**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

 Public Meeting held August 15, 2013

Commissioners Present:

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| Robert F. Powelson, ChairmanJohn F. Coleman, Jr., Vice Chairman |
| Wayne E. GardnerJames H. Cawley |
| Pamela A. Witmer |

Interim Guidelines For Natural Docket No.

Gas Distribution Company M-2012-2324075

Eligible Customer Lists

**FINAL order**

**BY THE COMMISSION:**

 Before the Commission, upon our own motion, are guidelines to provide greater uniformity in the customer account information provided by Natural Gas Distribution Companies (NGDCs) to Natural Gas Suppliers (NGSs) to assist in the development of the competitive retail market. We take this action to provide guidance to NGDCs and NGSs alike similar to the non-binding guidelines we issued for the benefit of the electric industry.[[1]](#footnote-1) We issued proposed guidelines via Tentative Order entered September 27, 2012 (*Tentative Order*), and solicited public comments. With this Final Order, we establish final interim guidelines for Eligible Customer Lists (ECLs) maintained by NGDCs.

**BACKGROUND**

 On March 6, 2012, Dominion Retail, Inc., Interstate Gas Supply, Inc., and Shipley Choice, LLC, petitioned the Commission, at Docket No. P-2012-2291983 (Petition), for a declaratory order stating that NGDCs were under a continuing obligation to provide complete customer lists to NGSs operating in their service territories without the imposition of fees on the NGSs. The Petition was specifically directed at Columbia Gas of Pennsylvania, Inc. (Columbia Gas) and National Fuel Gas Distribution Corporation (National Fuel), which are both NGDCs. The NGS petitioners in that proceeding were relying upon our order in *Procedures Applicable To Natural Gas Distribution Companies And Natural Gas Suppliers During the Transition to Full Retail Choice; Final Order*, Docket No. M-00991249F0009, Final Order entered May 12, 2000 (*Transition Final Order*), the *Transition Tentative Order[[2]](#footnote-2)* which preceded it and our regulation at 52 Pa. Code § 62.78 (privacy of customer information).

 By an Order adopted at the September 27, 2012 Public Meeting, we determined that the *Transition Final Order*, *Transition Tentative Order* and our regulation at Section 62.78 did not require the continued provision of customer lists at no cost to the NGS and denied the Petition for Declaratory Order. However, Columbia Gas stated that it would continue to provide customer lists to NGSs on a voluntary basis and we are pleased with that action.

By a separate Order, adopted at the September 27, 2012 Public Meeting, the Commission determined that it was apparent from the pleadings in that declaratory order proceeding at P-2012-2291983 that there is much divergence among NGDCs concerning the provision of customer lists. Accordingly, the Commission issued a *Tentative Order* setting forth proposed guidelines in order to provide uniformity in the customer account information provided by NGDCs to NGSs. The Commission reasoned that providing uniform guidelines concerning the composition of lists of eligible customers and the terms relating to the provision of these ECLs to NGSs would greatly benefit the continued development of the retail market for natural gas supply in Pennsylvania.

In the *Tentative Order*, we requested interested parties to file comments and reply comments regarding the proposed guidelines. Comments were received from Columbia Gas, National Fuel, Energy Association of Pennsylvania (EAP), Hess Corporation (Hess), the Industrial Customer Groups[[3]](#footnote-3), National Energy Marketers Association (NEMA), the Office of Consumer Advocate (OCA), PECO Energy Company (PECO), Natural Gas Supplier Parties[[4]](#footnote-4) (NGS Parties), Valley Energy, Inc. (Valley), and Washington Gas Energy Services, Inc. (Washington Gas). Reply comments were filed by the OCA.

The Commission thanks all of the commenters for providing thorough input on the topics raised by the *Tentative Order*. We have reviewed and considered all the comments. As to any recommendations which are not incorporated herein, they are deemed rejected.

