**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting heldOctober 23, 2014

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

James H. Cawley

Pamela A. Witmer

Gladys M. Brown

Interim Guidelines Docket No. M-2010-2183412

For Eligible Customer Lists

**FINAL ORDER**

**BY THE COMMISSION:**

Before the Commission is a recommendation from the Commission’s Office of Competitive Market Oversight (OCMO) to require triennial company-wide solicitations of residential and small commercial customers by the Electric Distribution Companies (EDCs) in order to update the electric Eligible Customer Lists (ECL), which are made available to Electric Generation Suppliers (EGSs). OCMO recommends that the first company-wide solicitation occur within the first quarter of 2015, with subsequent solicitations occurring every three years thereafter.

**Background**

In the course of a meeting held by OCMO through the Committee Handling Activities for Retail Growth in Electricity (CHARGE) on April 8, 2010, the issue of creating a uniform ECL was raised.[[1]](#footnote-1) This issue had previously been committed to and discussed by the Commission’s Electronic Data Exchange Working Group (EDEWG). Following the discussion at the April 8 CHARGE meeting, a team was assigned the task of continuing the discussion held by EDEWG and determining which ECL issues could be resolved by consensus between the EDCs and EGSs and which issues would need to be resolved with Commission guidance. At the conclusion of those discussions, the team reported back to CHARGE during a teleconference held on April 29, 2010. Various aspects of the ECL were discussed, including consensus items, non-consensus items and the various positions taken on the non-consensus items. At the conclusion of the discussion, Commission Staff stated that it would take under advisement the team’s ECL report and the CHARGE discussion and prepare a recommendation for the Commission’s consideration. At its July 15, 2010 Public Meeting, the Commission adopted for public comment a Tentative Order outlining OCMO’s proposal for the provision of more uniformity in the information to be provided in the EDCs’ ECLs.[[2]](#footnote-2) On November 15, 2011, the Commission adopted a Final Order, at this docket, which outlined interim guidelines for the EDCs’ provision of the ECLs.[[3]](#footnote-3)

The issue of the provision of ECLs was again raised on March 6, 2012, this time in relation to the Commonwealth’s competitive retail natural gas market. 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 natural gas distribution companies (NGDCs) were under a continuing obligation to provide complete ECLs to retail natural gas suppliers (NGSs) operating in their service territories without the imposition of fees on the NGSs.[[4]](#footnote-4) By an Order adopted at its September 27, 2012 Public Meeting, the Commission determined that NGDCs were not required to continually provide ECLs at no cost to the NGSs and denied the Petition.[[5]](#footnote-5)

In a separate Order, also adopted at the September 27, 2012 Public Meeting, the Commission determined that it was apparent from the pleadings in the 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.[[6]](#footnote-6) At its August 15, 2013 Public Meeting, the Commission unanimously adopted the Joint Motion of Commissioners Pamela A. Witmer and James H. Cawley regarding a Final Order[[7]](#footnote-7) outlining final interim guidelines for the NGDC provision of ECLs. In the Joint Motion, the Commissioners stated the following:

Additionally, upon further review of the *Electric ECL Order*, it has come to our attention that while we determined that “[i]n 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,” we failed to institute any sort of dedicated solicitation to “refresh” an EDC’s ECL on a company-wide basis. Accordingly, as part of this Motion, we suggest referring this issue to the Office of Competitive Markets Oversight (OCMO) for discussion by its CHARGE[[8]](#footnote-8) group in order to explore the necessity of such a requirement for EDCs.

Joint Motion of Commissioners Pamela A. Witmer and James H. Cawley, *Interim Guidelines for Natural Gas Distribution Company Eligible Customer Lists*, Docket No. M-2012-2324075 (Aug. 15, 2013 Public Meeting) (hereinafter Joint Motion).

In meeting this requirement, OCMO, during its January 16, 2014 CHARGE call, requested that interested parties submit informal comments on the issue of company-wide electric ECL solicitations. Informal comments were due to OCMO by February 28, 2014. Informal comments were submitted by Citizens’ Electric Company of Lewisburg and Wellsboro Electric Company (Citizens’ & Wellsboro); FirstEnergy Solutions Corporation (FES); Office of Consumer Advocate (OCA); PECO Energy Company (PECO) and PPL Electric Utilities Corporation (PPL).[[9]](#footnote-9)

Following its review of the informal comments, OCMO provided to the Commission its recommendations for a company-wide solicitation schedule for the EDCs to update their ECLs. At its June 19, 2014 Public Meeting, the Commission adopted for public comment a Tentative Order outlining OCMO’s recommendations.[[10]](#footnote-10) This Tentative Order proposed a triennial company-wide solicitation schedule for the EDCs, with certain information elements to be included. Comments were specifically requested regarding the provision of such a solicitation by those utilities serving dual-service customers (i.e., a customer receiving both natural gas and electricity service from the same utility) and whether or not such customers should be able to allow or restrict different information elements in one ECL (e.g., electric ECL) versus the other (e.g., natural gas ECL). Additionally, the Commission requested estimated costs for such solicitations and proposals regarding the recovery of those costs.

