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May 15, 2024

VIA ELECTRONIC FILING

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

Re: **Guidelines for Eligible Customer Lists, Docket No. M-2010-2183412**

Dear Secretary Chiavetta:

Enclosed for filing please find the comments of the Energy Association of Pennsylvania to the March 1, 2024 Secretarial Letter at the above-captioned docket. Please do not hesitate to reach out with any questions.

Sincerely,

A handwritten signature in black ink, reading 'Nicole W. Luciano', is positioned below the word 'Sincerely,'.

Nicole W. Luciano
Director of Policy

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Guidelines for Eligible Customer Lists : **Docket No. M-2010-2183412**

**Comments of the
Energy Association of Pennsylvania to
March 1, 2024 Secretarial Letter**

I. INTRODUCTION

On March 1, 2024, Pennsylvania Public Utility Commission (“Commission” or “PUC”) entered a Secretarial Letter seeking comments from interested parties regarding its guidelines for the Eligible Customer Lists (“ECLs”) that Electric Distribution Companies (“EDCs”) make available to Electric Generation Suppliers (“EGSs”) and that Natural Gas Distribution Companies (“NGDCs”) make available to Natural Gas Suppliers (“NGSs”).

As outlined in the Secretarial Letter, EDCs and NGDCs are directed by the Commission to conduct a solicitation to customers every three years to update their respective ECLs. These solicitations allow customers to restrict inclusion of their information in the ECL that is provided to EGSs and NGSs. Customers who do not respond (i.e., “opt-out”) are automatically included in the ECL. Even customers who do opt-out must do so with each triennial solicitation.

In 2020, Duquesne Light petitioned to expand email ECL service to include their “e-communication customers” in addition to e-Billing customers for its 2021 ECL solicitation.¹ The PUC granted² Duquesne Light’s petition, determining it was in the public interest to allow for

¹ Duquesne Light Petition at Docket No. P-2020-3022674.

² January 14, 2021 Order at Docket No. P-2020-3022674.

electronic solicitation for the triennial ECL update. In its decision, the Commission noted that this allowance would reduce costs, provide useful information on the effectiveness of electronic communication for the ECL, and is generally consistent with consumer preferences. As directed by this January 2021 PUC Order, Duquesne provided a report to the Commission and stakeholders with an evaluation of its electronic ECL solicitation.³ Following the success of its 2021 ECL solicitation utilizing electronic service, Duquesne again petitioned in 2023 to apply the 2021 ECL methods to their 2024 triennial ECL solicitation.

By a January 18, 2024 Opinion and Order, the Commission granted in part and denied in part Duquesne's 2023 petition. While agreeing that it would continue to serve the public interest to allow Duquesne to provide its solicitations to customers electronically, the Commission also agreed with the comments of the Office of Consumer Advocate ("OCA") that the PUC should initiate a proceeding to assess the efficacy of email solicitation on ECLs on a statewide basis and consider amendments to address consumers' preferences for future ECL solicitation periods.

The Commission directed the Office of Competitive Market Oversight ("OCMO"), in conjunction with the PUC's Law Bureau, to open a proceeding at this docket to update the ECL guidelines.⁴ However, given that the January 18, 2024 PUC Order dealt only with Duquesne Light and the EGS ECL, the PUC finds, via this Secretarial Letter, that it is appropriate to consider these issues for ECL guidelines for NGDCs and NGSs.

The Secretarial Letter requests feedback on the guidelines for the ECL, "especially the use of electronic methods in communicating with customers, in lieu of written notices sent via the U.S. Postal Service." Secretarial Letter at 3. Interested parties were given sixty (60) days from publication of the Secretarial Letter to file comments, i.e., May 15, 2024.

³ December 2021 Report filed by Duquesne Light at Docket No. P-2020-3022674.

⁴ PUC January 18, 2024 Order at pp. 8-9.

The Energy Association of Pennsylvania (“EAP” or “Association”) a trade association whose members include the major natural gas and electric public utilities operating in the Commonwealth of Pennsylvania, submits these comments on behalf of its EDC and NGDC members.

II. BACKGROUND

The history of the ECL dates to the creation of the Phase-in Committee (“PIC”), which was initiated to oversee the development of the competitive retail electric and natural gas supply markets. Over time, OCMO has assumed primary responsibility for handling retail choice issues. Through its Committee Handling Activities for Retail Growth in Electricity (“CHARGE”), OCMO, alongside the Commission’s Electronic Data Exchange Working Group (“EDEWG”) and various stakeholder meetings⁵, continued to develop guidelines for ECLs applicable to both EDCs and NGDCs.

The primary, overarching goal of the ECL was to enhance the marketing efforts of EGSs and NGSs. It was found to be a necessary tool to reduce barriers to competition and help increase both supplier and customer participation in the marketplace. To that extent, EAP believes its mission has been accomplished.

The ECL is one of many “market enhancements” the Commission has pursued in efforts toward creating a robust energy marketplace in the Commonwealth. There is not, however, any attendant statute or regulation which governs the creation, maintenance, or public policy goal of the ECL. In its July 15, 2010 Tentative Order on Interim Guidelines for Eligible Customer Lists,

⁵ The Commission held various stakeholder meetings via the Stakeholders Exploring Avenues for Removing Competition Hurdles (“SEARCH”) process. CHARGE and SEARCH members included EDCs, NGDCs, EGSs, NGSs, industry trade organizations, consumers, the Office of Consumer Advocate, and the Office of Small Business Advocate.

the Commission's own history only cites discussions held by the EDEWG on creation of a "uniform" ECL.