**DISCUSSION**

Previously, we determined that the general parameters for marketing retail natural gas to the public should be very similar to those governing the marketing of retail electric power. Accordingly, in setting forth these final interim guidelines for NGDCs and NGSs to follow, we have been guided by our reconsideration on our *Electric ECL Order* at Docket No. M-2010-2183412*. Electric ECL Order* at 2-3, 6-11. Thus, we will not re-address those issues and, instead, will adopt the following principles, consistent with the *Electric ECL Order*: (1) licensed competitive suppliers should have access to the distribution utility customer lists, (2) licensed competitive suppliers are obligated to safeguard the confidentiality of customer information, and (3) all residential and small commercial customers, regardless of their personal circumstances, will have the opportunity to restrict the release of all of their account information and usage information or none of their account information except historical billing data through the use of an “opt-out” process. In addition, we will require NGDCs to re-solicit all of their residential and small commercial customers on a triennial basis regarding their options surrounding the disclosure of their customer information for the purposes of creating a new ECL for NGSs.

1. **Comments of the Parties---Preliminary Matters**

The Industrial Customer Groups state that the Commission should maintain the

exemption for large Commercial and Industrial (C&I) data from the ECL data point requirements in order to protect the Industrial Customer Groups and other energy-intensive NGDC customers from potential exposure.[[5]](#footnote-5) Industrial Customer Groups Comments at 3. The Industrial Customer Groups assert that the Commission stated that large C&I customers “have long enjoyed the ability to shop for alternative suppliers,” and therefore no information sharing mechanism is needed for these customers given their apparent awareness of supplier options.[[6]](#footnote-6) *Id*. The Industrial Customer Groups assert that with this acknowledgment by the Commission that large C&I customers have a long standing history of shopping for alternative natural gas supply, the Commission explicitly exempted large C&I customers from the ECL disclosure requirements in its May 2000 Order. *Id.*

 Additionally, the Industrial Customer Groups state that large C&I usage data is competitively sensitive information. Industrial Customer Groups Comments at 4. They assert that natural gas consumption information has a direct relationship to confidential business practices for some large C&I customers, making restriction of this information crucial to prevent unfair competition. *Id.* The Industrial Customer Groups further argue that given the requirement that customers repeat the opt-out process every three years, there is a risk that large C&I customers’ usage date could be compromised by oversight or miscommunication between an NGDC and a customer. *Id.*

 In its comments, Hess asserts that the ECL procedures should apply to all NGDC customers, not to only a specific subset of customers. Hess Comments at 2. Hess reiterates the Commission’s statement of intent that the “general parameters of retail marketing natural gas to the public should be little different from those governing the retail marketing of electric power.” *Id*. Hess states that it understands that the *Electric ECL Order* requires Electric Distribution Companies (EDCs) to provide licensed Electric Generation Suppliers (EGSs) customer information for *all* of its electric customers. (emphasis added) *Id.* Thus, Hess asserts that the Commission should clarify the *Tentative Order* and so indicate that the guidelines will require an NGDC to provide licensed NGSs with customer information for all of its natural gas customers. Hess argues that such a result is consistent with the Commission’s efforts to not only have uniformity for customer list disclosures across NGDCs, but also across the entire Pennsylvania retail energy market (electric and natural gas). *Id*.

NEMA asserts that the Commission should establish binding gas ECL guidelines. NEMA Comments at 2. NEMA argues that Section 2204 of the Natural Gas Choice and Competition Act, 66 Pa. C.S. § 2204(a), gives the Commission the authority to, “adopt orders, rules, regulations and policies as shall be necessary and appropriate to implement fully this chapter.” *Id.* Conversely, EAP underscores the language in the *Tentative Order* at page 1, which emphasizes that the Commission is issuing Interim Guidelines intended to “provide guidance” to the NGDCs and NGSs, similar to its earlier actions in the retail electric market. EAP Comments at 2. EAP states that through these guidelines, the Commission is seeking to specifically identify its expectations and the desired outcome while affording flexibility in the method by which the ECL process is accomplished. *Id*. Accordingly, EAP asserts that the gas ECL guidelines are non-binding and advisory in nature.

In its comments, PECO asserts that combination gas and electric utilities should only have to perform single solicitation efforts applicable to their gas and electric customers. PECO Comments at 3. PECO states that this approach will reduce unnecessary costs related to performing two separate and distinct solicitations, the costs of which would be passed onto customers. *Id*. Further, PECO states that this approach will eliminate customer confusion that would result from receiving multiple communications for both gas and electric ECLs. *Id.* Therefore, PECO requests that the Commission revise its guidelines so that combination utilities need only perform a single solicitation applicable to all customers.