Comments to the Tentative Order were due on July 21, 2014, with reply comments due on August 4, 2014. The following parties filed comments to the Tentative Order: Duquesne Light Company (Duquesne); Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, FirstEnergy); OCA; Office of Small Business Advocate (OSBA); PECO; Pennsylvania Utility Law Project (PULP); and PPL.

The following parties filed reply comments to the Tentative Order: OSBA; Pennsylvania Coalition Against Domestic Violence (PCADV); and Retail Energy Supply Association (RESA).

**Discussion**

**A. PULP’s Request for an Evidentiary Proceeding**

**1. Comments**

PULP requests that the Commission allow for an evidentiary proceeding to factually explore the benefits and risks of the ECL. PULP points out that the Joint Motion directs OCMO to “explore the necessity of such a requirement for EDCs.” (Joint Motion at 2). PULP emphasizes the use of the word “necessity” in the Joint Motion. PULP believes that referring this proceeding for hearings would allow the Commission to fully explore the benefits and risks and to make factual determinations about the need for the ECL, compared to the risks, before proceeding with additional costly and time-consuming procedures. It also believes that there has been no showing of the need to institute an additional solicitation or periodic refreshing of the ECL and, therefore, requests that the underlying issues of the necessity for, potential benefits of, and the costs of a triennial refresh be referred to the Commission’s Office of Administrative Law Judge for specific findings. PULP Comments at 2 – 6.

RESA disagrees with PULP’s request for evidentiary proceedings. RESA references the Commission regulations at 52 Pa. Code § 54.8, which restrict an EDC or EGS’s ability to release customer information to a third party unless the customer has been notified and provided with the opportunity to deny the release.[[11]](#footnote-11) Additionally, RESA notes that the release of customer information was addressed on appeal to the Commonwealth Court, at which time the Court concluded that the Commission’s regulations “preserve the delicate balance between a viable and competitive marketplace and customer privacy.”[[12]](#footnote-12) Therefore, RESA believes there is no reason to reopen such a determination within this proceeding. RESA Reply Comments at 2 – 4.

RESA also avers that PULP failed to cite any relevant or persuasive information to justify its request. Rather, RESA believes PULP cited data breaches and industries that are unrelated to the electric ECL. RESA states that the information included on the ECL is not widely publicized or distributed and is only given by an EDC to those EGSs licensed by the Commission to serve in that EDC’s territory. RESA does not believe PULP has shown that any person, to date, has been harmed by the existence of the ECL, despite the current process for the provision of the ECL being applicable for over four years, with the prior version of the ECL having been available since the EDCs’ initial restructuring plans. RESA disagrees with PULP’s contention that the ECL should be discontinued because the information, such as the phone number or service address, could potentially be utilized for nefarious or criminal purposes. While RESA recognizes the possibility of such actions, it opines that other resources, such as telephone books, online white pages, state and county real estate databases and other sources of information all present certain customer-specific information that could potentially be utilized for unlawful purposes, but that this is not reason alone to discontinue the publication of the information. Therefore, RESA requests that the Commission reject PULP’s request for an evidentiary hearing to explore the benefits and risks of the ECL as there has been no showing that such a process is necessary or would produce meaningful information. RESA Reply Comments at 3 – 5.

**2. Disposition**

The Commission will deny PULP’s request for an evidentiary hearing as PULP’s request is beyond the scope of this proceeding. In essence, PULP is challenging the benefits of an ECL and whether any customer information should be provided by an EDC to an EGS, not just whether the ECL should be refreshed or whether individuals who previously opted out should have to again affirmatively opt-out during a refresh.

