



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166  
Tel: 717.232.8000 • Fax: 717.237.5300

Elizabeth P. Trinkle  
Direct Dial: 717.237.5378  
Direct Fax: 717.260.1759  
etrinkle@mwn.com

May 20, 2013

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

**VIA ELECTRONIC FILING**

**RE: EDC Customer Account Number Access Mechanism for EGSs;  
Docket No. M-2013-2355751**

Dear Secretary Chiavetta:

Enclosed please find the Comments of the Industrial Energy Consumers of Pennsylvania ("IECPA"), Duquesne Industrial Intervenors ("DII"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customer Groups") regarding the above-referenced proceeding.

Sincerely,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in black ink, appearing to be 'Elizabeth P. Trinkle', written over a horizontal line.

Elizabeth P. Trinkle

Counsel to Industrial Customer Groups

EPT/sds  
Enclosure

**www.mwn.com**

HARRISBURG, PA • LANCASTER, PA • STATE COLLEGE, PA • COLUMBUS, OH • WASHINGTON, DC

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

EDC Customer Account Number : Docket No. M-2013-2355751  
Access Mechanism for EGSs :

---

**COMMENTS OF  
INDUSTRIAL CUSTOMER GROUPS**

---

**I. INTRODUCTION**

On April 18, 2013, the Pennsylvania Public Utility Commission ("PUC" or "Commission") issued a Tentative Order in the above-captioned docket regarding a proposal by the Office of Competitive Market Oversight ("OCMO") to provide for procedures that would facilitate access by electric generation suppliers ("EGSs") to electric distribution companies' ("EDCs") account numbers for newly enrolled customers in cases where the account number is not available either from the customer or from the Eligible Customer List ("ECL").<sup>1</sup> In light of the data security issues associated with EDC customer account numbers for all customers, especially for Large Commercial and Industrial ("C&I") customers, the Comments included herein address the Tentative Order's request for comment on the safeguards necessary to ensure that account numbers are accurately communicated and provided only to the customer and supplier involved.

The Industrial Energy Consumers of Pennsylvania ("IECPA"), Duquesne Industrial Intervenors ("DII"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), Philadelphia Area Industrial Energy

---

<sup>1</sup> See *EDC Customer Account Number Access Mechanism for EGSs*, M-2013-2355751, at 8 ("Tentative Order").

Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customer Groups") submit these Comments in response to the Tentative Order. IECPA is a 20-member *ad hoc* group of energy-intensive industrial customers of electricity and natural gas. More than 41,000 Pennsylvanians are employed by IECPA member companies alone. DII, MEIUG, PICA, PPUG, PAIEUG, PPLICA, and WPPII are all *ad hoc* groups of commercial, institutional, and industrial customers of electricity that participate in various proceedings before this Commission.

Although the Tentative Order contemplates a mechanism primarily directed at accessing residential customer account numbers, the privacy of customer account data is an important issue for all customers. It is of particular concern to Large C&I customers that any adopted proposal strike the proper balance between providing EGSs with convenient access to customer account information and ensuring that customers' privacy rights to information security are upheld. The Industrial Customer Groups therefore urge the Commission to adopt policies that include appropriate safeguards to provide customers with the assurance that their information is not being accessed without consent.

## **II. COMMENTS**

### **A. Industrial Customer Groups' Usage Data is Highly Sensitive Information and Must Be Protected**

As the Industrial Customer Groups noted in their comments on the Commission's ECL regulations, usage data is competitively sensitive information and has a direct relationship to confidential business practices for some Large C&I customers.<sup>2</sup> For example, the usage information contained on the ECL includes on-peak and off-peak usage, and transmission and capacity peak load contributions, which can reveal production schedules and other cost

---

<sup>2</sup> See *Comments of the Industrial Customer Groups*, Docket Nos. M-2012-2183412, *et al.* (July 13, 2011).

mitigation strategies. For some industries, this type of usage information can have a direct correlation with the prices charged for the end product and/or the profits being earned by the company. For this reason, some customers consider energy usage data to be a "trade secret" that must be protected. It is therefore crucial that any mechanism adopted to aid EGSs in acquiring account numbers or other information protects Large C&I customer information to prevent unfair competition.

There are currently more than 270 EGSs listed as "Licensed Electric Suppliers" on the PUC's web site, many of which do not provide physical supply.<sup>3</sup> Although the Commission's regulations require EGSs to maintain confidentiality of customer information, only one of these EGSs need be a "bad apple" compromising customer data in order to inflict significant competitive harm on Large C&I customers.<sup>4</sup> An after-the-fact sanction or fine may not be sufficient to repair the harm to the customer if confidential information is disclosed. Accordingly, the Industrial Customer Groups urge the Commission to vigilantly safeguard customer information from unauthorized disclosure.

**B. Customers' Affirmative Consent Should Be Required Before Account Numbers are Released**

The Commission's regulations prohibit EDCs and EGSs from releasing private customer information unless "the customer has been notified of the intent and has been given a convenient method of notifying the [EDC or EGS] of the customer's desire to restrict the release of private information."<sup>5</sup> The Industrial Customer Groups recognize that the Commission has previously determined in its regulations governing ECLs that this requirement can be fulfilled through an "opt-out" or "negative check-off" approach, meaning that a customer's information will be

---

<sup>3</sup> See [http://www.puc.state.pa.us/consumer\\_info/electricity/suppliers\\_list.aspx](http://www.puc.state.pa.us/consumer_info/electricity/suppliers_list.aspx) (providing a list of companies approved by the PUC to be competitive EGSs in Pennsylvania).