**Resolution**

We have considered both the Industrial Customer Groups’ comments and Hess’s comments. We are persuaded by the Industrial Customer Groups’ assertion that large C&I customers should be exempted from the ECL procedures for the retail natural gas market. We acknowledge that unlike the electric industry, prior to the introduction of legislation to promote retail natural gas competition and the initiation of the ECL procedures, large C&I customers had a long-standing history of shopping for alternative natural gas suppliers. It is unnecessary to mandate their inclusion in disclosing their customer information as these types of energy-intensive natural gas customers are already likely fully informed of their supplier options. Thus, the gas ECL procedures herein will only apply to residential customers and small business customers.[[7]](#footnote-7)

 As to whether these guidelines are binding and mandatory in nature, we agree with EAP’s assessment. NEMA suggests that we elevate the requirements in these guidelines to binding law and regulations. We disagree with this suggestion. Rather, the purpose of this Final Order is to provide guidance, while preserving flexibility and discretion, regarding an NGDC’s release of appropriate customer information and usage data to a NGS.

 Lastly, when feasible, we do not oppose PECO’s suggestion that combination electric and gas utilities should only have to perform single solicitation across their entire customer base. However, we determine that combination electric and gas utilities still must keep distinct and separate ECLs for their electric customers and their natural gas customers. It is not necessary for a NGS to be privy to the customer information of an electric customer and vice versa for an EGS.

1. **Comments of the Parties---Data Points**

 Unlike the ECLs provided by EDCs to EGSs on the electric side where we specified a total of 25 data points were to be included, the Commission proffered only 10 data points, set forth in Appendix A to this Order, as being initially sufficient for the natural gas industry. These 10 data points contain such basic information as a customer’s name, billing address, service address and account number.

 In their comments, Washington Gas, the NGS Parties and NEMA assert that the Commission should include the following additional data points on the ECL: 1) Peak Demand CCF; 2) Base Factor; 3) Use Factor; and 4) County. *See* WGES Comments at 2, NGS Parties at 3-4; NEM Comments at 6-7. These parties explained that the Peak Demand CCF is a metric for calculating the most gas that a customer could use on a given day and that knowing a customer’s Peak Demand CCF will limit a NGS’s risk, allowing for better pricing of gas service to customers. *Id.* Additionally, they explained that Base Factor is the amount of gas a customer uses each day of the year regardless of temperature. *Id.* Lastly, the parties explained that Use Factor is the amount of gas a customer uses per heating degree day. *Id.* As explained by the parties,thesetwo factors would better allow suppliers to predict a customer’s usage on a given date and improve a NGS’s ability to forecast load.TheNGS Parties and NEMA also support the inclusion of a data point for County of the ECL. NGS Parties Comments at 3-4; NEMA Comments at 6. Both parties explain that the County data point would provide the county in which the service address is situated, which, they assert, would assist in the calculation of sales tax. *Id.*

In its reply comments, the OCA stated that it supported the Commission position in the Tentative Order that the data points listed on the ECL should be limited to only information essential to NGS marketing efforts for a customer class. The OCA notes that no party asserted that these additional data points are *essential* to NGS marketing efforts for a customer class. Further, the OCA points to Washington Gas’s assertion in its comments that these additional data points would be helpful, but are not essential to marketing efforts. *See* OCA Reply Comments at 3; Washington Gas Comments at 1-2. The OCA states that only the data points providing information that is necessary to make offers to customers should be included in the ECL. Accordingly, the OCA asserts that the additional points sought by Washington Gas, the NGS Parties and NEMA should not be included in the ECL.

**Resolution**

We agree with the OCA’s position on this matter. All the data points on the ECL contain private customer information. However, the ECL should only contain private information that is necessary for a NGS to make an initial offer to a customer, not any and all private customer information. Moreover, the information sought from the additional data points proposed by the suppliers can be garnered from the actual customer after it has accepted the supplier’s offer; it is not essential for an NGS to have this information prior to making an initial offer to the customer.