III. COMMENTS

The Association believes that the ECL may no longer be necessary as a tool for retail customers in Pennsylvania to obtain the benefits of a properly functioning and workable competitive retail market. Energy supply market participation has grown to a healthy level since the time the ECL was put into place; it is no longer a necessary tool toward further market advancement. The PUC's own customer survey from 2016 found that nearly all respondents are aware that they can shop for their own electric provider.⁶

Since the time the ECL was first established, suppliers can now reach customers in a variety of ways. EGSs and NGSs can market their services through radio, television, print media, social media, sponsorships, and direct mail services that rely on services other than the ECL. EGSs and NGSs have also been given a secure website access portal to EDC and NGDC customer account numbers to allow for facilitated access to customer information in cases where the customer does not have readily available access to their utility account number, e.g., at public sales events such as fairs, malls, etc. Moreover, the further availability of smart phones and utility account access websites and phone apps since 2010 also makes the utility account number itself more readily available for customers looking to switch suppliers.

The need to "level the playing field" as was cited at the ECL's inception is no longer prudent. Suppliers can reach prospective customers through many varied (and more impactful)

⁶ PA PUC Press Release "PUC Marks 20th Anniversary of Electric Competition in PA; New Survey Shows High Levels of Customer Awareness and Satisfaction with Electric Choice, Touts 14 Consecutive Months of Growth, Announces Upgrades to Electric Shopping Website PAPowerSwitch," December 8, 2016, <https://www.puc.pa.gov/press-release/2016/puc-marks-20th-anniversary-of-electric-competition-in-pa-new-survey-shows-high-levels-of-customer-awareness-and-satisfaction-with-electric-choice-touts-14-consecutive-months-of-growth-announces-upgrades-to-electric-shopping-website-papowers> Arguably, the percentage quoted (94%) could be even higher today, as this survey was conducted nearly 8 years ago.

methods today such as: the PUC’s own “PAPowerSwitch” and “PAGasSwitch” websites; purchase of mailing lists through direct mail services; name recognition via general advertising methods (billboards, websites, sponsorships, etc.); and many other methods. The EDCs and NGDCs do not use their access to customer information to “market” their default service or supplier of last resort service offerings, which was considered part of the initial justification for allowing supplier access to customer data contained in the ECL.⁷ The ECL, and its costs to consumers, is duplicative to many of these efforts.

Furthermore, as the solicitations have been ongoing for years, there is no evidence that they are further advancing customer interest in shopping. Better tools exist today with broad reach, interactive content, and personalization capabilities, including but not limited to social media platforms. Suppliers can utilize these tools to determine customer interest and preference in shopping for energy supply with the obligation to maintain opt-out preferences.

Conversely, utility-customer communication should be primarily focused on essential utility topics such as customer assistance programs, energy efficiency, and safety messaging. Customers can readily express their desire to receive shopping information via other methods, e.g., social media, emails, texts, etc. This issue may be particularly salient for customers of smaller utilities that are required to do these solicitations but do not have suppliers who are reaching out via mail or telephone to residential consumers. Customers are then making an opt-in or opt-out selection without ever hearing from a supplier.

The costs of a general solicitation are not insubstantial and are borne by ratepayers – not the suppliers who benefit from its collection, verification, and compilation. For the most recent ECL update solicitation, the EAP member utilities collectively spent over \$1.5 million dollars.

⁷ PA PUC Docket No. M-00991230, Final Order Re: *Procedures Applicable To Electric Distribution Companies And Electric Generation Suppliers During The Transition To Full Retail Choice*, May 13,1999.

Additional utility resources are then expended to answer consumer inquiries regarding the mailing and to process any responses to the mailing.

Given that there is no attendant rulemaking or statute where the creation of the ECL was proposed or codified, EAP believes the Commission could and should eliminate the ECL via general Order as was done to implement it.

A. Suggestions in the Alternative

Should the Commission believe there is still value to mandating the ECL, EAP offers the following suggestions:

1. ECL maintenance and solicitation costs should be borne by suppliers, not utilities.

There is no benefit to the utility or its general residential customer base to continue this solicitation; the benefits, instead, are borne by the individual suppliers who utilize this information to solicit customers. These costs could be significantly reduced by using modern electronic communication channels, including but not limited to emails, text messages, social media sites, etc. The PUC should consider the utilization of more efficient and less costly communication channels.

2. The ECL should move to an opt-in, not remain an opt-out. Given the status of Pennsylvania's retail energy supply market, customers are aware of their ability to shop and of the various suppliers available to them via advertising, direct mail, PAPowerSwitch/PAGasSwitch and other campaigns done by utilities, suppliers, and the Commission. If the customer takes no action on the solicitation, they should remain opted-out. Utilities could and do still offer more passive shopping messaging via bill messages, their websites, etc. Customer education on the

availability of shopping for residential energy supplies can still exist outside the ECL.

IV. CONCLUSION

Given the maturation of the energy market, customers' knowledge of their ability to shop for electric or gas supply, the monetary costs, and the potential for customer messaging fatigue, EAP recommends the Commission eliminate the requirement on utilities to maintain an "eligible customer list" for the benefit of suppliers. To the extent the Commission believes value remains in maintaining an ECL, EAP suggests costs for solicitation and maintenance of such a list should be borne by suppliers. Customers should also have to affirmatively opt-in to such solicitations going forward, rather than triennially opting out. Finally, the Commission should support utilization of more efficient and less costly channels for any future solicitations.

Respectfully submitted,



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Date: May 15, 2024