<sup>4</sup> See 52 Pa. Code §§ 53.8, 54.43(d).

<sup>5</sup> *Id.* § 54.8(a).

released unless the customer takes steps to restrict access.<sup>6</sup> Nevertheless, the Industrial Customer Groups respectfully urge the Commission to reconsider its prior decision, and adopt an "opt-in" mechanism requiring explicit, verified, customer authorization to make the data available before an EGS may access a customer's account number and other usage data that can be obtained through the electronic data interchange ("EDI") system once the account number is known. As the Commission recognizes in the Tentative Order, a customer's account number is the crucial identifying piece of data that links a customer to an EDC account.<sup>7</sup> Accordingly, the "hazards that could result from providing an incorrect number" are significant, including the release of billing and payment history, which the customer may not have intended to make available. An "opt-in" mechanism would ensure that customers are fully aware of the information that will be conveyed to an EGS if access to the customer account number is granted.

An "opt-in" process also provides the most secure option to prevent the release of private, sensitive customer information. As the Commission notes in the Tentative Order, while human error can result from a manual look-up process, an automated process is not guaranteed to be error-free, and may result in the release of private customer information without customer consent.<sup>8</sup> Similarly, an "opt-out" approach may result in errors and unauthorized data disclosure due to situations such as the "opt-out" notification being sent to an incorrect person within the organization. Given the sensitivity of the information associated with EDC customer account numbers, and the possibility for a customer's private data to be made available to an EGS without informed consent, an "opt-in" approach requiring explicit, verified customer authorization is the most secure approach to facilitating EGS access to customer account numbers.

---

<sup>6</sup> See *id.* § 54.8(b).

<sup>7</sup> See Tentative Order at 4.

<sup>8</sup> See *id.* at 5.

**C. Safeguards Are Necessary to Protect Customers Opting Out of Access by EGSs**

If the Commission continues to utilize an "opt-out" approach to customer information disclosure, the Industrial Customer Groups urge the Commission to adopt safeguards to ensure that the customer's "opt-out" wishes are honored. The Industrial Customer Groups are available and willing to work with interested EDCs and EGSs to develop safeguards that appropriately balance the interests of all stakeholders. As a starting point, several items should be considered.

First, the Industrial Customer Groups recommend that when a customer has opted out of the ECL, EDCs must be required to verify a customer's provision of written authorization for an EGS to access account data before the customer account number or other data is released. This could be accomplished by the EDC reviewing the EGS's Letter of Authorization ("LOA") or other written authorization executed by the customer and contacting the customer to confirm. An automated process could also be explored that would allow the customer to confirm that authorization was given. Although the Tentative Order raises concerns regarding the labor-intensiveness and cost-effectiveness of such a process, requiring EDCs to verify a customer's LOA or other written authorization is essential to reducing the risk that private, sensitive customer information will be mistakenly accessed.

Second, the Commission should establish an audit process to enable each customer to periodically confirm whether the EDC's system indicates that it has "opted in" or "opted out" of the ECL, and to verify the identity of all EGSs that have accessed the account data. The Commission's regulations governing the ECL do not currently provide customers with the opportunity to monitor EGS access to their accounts. Requiring such an audit process would allow customers to ensure that access to their private information is restricted only to the authorized EGS, and would assist the Commission in its own monitoring of EGS access

procedures by allowing customers to notify the EDC and the PUC regarding any unauthorized EGS account access.

Finally, the Commission should conduct periodic auditing of EGSs' authorization documentation to confirm that the EGS has clearly and explicitly set forth the types of customer information associated with access to a customer account number. EGSs should be required to retain such documentation for periodic Commission review, and copies of any signed authorization should be made available to the customer upon request. Although the Industrial Customer Groups strongly believe that each customer should have the ability to audit access to their individual accounts, thorough auditing and aggressive enforcement by the Commission would complement the customer's audit process.

These items are not an exhaustive listing of possible ways to appropriately balance customers' data security needs against the EGSs' desire to access account data. The Industrial Customer Groups are willing to evaluate other alternatives that the Commission or stakeholders may suggest.

**D. CONCLUSION**

**WHEREFORE**, Industrial Energy Consumers of Pennsylvania, Duquesne Industrial Intervenors, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Comments.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

Pamela C. Polacek (Attorney I.D. #78276)  
Elizabeth P. Trinkle (Attorney I.D. # 313763)  
McNees Wallace & Nurick LLC  
100 Pine Street  
Harrisburg, PA 17108-1166  
Phone: 717.232.8000  
Fax: 717.237.5300  
[ppolacek@mwn.com](mailto:ppolacek@mwn.com)  
[etrinkle@mwn.com](mailto:etrinkle@mwn.com)

Counsel to the Industrial Energy Consumers of Pennsylvania, Duquesne Industrial Intervenors, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors

Dated: May 20, 2013