As we stated in the *Tentative Order*, all information not restricted by the customer will be provided to the NGS as part of the ECL or access to a secure website.[[8]](#footnote-8) Thus, an

NGDC will not withhold part of any data point such as an account number to act as a check on the veracity of a NGS’s claim to serve a customer. The Commission and NGDCs have sufficient mechanisms in place to address claims of slamming.

1. **Comments of the Parties---Solicitation of Customers and Frequency of Future Solicitations**

 As we stated in the *Tentative Order*, when an NGDC solicits its customers regarding the release of their account information, it should offer the customer the choice to prohibit release of all of their account data or just the historical data. As we previously determined with the electric industry, the NGDC should use an “opt-out” process. *See, Electric ECL Order* at 11-17. The customer may make this initial choice by returning a form to the NGDC through the mail or via electronic or telephonic means.

 In the *Tentative Order*, we further stated that we expected that each NGDC that has not solicited its customers regarding the disclosure of their customer information within the 12 months prior to the effective date of the Final Order in this proceeding must then solicit its customers within 90 days of that effective date. Additionally, we stated that all NGDCs that have solicited their customers within that same 12-month period will be expected to solicit those customers again not later than one year after the previous solicitation. Furthermore, in the *Tentative Order*, we stated that we expected NGDCs to develop new lists and require all customers to make their opt-out selections once every three years. Customers that have previously opted out will need to opt out again during these triennial list updates.

Additionally, in the *Tentative Order*, in regards to the frequency of future solicitations, we stated that each NGDC should solicit its customers at least annually; however, as we decided for the electric industry, we would consider on-going activities in place of an annual solicitation.[[9]](#footnote-9)

The NGS Parties expressed that the proposed timing of the implementation of the initial solicitation, as well as the requirement that NGDCs develop an entirely new list every three years by presenting all customers with the option to opt out and completely refreshing the list, are practical and logical. NGS Parties Comments at 6. However, the NGS Parties asserted that there is no mention of a requirement that NGDCs re-run or regenerate the customer list from their customer records or the frequency of that effort. *Id*. The NGS Parties state that if the customer lists are not completely refreshed periodically, those lists and the choices the customers make will become stale. Then, over time the lists will provide much less useful information to NGS. *Id.* Therefore, the NGS Parties state that the list should be re-run monthly and then posted in a secure area on an NGDC’s website. The NGS Parties assert that this requirement is vital to maintain the benefit of the list data for NGSs. Otherwise, the monthly changes in customers’ statuses would make the list much less beneficial, and the utility of the list would decline monthly. *Id.*

 In its initial comments, the OCA asserts that for a customer to make an informed decision about whether to restrict the release of information on the ECL, the customer must have sufficient information and understanding about the ECL and about the information that is to be contained on the ECL. OCA Comments at 4-6. The OCA suggests that each NGDC should include educational information about the ECL in order for customers to make an informed decision regarding the disclosure of their information and the methods to change their disclosure preferences regarding the ECL in the future. *Id.* The OCA acknowledges that this could be accomplished through either bill inserts or bill messages. Thus, the OCA states the Commission should direct that all NGDCs, after having issued their detailed, initial solicitations, to have an ongoing process that allows customers to change preferences through both a website process (if available to the NGDC) or through a telephone contact with a customer service representative.

 Additionally, the OCA states that customers may find the triennial update, in which customers that have previously opted out of disclosing information on the ECL will need to opt again, confusing and unsatisfactory. OCA Comments at 7. The OCA submits that this practice may have a detrimental effect on the development of natural gas competition. *Id*. The OCA states that generally, such opt-out procedures used by other industries, such as credit card and banking institutions, maintain a customer’s preferences unless and until the customer changes his or her preferences regarding disclosure of their information. *Id*. OCA asserts that natural gas customers that choose to opt out of including their personal information on the ECL should have their preferences maintained unless and until they change them. *Id.* The OCA submits that the periodic ongoing process it suggested earlier that informs the customers about the ECL and its benefits, allowing customers to make an informed decision and change their preferences voluntarily rather than having to repeatedly opt out every three years, is the better method.