As RESA points out, since the transition to full retail choice, the Commission has consistently held “that access to a customer’s name, address, account number, rate class and load data is absolutely necessary for a supplier to have the ability to develop specific pricing offers and to have a meaningful opportunity to attract customers.”[[13]](#footnote-13) Again, in 2010, the Commission reiterated that the ECL provides “EGSs with important customer information so that the EGSs can more readily identify potential retail customers, and can better tailor products and service offerings to meet their customers’ needs,” which “helps to increase both supplier and customer participation in the marketplace.”[[14]](#footnote-14)

We agree with RESA that PULP failed to cite to any facts or information relevant to this issue. The studies and information cited by PULP address data security, not whether the data is necessary for suppliers to develop specific pricing offers and to have a meaningful opportunity to attract customers. The Commission agrees with PULP that data security is critical and reminds both EDCs and EGSs that they have an obligation to maintain the confidentiality of customer information.[[15]](#footnote-15) The Commission takes these obligations seriously and will not hesitate to hold EDCs and EGSs accountable for failing to meet their obligation to maintain the confidentiality of customer information as required by the regulations. We also agree with RESA that PULP’s assertion that the information on the ECL could potentially be used for nefarious or criminal purposes is not enough of a reason to end the ECL. Simply put, PULP has not raised any new or novel issues or facts that necessitate a complete review of what amounts to over 15 years of Commission precedent on this issue. “Where there are no disputed questions of fact and the issue to be decided is purely one of law or policy, a case may be disposed of without resort to an evidentiary hearing.”[[16]](#footnote-16) For these reasons, the Commission will deny PULP’s request for an evidentiary hearing.

**B. Frequency of Company-wide Solicitations**

The Commission proposed, in its Tentative Order, a triennial company-wide requirement for the refreshment of EDC ECLs, in order to maintain consistency between the natural gas ECL solicitation schedule and that utilized on the electric side. Additionally, it was proposed that the EDCs perform their next company-wide solicitation by the end of the first quarter of 2015, which would be three years after the solicitation required by the *November 15, 2011 Electricity ECL Order*.

**1. Comments**

Duquesne does not oppose a requirement for triennial company-wide solicitations for refreshing its ECL; however, it does express concern that customers may feel inundated with solicitations and other mailings related to retail competition. Therefore, Duquesne suggests that the solicitation be in the form of two separate letters, each based on the customer’s current ECL status. Duquesne assumes that the Commission will maintain the customer’s choice prior to each new solicitation, such that no response from the customer to the new solicitation will keep the customer’s existing status. Duquesne Comments at 1 and 2.

FirstEnergy also does not oppose an official refresh of ECLs as long as it is not done with a frequency that causes customer confusion, frustration or irritation with the utilities or the market. While FirstEnergy notes that it already provides customers with information regarding both the ECL and the retail market via mechanisms like new mover mailings, semi-annual bill inserts and call center scripting, it believes that a three-year cycle for refreshing the ECLs strikes an appropriate balance. FirstEnergy Comments at 2. FirstEnergy also references, specifically with regard to decreasing costs, the possibility of providing the solicitation electronically to those customers who have elected to receive their bills electronically. FirstEnergy Comments at 4.

PPL believes that its current approach to the ECL provides customers with a clear means by which they can choose to withhold some, or all, of their information with no obligation to provide reason or justification. All new and existing PPL customers receive notifications regarding their ECL options in welcome packets, bill inserts, PPL’s website and PPL’s social media outreach. PPL expresses concern, similar to Duquesne, that more frequent solicitations may cause customer confusion. However, PPL states that it is prepared to complete a company-wide solicitation during the first quarter of 2015. PPL Comments at 3 – 6.

OCA disagrees with the Commission’s proposed triennial solicitation schedule. It submits that a change to current refresh policies is unnecessary given the scope of the retail electric market and the many avenues by which EGSs market to customers. OCA supports providing notice to customers that they may not be receiving EGS offers because they have opted out of the ECL, but disagrees with requiring those customers who have already opted out of the ECL to reaffirm that decision every three years. OCA expresses concern that customers may find reaffirming their decisions to be confusing and unsatisfactory. If the Commission decides to implement a triennial procedure, OCA believes it should allow the stated preferences of customers that are on file to remain in effect, unless that customer requests changes. OCA maintains its concerns for the natural gas ECL and does not support the expansion of those requirements into the electric market. OCA Comments at 4 – 6.

Similarly, PULP expresses concern that customers who have already opted out of the ECL would have to reaffirm that decision. PULP believes that customers were not initially informed that their decision to opt-out was in any way time limited and, therefore, PULP believes it would be unreasonable to now impose a time limit on customer privacy requests. PULP references provisions regarding the duration of a customer’s choice to opt-out of the disclosure of nonpublic, personal information by a financial institution to an unaffiliated entity and notes that such customers, like utility customers, have a reasonable expectation of privacy. In the financial market, PULP states that a customer’s choice remains in effect unless a customer chooses otherwise. It expresses concern that requiring a reaffirmation from customers would undermine consumer confidence in the competitive market. Additionally, PULP notes that the level of competition between the retail electric and retail natural gas markets is not parallel. Due to the differences in competition between the two markets, PULP avers that the virtue of consistency between the two ECLs may be illusory if it results in the imposition of additional costs and potential customer confusion. PULP Comments at 6 – 9.

