

Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY
REVIEW COMMISSION**

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency
Pennsylvania Public Utility Commission

(2) Agency Number: L-2014-2409385
Identification Number: 57-305

(3) PA Code Cite: 52 Pa. Code § 54.5

(4) Short Title: Final-Omitted Rulemaking to Amend the Provisions of 52 Pa. Code Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Patricia T. Wiedt, Assistant Counsel, Pennsylvania Public Utility Commission, Law Bureau, Commonwealth Keystone Building, P.O. Box 3265, Harrisburg, PA 17105, Phone: (717)787-5755; Fax: (717)783-3458; pwiedt@pa.gov.

Secondary Contact: Matthew Hrivnak, Pennsylvania Public Utility Commission, Bureau of Consumer Services, Commonwealth Keystone Building, P.O. Box 3265, Harrisburg, PA 17105, Phone: (717)783-1678; mhrivnak@pa.gov.

(6) Type of Rulemaking (check applicable box):

Final Policy Statement

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The Commission adopts this Final-Omitted Rulemaking Order to amend our customer information regulations at 52 Pa. Code § 54.5 and add regulations at 52 Pa. Code § 54.10 providing for a disclosure statement for residential and small business customers and providing for the provision of notices of contract expiration or changes in terms for residential and small business customers. With this Final-Omitted Rulemaking Order, the Commission enhances these rules to guarantee ample customer protections are in place and that customers are provided with the necessary information to make informed decisions when shopping in Pennsylvania's competitive retail electricity market. As such, the Commission is amending its regulations to ensure, among other things, that future EGS disclosure statements include an EGS Contract Summary of key contractual terms and conditions; additional information regarding variable-priced products, including disclosure of the price to be charged for the first billing cycle of generation service, customer access to historical information and a more specific explanation of limits on variability.

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(8) State the statutory authority for the regulation. Include specific statutory citation.

66 Pa. C.S. § 501(b) (General powers, Administrative authority and regulations) “The commission shall have general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth. The commission may make such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its power or for the performance of its duties.”

66 Pa.C.S. § 2807(d)(2) (Consumer protections and customer service) “The commission shall establish regulations to require each electric distribution company, electricity supplier, marketer, aggregator and broker to provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services offered by that provider. Information shall be provided to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.”

66 Pa.C.S. § 2809(b) (License application and issuance) “An application for an electric generation supplier license must be made to the commission in writing, be verified by oath or affirmation and be in such form and contain such information as the commission may by its regulations require. A license shall be issued to any qualified applicant, authorizing the whole or any part of the service covered by the application, if it is found that the applicant is fit, willing and able to perform properly the service proposed and to conform to the provisions of this title and the lawful orders and regulations of the commission under this title, including the commission’s regulations regarding standards and billing practices, and the proposed service, to the extent authorized by the license, will be consistent with the public interest and the policy declared this chapter; otherwise such application will be denied.”

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The mounting record number of formal and informal complaints (between 1/1/14 and 3/28/14, 500 formal complaints were filed with the Commission’s Secretary’s Bureau and between 2/1/14 and 3/28/24, 5,626 informal complaints were filed with the Commission’s Bureau of Consumer Services (BCS)) and recent wave of media attention responding to the increase in wholesale electric prices in January 2014 instills in us a great sense of urgency to respond thoroughly and expeditiously.

While the events in the electricity supply market in January 2014 were unprecedented, we believe that occurrence of similar events is not necessarily a remote possibility. Furthermore, fluctuations and volatility in the wholesale energy market could again contribute to unforeseen and unexpected surges in retail energy prices. As such, similar circumstances could potentially reoccur as early as this coming summer.

In light of this and after a renewed review of the *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service; Amendment re: Supplier Contract Renewal/Change Notices (Interim Guidelines)*, Final Order, at Docket Nos. M-2010-2195286 and M-0001437 (entered Sep. 23, 2010) adopted over three years ago, the Commission finds that codifying, strengthening, and augmenting those guidelines as expeditiously as possible is in the public interest. Through this Final-Omitted Rulemaking Order, the Commission seeks to promulgate regulations, as soon as practicable, to require EGSs to provide stronger disclosures that contain more concise, transparent terms and conditions, especially concerning variable-rate products.

On March 18, 2014, Pennsylvania Senators Robert M. Tomlinson and Lisa M. Boscola (Senators Tomlinson and Boscola) sent to the Commission a letter notifying us that they had received numerous complaints from constituents enrolled in variable-priced contracts. These complaints were specifically in regard to high electric bills caused by retail electric rates spikes over this past winter. Additionally, the letter stated that Senators Tomlinson and Boscola had also received constituent complaints about being unknowingly placed on a variable-priced plan at the end of a fixed-term contract. Senators Tomlinson and Boscola stated that the Commission should immediately begin revising its regulations with regard to variable-priced contracts and the treatment of customers who have an expiring fixed-term contract. The letter stated that customers should be fully informed of the rates they will be paying and that the requirements regarding the timing and type of notifications provided to customers should be strengthened. Lastly, Senators Tomlinson and Boscola encouraged EGSs to provide to customers more information regarding price variability and to provide more timely and complete notices of changes to or expiration of a fixed-term contract.

Formal notice and comment procedures are impracticable and contrary to the public interest because customers are being affected now with extraordinarily high bills and may be affected again as early as this summer due to peak demand periods and potential fluctuations in the wholesale energy market. The Commission seeks to amend its regulations as soon as practicable to ensure customers are being provided with the necessary information to make informed decisions when shopping in Pennsylvania's competitive retail electricity market. Specifically, these Final-Omitted Regulations will provide increased protection to customers and more adequately inform customers about the scope and limits of rate variability, the terms and conditions of an EGS contract, and the customer's options prior to and after the expiration of their current contract for generation supply. Any delay in requiring EGSs to enhance disclosure statements provided to customers, such as a change in contract terms and notice of contract renewal, is contrary to public interest.

Formal notice and comment procedures are unnecessary because there have been and continue to be substantial channels for formal and informal public notice and comment. The public has voiced their comments and concerns through the filing of nearly 850 Formal Complaints with the Commission's Secretary's Bureau between January 1, 2014 and March 25, 2014, and the filing of over 5,600 informal complaints with the Commission's Bureau of Consumer Services (BCS) regarding EGSs. In addition, BCS has answered more than 9,000 inquiries on the subject. Moreover, the media has raised this issue throughout the Commonwealth. Additionally, the Commission has received a number of inquiries and comments from the Legislature regarding these events. As such, the public is indeed on high notice and constituents have reached out to their legislators, who are discussing legislative amendments to achieve clear and more expansive disclosure of contract terms. Throughout February and March of this year, the Commission has held numerous conference calls and meetings with interested parties, including the

Office of Attorney General, the Office of Consumer Advocate, customers, suppliers, utilities, legislative committees, and the media.

As discussed, the Commission has already accepted and reviewed formal comments on advance notification by an EGS of impending changes affecting customer service via a previous Commission order. *See September 2010 Interim Guidelines*, Docket Nos. M-2010-2195286 and M-0001437. In the *September 2010 Interim Guidelines*, 12 parties filed comments, including the OCA, OSBA, Pennsylvania Utility Law Project (PULP), PPL Electric Utilities Corporation (PPL), PECO Energy Company (PECO), National Energy Marketers Association (NEMA), Pennsylvania Energy Marketers Association (PEMC), Washington Gas & Electric Services, Inc. (WGES), BlueStar Energy Solutions (BlueStar), Dominion Retail, Inc. (Dominion), FirstEnergy Solutions Corporation (FES), and Direct Energy Services, LLC (Direct Energy).

These regulations are, for the most part, simply codifying notice guidelines that have been in operation since 2010. We have over three years of experience with suppliers operating under these guidelines; and that experience for the most part has been positive with few compliance problems. However, our guidelines are sometimes overlooked by suppliers since guidelines do not have the force of law like regulations. Therefore, it is now appropriate to promulgate these regulations, which will be more visible and enforceable. While additional comments obtained through a proposed rulemaking have the potential to provide more insight and analysis (especially on generally-related issues of electric supply competition), additional comments for the limited purposes of this rulemaking – protecting customers by requiring EGSs to provide enhanced disclosure statements – are unnecessary. Both governmental and other stakeholder resources will be saved by forgoing the extensive formal notice and comment rulemaking process. Accordingly, the public interest is better served through administrative streamlining in this Final-Omitted Rulemaking pursuant to the Commonwealth Documents Law, 45 P.S. § 1204.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

New York. In *Order Taking Actions to Improve the Residential and Small Nonresidential Retail Access Markets*, NYPSC Case No. 12-M-0476 (issued Feb. 25, 2014) (NYPSC Order) the New York Public Service Commission (NYPSC) required that, for renewal notices, all EGSs must include the following specific language on envelopes in bold lettering: "Important: Your [EGS/ESCO name] contract renewal offer is enclosed. This may affect the price you pay for energy supply."

Texas. In Texas, all EGSs must follow a new set of customer protections by providing:

- An Electricity Facts Label: This shows pricing information and contract terms in a standardized format so that you can compare offers.
- A Terms of Service agreement: This is your contract. It informs you of the company's contract terms and conditions.
- Notice of Contract Expiration: If you have electric service with a contract term of three or more remaining months, your electric company must notify you in writing at least 30 days or one billing cycle, and not more than 60 days or two billing cycles, from the end of your contract, stating that it will soon expire. You should either renew service with your current service provider or select a new provider before your contract ends in order to prevent being automatically switched to a month-to-month, variable rate plan.
- A "Your Rights as a Customer" disclosure: This informs you of your standard customer protections as mandated by the PUC.
- Non-English-language materials: All electric companies must make customer information available in Spanish. In fact, a company must make all marketing materials available in the language(s) of their customers.

These final-omitted regulations providing increased consumer protections will help to increase electric competition in Pennsylvania as consumers develop more confidence in the electric supply market.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This final-omitted rulemaking will only affect the rulemaking that we are amending in the final-omitted rulemaking order.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

In September of 2010, the Commission reviewed its customer information regulations and provided *Interim Guidelines*, as noted previously. In its *Interim Guidelines*, the Commission provided general guidance on the timing and content of advanced notifications that give customers important information about their options prior to the expiration of or a change in terms of their current contract for generation supply.

Recently, the Commission sought from its Office of Competitive Market Oversight (OCMO), recommendations on how to provide shopping customers with a disclosure statement that contains more concise, transparent terms and conditions, especially concerning variable-rate products, and how to provide greater clarity of customers' rights and responsibilities when shopping for electricity generation supply. In an Order adopted at its February 20, 2014 Public Meeting, the Commission reaffirmed the General Assembly's directive that EGSs provide:

...[A]dequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services offered by the provider. Information shall be provided to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.

Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products, Docket No. M-2014-2406134, (Order entered Mar. 4, 2014) (*Variable Rate Order*) at 4-5, citing 66 Pa. C.S. § 2807(d).

In the *Variable Rate Order*, the Commission expressed particular concern for customers receiving their electric supply service from an EGS under a contract with a monthly adjusted variable rate. As indicated *supra*, many of these customers experienced sharp increases in their monthly bills during the early months of 2014 due to the demands of the winter heating season and unprecedented price spikes in the wholesale electricity market. While acknowledging that it is important for consumers to carefully review the terms of their contracts, including conditions of variability, the Commission believes that EGSs must take further steps to ensure that customers can easily find and understand information related to price, price variability and history, cancellation fees, renewal notices, and other terms and conditions.

Additionally, in the *Variable Rate Order*, the Commission outlined measures it had immediately undertaken following the events of early 2014. Specifically, Commission staff initiated the following measures to help ensure that consumers are more informed about variable rate products:

- Posting of a “consumer alert” as a slider on the Commission’s website at www.puc.pa.gov informing customers that they may see price fluctuations if enrolled in a variable-priced contract and provided a number of steps a customer should take to become more aware of their options;
- Posting of an abridged version of the “consumer alert” referenced above on the Commission’s www.PaPowerSwitch.com website;
- Reissuing the Commission’s January 31, 2014 press release noting information on the Commission’s website and PaPowerSwitch.com;
- Development of a separate page on www.PaPowerSwitch.com outlining the difference between fixed and variable-priced contracts;
- Development of a fact sheet regarding fixed versus variable rates; and,
- Addition of a fixed versus variable question-and-answer (“Q&A”) on the Commission’s “Shopping for Electricity” fact sheet and on www.PaPowerSwitch.com.

In an effort to obtain feedback from stakeholders on the proposed changes to our Disclosure Regulations included in this Final-Omitted Rulemaking Order, the Commission issued a Secretarial Letter on March 19, 2014, alerting affected parties of the intention to promulgate a Final-Omitted Rulemaking that would amend existing Regulations at 52 Pa. Code, Chapter 54, to revise disclosure statement requirements for residential and small business customers. *Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Renewal or Changes in Terms*, Docket No. L-2014-2409385, (Secretarial Letter served Mar. 19, 2014) (Secretarial Letter). This Secretarial Letter noted that while some amendments would codify, with modifications, existing contract renewal/change in terms notice requirements contained in the *Interim Guidelines*, other changes raise new issues that had not previously been

considered. As a result, the Commission requested comments on its proposed regulations in order to give an opportunity for those entities most affected to provide recommendations prior to the issuance of this Final-Omitted Rulemaking Order.

In response to the March 19, 2014 Secretarial Letter, the Commission received comments related to these and other issues regarding the effect the proposed amendments would have on the Commission's existing regulations and EGS operations. Comments were filed by the following parties: Pennsylvania Representatives Robert W. Godshall and Peter J. Daley, the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), Citizen Power, UGI Energy Services, LLC (UGIES), Washington Gas Energy Services, Inc. (WGES), Constellation NewEnergy, Inc. (CNE) and Constellation Energy Power Choice, Inc. (formerly MXenergy Electric, Inc.) (CEPCI) (collectively, Constellation), IGS Energy (IGS), the Retail Energy Supply Association (RESA), NRG Retail Northeast Companies¹ (NRG), Alphabuyer, the National Energy Marketers Association (NEM), and FirstEnergy Solutions Corp. (FES).