 In its Reply Comments, the OCA stated that it does not oppose the NGS Parties’ proposal to require that an NGDC re-run the ECL monthly as long as it can be done in a cost-effective manner. OCA Reply Comments at 4. From a comparative standpoint, the OCA notes that the Commission directed EDCs to re-run the electric ECL monthly in its ECL guidelines. *See Interim Guidelines for Eligible Customer Lists*, Docket No. M‑2010‑2183412, Final Order at 10 (November 12, 2010). The OCA asserts that the frequency of re-running the ECL should be specified by the Commission in the Final Order to avoid any confusion. *Id*.

 Similar to the OCA, Columbia Gas, in its comments, also states that once a customer “opts out” that customer should not have to renew the “opt out” selection, and that requiring customers to renew such selection is likely to spur customer complaints and confusion. Columbia Gas Comments at 5. Columbia Gas also states that it has in place an ongoing process whereby twice a year it sends out bill insert notifications to its customers and informs them of their ability to restrict all or part of their information from the ECL in the manner described in the Commission’s *Tentative Order*. Columbia Gas Comments at 4. Columbia Gas explains that it then updates the customer’s information on the next ECL after it processes and receives a response (or non-response) to the semi-annual bill insert notifications. Columbia Gas asserts that its continued communications provide its customers with an ongoing opportunity to update their ECL information in a better and more informative manner than single solicitations. Therefore, Columbia Gas requests that the Commission allow alternative mechanisms for notifying customers of their ability to opt out of the ECL.

 NEMA states that it believes the ECL must be maintained and disseminated in a manner that strikes an appropriate balance between the accuracy of the information on the list and consumers’ information privacy concerns. NEMA Comments at 5. NEMA states that this includes the need for utilities to retain records as to those consumers that choose to opt-out of the ECL. *Id*. Additionally, NEMA states that consumers should receive notice of the ECL on a regular basis, not just through direct utility solicitations but through other utility communications such as bill inserts and announcements. *Id.* These communications would permit periodic updating of the ECL and maintain the information on the ECL on the most current, accurate basis possible. NEMA suggests that the natural gas ECL be updated annually. *Id.*

**Resolution**

We agree with the OCA’s position that in order for a customer to make an informed decision about whether to restrict the release of information on the ECL, the customer must have sufficient information and understanding about the ECL and about the information that is to be contained on the ECL. We believe that within the initial solicitation by NGDCs to customers for them to choose their preference regarding the release of information through the ECL, the customers should be provided information that explains the following: (1) what the ECL is; (2) what information is to be included on the ECL; (3) what the more detailed information represents; (4) how this information is to be used by NGSs; (5) how the information is to be safeguarded by NG
DCs; (6) how widely the information will be disseminated; and (7) the potential benefits to the customers of having their information included on the ECL. Again, we believe this will allow the customer to make an informed choice about disclosing their information on the ECL and will facilitate competitive choice. This same information should be sent to new customers as well. We also determine that customers can make this initial choice regarding including their information on the ECL by returning a form to the NGDC via mail, by calling a toll-free number or through the NGDC’s website.

In regards to future solicitations to customers, we determine that each NGDC should educate its customers regarding the disclosure options at least annually. We take note of Columbia Gas’s current practice of notifying its customers that they may opt-out of the ECL semi-annually. As we stated above, we are establishing guidelines and, thus, will not disturb an NGDC’s current practice that facilitates competition in the retail natural gas market and aligns with our intent to give customers the opportunity to make informed decisions as to whether they wish to exercise their right to restrict or disclose their personal information. However, we do not believe that such annual solicitations, even if done on a voluntary basis through bill inserts, relieves NGDCs, such as Columbia Gas, from the requirement to re-solicit its entire residential and small commercial customer base on a triennial basis as discussed below.