While OSBA does not initially take a position on a triennial refresh schedule, it provides, in its reply comments, a request that the Commission reconsider such a requirement given the high costs and the fact that EDCs already actively educate customers regarding the ECL, as well as the lack of EGS support for the proposal. OSBA Reply Comments at 2 and 3.

PCADV agrees with the comments provided by OCA and PULP that updates to the ECL are unnecessary. It agrees that those customers who have already opted-out of the ECL should not have to reaffirm that decision. PCADV Reply Comments at 1 and 2.

RESA does not oppose the Commission’s proposal for a triennial solicitation schedule. It does oppose OCA and PULP’s request to reconsider the opt-out provision of the ECL. It disagrees with both parties that customers should not have to reaffirm their decision to opt out of the ECL. RESA believes the Commission has made its views on opt-out provisions clear. Also, RESA avers that requiring customers to reaffirm their decisions does not impact the consumer protections already in place. RESA notes that many safeguards, including but not limited to, the federal “Do Not Call” law,[[17]](#footnote-17) Pennsylvania’s Telemarketer Registration Act and the privacy requirements at 52 Pa. Code § 54.8, as well as compliance measures, ensure that consumer information is adequately protected from disclosure. Lastly, RESA believes that not requiring a reaffirmation during the triennial solicitation would reduce the number of customers who would authorize the release of the information and would reduce the efficacy of any information provided to EGSs. RESA Reply Comments at 5 – 7.

**2. Disposition**

The Commission maintains its position that it is in the best interest of all market participants for customers to be periodically reminded of their ability to include in, or restrict from, the ECL any, or all, of their information. While we recognize the outreach already being performed by the EDCs with regard to both the ECL and the competitive electric market as a whole, and applaud those efforts, we believe it beneficial for customers to receive a separate communication from their utility that details their options with regard to the ECL.

We disagree with OCA, PULP and PCADV that the opt-out nature of the ECL should be reconsidered and that those customers who have already opted to restrict some, or all, of their information from the ECL should not be required to reaffirm that decision. First, we agree with RESA that the Commission has already, on many occasions,[[18]](#footnote-18) reiterated its stance that opting out is an appropriate mechanism, especially with regard to customer information on the ECL. The comments provided by OCA, PULP and PCADV are neither new or novel nor persuasive enough to induce this Commission to reverse course on this issue.

Secondly, regarding customers who have already opted out of including some, or all, of their information from the ECL, we disagree with PULP that having to reaffirm that decision is inappropriate because customers were not provided, upon opting out, a time limitation for that decision. The lack of a time limitation does not prevent, nor does it make inappropriate, a determination by the Commission that such customers must reaffirm their decision. In fact, we believe it advantageous for customers to be notified at regular and reasonable intervals of their options in regards to not only the ECL, but also the competitive retail electric market as a whole. This is evident in the Commission’s requirements for EDCs to provide education regarding retail electric shopping; for EGSs to provide multiple notifications regarding the change in terms or expiration of a retail electricity supply contract and the customer’s options upon that term change or expiration; and the Commission’s own continued consumer education outreach via avenues such as trade shows, social media and press releases.

PULP opines that the Commission’s triennial solicitation proposal is based on a belief that consistencies, where possible, between the competitive retail electric and natural gas markets are beneficial and opines that the level of competitive development between the two industries is not parallel, making the proposal unnecessary and costly. We believe the relative maturity of the competitive retail electric market actually emphasizes the need for such a solicitation schedule for the electric ECL. Customers in the competitive retail electric market are becoming more educated regarding their choices and the benefits of competition and therefore, while they may have opted out of including information on an ECL in the past, with greater knowledge may come greater interest in receiving information from EGSs and shopping, leading to an interest in including information previously restricted from the ECL. Additionally, periodic reaffirmation provides those customers who may, for whatever reason, have now decided to remove some, or all, of their information from the ECL with a reminder that the opportunity is always available to do so.

Therefore, we direct the EDCs to perform company-wide solicitations, on a triennial basis, to refresh their ECLs. We believe such solicitations will be beneficial in reminding customers of the benefits of the electric ECL and the competitive retail electric market, while also providing customers with the ability to opt-out of including any, or all, of their information. We agree with FirstEnergy’s proposal to allow the solicitation to be served electronically to those customers who have opted to receive their bills via electronic means and will allow the EDCs to do so. We direct the EDCs to perform their next company-wide solicitation by the end of the first quarter of 2015, with solicitations occurring on a three-year basis after that.