In addition, two residential customers e-mailed either the Commission's website or www.PaPowerSwitch.com with comments regarding the Commission's proposed regulatory changes to EGS disclosure statements, as well as changes to customer notices regarding "contract renewals" and "changes in terms."

One customer, Mr. David Tranquillo, was supportive of changes to contract terms and conditions, including rebates and incentives, being explained "in bold print in a size larger than the rest of the offer." Another customer, Mr. Ron Brenize, was supportive of changes that would require suppliers to notify customers of rate increases via mail, e-mail, or on the bill. He added "this would give the consumer time to review and make changes if they desire."

As discussed above, the Commission also received a letter, dated March 18, 2014, from Senators Tomlinson and Boscola suggesting that our regulations regarding disclosure statements be revised immediately. The letter also stated that customers should be provided with more information regarding the prices to be paid and the variability that may occur if enrolled in a variable-price contract.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

138 EGSs will be affected by the regulation. As noted above, these regulations are, for the most part, simply codifying notice guidelines that have been in operation since 2010. We have over three years of experience with suppliers operating under these guidelines.

Of the 138 EGSs, approximately less than 10 are considered small businesses.

5.6 million electric customers will benefit from this rulemaking.

¹ The NRG Retail Northeast Companies include NRG Residential Solutions, Green Mountain Energy Company and Energy Plus Holdings Company.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

138 EGSs will be affected by the regulation. As noted above, these regulations are, for the most part, simply codifying notice guidelines that have been in operation since 2010. We have over three years of experience with suppliers operating under these guidelines.

Of the 138 EGSs, approximately, less than 10 are considered small businesses.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

Minimum financial impact is expected since these regulations are, for the most part, simply codifying notice guidelines that have been in operation since 2010.

Benefits will include increased electric competition in Pennsylvania as well as additional consumer protection measures. 5.6 million electric customers are expected to benefit from this rulemaking.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

Any delay in requiring EGSs to enhance disclosure statements provided to customers, such as a change in contract terms and notice of contract renewal, is contrary to public interest. The public has voiced their comments and concerns through the filing of nearly 850 formal complaints with the Commission's Secretary's Bureau between January 1, 2014 and March 25, 2014, and the filing of over 5,600 informal complaints with the Commission's Bureau of Consumer Services regarding EGSs. In addition, BCS has answered more than 9,000 inquiries on the subject. With this rulemaking, the Commission is enhancing the disclosure rules to guarantee ample customer protections are in place and that customers are provided with the necessary information to make informed decisions when shopping in Pennsylvania's competitive electric market.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

No undue costs and/or savings are anticipated since these regulations are, for the most part, simply codifying notice guidelines that have been in operation since 2010.

RESA commented that direct mailing costs may be too burdensome to implement. RESA comments 9-10. FES commented that changes in 54.5(c) and 54.5(g) will be costly. FES and WGES commented that they cannot fully estimate the costs for implementing the rulemaking. FES comments pgs. 3-4, WGES comments pg. 6-7. In response to many of the concerns from commenters, the Commission agreed and declined to include additional notices surrounding variable price changes. This removal of additional notice requirements has significantly reduced the costs of implementing changes for the regulated community. Additionally, the Commission has allowed EGSs to provide the Initial Notices to customer via electronic communication, with customer consent.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

No undue costs and/or savings are anticipated.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

No undue costs and/or savings are anticipated.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

As indicated above, any costs incurred would be minimal. We took steps to mitigate the concerns raised by the parties, lessened the number of notice requirements, and provided for electronic communication for the Initial Notice, with customer consent.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. N/A

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(23a) Provide the past three year expenditure history for programs affected by the regulation. N/A

Program	FY -3	FY -2	FY -1	Current FY

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the final regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the final regulation.

As noted above, there are less than ten EGSs that are small businesses. We anticipate that any costs incurred would be minimal. We took steps to mitigate the concerns raised by the parties, lessened the number of notice requirements, and provided for electronic communication for the Initial Notice, with customer consent.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

Most if not all of the consumer protection revisions to this chapter will benefit minorities, the elderly, small businesses, and farmers, if they are retail electric shoppers. These increased consumer protections will guarantee ample customer protections are in place and that all of these affected customer groups or persons are provided with the necessary information to make informed decisions when shopping in Pennsylvania's competitive retail electricity market.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

N/A

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

As noted above, there are less than 10 EGSs that are small businesses. We anticipate that any costs incurred would be minimal since these regulations are, for the most part, simply codifying notice guidelines that have been in operation since 2010. We took steps to mitigate the concerns raised by the parties, lessened the number of notice requirements, and provided for electronic communication for the Initial Notice, with customer consent.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

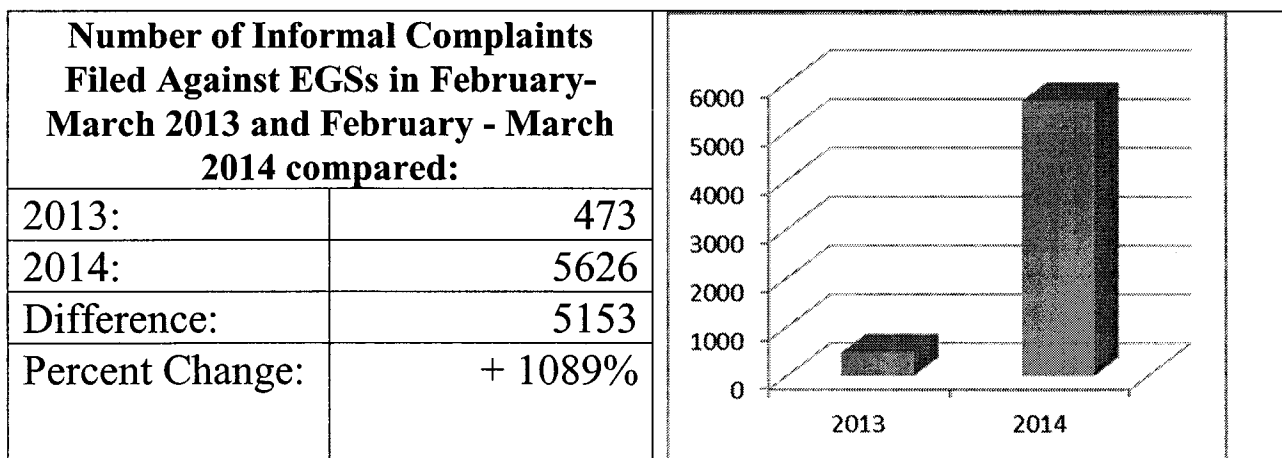
Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service; Amendment re: Supplier Contract Renewal/Change Notices (Interim Guidelines), Final Order, at Docket Nos. M-2010-2195286 and M-0001437 (entered Sep. 23, 2010).

Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products, Docket No. M-2014-2406134, (Order entered Mar. 4, 2014) (*Variable Rate Order*).

The mounting number of complaints² and recent wave of media attention responding to the increase in wholesale electric prices in January 2014 instills in us a great sense of urgency to respond thoroughly and expeditiously. Due to extraordinary demand in the PJM³ market caused by extreme cold weather, average wholesale day-ahead LMP⁴ prices for Pennsylvania in January 2014 were estimated at \$148/MWh, vs. \$44/MWh in December 2013. Estimated energy uplift charges, which are energy-related charges billed to suppliers in addition to LMP costs, also increased substantially in January 2014.⁵

As a result of these high PJM energy wholesale market prices, many EGSs serving Pennsylvania customers with variable-priced retail supply contracts needed to increase their retail prices to customers in order to recover the higher wholesale electric energy costs they incurred in January 2014. Some variable retail prices rose to a high of 28 cents per kWh. These dramatic and sudden price increases, coupled with higher than normal usage caused by the cold weather, especially at times of historic peak winter demand, resulted in some retail electric customers realizing very high electric bills in amounts two to three times (and even higher) than what they would normally be billed during this time of year.

This Commission has received a record number of inquiries and informal complaints related to EGS high bills over the last several weeks. It appears that most of the affected customers are participating in the competitive retail market and receiving electric supply service from an EGS under a contract with a variable rate that is adjusted monthly. The following chart and graph displays the number of informal complaints received by the Commission in the months of February and March 2014 compared to February and March 2013 – the vast majority of these being related to billing and prices:



² Between January 1, 2014 and March 28, 2014, 500 formal complaints were filed with the Commission's Secretary's Bureau. The Commission's Bureau of Consumer Services (BCS) received 5,626 informal complaints between February 1, 2014 and March 28, 2014.

³ PJM Interconnection is a regional transmission organization that oversees and manages the electricity grid for fifty million consumers in thirteen states and the District of Columbia. *New Jersey Bd. of Public Utilities v. FERC*, --F.3d--, 2014 WL 642943 at *3 (3d Cir. 2014).

⁴ Under LMP (Locational Marginal Price), "the price any given buyer pays for electricity reflects a collection of costs attendant to moving a megawatt of electricity through the system to a buyer's specific location on the grid." *Id.* at *4 (citing *Black Oak Energy v. FERC*, 725 F.3d 230, 233-4 (D.C. Circuit 2013)).

⁵ For more information about PJM wholesale prices, see historical pricing information posted on PJM's website at: <http://www.pjm.com/markets-and-operations/energy/real-time/monthlylmp.aspx>. For general information about PJM and the wholesale market, see PJM's "Learning Center" website at: <http://www.pjm.com/about-pjm/learning-center.aspx>.

(29) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: March 2014
- B. The date or dates on which public meetings or hearings will be held: N/A
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: July 2014
- D. The expected effective date of the final-form regulation: upon publication in PA Bulletin
- E. The date by which compliance with the final-form regulation will be required: within 30 days of publication in PA Bulletin
- F. The date by which required permits, licenses or other approvals must be obtained: N/A

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Commission's OCMO team as well as the Commission's Bureau of Consumer Services will continue to examine the disclosure process after its implementation. As further suggestions and revisions are developed and existing best practices are refined, the Commission will evaluate and propose implementation orders and updates to the existing regulation.

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**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

2014 APR -8 AM 10: 54

(Pursuant to Commonwealth Documents Law)

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Copy below is hereby approved as to form and legality. Attorney General.

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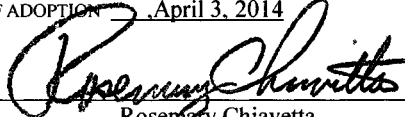
DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached

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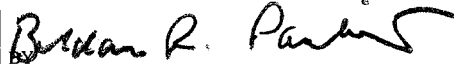
Pennsylvania Public Utility Commission
(AGENCY)

DOCUMENT/FISCAL NOTE NO. L-2014-2409385/57-305

DATE OF ADOPTION April 3, 2014
BY 
Rosemary Chiavetta

TITLE Secy
(SECRETARY)

Copy below is hereby approved as to form and legality. Executive or independent Agencies.


Bohdan R. Pankiw
Chief Counsel

4-3-2014
DATE OF APPROVAL

Check if applicable. No Attorney General approval or objection within 30 days after submission.

L-2014-2409385/57-305
Final-Omitted Rulemaking
Amending Regulations Regarding
Disclosure Statement for Residential and
Small Business Customers and the Provision of
Notices of Contract Expiration or Changes in
Terms for Residential and Small Business Customers
52 Pa Code, Chapter 54

The Pennsylvania Public Utility Commission on April 3, 2014, adopted a final-omitted rulemaking order amending regulations regarding disclosure statements for residential and small business customers, and adding Section 54.10, regarding the provision of notices of contract expiration or changes in terms for residential and small business customers. The contact person is Assistant Counsel Patricia Wiedt, Law Bureau, 717 787-5755.

EXECUTIVE SUMMARY

L-2014-2409385/57-305

Final-Omitted Rulemaking

**Amending the Provisions of 52 Pa. Code Section 54.5
Regulations Regarding Disclosure Statement for Residential and
Small Business Customers and to Add Section 54.10 Regulations Regarding the
Provision of Notices of Contract Expiration or Changes in Terms for
Residential and Small Business Customers**

The Commission adopts this Final-Omitted Rulemaking Order to amend our customer information regulations at 52 Pa. Code § 54.5 and add regulations at 52 Pa. Code § 54.10 providing for a disclosure statement for residential and small business customers and providing for the provision of notices of contract expiration or changes in terms for residential and small business customers. With this Final-Omitted Rulemaking Order, the Commission enhances these rules to guarantee ample customer protections are in place and that customers are provided with the necessary information to make informed decisions when shopping in Pennsylvania's competitive retail electricity market. As such, the Commission is amending its regulations to ensure, among other things, that future EGS disclosure statements include an EGS Contract Summary of key contractual terms and conditions; additional information regarding variable-priced products, including disclosure of the price to be charged for the first billing cycle of generation service, customer access to historical information and a more specific explanation of limits on variability.

The contact persons for this Final-Omitted Rulemaking are Assistant Counsel Patricia T. Wiedt (717) 787-5755 and Utility Complaints Investigation Administrator Matthew Hrivnak (717) 783-1678.