We agree with the OCA that any ongoing process regarding future solicitations should provide information about the ECL and give customers various methods to change their disclosure preferences regarding the ECL. The ongoing process should allow customers to change preferences through the mail, a website process or a telephone contact with a customer service representative. Accordingly, NGDCs should maintain an ongoing process that provides information about the ECL and allows the customer to change their preferences regarding the release of information on the ECL at any time. Moreover, we strongly suggest that NGDCs coordinate with the Commission’s Office of Communications to review their solicitation materials to ensure that they have taken reasonable steps to make sure customers are aware of (1) what their choice means; (2) how the information would be used; and (3) clear instruction on how to opt-out.

We take note of the comments of the OCA, Columbia, and PECO that requiring customers to repeatedly and affirmatively choose to opt out of the ECL disclosure process could be confusing and result in customer complaints and increased dissatisfaction with the competitive process. However, we agree with the NGS Parties that all customers should be presented with the option to opt out. Therefore, we will initiate a triennial update and will require NGDCs to re-solicit their entire residential and small commercial customer base every three years for the purpose of opting out of disclosing information on the ECL. As such, once a customer chooses to “opt out” from the ECL, that customer will need to periodically re-affirm that choice in future solicitations if they wish to continue having their customer information withheld. While the ongoing activities throughout the year by NGDCs (i.e., providing information to their customer base about the ECL and to permit their customers to change their disclosures preference at their own option if and when circumstances warrant) facilitates and promotes retail competition, we believe that a focused, triennial mailing is needed to ensure that the ECL is refreshed so that the information available to NGSs does not become stale.

In response to the comments submitted by the NGS Parties, the OCA and NEMA that address whether or not NGDCs are required to re-run or regenerate the customer list from their customer records and the frequency of that effort, the Commission acknowledges that if the customer lists are not completely refreshed periodically, over time the lists will provide much less useful information to NGSs. The NGS Parties recommend that the list should be re-run monthly and then posted in a secure area on an NGDC’s website. We agree and have determined that in order to provide NGSs with timely and accurate information, all NGDCs should update their ECL on a monthly basis and then post it in a secure area on the NGDC website (or by way of an alternative method if not available to the NGDC) so the NGSs have access to it.

1. **Comments of the Parties---Expense of solicitations**

In our *Tentative Order*, we stated that we recognized that the cost of soliciting customers as well as preparing and distributing ECLs is a legitimate business expense for NGDCs. Therefore, we determined that NGDCs may request recovery of these expenses through base rates as opposed to a fee or surcharge levied on any one group of customers of NGSs. However, we also noted that our discussion here should in no way be deemed to be an approval of the level of any such expense claimed.

 In their comments, PECO and Hess agree with our determination that the solicitation of customers and the preparation and distribution of ECLs is a legitimate business expense and that NGDCs should be permitted to request cost recovery through base rates. PECO Comments at 5; Hess Comments at 3. Hess further states that the Commission should allow the NGDCs to track any incremental costs associated with customer ECLs and to seek recovery through base rates in their next general base rate case. *Id.*

In its comments, the EAP raises concerns about the timeliness of recovering costs regarding the customer costs of solicitation process or associated customer education efforts through a base rate case and requests the Commission to refrain from designating this as the only method of cost recovery. EAP Comments at 4. The EAP asserts that it believes that cost recovery should occur on a full and current basis and an utility should not be required to carry the costs until such time as it files its next base rate case. *Id*. EAP states that the Commission should remain flexible regarding the manner in which NGDCs may seek cost recovery in this regard. EAP states that it anticipates that its members may seek cost recovery through an alternative regulatory process or in conjunction with legislation currently being discussed with suppliers, the Commission and the legislature. *Id.*

**Resolution**

We agree with EAP’s comment that we not designate a base rate case as the only means of cost recovery for any incremental costs associated with the ECL process at this time. Thus, we are only making a determination that such incremental costs are subject to cost recovery. However, based on our experience with the *Electric ECL Order*, we do not anticipate that the costs of compliance will be of such a magnitude as to warrant the time and expense of special rate filings and petitions. Also, because we have exempted large C&I customers from this ECL requirement, we do not anticipate that any cost recovery would be directed at this customer class.