**C. Company-wide Solicitations for Dual-Service Customers**

With regard to utilities serving dual-service customers, the Commission believed such utilities should be allowed to provide those customers with a single solicitation that includes all pertinent information regarding the electric *and* natural gas ECLs. However, we recognized that the schedules for refreshing the electric and natural gas ECLs may not coincide and specifically requested comments on this issue. Additionally, the Commission requested comments as to whether or not a dual-service customer can restrict some, or all, of his or her information from one ECL, while restricting or allowing different points of information on the other ECL.

**1. Comments**

PECO plans to perform a single solicitation, which will be applicable to all electric and natural gas customers, during the first quarter of 2015. It notes that, based on its experience, dual-service customers prefer to include the same amount of information on both the electric and natural gas ECLs. Therefore, PECO proposes applying such a customer’s preferences to both ECLs. Additionally, PECO notes that its system is designed to accommodate common elections, meaning that a customer’s decisions regarding the ECL are applied at the customer account level, which includes both electric and natural gas service information. PECO avers that this avoids customer confusion and keeps costs at reasonable levels. Moreover, PECO believes this helps those suppliers providing both retail electric and retail natural gas service in that it prevents them from having to track different customer choices for one ECL versus the other. PECO Comments at 2 and 3.

OCA does not oppose allowing a single solicitation for dual-service customers as long as all pertinent information regarding both ECLs is included. OCA believes that dual-service customers must be allowed to have independent choices for each ECL, so that those customers are able to restrict some information from one ECL but not from the other, if they choose to do so. OCA Comments at 6.

PULP believes that the Commission’s proposed approach may be confusing for customers, costly for the utilities and subject to significant error. PULP urges that dual-service customers be provided an option to restrict their information in both accounts with a single affirmation. PULP Comments at 13.

**2. Disposition**

PECO proposed to do a company-wide solicitation of both its electric and natural gas customers in the first quarter of 2015. While no other dual-service utilities provided feedback on the possibility of performing a single solicitation of dual-service customers, we do not believe this to be a widespread issue.[[19]](#footnote-19) Therefore, we will allow dual-service utilities to determine whether to perform a single solicitation of its dual-service customers or to perform separate solicitations. Should such a utility decide to perform a single solicitation, we will leave it to that utility’s discretion to determine whether to utilize the electric ECL schedule or the natural gas ECL schedule; however, the solicitations must occur on a triennial basis regardless of which schedule is utilized.

While we do not necessarily disagree with OCA that dual-service customers may choose to restrict certain information from one ECL, while including it on the other ECL, we generally believe that this possibility is remote. As a practical matter, we believe that most customers make the same choices regarding the inclusion of their information, regardless of the utility service. Therefore, we believe it unnecessary to require a dual-service utility, like PECO, to perform system changes to accommodate such a small number of people. However, if such a utility is currently able to provide dual-service customers with the ability to make separate decisions with regard to the electric and natural gas ECLs, they may feel free to provide that option.

**D. Content of Company-wide Solicitations**

We proposed that the triennial solicitations include the following information in order for customers to choose their preferences regarding the release of information through the ECL: (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 EGSs; (5) how the information is to be safeguarded by EDCs; (6) how widely the information will be disseminated; and (7) the potential benefits to the customers of having their information included on the ECL. Additionally, we proposed that the EDCs work in consultation with the Commission’s Office of Communications in developing those solicitations to ensure that the solicitations do not create a negative impression of electric choice.

We also proposed that EDCs allow customers to not only reply to the triennial solicitation via direct mail, but through website processes, electronic mail and/or telephone contacts with EDC customer service representatives. Therefore, in addition to the seven areas of information proposed for inclusion in the solicitation, we proposed the inclusion of language outlining the methodologies through which a customer can respond with his or her preferences regarding information included on the ECL.

**1. Comments**

Duquesne requests that the solicitation not include information regarding how customer information will, or should, be used by suppliers or how the information will be safeguarded by the suppliers. It believes this information is more appropriately communicated by the suppliers themselves or by the Commission. Duquesne believes customers may interpret the information as a guarantee that the EDC cannot make. Additionally, Duquesne proposes that the Commission provide EDCs with standard language regarding the potential benefits of the ECL and standardized statements regarding how the information will be used and protected. These statements would include information that they were created by and are being provided as a requirement of the Commission. Duquesne notes that it already handles customers’ ECL responses via U.S. Mail, its own website, electronic mail and toll-free telephone calls. Duquesne Comments at 3 and 4.