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held April 3, 2014

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
James H. Cawley
Pamela A. Witmer
Gladys M. Brown

Rulemaking to Amend the Provisions of 52 Pa. Code,
Section 54.5 Regulations Regarding Disclosure
Statement for Residential and Small Business
Customers and to Add Section 54.10 Regulations
Regarding the Provision of Notices of Contract
Expiration or Changes in Terms for Residential and
Small Business Customers

L-2014-2409385

FINAL-OMITTED RULEMAKING ORDER

BY THE COMMISSION:

The Pennsylvania Public Utility Commission (Commission) adopts this Final-Omitted Rulemaking Order to amend our customer information regulations at 52 Pa. Code § 54.5 and add regulations at 52 Pa. Code § 54.10 providing for a disclosure statement for residential and small business customers and providing for the provision of notices of contract expiration or changes in terms for residential and small business customers. The existing regulations at 52 Pa. Code §§ 54.1-54.9 require that electric generation suppliers (EGSs) enable customers to make informed choices regarding the purchase of electricity offered by providing adequate and accurate customer information in an understandable format, including rules regarding the disclosure of contract terms and conditions. Section 54.5 directs EGSs to provide residential and small business

customers with a disclosure statement containing written terms and conditions including, but not limited to: pricing information, length of agreement, cancellation provisions, penalties, and an explanation of any bonuses or incentives. *See* 52 Pa. Code § 54.5.

With this Final-Omitted Rulemaking Order, the Commission enhances these rules to guarantee ample customer protections are in place and that customers are provided with the necessary information to make informed decisions when shopping in Pennsylvania's competitive retail electricity market. As such, the Commission is amending its regulations to ensure, among other things, that future EGS disclosure statements include an EGS Contract Summary of key contractual terms and conditions; additional information regarding variable-priced products, including disclosure of the price to be charged for the first billing cycle of generation service, customer access to historical information and a more specific explanation of limits on variability.

The Commission has also added a new section to Chapter 54, 54 Pa. Code § 54.10, which provides the notice provisions EGSs must follow before expiration or changing the terms of a residential or small business customer's contract. Specifically, this new section directs EGSs to provide two notices, the first to be issued between 45 and 60 days before the expiration or change in terms of the contract and the second to be issued no less than 30 days before the expiration or change in terms of the contract. These notices will provide customers with information regarding their option to stay with their existing EGS, to purchase generation supply from a different EGS or to return to default service.

For the reasons more fully explained herein, the Commission finds good cause that undergoing the traditional notice and comment procedures for these regulations is impracticable, unnecessary, and contrary to the public interest. *See* 45 P.S. § 1204(3). In light of the record-breaking recent wave of informal and formal complaints filed with the Commission concerning energy price increases in January 2014, the Commission believes it is essential to the public interest to act promptly and expeditiously to amend its

regulations to require EGSs to provide more sufficient disclosures and notices to customers regarding products offered in the retail electric market. Accordingly, for good cause, we issue this Final-Omitted Rulemaking Order to amend our regulations at 52 Pa. Code § 54.5 and add regulations at 52 Pa. Code § 54.10 in order to ensure that residential and small business consumers receive adequate disclosures and notices when shopping for electricity in the Commonwealth.

BACKGROUND

The Public Utility Code requires EGSs to provide adequate and accurate information to customers. *See* 66 Pa. C.S. § 2807(d)(2). Specifically, Section 2807(d)(2) requires the Commission to:

[E]stablish regulations to require each electric distribution company, electricity supplier, marketer, aggregator and broker to provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity service offered by that provider. Information shall be provided to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.

66 Pa. C.S. § 2807(d)(2).

Pursuant to this statutory directive, the Commission first promulgated regulations in 1998 to enable customers to make informed choices when purchasing electricity generation. *See* 52 Pa. Code §§ 54.1 – 54.9 (relating to customer information). The regulations at 52 Pa. Code §§ 54.4 – 54.6 (relating to the bill format and disclosure statements for residential and small business customers and to requests for information about generation supply) were later amended in 2007, after receiving and incorporating comments from numerous stakeholders.

In 2010, the Commission adopted *Interim Guidelines* which provided general guidance on the timing and content of advanced notifications that give customers important information about their options prior to the expiration of or a change in terms of their current contract for generation supply. *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service; Amendment re: Supplier Contract Renewal/Change Notices (Interim Guidelines)*, Final Order, at Docket Nos. M-2010-2195286 and M-0001437 (entered Sep. 23, 2010).

With this Final-Omitted Rulemaking, the Commission specifically examines and updates 52 Pa. Code § 54.5 regarding disclosure statements for residential and small business customers. This Section requires that EGSs provide disclosure statements to residential and small business customers when those customers request an EGS to initiate service; when an EGS proposes to change the terms of service; or when service commences from a default service provider. *See* 52 Pa. Code §§ 54.5(b)(1 – 3). These disclosure statements must include, among other things: the generation charges; conditions of and any applicable limitations on variable prices; explanations of cancellation fees; and information regarding a customer's options upon the expiration of a fixed term agreement. *See* Annex A, § 54.5

Additionally, in this Final-Omitted Rulemaking, the Commission seeks to add a new section outlining requirements for EGSs to provide notices to residential and small business customers when a fixed term contract is expiring or when an EGS is proposing to change the terms of a contract. *See* Annex A, § 54.10.

HISTORY OF THE COMMISSION'S REVIEW OF ITS CUSTOMER INFORMATION REGULATIONS

In September of 2010, the Commission reviewed its customer information regulations and provided *Interim Guidelines*, as noted previously. In its *Interim Guidelines*, the Commission provided general guidance on the timing and content of advanced notifications that give customers important information about their options prior to the expiration of or a change in terms of their current contract for generation supply.

Section 54.5(g) of the Commission's regulations currently states that an EGS must send a notice to alert a customer about the pending expiration or a change in terms of a contract for electric generation. This Section reads as follows:

(g) Disclosure statements must include the following customer notification:

(1) "If you have a fixed term agreement with us and it is approaching the expiration date or whenever we propose to change our terms of service in any type of agreement, you will receive written notification from us in each of our last three bills for supply charges or in corresponding separate mailings that precede either the expiration date or the effective date of the proposed changes. We will explain your options to you in these three advance notifications."

52 Pa. Code § 54.5(g)(1).

According to the *Interim Guidelines*, an "Initial Notice" is to be provided to a customer between 52 and 90 days before a contract expires or before a change in contract terms takes effect, and is to include a general description of the proposed changes to the terms of service; the effective date of the change; and the reason for the change(s). Additionally, this Initial Notice is to explain that a customer will receive a second notice with more details, including an explanation of the customer's options. See *Interim Guidelines* at Appendix A, Section II(a).

A second notice (the “Options Notice”) is to be provided to the customer at least 45 days prior to the expiration or a change in terms of the contract. The Options Notice is to include the specific changes to the terms of service being proposed; information on new prices; an explanation of the customer’s options and how to exercise those options; the date by which the customer must exercise one of the options; the telephone numbers and website addresses for the Commission and the Office of Consumer Advocate (OCA); and the electric distribution company’s (EDC’s) Price To Compare (PTC). *See Interim Guidelines* at Appendix A, Section II(b).

During the winter of 2014, numerous retail electric customers with variable-rate contracts experienced sharp price increases resulting from price fluctuations in the wholesale and retail electricity markets. In light of this and after a renewed review of the *Interim Guidelines* adopted over three years ago, the Commission finds that codifying, strengthening, and augmenting those guidelines as expeditiously as possible is in the public interest. Through this Final-Omitted Rulemaking Order, the Commission seeks to promulgate regulations, as soon as practicable, to require EGSs to provide stronger disclosures that contain more concise, transparent terms and conditions, especially concerning variable-rate products.

Recently, the Commission sought from its Office of Competitive Market Oversight (OCMO), recommendations on how to provide shopping customers with a disclosure statement that contains more concise, transparent terms and conditions, especially concerning variable-rate products, and how to provide greater clarity of customers’ rights and responsibilities when shopping for electricity generation supply. In an Order adopted at its February 20, 2014 Public Meeting, the Commission reaffirmed the General Assembly’s directive that EGSs provide:

...[A]dequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services

offered by the provider. Information shall be provided to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.

Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products, Docket No. M-2014-2406134, (Order entered Mar. 4, 2014) (*Variable Rate Order*) at 4-5, citing 66 Pa. C.S. § 2807(d).

In the *Variable Rate Order*, the Commission expressed particular concern for customers receiving their electric supply service from an EGS under a contract with a monthly adjusted variable rate. As indicated *supra*, many of these customers experienced sharp increases in their monthly bills during the early months of 2014 due to the demands of the winter heating season and unprecedented price spikes in the wholesale electricity market. While acknowledging that it is important for consumers to carefully review the terms of their contracts, including conditions of variability, the Commission believes that EGSs must take further steps to ensure that customers can easily find and understand information related to price, price variability and history, cancellation fees, renewal notices, and other terms and conditions.

Additionally, in the *Variable Rate Order*, the Commission outlined measures it had immediately undertaken following the events of early 2014. Specifically, Commission staff initiated the following measures to help ensure that consumers are more informed about variable rate products:

- Posting of a “consumer alert” as a slider on the Commission’s website at www.puc.pa.gov informing customers that they may see price fluctuations if enrolled in a variable-priced contract and provided a number of steps a customer should take to become more aware of their options;
- Posting of an abridged version of the “consumer alert” referenced above on the Commission’s www.PaPowerSwitch.com website;
- Reissuing the Commission’s January 31, 2014 press release noting

information on the Commission's website and PaPowerSwitch.com;

- Development of a separate page on www.PaPowerSwitch.com outlining the difference between fixed and variable-priced contracts;
- Development of a fact sheet regarding fixed versus variable rates; and,
- Addition of a fixed versus variable question-and-answer ("Q&A") on the Commission's "Shopping for Electricity" fact sheet and on www.PaPowerSwitch.com.

In an effort to obtain feedback from stakeholders on the proposed changes to our Disclosure Regulations included in this Final-Omitted Rulemaking Order, the Commission issued a Secretarial Letter on March 19, 2014, alerting affected parties of the intention to promulgate a Final-Omitted Rulemaking that would amend existing Regulations at 52 Pa. Code, Chapter 54, to revise disclosure statement requirements for residential and small business customers. *Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Renewal or Changes in Terms*, Docket No. L-2014-2409385, (Secretarial Letter served Mar. 19, 2014) (Secretarial Letter). This Secretarial Letter noted that while some amendments would codify, with modifications, existing contract renewal/change in terms notice requirements contained in the *Interim Guidelines*, other changes raise new issues that had not previously been considered. As a result, the Commission requested comments on its proposed regulations in order to give an opportunity for those entities most affected to provide recommendations prior to the issuance of this Final-Omitted Rulemaking Order.

In response to the March 19, 2014 Secretarial Letter, the Commission received comments related to these and other issues regarding the effect the proposed amendments would have on the Commission's existing regulations and EGS operations. Comments were filed by the following parties: Pennsylvania Representatives Robert W. Godshall

and Peter J. Daley (Representatives Godshall and Daley); the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), Citizen Power, UGI Energy Services, LLC (UGIES), Washington Gas Energy Services, Inc. (WGES), Constellation NewEnergy, Inc. (CNE) and Constellation Energy Power Choice, Inc. (formerly MXenergy Electric, Inc.) (CEPCI) (collectively, Constellation), IGS Energy (IGS), the Retail Energy Supply Association (RESA), NRG Retail Northeast Companies¹ (NRG), Alphabuyer, the National Energy Marketers Association (NEM), and FirstEnergy Solutions Corp. (FES).

On March 18, 2014, Pennsylvania Senators Robert M. Tomlinson and Lisa M. Boscola (Senators Tomlinson and Boscola) sent to the Commission a letter notifying us that they had received numerous complaints from constituents enrolled in variable-priced contracts. These complaints were specifically in regard to high electric bills caused by retail electric rates spikes over this past winter. Additionally, the letter stated that Senators Tomlinson and Boscola had also received constituent complaints about being unknowingly placed on a variable-priced plan at the end of a fixed-term contract. Senators Tomlinson and Boscola stated that the Commission should immediately begin revising its regulations with regard to variable-priced contracts and the treatment of customers who have an expiring fixed-term contract. The letter stated that customers should be fully informed of the rates they will be paying and that the requirements regarding the timing and type of notifications provided to customers should be strengthened. Lastly, Senators Tomlinson and Boscola encouraged EGSs to provide to customers more information regarding price variability and to provide more timely and complete notices of changes to or expiration of a fixed-term contract.

In addition, two residential customers e-mailed either the Commission's website or www.PaPowerSwitch.com with comments regarding the Commission's proposed

¹ The NRG Retail Northeast Companies include NRG Residential Solutions, Green Mountain Energy Company and Energy Plus Holdings Company.

regulatory changes to EGS disclosure statements, as well as changes to customer notices regarding “contract renewals” and “changes in terms.”

One customer, Mr. David Tranquillo, was supportive of changes to contract terms and conditions, including rebates and incentives, being explained “in bold print in a size larger than the rest of the offer.” Another customer, Mr. Ron Brenize, was supportive of changes that would require suppliers to notify customers of rate increases via mail, e-mail, or on the bill. He added “this would give the consumer time to review and make changes if they desire.”

DISCUSSION

The Commission has reviewed the comments filed in regard to its proposals and will address those that necessitate more discussion below. As a preliminary matter, we note that any issue or comment that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that the Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

1. Amendment to § 54.5 (c) Contracts with variable pricing

Currently, Section 54.5 (c) states the following:

(2) The variable pricing statement, if applicable, must include:

52 Pa. Code § 54.5 (c)(2).

a. Comments

UGIES believes the “if applicable” language is ambiguous and can be misinterpreted. One interpretation may be that a statement on the limits of price variability must be included only “if applicable.” As such, UGIES states that existing EGS disclosure statements may not contain a statement that there is no limit on price variability and believes that a revision to the language is warranted to clarify the EGSs with variable prices must clearly and conspicuously explain any limits (or lack thereof) on how a price may change. UGIES Comments at 4. Notably, OCA also made a similar suggestion to this regulation. OCA Comments at 6.

b. Resolution

The Commission agrees with UGIES’s comments regarding the potential misinterpretation of the current language at § 54.5 (c) and has revised the language as follows:

(2) The variable pricing statement, ~~if applicable,~~ must include:

52 Pa. Code § 54.5 (c)(2).

2. Additions to § 54.5 (c)(2)(ii) Limits on price variability

As previously discussed, the Commission believes that changes to its regulations regarding the disclosure statements provided to residential and small business customers are required to provide more ample consumer protections and to increase customer awareness and education about the competitive electric marketplace. Specifically, we have concerns that customers are not receiving enough information regarding the rates being charged by EGSs and the circumstances under which those rates may vary.