**CONCLUSION**

For the foregoing reasons, we will adopt this Opinion and Order to serve as Interim Guidelines for the content of Eligible Customer Lists to be provided by NGDCs to NGSs licensed to provide service in the Commonwealth. This list will provide NGSs with important customer information so that the NGSs can more readily identify potential retail customers, and can better tailor products and service offerings to meet their customers’ needs. We believe this action will help to increase both supplier and customer participation in the marketplace. These Interim Guidelines provide: (1) that residential and small commercial natural gas customers shall have the right to withhold all customer account and usage data from the gas ECL, (2) that NGDCs will continue to use the “opt-out” process to secure consent from their residential and small commercial natural gas customers concerning the disclosure of customer information to Commission-licensed NGSs, (3) that all NGDCs shall make their next solicitation in accordance with the timeframe set forth in the Ordering Paragraphs below, (4) that NGDCs shall, in consultation with our Office of Communications, make sure that residential and small commercial customers are aware of what their choice means, how the information will be used, and clear instruction on how to opt-out, (5) that the ECL will include only the elements set forth Appendix A to this Order, (6) that NGDCs shall update the ECLs monthly and post it on a secure website so that NGSs have access to the updated ECL, (7) that the NGDCs shall educate their residential and small commercial customer base at least annually regarding their disclosure preference or use alternative ongoing activities such as bill inserts to notify customers of their disclosure options, (8) that once every three years NGDCs will re-solicit their entire residential and small commercial customer base for the purpose of re-affirming customers’ choices to opt out of disclosing information on the ECL, and (9) that NGDCs have the ability to seek cost recovery for all incremental costs associated with soliciting customers and preparing and distributing the ECL, but such cost recovery may not be directed at large C&I customers; **THEREFORE,**

 **IT IS ORDERED:**

 1. That the Interim Guidelines for Eligible Customer Lists as set forth in this Final Order are hereby adopted.

2. That all licensed Natural Gas Suppliers should have access to the distribution utility customer lists or Eligible Customers Lists maintained by Natural Gas Distribution Companies.

3. That all residential and small commercial customers of Natural Gas Distribution Companies (NGDCs) shall have the right to withhold all customer account and usage data from the Eligible Customer List (ECL) that is made available to Commission-licensed Natural Gas Suppliers (NGSs).

 4. That NGDCs shall continue to use the “opt-out” process to secure customer consent to the disclosure of customer information to Commission-licensed NGSs.

5. That the ECL shall include the elements set forth in Appendix A attached hereto.

6. That all licensed NGSs are obligated to safeguard the confidentiality of customer information set forth in the Eligible Customer List.

7. That each NGDC that has not solicited its residential and small commercial customer base within the twelve (12) months prior to the effective date of this Final Order shall solicit its entire residential and small commercial customer base within ninety (90) days of the effective date.

1. That each NGDC that has solicited its residential and small commercial customer base within the twelve (12) months prior to the effective date of this Final Order shall be expected to make their next solicitation to its entire residential and small commercial customer base no later than one (1) year after the prior solicitation.
2. That if a combination electric and gas utility company has solicited its entire electrical customer base and entire natural gas residential and small commercial customer base within twelve (12) months prior to the effective date of this Final Order, it shall be expected to make its next solicitation to its to these customers no later than one (1) year after the prior solicitation.
3. That a combination electric and gas utilities shall keep distinct and separate ECLs for their electric customers and their residential and small commercial natural gas customers.
4. That in preparing their initial solicitations to residential and small commercial customers for them to choose their preference regarding the release of information through the ECL, the NGDCs shall provide the customers information that explains the following: (1) what the ECL is; (2) what information is to be included on the ECL; (3) what the more detailed information represents; (4) how this information is to be used by NGSs; (5) how the information is to be safeguarded by NGDCs; (6) how widely the information will be disseminated; (7) the potential benefits to the customers of having their information included on the ECL and (8) what their opt-out choice means.
5. That once every three years NGDCs will create a new ECL by re-soliciting their entire residential and small commercial customer base about their options regarding the disclosure of their customer information to NGSs.
6. That in preparing future solicitations, customer communications or reminder

materials regarding the Eligible Customer List, all NGDCs shall, in consultation with the Commission’s Office of Communications, make sure that residential and small commercial customers are aware of: (1) how the customer account and usage information would be used, (2) clear instruction on how to opt-out, (3) what their opt-out choice means, and (4) allow customers to change preferences either by first class mail or via electronic or telephonic means.