FirstEnergy states that it generally provides the proposed information in its materials regarding a customer’s choice to be included in or opt-out of the ECL. Additionally, it currently offers customers multiple methods, including direct mail, web and telephone options, for customers to opt-out of the ECL. FirstEnergy agrees that the content and methods of response outlined in the Commission’s proposal are reasonable and can be readily implemented. However, FirstEnergy does propose that, should the Commission require a consistent solicitation schedule, those solicitations should include language clearly explaining to customers that, despite the fact that they may have previously opted-out of the ECL, they need to again affirm their preferences. FirstEnergy believes this will help prevent customer confusion. FirstEnergy Comments at 3 and 4.

PECO agrees that the solicitation should include an easy-to-understand explanation of the purpose of the ECL. Also, PECO believes an explanation should be included that informs customers that the utility can provide EGSs with the customer’s name, address, account number and usage. It believes that the inclusion of all gas and electric ECL data elements would make the solicitation lengthy and confusing. Instead, PECO believes that those additional data elements, such as load profiles or peak demand, could possibly be made available on the utility’s website. PECO avers that a statement explaining that customer information can be provided to suppliers who will use it to contact them will be satisfactory for educating customers on how the information will be used. Regarding safeguards, PECO believes the solicitation should explain that EDCs will only share information, according to the customer’s direction, with NGSs and EGSs that have been licensed by the Commission. PECO opines that the solicitation should state that the data contained in the ECL will help make various competitive options, such as rates and renewable energy options, available to the customers. Lastly, PECO agrees that multiple methods for responding to the solicitation should be provided. Specifically, PECO believes customers should be able to notify the EDC by mail via a bill insert solicitation card, on the utility’s website or by contacting a utility customer service representative. PECO Comments at 3 – 5.

PPL has no objections to the types of information the Commission proposed for inclusion in the solicitation. It believes the information is appropriate and notes that it is similar to what PPL already provides to customers. PPL Comments at 6.

OCA supports the inclusion of the information proposed by the Commission and requests that it be allowed to assist the EDCs and the Commission’s Office of Communications in developing and evaluating the solicitations. OCA also supports allowing customers to respond to solicitations via multiple methods. OCA Comments at 6 and 7.

**2. Disposition**

The Commission directs the EDCs to include the following information in their solicitations: (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 EGSs; (5) how the information is to be safeguarded by EDCs; (6) how widely the information will be disseminated; and (7) the potential benefits to the customers of having their information included on the ECL. The Commission agrees with FirstEnergy that it may be beneficial to include language within the solicitation informing customers that, while they may have previously opted to exclude some, or all, of their information in previous iterations of the ECL, they must again affirm their preferences. We strongly encourage the EDCs to include such language.

Regarding Duquesne’s request that the solicitation not include information on how suppliers will use and safeguard customer information, we believe that this information is essential as it both informs the customer of the purpose of the ECL and that customer information will not be widely disseminated for other purposes. Such information should convey that EGSs use this information to develop specific pricing offers to have a meaningful opportunity to attract customers. It should also inform the customer that EGSs are obligated under the Commission’s regulations at 52 Pa. Code §§ 54.8 and 54.43 to maintain the confidentiality of this information and are not to release customer information to other individuals or entities without the customer’s consent. We will not provide specific language for this element, or other elements of the solicitations herein. However, we direct the EDCs to work with the Commission’s Office of Communications to develop the solicitations to ensure they meet the requirements outlined above; are easy to read and understand; and to ensure they are neutral with regard to the competitive retail market. The EDC and the Office of Communications may allow OCA to provide feedback on the development of the solicitations; however, the approval of OCA is not required.

We also adopt our original proposal that the EDCs allow customers to not only reply to the solicitation via direct mail, but also through website processes, electronic mail and/or telephone contacts with the EDC customer service representatives.

**E. Costs and Cost Recovery**

While we did not propose a specific method for the recovery of costs, the Commission requested comments from the EDCs regarding the costs of performing triennial company-wide solicitations, as well as comments from all interested stakeholders regarding how the EDCs should recover the costs associated with the solicitations.

**1. Comments**

Duquesne estimates the cost of the solicitation at $657,000, which includes all costs related to the preparation of documents, such as paper stock, printing, folding, postage and return postage fees. Duquesne notes that it would not incur costs if customers chose to utilize its website, electronic mail or the toll-free customer contact number in order to update their information for the ECL as Duquesne already permits. Duquesne proposes the use of the Retail Markets Initiatives Surcharge in its Provider of Last Resort (POLR)/Default Service Plan VII, which is currently before the Commission. Duquesne Comments at 4.