Currently, Section 54.5 (c)(2)(ii) only requires that the limits on price variability be disclosed. Because many customers on variable-priced contracts during the events of early 2014 either were not enrolled in contracts that contained any sort of pricing limitations or perhaps were unaware of those limitations, or lack thereof, there was significant confusion and frustration with the shopping experience (as evidenced by the thousands of inquiries and complaints we have received on this subject). Due to such a negative turn of events and in the interest of all residential and small business customers participating in the competitive market now and in the future, we believe that more specific direction should be provided to EGSs regarding the level of detail the Commission expects regarding the variability in retail generation supply pricing. As such, the Commission is amending its regulations regarding the disclosure of limits on price variability. Specifically, the following language has been added to § 54.5 (c)(2)(ii), Limits on price variability:

(ii) Limits on price variability:

(a) If there is a limit on price variability, such as a specific price cap, a maximum percentage increase in price between billing cycles or minimum/maximum charges per kilowatt-hour for electricity during the term of the contract, the EGS shall clearly explain the applicable limits.

(b) If there is no limit on price variability, the EGS shall clearly and conspicuously state that there is no limit on how much the price may change from one billing cycle to the next.

52 Pa. Code § 54.5 (c)(2)(ii).

a. Comments

NRG agrees with these changes. NRG Comments at 4. WGES agrees with the addition of § 54.5 (c)(2)(ii)(b) but believes that § 54.5 (c)(2)(ii)(a) is redundant with § 54.5 (c)(2)(ii). WGES Comments at 3.

OCA and NEM question the usefulness of providing a statement regarding the lack of limits on price variability. OCA Comments at 5 and NEM Comments at 4, 5. Specifically, in OCA's opinion, having a statement that contemplates no price limit may not confirm with the Commission's current regulations at § 54.5 that specifically reference price limit. OCA Comments at 6. However, OCA recommends that, if this requirement is maintained, the Commission should provide the exact language to be used by EGSs to convey this message. OCA Comments at 5.

b. Resolution

We disagree with OCA and NEM that information regarding the lack of limits on price variability is not helpful to customers. We further disagree with the OCA that allowing a statement or explanation of "no limit" is "taking a step in the wrong direction." OCA Comments at 6. Conversely, we see the clear benefit to customers of requiring an EGS to make it explicitly known if it does *not* have any limitations on the variable prices charged. This Commission strongly believes that disclosure of this information will be invaluable to customers enrolling in variable-priced contracts with an EGS, since customers will be provided clear, plain language descriptions of any floors and/or ceilings on their rates. Through the promulgation of these regulations, it is the Commission's goal to provide as much information as possible in order to ensure that consumers are protected and are able to see the benefits of a competitive electric market, which includes a variety of products and offerings. In making these limits (or lack thereof) known in the disclosure statement provided to residential and small business customers, who in many cases are less sophisticated in their knowledge of energy markets and the fluctuations that may exist in these markets, we are ensuring that customers know whether their generation charges could possibly increase drastically, depending on any number of factors, over the life of a contract. As such, the Commission has amended § 54.5 (c)(2)(ii) as outlined above.

3. Addition of § 54.5 (c)(2)(iii) Regarding the Provision of the First Billing Cycle's Pricing for Variable Rate Contracts

While this Commission recognizes that variable-priced contracts will, in fact, vary, we believe it is essential to provide customers with the rate that will be charged for the first billing cycle upon the EGS's enrollment of that customer. We do not believe it is in the best interests of customers to allow an EGS to enroll a customer without that customer knowing the rate, per kilowatt-hour (kWh), he or she will be charged for the first billing cycle of service. As such, the following language has been added as 52 Pa. Code § 54.5 (c)(2)(iii):

(iii) The price to be charged, per kilowatt-hour, for the first billing cycle of generation service.

52 Pa. Code § 54.5 (c)(2)(iii).

a. Comments

WGES notes that while it, like many other EGSs, does provide customers with the rate for the first billing cycle when it has a customer who initially contracts for service, "it is not clear that such a requirement is consistent with all variable pricing models." WGES Comments at 3. NRG supports this change. Specifically, NRG notes that "requiring that suppliers to include the first month's price provides customers a starting point to which future comparisons can be made." NRG Comments at 4. NRG continues that this regulation, as proposed, provides EGSs with needed flexibility to design variable product offerings to meet their needs and the needs of customers, "without restricting the types of product offers that EGSs can offer." NRG Comments at 4.

OCA notes that while this change "could have some benefit," the OCA is concerned that such a requirement is insufficient where introductory rates are often used.

As a result, the OCA suggests that there should be specific language added to the regulation to make clear that a variable product's price will change in the second month and that if the price in the first month is "introductory," there be a clear statement added that the price is an introductory price, the length of the introductory period and the price for the first month after the introductory period ends. OCA Comments at 8.

b. Resolution

As indicated above, and throughout the Order, the goal of this Final-Omitted Rulemaking is to make changes to EGS disclosure practices that are in the public interest. While we note and applaud WGES's explanation that it provides the rate for the first billing month for customers who initially contract with them, the Commission is aware that not all EGSs operating in the Commonwealth operate in the same way. Accordingly, we believe that this change is needed and will be retained in the Final-Omitted Rulemaking.

In doing so, we also take note of OCA's concern that greater explanation is needed when introductory rates are involved. However, rather than include the language suggested by the OCA in this regulation regarding the use of introductory rates, we think this type of information and explanation is better left for inclusion in the EGS Contract Summary that will be explained, *infra*. As indicated below, the EGS Contract Summary is a more fluid document, and may be refined with stakeholder input through OCMO.

4. Amendment to § 54.5 (c)(10) Regarding Explanation of Certain Contract Terms

As previously discussed, this Commission believes it is in the best interest of those customers enrolled in variable-priced contracts to have EGSs provide them with sufficient information regarding variability. Because of the nuances and complexities of

the electricity markets and because of the “legalese” often included in disclosure statements provided to customers, we believe it important to provide customers pertinent information in plain, easy-to-understand language that stands apart from the rest of the “fine print” of disclosure statements. As such, the Commission has made the following amendment to § 54.5 (c)(10):

(10) An explanation of *limits on price variability*, penalties, fees or exceptions, printed in type size larger than the type size appearing in the terms of service.

52 Pa. Code § 54.5 (c)(10).

5. Addition of § 54.5 (c)(14) Regarding Provision of Information for Variable Rate Contracts

a. Addition of § 54.5 (c)(14)(i) and (c)(14)(ii) Regarding Provision of Historical Pricing Information

Currently, when an EGS enrolls customers into a variable-priced contract, it must only provide information in the disclosure statement regarding the basis on which that pricing may vary, any applicable limits on pricing variability and an explanation of any applicable sign-up bonuses, add-ons, limited time offers, other sales promotions and exclusions. *See* 52 Pa. Code §§ 54.5(c)(2) and 54.5(c)(5). However, due to customer confusion surrounding changes in variable-priced products following the events of early 2014, the Commission believes that customers need more information on variable rate contracts upon enrollment.

Specifically, the Commission believes the provision of historical pricing for an EGS’s variable rate will be beneficial to customers, despite the fact that historical information is not necessarily an indicator of current or future market conditions. While not necessarily indicative of future performance, this information will allow customers to

notice any trends (including the range of prices that have been charged) in variable-priced products. Specifically, we proposed the provision of 12 months of historical retail pricing which would allow customers to understand pricing changes that occur due to seasonal changes and fluctuations due to weather conditions and related temperatures. With this information, a customer may be able to determine appropriate times to reduce his or her electricity consumption or to recognize when it is their interest to shop around for alternative generation supply products.

Furthermore, the Commission believes that the provision of historical pricing is common, and perhaps expected, practice when providing variable rate products in other areas. For example, customers purchasing either individual stocks or mutual funds have access to historical prices, for the sake of determining any potential trends, to determine how prices were affected by certain events (e.g. major weather events; global events; *force majeure*) or to generally see stock and plan performance over time. Similarly, there is no clear indication or guarantee that past performance can ever be an indicator of current or future pricing.

For these reasons, the Commission proposed the addition of section § 54.5 (c)(14). This section stated the following:

(14) For contracts with variable pricing, the EGS shall provide:

(i) A telephone number and Internet address at which a customer may obtain the previous 12 months' average monthly billed prices for that customer's rate class and EDC service territory. If an EGS has not been providing generation service in a customer rate class and EDC service territory for 12 months, the EGS shall provide the average monthly billed prices for the months available to date.

(ii) In plain language, a statement that historical pricing is not indicative of present or future pricing.

52 Pa. Code § 54.5 (c)(14).

i. Comments

Multiple parties request that this language be amended and/or clarified. OCA wants to ensure that this information is not misleading and believes a common approach should be utilized. Additionally, OCA believes the highest and lowest price per kWh charged for a rate class and EDC service territory should be provided. Lastly, OCA requests that instead of restricting information to only 12 months, information for between 36 and 60 months be provided, in order to “properly reflect energy pricing changes over a reasonable period of time.” OCA Comments at 9, 10. RESA believes the language should be clarified to make it easier for EGSs to provide information based on meter reads. RESA Comments at 4, 5.

NEM, NRG, IGS and WGES disagree with the provision of historical pricing information as it may be limited in value, confusing, costly, and may be competitively sensitive. NEM Comments at 5; NRG Comments at 5; IGS Comments at 6, 7; and WGES Comments at 4. WGES requests clarification regarding how the average will be calculated. WGES Comments at 4. Constellation requests clarification that EGSs would be providing 12 prices – the average for each month. Constellation Comments at 4.

OCA agrees with the Commission’s inclusion of a requirement that EGSs provide a statement to customers that historical pricing is not indicative of future pricing. OCA Comments at 10. Conversely, WGES believes the reasoning behind such a statement is why historical pricing should not be required. WGES Comments at 4.

ii. Resolution

The Commission disagrees with those parties who believe that the provision of historical pricing information is useless to customers. As previously discussed, while we

recognize that this information is not indicative of future pricing, we believe customers may use historical pricing information to determine trends related to seasonal changes, global events, etc. Additionally, this information may help a customer determine optimal times to reduce his or her electricity consumption.

While we disagree with OCA that 36 to 60 months' of historical pricing should be provided by EGSs, as we believe that a 3 to 5 year term is too long and too far removed from current and future conditions to provide any practical value to customers, we agree that it may be beneficial to provide more than 12 months' information. We believe 24 months of historical information would be an appropriate amount as it allows customers to not only view one full year of seasonal changes, but two. In the Commission's opinion, this change meets OCA's desire that enough information is given to "properly reflect energy pricing changes over a reasonable period of time." As evident in the events earlier this year, one year's seasonal changes may be drastically different from the previous year. As such, a comparison between two separate years will aid customers in recognizing how their electric consumption changes over time and how prices are affected by various events. Therefore, we have revised at § 54.5 (c)(14) to reflect that 24 months' of historical information shall be provided by the EGSs.

The Commission also recognizes that there are various types of retail electric price offerings throughout the Commonwealth, as well as a variety of offers from each EGS. Due to the variety of price offerings, a one-size-fits-all approach to calculating the average monthly billed price is neither practical nor useful. In addition, as the retail electric market offerings change and evolve, it is impractical to propose a calculation method that is applicable to all current and future rate designs. We agree with the various commenters that further information is needed regarding ways to provide such information in a consumer-friendly and useful format while maintaining competitive sensitivities. However, we do not believe it appropriate to include such details as to the interpretation and application of this requirement in regulations. As such, we will refer

this issue to OCMO to review and provide recommendations to the Commission as to the best manner for providing historical pricing information to customers.

b. Notifications Regarding Price Changes

In the March 19, 2014 Secretarial Letter, there were two provisions included in the Annex regarding customer notifications. Specifically, the Commission sought input from stakeholders on the following two provisions in § 54.5(c)(14)(iii) and (iv):

(iii) Information regarding when the customer will be aware of each price change.

(iv) Notice to customers of a rate increase of more than 50% over the prior billing cycle as soon as the EGS becomes aware that such an increase will occur. For customers who have elected to receive electronic communications from the EGS, the notice of the rate increase will be transmitted in the manner chosen by the customer. For all other customers, notice will be provided by direct mail.

52 Pa. Code § 54.5 (c)(14)(iii-iv).

i. Comments

OCA believes that customers on variable-priced contracts should be provided notification of price changes before being charged such prices. OCA submits that this information be provided at least at the beginning of each month. OCA Comments at 10. NRG and WGES believe that such a provision is burdensome. NRG Comments 6, 7; and WGES Comments at 5. UGIES states that this would require EGSs to provide forward price projections. UGIES Comments at 6.

Comments were also provided regarding the percentage of price increases over the previous billing cycle that should warrant notification to customers. Percentages ranging

from 30% to 100% price increases were suggested as a trigger for customer notification. Citizen Power Comments at 2 and Constellation Comments at 4, 5.

