission, is concerned customers may not fully understand the meaning of the PTC or that the PTC is set quarterly and is thus not permanent. Constellation believes that the Commission’s IWP addresses the presentation of the PTC in an appropriate manner to address these facts. However, Constellation recommends that the IWP be clarified such that the requirement is imposed upon the EDCs to present the PTC on invoices for default service customers only. Constellation would be remiss to note that if there is too much emphasis placed on the PTC that it could improperly encourage customers to base their decisions on price alone (without fully understanding the differences between the rates offered by EGSs and the default service rate) and ignore the other products and services that may be the offered by the EGS.

F. Coordination between EDCs and EGSs

While the Commission tentatively concluded that there did not appear to exist any issues associated with EDC Supplier Charges, and while Constellation generally believes that to be the case, Constellation takes this opportunity to point out certain unique fees and processes imposed by Duquesne Light Company (“DLC”) that have acted as a barrier to more robust

development of retail competition for residential and small commercial customers in the DLC territory.

For example, DLC stands alone among Pennsylvania EDCs in essentially erecting barriers to the use of Multiple Scheduling Coordinators for an EGSs' customer base in the DLC service territory. While perhaps permissible pursuant to several Commission orders,³ DLC's tariffs nevertheless impose an Initial Charge of \$20,125 (50% of \$40,250) and an ongoing charge will be \$2,500 per month per additional entity or "bucket" for Scheduling Coordinators. In addition, DLC requires full payment for these charges prior to the month in which an EGS begins utilizing the Multiple Scheduling Coordinators option. Such an effort would require the issuance of a unique DUNS "plus 4 adder" to be used in EDI transactions, as well as additional testing. Throughout Pennsylvania and the PJM footprint, however, other EDCs allow the use of Multiple Scheduling Coordinators without the imposition such onerous fees and charges. Constellation asks that the Commission review DLC's practice in light of the barrier created, and direct DLC to adopt a more industry-standard approach to the use of Multiple Scheduling Coordinators.

1. Sample Bills

Constellation supports requiring EDCs to provide three (3) distinct sample bills which could be accessed by EGSs on the secure EDC websites. In addition, Constellation urges the Commission to conclude that customer authorization is sufficient to enable an EGS to receive a customer's specific bill upon request. Therefore, any current customer authorization provided

³ Docket M-00991230, F.0002 and also available at the PA PUC link: <http://www.puc.state.pa.us/general/ConsolidatedCaseView.aspx?Docket=M-00991230F0002>

to an EGS pursuant to a letter of authorization (“LOA”) should be sufficient to allow such EGS to receive a copy of the customer’s entire bill.

2. Creditworthiness Standards

Constellation agrees that RESA’s proposal addresses the Commission’s overarching concern that EGSs providing service in the Commonwealth are credit-worthy or have credit instruments in place sufficient to support their operations in Pennsylvania.

IV. CONCLUSION

Constellation appreciates this opportunity to submit to the Commission its Comments on the IWP. The recommendations herein will promote continued development of the Commonwealth’s competitive retail and wholesale markets, for the ultimate benefit of Pennsylvania’s consumers. Constellation looks forward to continued discussions with all stakeholders during this Investigation regarding the issues addressed herein, and other issues pertaining to the development of the competitive electricity markets throughout the Commonwealth. Constellation is confident that upon inclusion of the recommendations in these Comments, the Commission’s Investigation will appropriately promote continued development of competition in the Commonwealth for the benefit of all consumers.

Respectfully submitted,



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