FirstEnergy estimates that a direct mail solicitation would costs approximately $400,000. It notes that costs could be reduced to approximately $70,000 per refresh if the EDCs are permitted to inform and educate their customers about the ECL through bill inserts, with electronic requests provided to customers who currently receive their bills electronically. FirstEnergy proposes the recovery of its costs on a full and current basis through a non-bypassable rider, like its Default Service Support Riders. FirstEnergy Comments at 4.

PECO anticipates that its ongoing costs will be modest as it has already invested in the infrastructure necessary to maintain ECLs. It proposes the recovery of costs through base rates. PECO Comments at 5.

PPL estimates that, at a minimum, it would cost approximately $1 million for a solicitation. PPL proposes the recovery of its costs through its Competitive Enhancement Rider. PPL Comments at 7 and 8.

OCA, OSBA, PULP and PCADV propose that the EDCs recover their costs from the EGSs since the EGSs are the party that benefits from the ECL. OCA Comments at 7; OSBA Comments at 1 and 2; OSBA Reply Comments at 3; PULP Comments at 9 – 12; PCADV Reply Comments at 2. OSBA proposes a discount on the Purchase of Receivables (POR) program. It notes that, if the Commission determines that EGSs should not be solely responsible for the costs of updating the ECLs, the costs should be recovered through a non-bypassable surcharge applicable to all residential and small business customers, including those who are shopping in the retail electric market. OSBA Comments at 1 and 2.

RESA disagrees with OCA, PULP and OSBA that EGSs should be required to pay for the triennial solicitation. RESA avers those parties unfairly characterize EGSs as using the ECL as a marketing tool when it actually plays an important role in ensuring a properly functioning competitive market. RESA believes the ECL allows EGSs to provide customers with competitive offers that frequently take into account customers’ historical usage and load profiles, information provided on the ECL. Additionally, RESA opines that the ECL helps facilitate the enrollment process by providing accurate customer account number information. Therefore, RESA requests that the Commission reject the proposals by OCA, PULP and OSBA and proposes that the EDCs recover the costs of the solicitations through base rates or a surcharge mechanism. RESA Reply Comments at 7 – 10.

**2. Disposition**

This Commission believes that the ECL benefits all residential and small commercial customers, not simply those who are shopping. We disagree with OCA, PULP, OSBA and PCADV that the ECL solely benefits the EGSs. As alluded to by RESA, the intent of the ECL is to allow EGSs to provide tailored products to customers. While this is “marketing,” it is to the benefit of the retail electric customer and furthers the intent of the Competition Act to permit customers to obtain direct access to the competitive retail generation market.[[20]](#footnote-20) We believe all customers, shopping and non-shopping, benefit from the ability to provide their information (or deny if they choose to do so) to those EGSs licensed by the Commission in order to receive competitive electric generation products. Accordingly, we will decline the request of OCA, PULP, OSBA and PCADV to direct the EDCs to recover from the EGSs their costs for the triennial solicitation. Instead, we will allow the EDCs to seek recovery of their costs in their next base rate case.

**Conclusion**

Through this Final Order, the Commission directs the EDCs to perform triennial company-wide solicitations in order to update their electricity ECLs. We believe these updates are in the best interest of all market participants as they allow customers to be periodically reminded of their ability to include in, or restrict from, the ECL any, or all, of their information. We continue to believe that the ECL is necessary for a supplier to have in order to develop specific pricing offers and to provide suppliers with a meaningful opportunity to attract customers.

**THEREFORE,**

**IT IS ORDERED:**

1. That this Final Order shall be served on all Electric Distribution Companies, the Office of Consumer Advocate, the Office of Small Business Advocate, the Bureau of Investigation & Enforcement and all parties that filed comments at Docket No. M-2010-2183412.

2. That the Secretary shall deposit a Notice of this Final Order with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin.*

3. That the Office of Competitive Market Oversight shall electronically serve a copy of this Final Order on all persons on the contact list for the Committee Handling Activities for Retail Growth in Electricity.

4. That a copy of this Final Order shall be posted on the Commission’s website at the Office of Competitive Market Oversight’s web page at <http://www.puc.pa.gov/utility_industry/electricity/electric_competitive_market_oversight.aspx>.

5. That the contact persons for this matter are H. Kirk House, Director, Office of Competitive Market Oversight, 717-772-8495 or [hhouse@pa.gov](mailto:hhouse@pa.gov), or Dan Mumford, Deputy Director, Office of Competitive Market Oversight, 717-783-1957 or [dmumford@pa.gov](mailto:dmumford@pa.gov). Questions may also be referred to [ra-ocmo@pa.gov](mailto:ra-ocmo@pa.gov).