Other parties believe such a requirement, even at 50%, would be impractical and onerous. WGES Comments at 5 and UGIES Comments pg. 7. WGES specifically states that such a provision, if included in regulations would imply that the Commission sanctions a rate increase of a certain percentage as being “reasonable.” WGES Comments at 5.

ii. Resolution

The Commission declines to include requirements in its regulations regarding the provision of notices surrounding variable pricing changes. While we agree with those parties that stated that EGSs should provide some indication of when customers will realize a price change, we disagree with the inclusion of such a requirement in our regulations at this time. Specifically, we believe this information is best included in the EGS Contract Summary provided to customers. EGSs should include, in the EGS Contract Summary, information regarding not only when a customer may realize a price change, but also when they can expect notification of a price change. For example, an EGS could state that a customer’s variable rate may change monthly and the customer will receive notification of the price change during a certain time of the month, once the final monthly meter read is performed, or when the price takes effect (*i.e.* when the customer receives the bill with that price). The inclusion of this information on the EGS Contract Summary allows the Commission flexibility in amending the template to be more or less specific in its direction regarding the inclusion of such information. Additionally, it allows for other stakeholders to bring concerns to the Commission with a potential resolution completed in a timely fashion.

The Commission also declines to include in its regulations a requirement that EGSs notify customers of certain minimum percentage price increases. While we clearly understand customer confusion and potential frustration with increasing prices, as evident during the winter of 2014, we do not believe it appropriate to set a minimum percentage that would represent a “significant” increase. As accurately stated by WGES, this Commission should not be perceived as condoning certain levels of rate increases – especially those at 50% over the previous bill as reasonable. Instead, this Commission believes that EGSs should be in contact with its customers regularly regarding rates being charged. It is in an EGS’s best interest to contact customers regarding potential rate increases in order to retain that person as a customer. We realize this expectation may not have been met during the events earlier this year; however, as recognized by the majority of parties, those events were unforeseeable. We are confident that all parties involved, including the EGSs, have learned from these events and we expect that they will act in good faith and in the best interest of customers going forward.

6. Amendment to § 54.5(g) Regarding Customer Notices

The Commission has made minor changes to 52 Pa. Code § 54.5(g) to conform with the requirement that EGSs send two notices to customers, an Initial and Options notice, which indicate a contract’s impending expiration or change in service terms for a contract. Currently, the section contemplates that three notices would be sent – in each of the last three bills for supply services. While this language has been in regulations, it is unclear whether the intent could even be met, considering EDCs do most of the billing for EGSs and EDCs do not allow EGSs to provide any inserts that accompany bills. To prevent confusion going forward and to provide clear direction to EGSs, the Commission has revised this language to indicate that two notices must be provided to customers when informing them of a contract’s expiration or change in terms.

In addition, due to the importance of these notices, we have removed any possibility that these notices can be sent along with a customer's bill by instead requiring two separate written notifications for both the Initial and Options Notice. We believe that providing the notices to customers separately from bills allows these notices to stand out and also come directly from the EGS, thus encouraging and reinforcing an EGS-customer relationship. As such, Section 54.5(g) has been amended as follows:

(g) Disclosure statements must include the following customer notification:
“If you have a fixed term contract approaching the expiration date, or whenever we propose to change the terms of service in any type of contract, you will receive two separate written notifications that precede either the expiration date or the effective date of the proposed changes. These notifications will explain your options going forward.”

~~(1) “If you have a fixed term agreement with us and it is approaching the expiration date or whenever we propose to change our terms of service in any type of agreement, you will receive written notification from us in each of our last three bills for supply charges or in corresponding separate mailings that precede either the expiration date or the effective date of the proposed changes. We will explain your options to you in these three advance notifications.”~~

52 Pa. Code § 54.5(g).

We had provided similar language in the March 19, 2014 Secretarial Letter in order to get stakeholders' feedback. Notably, though, we had included a provision that retained only notification to be done via “separate mailings” and other than removing the phrase “in each of our last three bills,” did not indicate how many notices must be sent.

a. Comments

In comments, RESA recommends that this section be amended to allow for delivery of these two notifications “in the form and manner to which the customer agreed in forming the contract.” RESA Comments at 5. OCA suggests that removing the requirement of three notifications is a mistake and recommended language to retain “three notifications” in separate mailings that precede either contract expiration or the effective date of a change in terms. OCA Comments at 12, 13.

b. Resolution

As indicated above, we have attempted, in part, to address RESA’s concern that more flexibility be given to EGSs when providing notices to customers to have them “in a form and manner to which a customer agreed” when forming the contract. Accordingly, we have removed the requirement that the notices be sent “in separate mailings.” Notably, however, and as explained in detail below, while we have amended Section 54.10 to allow for the Initial Notice to be sent via electronic communication to customers that consent to that type of delivery, we are still requiring that the Options Notice be sent by mail, especially in light of the fact that we are retaining the requirement that the envelope containing the Options Notice include messaging to alert customers that “it contains important information regarding the expiration or changes in terms of the customer’s electric supply contract.”

In response to the OCA’s comments that the change contained in § 54.5(g) is seen as going backward, for all the reasons articulated above, we disagree. Again, understanding that a majority of EGS bills are provided by EDCs and that EDCs do not allow EGSs any bill inserts, it is more than likely that EGSs have not been able to carry out their commitment to provide “written notification from us in each of our last three bills for supply changes or in corresponding separate mailings that precede either the expiration date or the effective date of the proposed changes” for some time. This reality, combined with the fact that the proposed regulations in this Final-Omitted Rulemaking

that cover required notices before contract expiration or a change in terms only require two notices, further support the Commission’s reasoning for only including two notices in this provision instead of the three as suggested by OCA.

Additionally, to maintain consistency throughout our regulations, we have amended this section to replace the word “agreement” with the word “contract.”

7. Addition of § 54.5 (i) Creation of an EGS Contract Summary

With the recent events surrounding the retail electric marketplace, this Commission supports the idea that EGS disclosure statements, as they currently exist, need a clear and concise summary for the benefit of consumers. In order to ensure customers are protected when participating in the competitive retail marketplace, we believe more education is needed regarding the terms of a contract. This idea has been evident in recent actions of the Commission, such as clarifying the presentation of information available on www.PaPowerSwitch.com and updating the definitions of both “variable” and “fixed price” contracts in the Commission’s Final Order regarding *Guidelines for Use of Fixed Price Labels for Products with a Pass-Through Clause*.² In furtherance of this goal, the Commission has added a requirement, at 52 Pa. Code § 54.5(i) which states the following:

(i) The EGS shall provide, with the disclosure statement, a separate EGS Contract Summary in a format provided by the Commission.

52 Pa. Code § 54.5(i).

We believe the provision of an EGS Contract Summary will provide, in an easy-to-read, one-page document, the most important terms of the disclosure statement. Many

² See *Guidelines for Use of Fixed Price Labels for Products with a Pass-Through Clause* Final Order, at Docket No. M-2013-2362961, entered November 14, 2013.

customers either do not read the “fine print” of their disclosure statements or are confused by the “legalese” included therein. The provision of a summary document provides pertinent contract terms in common language, consistent with much of the information provided on the Commission’s PaPowerSwitch website, allowing for customers to more easily understand the contract into which they have enrolled. This information is also beneficial if a customer decides to review his or her current EGS terms and compare those terms with other EGS offers.

To aid the EGSs in fulfilling this new requirement, the Commission has created an EGS Contract Summary template separate from the regulations themselves, attached to this Order as Attachment A. This template is meant to provide pertinent information in a clearly understandable “Schumer Box” style³ format for consumers to view, in addition to the disclosure statement they currently receive.⁴ The Commission’s template as proposed for the EGS Contract Summary includes the following headings, with an explanation of the type of information the Commission expects to see in each corresponding box:

- Electric Generation Supplier Information;
- Price Structure – fixed vs. variable; inclusion of an explanation of the limits on variability; information regarding notification of price changes;
- Generation/Supply Price;
- A Statement Regarding Savings – if applicable, a statement that the supply price may not always provide savings to the customer;
- Deposit Requirements;
- Incentives;

³ A Schumer Box is template used by the credit card industry to present certain terms and conditions. This template is named after Senator Charles Schumer (NY) who was responsible for the legislation associated with the requirements for outlining credit card terms.

⁴ Attachment A is an attachment to this Final-Omitted Rulemaking Order and is not an attachment to Annex A. As such, the EGS Contract Summary template provided herein is not included in the revised regulations.

- Contract Start Date;
- Contract Term/Length;
- Cancellation/Early Termination Fees;
- Renewal Terms; and,
- EDC Information.

The Commission recognizes that many of the requirements in the EGS Contract Summary Template may not be applicable to certain types of contracts. For example, some EGS contracts guarantee a percentage of savings in relation to the EDC's PTC. However, most contracts do not have such guarantees. As such, an EGS would explicitly state, in plain language, that it does not guarantee that a customer will be saving money every month/billing cycle under this contract.

Because some terms outlined in the EGS Contract Summary template provided herein may not be relevant to all contracts, EGSs are required to include those terms, as listed above, which are applicable to the contract being summarized. If a certain category of information is not applicable, the EGS may remove it from the template for that contract summary.

While we anticipate that the EGS Contract Summary will be incorporated into the EGS application going forward as an addendum to the disclosure statement template and have enumerated this fact in the regulations by stating EGSs "*shall provide, with the disclosure statement, an EGS Contract Summary in a format provided by the Commission,*" we also want to ensure that the EGS Contract Summary is useful and can be made available to consumers as soon as possible going forward. Accordingly, we direct OCMO to provide further direction to currently licensed EGSs serving residential and/or small business customers regarding the submission of EGS Contract Summaries to the Commission.

8. Addition of § 54.10 Notice of Contract Expiration or Change of Terms for Residential and Small Business Customers

The Commission believes that one of the primary ways in which to protect residential and small business consumers when participating in the competitive retail electric market is to ensure that these customers are educated on marketplace operations and on their options when moving around in the market (*i.e.* choosing different products with the same EGS; switching from one EGS to another; switching from default service to EGS service; or switching from EGS service to default service). As previously discussed, in 2010, after working with numerous stakeholders and reviewing comments, the Commission adopted *Interim Guidelines* that outlined requirements for the EGS provision of two notices to customers regarding the expiration of or change in terms of an electric supply contract. These notices are intended to provide customers with important information about their options prior to the expiration of or change in terms of their current contracts for generation supply. Because inaction will likely lead to placement on a variable rate, it is essential that customers enrolled in a fixed-rate contract be notified prior to that contract's pending expiration or change in terms.

Prior to the expiration or change in terms of a fixed-rate contract (or any fixed-term contract for that matter), customers need to make a decision whether to remain with their current EGS, choose a new EGS, or return to default service. In order to aid customers in making such a decision, the *Interim Guidelines* required EGSs to provide an Initial Notice of the contract expiration, or to a change in contract terms, between 52 and 90 days before that contract expires. Additionally, the EGSs are required to provide an Options Notice, which outlines the actions a customer may take, no less than 45 days in advance of the contract expiration or change in terms. To codify these *Interim Guidelines* and in order to ensure EGS compliance with these requirements, we have added Section 54.10 – Notice of Contract Renewal or Change in Terms, to our regulations. Due to the length of this addition, we will not reiterate the language here

and, instead, refer readers to Annex A, which outlines all of the regulatory changes, including the addition of 52 Pa. Code § 54.10, resulting from this Order. However, in this section of the order, we would like to highlight certain provisions that differ from the *Interim Guidelines*.

a. Amendment to the Timing of the Initial and Options Notices

The Commission's *Interim Guidelines* stated: (a) An Initial Notice shall be provided to each affected customer 52 to 90 days prior to the expiration date of the fixed term⁵ agreement or the effective date of the proposed change in terms; and (b) The Options Notice shall be provided to each affected customer at least 45 days prior to the expiration date of the fixed term agreement or the effective date of the proposed change in terms.

We believe that customers need to be notified prior to the expiration of their existing contract or prior to a change in the terms and conditions of that contract in a fashion that gives them both the information and time to act. Having an EGS provide an Initial Notice 90 days before the contract expires loses the implied urgency. Similarly, customers who receive their Options Notice 45 days before expiration may act immediately and incur an early cancellation fee because they left their existing EGS too soon. By requiring the EGSs to send the Initial and Options Notices closer to the expiration or change in terms of a contract, it will make customers more cognizant of the upcoming change and will likely force customers to not delay in making an affirmative choice to either remain with their existing EGS, switch to alternative EGS or return to default service. As such, we have amended the language from the *Interim Guidelines* to direct that the Initial Notice be provided to the customer 45 to 60 days prior to the

⁵ Fixed-term agreements are agreements that may offer a fixed-price or a variable-price over a specific period of time, such as 12 months, but is not intended to apply to a rolling month-to-month contract that has no set term length or expiration date.

expiration of the contract and that the Options Notice be provided to the customer no less than 30 days prior to the expiration or change in terms of the contract.

b. Amendment to the Provision of the Initial and Options Notices

Currently, Section § 54.5(g) states: *“If you have a fixed term agreement with us and it is approaching the expiration date or whenever we propose to change our terms of service in any type of agreement, you will receive written notification from us in each of our last three bills for supply charges or in corresponding separate mailings that precede either the expiration date or the effective date of the proposed changes. We will explain your options to you in these three advance notification.”* See 52 Pa. Code § 54.5(g). In the 2010 *Interim Guidelines*, the Commission required the provision of an Initial Notice to customers between 52 and 90 days prior to the expiration or change in terms of a contract and the provision of an Options Notice to customers at least 45 prior to the expiration or change in terms of a contract. Due to the importance of the notices, the *Interim Guidelines* stated that the notices will be mailed to customers, separately from those customers’ electric bills.

i. Comments

Multiple parties believe that the EGSs should be allowed to use electronic means to transmit these notices, should a customer request such methodology. RESA Comments at 7; Constellation Comments at 5.

ii. Resolution

The Commission agrees that many customers may request notifications via email, text messaging or other electronic means. As such, we will allow EGSs to provide the Initial Notices to customer via electronic communication, using the format chosen by the

customer. We would like to make it clear that this Commission does not believe that simply posting messaging on a website, such as the EGS's homepage, would constitute notification. We expect the EGS to actively reach out to the customer via the electronic means (*e.g.*, e-mail or text message) requested by that customer.