1. That all NGDCs should update their Eligible Customer List on a monthly

basis and then post it in a secure area on their website (or by way of an alternative method if not available to the NGDC) so the NGSs have access to it.

1. That NGDCs will be able to seek cost recovery from residential and small commercial customers for soliciting customers, and preparing and distributing Eligible Customer Lists, but may not seek such recovery from large C&I customers.
2. That this Final Order shall be served on all Natural Gas Distribution

Companies, Natural Gas Suppliers licensed to provide service in the Commonwealth, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and the Pennsylvania Coalition against Domestic Violence.

17. That a copy of this Final Order shall be posted on the Commission’s website at OCMO’s web page.

18. That this docket be marked closed.



**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: August 15, 2013

ORDER ENTERED: September 23, 2013

**APPENDIX A**

**Natural Gas ECL Customer Data Elements**

1. Customer Account Number
2. Customer Name
3. Service Address
4. Billing Address
5. Tariff Rate Class and Schedule
6. Rate Subclass/Rate Subcode (if available)
7. Meter Read Cycle
8. SOLR/Shopping Status (Y or N)
9. Monthly Consumption (each of 12 months)(Mcf)
10. Monthly Peak Demand (each of 12 months) (Mcf/d) (if available)
1. *Interim Guidelines For Eligible Customer Lists*, Docket No. M-2010-2183412, Final Order on Reconsideration entered November 15, 2011 (*Electric ECL Order*). [↑](#footnote-ref-1)
2. *Procedures Applicable To Natural Gas Distribution Companies And Natural Gas Suppliers During the Transition to Full Retail Choice; Request for Comments*, Docket No. M-00991249F0009, Tentative Order entered April 13, 2000 (Transition Tentative Order). [↑](#footnote-ref-2)
3. The Industrial Customer Groups consists of the following ad hoc groups of commercial, institutional and industrial customers of natural gas that participate in various proceedings before the Commission: the Industrial Energy Consumers of Pennsylvania (IECPA), Central Penn Gas Large Users Group (CPGLUG), Columbia Industrial Intervenors (CII), Peoples Industrial Intervenors (PII), Philadelphia Area Industrial Energy Users Group (PAIEUG), Philadelphia Industrial & Commercial Gas Users Group (PICGUG), UGI Industrial Intervenors (UGIII). [↑](#footnote-ref-3)
4. NGS Parties include Shipley Choice, LLC d/b/a Shipley Energy (Shipley), Interstate Gas Supply d/b/a IGC Energy (IGS) and Dominion Retail, Inc. d/b/a Dominion Energy Solutions (DES). [↑](#footnote-ref-4)
5. *See Procedures Applicable To Natural Gas Distribution Companies and Natural Gas Suppliers During the Transition to Full Retail Choice*, Docket No. M-00991249F0009, Final Order adopted May 11, 2000 (*May 2000 Order*). [↑](#footnote-ref-5)
6. *See May 2000 Order* at 9. [↑](#footnote-ref-6)
7. *See* 52 Pa. Code § 62.72 [↑](#footnote-ref-7)
8. We already determined that customer telephone numbers are not part of the ECL for the natural gas industry. Nonetheless, we again caution NGSs, other marketers and agents that they remain subject to the provisions of the state and federal “do not call” laws as well as our consumer protection regulations at 52 Pa. Code § 56, *et seq.* (Standards and billing practices for residential utility service). [↑](#footnote-ref-8)
9. In our *Electric ECL Order* we stated: In lieu of annual companywide solicitations, EDCs shall actively notify customers of their withholding options through each new customer’s welcome package and through periodic announcements in customer bill inserts, e-mail, or a separate announcement included in the customer’s paper bill or electronic notification, if available. The welcome package for new customers and periodic announcements for all customers shall also provide guidance on how to make the selection through company-provided form, e-mails, written letter, toll-free numbers, or the EDC website. *Electric ECL Order* at 23. We adopted this same policy for the natural gas industry. [↑](#footnote-ref-9)