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

ORDER ADOPTED: October 23, 2014

ORDER ENTERED: October 23, 2014

1. Recaps of all CHARGE meetings can be found on the Commission’s website at the following link: <http://www.puc.pa.gov/utility_industry/electricity/office_of_competitive_market_oversight/charge.aspx>. [↑](#footnote-ref-1)
2. *See Interim Guidelines For Eligible Customer Lists* Tentative Order, at Docket No. M-2010-2183412 (entered July 15, 2010). [↑](#footnote-ref-2)
3. *See Interim Guidelines For Eligible Customer Lists* Final Order on Reconsideration, at Docket No. M-2010-2183412 (Nov. 15, 2011) (hereinafter *November 15, 2011 Electricity ECL Order)*. [↑](#footnote-ref-3)
4. *See Petition of Dominion Retail, Inc., Interstate Gas Supply, Inc. and Shipley Choice, LLC. for Declaratory Order*, at Docket No. P-2012-2291983, filed Mar. 6, 2012. [↑](#footnote-ref-4)
5. *See Petition of Dominion Retail, Inc., Interstate Gas Supply, Inc. and Shipley Choice, LLC. for Declaratory Order* Opinion and Order, at Docket No. P-2012-2291983 (Sept. 27, 2012). [↑](#footnote-ref-5)
6. *See Interim Guidelines for Natural Gas Distribution Company Eligible Customer Lists* Tentative Order, at Docket No. M-2012-2324075 (Sept. 27, 2012). [↑](#footnote-ref-6)
7. *See Interim Guidelines for Natural Gas Distribution Company Eligible Customer Lists* Final Order, at Docket No. M-2012-2324075 (Sept. 23, 2013) (hereinafter *September 23, 2013 Natural Gas ECL Order)*. [↑](#footnote-ref-7)
8. CHARGE is an acronym for Committee Handling Activities for Retail Growth in Electricity. [↑](#footnote-ref-8)
9. These comments are posted on the Commission’s website at the following link: <http://www.puc.pa.gov/utility_industry/electricity/electric_competitive_market_oversight.aspx>. [↑](#footnote-ref-9)
10. *See Interim Guidelines For Eligible Customer Lists* Tentative Order, at Docket No. M-2010-2183412 (entered June 19, 2014) (hereinafter Tentative Order). [↑](#footnote-ref-10)
11. *See* 52 Pa. Code § 54.8(a)-(c). [↑](#footnote-ref-11)
12. *See The Mid-Atlantic Power Supply Association v. PUC*, 746 A.2d 1196, 1201 (Pa. Cmmwlth. 2000). [↑](#footnote-ref-12)
13. *Procedures Applicable to Electric Distribution Companies and Electric Generation Suppliers During the Transition to Full Retail Choice*, Final Order, at Docket No. M-00991230 (entered May 18, 1999), 92 Pa.P.U.C. 400, slip op. at 8. [↑](#footnote-ref-13)
14. *Interim Guidelines for Eligible Customer Lists*, Opinion and Order, at Docket No. M-2010-2183412 (entered November 12, 2010) at 18. [↑](#footnote-ref-14)
15. *See* 52 Pa. Code § 54.8 (Privacy of customer information) and 52 Pa. Code § 54.43(d) (Standards of conduct and disclosure for licensees). [↑](#footnote-ref-15)
16. *Dee-Dee Cab, Inc. v. Pa. PUC*, 817 A.2d 593, 598 (Pa. Cmwlth. 2003) (citing *Cresco, Inc. v. Pa. PUC*, 622 A.2d 997) (Pa. Cmwlth. 1993). [↑](#footnote-ref-16)
17. *See Telemarketing and Consumer Fraud and Abuse Prevention Act*, 15 U.S.C. § 6101 et seq. [↑](#footnote-ref-17)
18. *See Petition of Direct Energy Services, LLC for Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike County Light and Power Company*, Docket No. P-00062205, Final Opinion and Order entered Apr. 20, 2006, at 14. *See also,* Final Order on Reconsideration, at this docket, entered Nov. 15, 2011, at 15. *See also, Interim Guidelines for Natural Gas Distribution Company Eligible Customer Lists*, Docket No. M-2012-2324075, Final Order entered Sept. 23, 2013, at 15. [↑](#footnote-ref-18)
19. We believe this issue only applies to PECO Energy Company and Pike County Light and Power Company as they are dual-service utilities. While UGI Utilities Inc. provides both electric and natural gas services, few customers receive both service from UGI. For those customers who do receive both services from UGI, the services are billed separately and treated distinctly from each other. Therefore, we believe this issue does not apply to UGI. [↑](#footnote-ref-19)
20. *See*, 66 Pa. C.S. § 2802(3). [↑](#footnote-ref-20)