While the Commission will allow the Initial Notice to be communicated electronically, we still believe standard U.S. mail is an effective means of communicating important information to customers, especially in light of the fact that we are retaining the requirement that the envelope containing the Options Notice include messaging to alert a customer that it contains important information regarding that customer's contract. Additionally, the potential utilization of electronic means for delivering the Initial Notice and requiring the Options Notice to be delivered via first class mail provides for multiple avenues through which to reach a customer. As such, we will require EGSs to provide the Options Notice via first class mail. We have amended the language in § 54.10 (a)(1).

c. Amendment to Cancellation Fee Information in the Initial Notice

The Commission proposed the addition of § 54.10 (a)(1)(vi) which stated:

(vi) A statement indicating whether the existing fixed term contract has a cancellation fee, and an explanation of the fee amount and how to avoid the fee, if possible.

52 Pa. Code § 54.10(a)(1)(vi).

i. Comments

RESA requests that the language be amended to include the option for customers to select a different product from their existing EGS. RESA Comments at 7.

ii. Resolution

The Commission maintains its position that customers nearing the end of a fixed-term agreement need to be made aware that their existing contract has a cancellation fee. We agree with RESA that customers should be notified that they can choose a different product that is being offered by their existing EGS, as well as having the ability of choosing to purchase supply from an alternative EGS or return to default service. Therefore, we have amended the language at § 54.10 (a)(1)(vi) to state the following:

(vi) A statement indicating whether the existing fixed term contract has a cancellation fee, and an explanation of the fee amount and how to avoid the fee, if possible, including notice of the date when the customer can choose a different product from the customer's existing EGS, can choose an alternative EGS or can return to default service.

52 Pa. Code § 54.5(a)(1)(vi).

d. Amendment to Information in Options Notice re: Customer's Options

Currently, the Commission's *Interim Guidelines* provide for: *A statement advising the consumer of the specific changes being proposed by the EGS and informing the customer of its options, including the customer's ability to select another EGS within a certain time period, accept the proposed changes, or return to default service.* The Commission proposed the inclusion of this language in its regulations.

i. Comments

Constellation notes that customers should be encouraged to explore all of their options, including options for service from their existing EGS. Constellation Comments at 5, 6.

ii. Resolution

We agree with Constellation that the option for a customer to accept a new product from his or her existing EGS should be included and have revised the language to state the following:

(i) A statement advising the customer of the specific changes being proposed by the EGS and informing the customer of how to exercise the customer's options, including the customer's ability to accept the proposed changes, to choose another product offering from the customer's existing EGS, to select another EGS, or to return to default service.

52 Pa. Code § 54.10 (a)(2)(i)

e. Amendment to Provide Customers with First Billing Cycle's Rate

As noted previously, this Commission recognizes that variable-priced contracts will, in fact, vary, but we believe it is essential to provide customers with the rate that will be charged for the first billing cycle of service. In the instances where a customer is enrolled in a fixed-term contract that is nearing expiration or a change in terms, we believe that customer must know the first billing cycle's per kWh rate. Specifically, when EGSs provide the Options Notice at least 30 days in advance of the expiration or change in terms of the contract, that EGS should provide the new rate the customer will be charged the first billing cycle following the expiration or change in terms. As such, we proposed that customers who have not responded to the notices provided by EGSs and will be converted to a month-to-month or to another fixed-term contract be provided the first billing cycle's per kWh rate.

The Commission also proposed for those customers enrolled in fixed-term contracts who do not respond to the Initial or Options Notices and will be enrolled in a

month-to-month variable-priced contract, that EGSs provide to customers 30 days' notice in advance of any subsequent price change.

i. Comments

Constellation requests that the first billing cycle's price be provided closer to when that rate will be charged. Specifically, Constellation proposes that EGSs provide the first billing cycle's rate to customers seven to 14 days in advance, instead of 30 days in advance via the Options Notice. Constellation states that the monthly rate for the upcoming month is typically established a few weeks in advance of the month. Constellation Comments at 6.

Multiple parties provided comments regarding the proposed notification of rate changes for those customers who are entered into a month-to-month contract upon expiration of their fixed-term contract. RESA, NEM and UGIES state that the providing notifications of rate changes as suggested 30 days in advance of the rate change would be costly, burdensome and may confuse customers, which could have a negative impact on both variable price products and retail choice. RESA Comments at 8; NEM Comments at 8, 9; UGIES Comments at 11, 12.

While first suggesting that this requirement should not be maintained, RESA notes that, if the Commission would decide to make such a requirement, those notifications should be transmitted electronically if agreed upon by the customer. RESA Comments at 8. NRG also states that the requirement should not be imposed if the rate change benefits the customers or if an EGS already has limitations on the variability of its rate(s). NRG Comments at 8.

ii. Resolution

The Commission disagrees with Constellation that the provision of the first billing cycle's rate should be provided seven to 14 days in advance instead of 30 days in advance via the Options Notice. The purpose of the Options Notice is to provide a customer with information regarding their options in advance of the expiration of his or her fixed-term contract. The intent is to encourage a customer to take action, whether it be enrolling in a new product with his or her existing EGS, enrolling with an alternative EGS or returning to default service. As is the case when a customer initially shops, we believe the customer should be presented with, at a minimum, the first billing cycle's rate he or she will be charged. This information is most appropriate in the Options notice.

Upon review of stakeholders' comments, consumer complaints and feedback provided by a variety of parties, the Commission maintains its position that 30 days' notice of any pricing changes should be provided to those customers whose fixed-term contract has expired or has had a change in terms and are now enrolled in a variable-priced month to month contract. Because many of the customers enrolled in fixed-term contracts have affirmatively chosen a fixed rate, these customers may need more information regarding the potential variability in rates they may experience upon contract expiration or when the terms of the contract are changed. Therefore, the following language has been included at § 54.10 (a)(2)(ii)(A)(I):

(I) Notice of a subsequent change in pricing shall be provided to the customer at least 30 days prior to the new price being charged.

52 Pa. Code § 54.10 (a)(2)(ii)(A)(I).

However, we recognize the comments provided by the EGSs who indicated that providing notice only via first class mail to all such customers may be costly and burdensome. As such, customers who did not respond to either the Initial or Options Notices, whose fixed-term contract has been converted to a month to month contract and

who have elected to receive electronic communications from the EGS will be able to receive price change notifications transmitted in the manner chosen by the customer. For all other applicable customers, the price change notices will be provided by first class mail. We would like to make it clear that the Commission does not believe that simply posting messaging on a website, such as the EGS's own website, would constitute compliance with this requirement. We expect EGSs to actively reach out to these customers and provide notice of price changes via the means requested by that customer. Accordingly, the following language has been included at § 54.10 (a)(2)(ii)(A)(II):

(II) For customers who have elected to receive electronic communications from the EGS, notice of the change in pricing shall be transmitted in the manner chosen by the customer. For all other customers, notice shall be provided by first class mail.

52 Pa. Code § 54.10 (a)(2)(ii)(A)(II):

f. Inclusion of Information on Options Notice Envelope

We recognize the fact that due to the cost, popularity and effectiveness of mail advertising for EGS products, customers tend to receive significant amounts of mail at any point in time and may disregard general notifications provided by any number of entities, including their EGS. As such, this Commission believes it is in the best interest of those customers on fixed-term contracts nearing expiration or a pending change in terms to be made clearly aware of this upcoming change. To do this, the Options Notice provided by EGSs to customers must be distinguishable from the other mailings a customer may receive. As such, we proposed that the front of the envelope used in the distribution of the Options Notice should include, language that the mailing contains important information regarding the expiration or changes in terms of a customer's electric supply contract.

i. Comments

Constellation encourages the Commission to review the New York Public Service Commission's proceeding related to similar issues and recommends that the Commission adopt the same universal statement as utilized in New York. Additionally, Constellation requests that EGSs be allowed the flexibility to provide the messaging through the clear window portion of a window envelope, if practical. Constellation Comments at 7, 8.

Citizen Power requests that the language indicate that the expiration or changes in terms of the contract may modify the rates paid by the customer. Citizen Power Comments at 2.

ii. Resolution

We maintain our position that language regarding the expiration or change in terms of a customer's fixed-term contracts should be clearly visible on the envelope distributing the Options Notice in order to make the notice more distinguishable from other items of mail. However, we do not intend a requirement that will be overly burdensome to EGSs to effectuate if they have similar processes that can achieve the same effect – such as providing messaging visible in the transparent window portion of the envelope, as Constellation suggests. To achieve this effect, we are requiring information that alerts the customer as to the importance and purpose of the mailing to be “clearly visible” on the front of envelope. This change will accommodate either messaging on the envelope as originally proposed or messaging in the transparent window as long as it is clearly visible on the front of the envelope.

Regarding the exact wording of the messaging that needs to be visible on the envelope, we decline to make any specific recommendations in this proceeding. Accordingly, EGSs are free to use language from other jurisdictions, as long as it fulfills

the intent of the regulation – which is to make known that the Options Notice contains important information regarding the expiration or change in terms of a customer’s electric supply contract. Accordingly, the Commission has included the following language in order to attain this objective:

(vi) language clearly visible on the front of the envelope used to provide the Options Notice stating that it contains important information regarding the expiration or changes in terms of the customer’s electric supply contract.

52 Pa. Code § 54.10(a)(2)(vi).

g. Inclusion of Information Regarding Actions to be Taken Should a Customer not Respond to EGS Notices

Lastly, as outlined in the *Interim Guidelines*, we believe direction is needed regarding actions to be taken when customers fail to respond to either of the two required EGS notices. Because the intent of the competitive market is to encourage customers to shop for their retail electricity supply, we do not believe it is appropriate for a customer to be reverted to default service should that customer fail to respond to either of the two EGS-provided notices. Instead, and as indicated in the *Interim Guidelines*, we believe that customers with a fixed-term contract who fail to respond to the EGS notices should be enrolled in one of two types of contracts. The first would be to convert that customer to a month-to-month contract with no cancellation fee. This month-to-month contract will remain in place until the customer affirmatively enters into a new contract with the existing EGS, a new EGS, or returns to the default service provider. The second option would be for the customer to be enrolled in a new fixed-term contract that includes a customer-initiated cancellation provision and does not include cancellation fees.

However, in allowing that EGS to retain these customers, the Commission believes certain customer protections should be in place, which is why cancellation fees

may not be imposed on these customers, should they choose to switch suppliers or return to default service while enrolled in one of these two contracts. To memorialize this language from the *Interim Guidelines* and in order to ensure EGS compliance with these requirements, we have added Section 54.10(a)(3) to our regulations. Due to the length of this addition, we will not reiterate the language here and, instead, will refer readers to Annex A, which outlines all of the regulatory changes, including the addition of 52 Pa. Code § 54.10(a)(3), resulting from this Order.

8. Implementation

EGSs shall implement these regulatory changes within 30 days of the publication in the *Pennsylvania Bulletin*.

Process and Justification for Promulgating Final-Omitted Regulations

Under the Public Utility Code, the Commission may promulgate regulations as may be necessary and proper in the exercise of its powers and performance of its duties. 66 Pa. C.S. § 501(b). In promulgating regulations, the Commission must adhere to the statutory requirements of the Regulatory Review Act, 71 P.S. §§ 745.1 *et seq.*, the Commonwealth Documents Law, 45 P.S. §§ 1201 *et seq.*, and the Commonwealth Attorneys Act, 71 P.S. §§ 732-204. A Commonwealth agency enjoys wide discretion in establishing rules, regulations, and standards; this discretion will not be overturned by a reviewing court absent proof of fraud, bad faith, or a blatant abuse of discretion. *Logsdon v. Dept. of Educ.*, 671 A.2d 302, 305 (Pa. Cmwlth. 1996). In order for a regulation to have the force of law binding on the judiciary, the agency must: 1) act pursuant to the agency's governing statute, 2) adhere to proper procedure, and 3) issue a reasonable regulation. *Rohrbaugh v. Pa. Pub. Util. Comm'n*, 727 A.2d 1080, 1085 (Pa. 1999).

In proposing a new or modified regulation, an agency generally must provide notice to the public of its proposed rulemaking and an opportunity for the public to comment. 45 P.S. § 1201; *Naylor v. Com., Dept. of Public Welfare*, 54 A.3d 429, 434-6 (Pa. Cmwlth. 2012). The purpose behind this formal notice and comment rulemaking is to provide “affected parties a democratic process for participation in the formulation of standards which govern their conduct and increases the likelihood of administrative responsiveness to their needs and concerns.” *Dept. of Enviro. Resources v. Rushton Min. Co.*, 591 A.2d 1168, 1171 (Pa. Cmwlth. 1991). Furthermore, this formal process “enables the agency to obtain information relevant to the proposed rule and facilitates the consideration of alternatives, detrimental effects, criticism, and advice, thereby contributing to the soundness of the proposed regulation.” *Id.*

An agency may forgo those formal notice and comment procedures attendant to a proposed rulemaking by promulgating Final-Omitted Regulations. 45 P.S. § 1204. The Commonwealth Documents Law, Section 1204 of the Pennsylvania Statutes, 45 P.S. § 1204, in discussing scenarios that justify Final-Omitted Regulations, provides:

Except as otherwise provided by regulations promulgated by the joint committee, an agency may omit or modify the procedures specified in §§ 201 and 202, if:

- (1) The administrative regulation or change therein relates to: (i) military affairs; (ii) agency organization, management or personnel; (iii) agency procedure or practice; (iv) Commonwealth property, loans, grants, benefits or contracts; or (v) the interpretation of a self-executing act of Assembly or administrative regulation; or
- (2) All persons subject to the administrative regulation or change therein are named therein and are either personally served with notice of the proposed promulgation, amendment, or repeal or otherwise have actual notice thereof in accordance with law; or
- (3) The agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the order adopting the administrative regulation or change therein) that the procedures specified in

§§ 201 and 202 are in the circumstances impracticable, unnecessary, or contrary to the public interest.

45 P.S. §1204.

Pertinently, an agency may forgo traditional notice and comment procedures if the agency finds for good cause those procedures are “impracticable, unnecessary or contrary to the public interest.” 45 P.S. §1204(3). To demonstrate good cause that the formal notice and comment rulemaking process is unnecessary, an agency must include a “finding and a brief statement of the reasons...in the order adopting the administrative regulation or change.” 1 Pa. Code § 7.4.

Here, the Commission has determined that Final-Omitted Regulations revising our customer information regulations, 52 Pa. Code § 54.5, and adding 52 Pa. Code § 54.10 regarding customer notices, are necessary to serve and protect the public interest. Based upon the circumstances of this situation, specifically, the unusually high electric supply bills recently incurred by customers resulting from variable-priced contracts and fluctuations in wholesale energy markets, the exception at §1204(3) is, in our opinion, applicable.

Good Cause Supports Commission Promulgation of Final-Omitted Regulations

The Commission finds good cause that undergoing the traditional notice and comment procedures for these regulations is impracticable, unnecessary, and contrary to the public interest. *See* 45 P.S. § 1204(3). Importantly, pursuant to Section 1204(2) all EGSs affected by these regulations will be served and provided with actual notice. *See* 45 P.S. § 1204(2).

Formal notice and comment procedures are impracticable and contrary to the public interest because customers are being affected now with extraordinarily high bills

and may be affected again as early as this summer due to peak demand periods and potential fluctuations in the wholesale energy market. The Commission seeks to amend its regulations as soon as practicable to ensure customers are being provided with the necessary information to make informed decisions when shopping in Pennsylvania's competitive retail electricity market. Specifically, these Final-Omitted Regulations will provide increased protection to customers and more adequately inform customers about the scope and limits of rate variability, the terms and conditions of an EGS contract, and the customer's options prior to and after the expiration of their current contract for generation supply. Any delay in requiring EGSs to enhance disclosure statements provided to customers, such as a change in contract terms and notice of contract renewal, is contrary to public interest.

Formal notice and comment procedures are unnecessary because there have been and continue to be substantial channels for formal and informal public notice and comment. The public has voiced their comments and concerns through the filing of nearly 500 formal complaints with the Commission's Secretary's Bureau between January 1, 2014 and March 25, 2014, and the filing of over 5,600 informal complaints with the Commission's Bureau of Consumer Services (BCS) regarding EGSs. In addition, BCS has answered more than 9,000 inquiries on the subject. Moreover, the media has raised this issue throughout the Commonwealth. Additionally, the Commission has received a number of inquiries and comments from the Legislature regarding these events. As such, the public is indeed on high notice and constituents have reached out to their legislators, who are discussing legislative amendments to achieve clear and more expansive disclosure of contract terms. Throughout February and March of this year, the Commission has held numerous conference calls and meetings with interested parties, including the Office of Attorney General, the Office of Consumer Advocate, customers, suppliers, utilities, legislative committees, and the media.

As discussed, the Commission has already accepted and reviewed formal comments on advance notification by an EGS of impending changes affecting customer service via a previous Commission order. *See September 2010 Interim Guidelines*, Docket Nos. M-2010-2195286 and M-0001437. In the *September 2010 Interim Guidelines*, 12 parties filed comments, including the OCA, OSBA, Pennsylvania Utility Law Project (PULP), PPL Electric Utilities Corporation (PPL), PECO Energy Company (PECO), National Energy Marketers Association (NEMA), Pennsylvania Energy Marketers Association (PEMC), Washington Gas & Electric Services, Inc. (WGES), BlueStar Energy Solutions (BlueStar), Dominion Retail, Inc. (Dominion), FirstEnergy Solutions Corporation (FES), and Direct Energy Services, LLC (Direct Energy).

These regulations are, for the most part, simply codifying notice guidelines that have been in operation since 2010. We have over three years of experience with suppliers operating under these guidelines; and that experience for the most part has been positive with few compliance problems. However, our guidelines are sometimes overlooked by suppliers since guidelines do not have the force of law like regulations. Therefore, it is now appropriate to promulgate these regulations, which will be more visible and enforceable. While additional comments obtained through a proposed rulemaking have the potential to provide more insight and analysis (especially on generally-related issues of electric supply competition), additional comments for the limited purposes of this rulemaking – protecting customers by requiring EGSs to provide enhanced disclosure statements – are unnecessary. Both governmental and other stakeholder resources will be saved by forgoing the extensive formal notice and comment rulemaking process. Accordingly, the public interest is better served through administrative streamlining in this Final-Omitted Rulemaking pursuant to the Commonwealth Documents Law, 45 P.S. § 1204.

In an effort to obtain comments on proposed changes to our Disclosure Regulations, on March 19, 2014, the Commission issued a Secretarial Letter alerting

affected parties of the intention to promulgate a Final-Omitted Rulemaking that would amend existing Regulations at 52 Pa. Code, Chapter 54, to revise disclosure statement requirements for residential and small business customers. *Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Renewal or Changes in Terms*, Docket No. L-2014-2409385, (Secretarial Letter served Mar. 19, 2014) (Secretarial Letter). This Secretarial Letter noted that while some amendments would codify, with modifications, existing contract renewal/change in terms notice requirements, other changes raise new issues that had not previously been considered. As a result, the Commission requested comments on its proposed regulations in order to give an opportunity for those entities most affected to provide feedback.

The Commission received comments related to these and other issues regarding the effect the proposed amendments would have on the Commission's existing regulations and EGS operations. Comments were filed by the following parties: Representatives Godshall and Daley, OCA, OSBA, Citizen Power, UGIES, WGES, Constellation, IGS, RESA, NRG, Alphabuyer, NEM and FES.

The Commission also received a letter, dated March 18, 2014, from Senators Tomlinson and Boscola suggesting that our regulations regarding disclosure statements be revised immediately. The letter also stated that customers should be provided with more information regarding the prices to be paid and the variability that may occur if enrolled in a variable-price contract.

In addition, two residential customers e-mailed either the Commission's website or www.PaPowerSwitch.com with comments regarding the Commission's proposed regulatory changes to EGS disclosure statements, as well as changes to customer notices regarding "contract renewals" and "changes in terms."

One customer, Mr. David Tranquillo, was supportive of changes to contract terms and conditions, including rebates and incentives, being explained “in bold print in a size larger than the rest of the offer.” Another customer, Mr. Ron Brenize, was supportive of changes that would require suppliers to notify customers of rate increases via mail, e-mail, or on the bill. He added “this would give the consumer time to review and make changes if they desire.”

WGES, OSBA, OCA, Representative Godshall and Representative Daley expressed concern with the Commission’s decision to move forward with drafting this regulation using the Final-Omitted Rulemaking process. WGES Comments at 2, 7, OSBA Comments at 1, 2, and OCA Comments at 1-3. Conversely, UGIES, Alphabuyer, Constellation, Senator Tomlinson, and Senator Boscola commended the Commission for immediately moving forward with revising the disclosure regulations.

We agree with the comments of UGIES, Alphabuyer, Constellation and Senators Tomlinson and Boscola that it is in the public interest to proceed with this rulemaking using the Final-Omitted Rulemaking process. Senators Tomlinson and Boscola requested that the Commission, “Immediately begin revising the regulations addressing the notification electric suppliers must provide to customers regarding variable rates and the end of fixed rate offerings.” Tomlinson/Boscola letter at pg. 1. As the Commission discussed previously in this Final-Omitted Rulemaking, the Commission finds good cause that undergoing the traditional notice and comment procedures for these regulations is impracticable, unnecessary, and contrary to the public interest. In light of the recent high number of informal and formal complaints filed before the Commission, the possible damage these complaints will have on the ongoing success and operation of the competitive retail electric market in the Commonwealth and the more important need for residential and small commercial customers to enter into contracts which they fully

understand, the Commission believes it is essential to the public interest to act promptly and expeditiously to amend these regulations using the Final-Omitted process.

Additionally, as previously mentioned, the Commission has undertaken many recent immediate measures to ensure that customers are better educated about their options when participating in the competitive retail electric market. We have provided enhanced information to explain price fluctuations in variable rates and the differences between fixed versus variable rates on the Commission's website and PaPowerSwitch.com. We have also provided information and guidance via press releases and other media outlets to educate customers with their options when presented with a high billing complaint. However, while the Commission believes those initial steps were informative, as discussed, we believe the public interest is even better served by the promulgation of these Final-Omitted regulations included herein.

Through its Retail Markets Investigation and OCMO, the Commission has created a "democratic process for participation" in the formulation of standards governing retail electricity shopping at 52 Pa. Code §§ 54.1-54.9 "to increase[] the likelihood of administrative responsiveness" to the needs and concerns of stakeholders and interested parties. *See Rushton Min. Co.*, 591 A.2d at 1171. Therefore, this Final-Omitted Rulemaking still meets the intent of a *de novo* rulemaking with formal notice and comment without risking promulgation of an agency regulation not in the public interest.

Statutory Safeguards Prevent Promulgation of an Agency Regulation Not In Public Interest

Importantly, Final-Omitted Regulations are subjected to the same review before IRRC as review of final-form regulations. *See* 71 P.S. § 745.5a-745.6. IRRC, the legislative committees, and the Attorney General may still comment on the final-form

regulation. 71 P.S. § 745.5a(c). IRRC or a committee may disapprove the Final-Omitted Regulation. *See* 71 P.S. §§ 745.5a-745.7. IRRC may also request and receive public comments up to 48 hours prior to IRRC's public meeting where the final-form regulation will be ruled upon. 71 P.S. § 745.5a(j). If IRRC does not disapprove the Final-Omitted Regulation within its statutory time frame, the Final-Omitted Regulation will be deemed approved. 71 P.S. § 745.5a(e). An agency may accept revisions to the Final-Omitted Regulations, as recommended by IRRC or a committee. 71 P.S. § 745.5a(g). An agency may also toll the time for review in order to provide the agency with sufficient time to make recommended changes suggested by IRRC or the committees. *See id.* An agency may also withdraw a Final-Omitted Regulation. Upon receiving a report from the agency regarding revisions to the Final-Omitted Regulations, IRRC will deliver an approval or disapproval order to the committees for consideration by the General Assembly and the Governor, both of which retain powers to prevent promulgation of the agency's Final-Omitted Regulation. *See* 71 P.S. § 745.7(c.1)-(d). Therefore, statutory safeguards are in place to prevent promulgation of an unreasonable agency regulation not in the public interest.

CONCLUSION

The revisions made to the Disclosure Statement Regulations, including the addition of the EGS Contract Summary and Section 54.10, Notice of Contract Expiration or Change in Terms, are intended to increase consumer protection and better inform customers about the scope and limits of rate variability, the terms and conditions of an EGS contract, and a customer's options prior to and after the expiration of their current contract for generation supply. The regulations, as now revised after consideration of comments from affected parties, provide for enhanced information from EGSs to customers who enter into variable-priced contracts and for the inclusion of information about what will happen to a customer's current supply contract if the customer does not respond to either the Initial or Options Notices. This information will ensure that

customers will have this information at hand when considering the various alternatives for purchasing future electric generation supply.

Well-informed customers are essential participants in a successful competitive retail market. We have recently seen first-hand the frustrations of customers enrolled in variable-priced contracts who are not sufficiently aware of potentially significant price increases due to fluctuating wholesale market conditions. By updating these regulations to provide customers with accurate, timely pricing information and history when they are shopping for electric generation supply, we intend to create a more user-friendly marketplace that should continue to attract increased numbers of customers.

The Commission believes that this Final-Omitted Rulemaking is prudent and is essential to the public interest. For the above reasons, the exceptions to the notice of proposed rulemaking requirements enunciated in §1204(3) are applicable in the instant case. Accordingly, under Sections 501 and 1501 of the Public Utility Code, 66 Pa. C.S. §§ 501 and 1501; the Commonwealth Documents Law, 45 P.S. § 1204; the Regulatory Review Act, 71 P.S. §§ 745.1 *et seq.*; the Commonwealth Attorneys Act, 71 P.S. §§ 732-204; and the regulations promulgated at 1 Pa. Code § 7.4, the Commission adopts the regulations at 52 Pa. Code §§ 54.5, 54.10, as set forth in Annex A; **THEREFORE,**

IT IS ORDERED:

1. That this Final-Omitted Rulemaking Order, together with Attachment A and Annex A, be published as final in the *Pennsylvania Bulletin*.
2. That the Secretary shall submit this Order, Attachment A and Annex A to the Attorney General for review and approval and to the Governor's Budget Office for fiscal review.

3. That the Secretary shall submit this Order, Attachment A and Annex A to the legislative standing committees and to the Independent Regulatory Review Commission for review and approval.

4. That the Secretary shall duly certify this Order, Attachment A and Annex A and deposit them with the Legislative Reference Bureau for final publication upon approval by the Independent Regulatory Review Commission.

5. That the Commission's Office of Competitive Market Oversight provide further direction to currently licensed EGSs serving residential and/or small business customers regarding the submission of EGS Contract Summaries to the Commission.

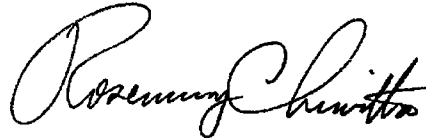
6. That this Order, Attachment A and Annex A, revising the regulations appearing in Title 52 of the Pennsylvania Code Chapter 54 relating to Electricity Generation Customer Choice, be served on all licensed Electric Generation Suppliers, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and those parties who submitted comments at Docket Nos. L-2014-2409385 and M-2010-2195286.

7. That the Office of Competitive Market Oversight shall electronically send a copy of this Final-Omitted Rulemaking Order, Attachment A and Annex A to all persons on the contact list for the Committee Handling Activities for Retail Growth in Electricity, and to all persons on the contact list for the Investigation of Pennsylvania's Retail Electricity Market, order entered April 29, 2011 at Docket No. I-2011-2237952.

8. That a copy of this Final-Omitted Rulemaking Order, Attachment A and Annex A shall be posted on the Commission's website at the Office of Competitive Market Oversight web page and on the web page for the *Investigation of Pennsylvania's Retail Electricity Market*.

9. The contact persons for this matter are Matthew Hrivnak in Bureau of Consumer Services (717) 783-1678 and Patricia Wiedt in the Law Bureau (717) 787-5755.

BY THE COMMISSION

A handwritten signature in cursive script, reading "Rosemary Chiavetta".

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: April 3, 2014

ORDER ENTERED: April 3, 2014

ATTACHMENT A

Electric Generation Supplier Contract Summary

Electric Generation Supplier Information	<i>Name, telephone number, website, etc. Plain language statement that EGS is responsible for generation charges.</i>
Price Structure	<i>Fixed or variable. If variable, based on what? If variable, how often is the rate expected to vary? If variable, give any applicable ranges/ceilings. If no ranges/ceilings, a plain language statement indicating this fact. If variable, describe when the customer will receive notification of price changes in relation to time of month, final monthly meter read, billing cycle or when the price takes effect.</i>
Generation/Supply Price	<i>\$/kWh or ¢/kWh. If variable rate, the first billing cycle's rate. Any introductory rate with length of term.</i>
Statement Regarding Savings	<i>Plain language that the supply price may not always provide savings to the customer</i>
Deposit Requirements	<i>Any deposit requirements necessary for a customer and any terms associated with that deposit, in plain language.</i>
Incentives	<i>Any bonuses, discounts, cashback, etc. offers and any associated terms, in plain language.</i>
Contract Start Date	<i>Plain language regarding start of EGS service (meter reads/billing cycles/etc.)</i>
Contract Term/Length	<i>In months, billing cycles, etc.</i>
Cancellation/Early Termination Fees	<i>Yes or no. If yes, describe the amount of the fee and how to avoid that fee, if possible.</i>
Renewal Terms	<i>Treatment of customer at end of contract. Timing of notices. No cancellation/early termination fees. In plain language.</i>
Electric Distribution Company Information	<i>Name, telephone number, website, etc. Plain language statement that EDC is responsible for distribution charges, as well as any emergencies/outages/etc.</i>

ANNEX A
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 54: ELECTRICITY GENERATION CUSTOMER CHOICE
Subchapter A. CUSTOMER INFORMATION

§ 54.5. Disclosure statement for residential and small business customers.

* * * * *

(c) The contract's terms of service shall be disclosed, including the following terms and conditions, if applicable:

(1) Generation charges shall be disclosed according to the actual prices.

(2) The variable pricing statement, ~~if applicable~~, must include:

(i) Conditions of variability (state on what basis prices will vary).

(ii) Limits on price variability:-

(A) IF THERE IS A LIMIT ON PRICE VARIABILITY, SUCH AS A SPECIFIC PRICE CAP, A MAXIMUM PERCENTAGE INCREASE IN PRICE BETWEEN BILLING CYCLES OR MINIMUM/MAXIMUM CHARGES PER KILOWATT-HOUR FOR ELECTRICITY DURING THE TERM OF THE CONTRACT, THE EGS SHALL CLEARLY EXPLAIN THE APPLICABLE LIMITS.

(B) IF THERE IS NO LIMIT ON PRICE VARIABILITY, THE EGS SHALL CLEARLY AND CONSPICUOUSLY STATE THAT THERE IS NO LIMIT ON HOW MUCH THE PRICE MAY CHANGE FROM ONE BILLING CYCLE TO THE NEXT.

(III) THE PRICE TO BE CHARGED, PER KILOWATT-HOUR, FOR THE FIRST BILLING CYCLE OF GENERATION SERVICE.

* * * * *

(10) An explanation of LIMITS ON PRICE VARIABILITY, penalties, fees or exceptions, printed in type size larger than the type size appearing in the terms of service.

* * * * *

(14) FOR CONTRACTS WITH VARIABLE PRICING, THE EGS SHALL PROVIDE:

(I) A TELEPHONE NUMBER AND INTERNET ADDRESS AT WHICH A CUSTOMER MAY OBTAIN THE PREVIOUS 24 MONTHS' AVERAGE MONTHLY BILLED PRICES FOR THAT CUSTOMER'S RATE CLASS AND EDC SERVICE TERRITORY. IF AN EGS HAS NOT BEEN PROVIDING GENERATION SERVICE IN A RATE CLASS AND EDC SERVICE TERRITORY FOR 24 MONTHS, THE EGS SHALL PROVIDE THE AVERAGE MONTHLY BILLED PRICES FOR THE MONTHS AVAILABLE TO DATE.

(II) IN PLAIN LANGUAGE, A STATEMENT THAT HISTORICAL PRICING IS NOT INDICATIVE OF PRESENT OR FUTURE PRICING.

* * * * *

(g) Disclosure statements must include the following customer notification: "IF YOU HAVE A FIXED TERM CONTRACT APPROACHING THE EXPIRATION DATE, OR WHENEVER WE PROPOSE TO CHANGE THE TERMS OF SERVICE IN ANY TYPE OF CONTRACT, YOU WILL RECEIVE TWO SEPARATE WRITTEN NOTIFICATIONS THAT PRECEDE EITHER THE EXPIRATION DATE OR THE EFFECTIVE DATE OF THE PROPOSED CHANGES. THESE NOTIFICATIONS WILL EXPLAIN YOUR OPTIONS GOING FORWARD."

~~(1) "If you have a fixed term agreement with us and it is approaching the expiration date or whenever we propose to change our terms of service in any type of agreement, you will receive written notification from us in each of our last three bills for supply charges or in corresponding separate mailings that precede either the expiration date or the effective date of the proposed changes. We will explain your options to you in these three advance notifications."~~

(h) If the default service provider changes, the new default service provider shall notify customers of that change, and provide customers with its name, address, telephone number and Internet address, if available.

(I) THE EGS SHALL PROVIDE, WITH THE DISCLOSURE STATEMENT, A SEPARATE EGS CONTRACT SUMMARY IN A FORMAT PROVIDED BY THE COMMISSION.

* * * * *

§ 54.10. NOTICE OF CONTRACT EXPIRATION OR CHANGE IN TERMS FOR RESIDENTIAL AND SMALL BUSINESS CUSTOMERS.

(A) AN EGS SHALL PROVIDE THE FOLLOWING NOTICES TO CUSTOMERS PRIOR TO THE EXPIRATION OF A FIXED TERM CONTRACT OR PRIOR TO A CHANGE IN CONTRACT TERMS:

(1) AN INITIAL NOTICE SHALL BE PROVIDED TO EACH AFFECTED CUSTOMER 45 TO 60 DAYS PRIOR TO THE EXPIRATION DATE OF THE FIXED TERM CONTRACT OR THE EFFECTIVE DATE OF THE PROPOSED CHANGE IN TERMS. FOR CUSTOMERS WHO HAVE ELECTED TO RECEIVE ELECTRONIC COMMUNICATIONS FROM THE EGS, THE NOTICE SHALL BE TRANSMITTED IN THE MANNER CHOSEN BY THE CUSTOMER. THE INITIAL NOTICE SHALL INCLUDE THE FOLLOWING:

(I) A GENERAL DESCRIPTION OF THE PROPOSED CHANGE IN TERMS OF SERVICE.

(II) THE DATE A CHANGE SHALL BE EFFECTIVE OR WHEN THE FIXED TERM CONTRACT IS TO EXPIRE.

(III) AN EXPLANATION OF WHY A CHANGE IN CONTRACT TERMS IS NECESSARY.

(IV) A STATEMENT INDICATING WHEN A FOLLOW-UP OPTIONS NOTICE SHALL BE ISSUED WITH DETAILS REGARDING THE PROPOSED CHANGE.

(V) A STATEMENT EXPLAINING THAT THE OPTIONS NOTICE SHALL DISCUSS THE CUSTOMER'S OPTIONS TO THE PROPOSED CHANGE IN TERMS OF SERVICE OR EXPIRING FIXED TERM CONTRACT.

(VI) A STATEMENT INDICATING WHETHER THE EXISTING FIXED TERM CONTRACT HAS A CANCELLATION FEE, AND AN EXPLANATION OF THE FEE AMOUNT AND HOW TO AVOID THE FEE, IF POSSIBLE, INCLUDING NOTICE OF THE DATE WHEN THE CUSTOMER CAN CHOOSE A DIFFERENT PRODUCT FROM THE CUSTOMER'S EXISTING EGS, CAN CHOOSE AN ALTERNATIVE EGS OR CAN RETURN TO DEFAULT SERVICE.

(2) AN OPTIONS NOTICE SHALL BE PROVIDED, BY FIRST CLASS MAIL, TO EACH AFFECTED CUSTOMER AT LEAST 30 DAYS PRIOR TO THE EXPIRATION DATE OF THE FIXED TERM CONTRACT OR THE EFFECTIVE DATE OF THE PROPOSED CHANGE IN TERMS. THE OPTIONS NOTICE SHALL INCLUDE THE FOLLOWING:

(I) A STATEMENT ADVISING THE CUSTOMER OF THE SPECIFIC CHANGES BEING PROPOSED BY THE EGS AND INFORMING THE CUSTOMER OF HOW TO EXERCISE THE CUSTOMER'S OPTIONS, INCLUDING THE CUSTOMER'S ABILITY TO ACCEPT THE PROPOSED CHANGES, TO CHOOSE ANOTHER PRODUCT OFFERING FROM THE CUSTOMER'S EXISTING EGS, TO SELECT ANOTHER EGS, OR TO RETURN TO DEFAULT SERVICE.

(II) INFORMATION REGARDING NEW PRICING OR RENEWAL PRICING INCLUDING THE PRICE TO BE CHARGED, PER KILOWATT-HOUR, FOR THE FIRST BILLING CYCLE OF GENERATION SERVICE:

(A) IF A CUSTOMER FAILS TO RESPOND TO THE OPTIONS NOTICE AND IS CONVERTED TO A MONTH-TO-MONTH CONTRACT, THE EGS SHALL PROVIDE A DISCLOSURE STATEMENT UNDER 54.5 (RELATING TO DISCLOSURE STATEMENT FOR RESIDENTIAL AND SMALL BUSINESS CUSTOMERS).

(I) NOTICE OF A SUBSEQUENT CHANGE IN PRICING SHALL BE PROVIDED TO THE CUSTOMER AT LEAST 30 DAYS PRIOR TO THE NEW PRICE BEING CHARGED.

(II) FOR CUSTOMERS WHO HAVE ELECTED TO RECEIVE ELECTRONIC COMMUNICATIONS FROM THE EGS, NOTICE OF THE CHANGE IN PRICING SHALL BE TRANSMITTED IN THE MANNER CHOSEN BY THE CUSTOMER. FOR ALL OTHER CUSTOMERS, NOTICE SHALL BE PROVIDED BY FIRST CLASS MAIL.

(B) IF A CUSTOMER FAILS TO RESPOND TO THE OPTIONS NOTICE AND IS ENTERED INTO A NEW FIXED TERM CONTRACT, THE EGS SHALL PROVIDE THE FIXED, PER KILOWATT-HOUR PRICE TO BE CHARGED AND TERM LENGTH OF THE CONTRACT.

(III) THE TELEPHONE NUMBERS AND INTERNET ADDRESSES, AS APPLICABLE, FOR THE OFFICE OF CONSUMER ADVOCATE, THE COMMISSION AND PAPOWERSWITCH.COM.

(IV) LANGUAGE CLEARLY VISIBLE ON THE FRONT OF THE ENVELOPE USED TO PROVIDE THE OPTIONS NOTICE STATING THAT IT CONTAINS IMPORTANT INFORMATION REGARDING THE EXPIRATION OR CHANGES IN TERMS OF THE CUSTOMER'S ELECTRIC SUPPLY CONTRACT.

(3) WHEN A CUSTOMER FAILS TO RESPOND TO EITHER NOTICE, THE FOLLOWING SHALL APPLY:

(I) A FIXED TERM CONTRACT SHALL BE CONVERTED TO ONE OF THE FOLLOWING:

(A) A MONTH-TO-MONTH CONTRACT, EITHER AT THE SAME TERMS AND CONDITIONS OR AT REVISED TERMS AND CONDITIONS, AS LONG AS THE CONTRACT CONTAINS NO CANCELLATION FEES.

(B) ANOTHER FIXED TERM CONTRACT, AS LONG AS THE NEW CONTRACT INCLUDES A CUSTOMER-INITIATED CANCELLATION PROVISION THAT ALLOWS THE CUSTOMER TO CANCEL AT ANY TIME, FOR ANY REASON, AND CONTAINS NO CANCELLATION FEES.

(II) THE CONVERTED CONTRACTS SHALL REMAIN IN PLACE UNTIL THE CUSTOMER CHOOSES ONE OF THE FOLLOWING OPTIONS:

(A) SELECT ANOTHER PRODUCT OFFERING FROM THE EXISTING EGS.

(B) ENROLL WITH ANOTHER EGS.

(C) RETURN TO THE DEFAULT SERVICE PROVIDER.



COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION
400 NORTH STREET
HARRISBURG, PA 17120

ROBERT F. POWELSON
CHAIRMAN

April 8, 2014

The Honorable John F. Mizner
Chairman
Independent Regulatory Review Commission
14th Floor, HARRISTOWN II
333 Market Street
Harrisburg, PA 17101

Re: L-2014-2409385/57-305; Final-Omitted Rulemaking Amending Disclosure Statement for Residential and Small Business Customers and the Provision of Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers, 52 Pa. Code, Chapter 54

Dear Chairman Mizner:

Enclosed please find one copy of the regulatory documents concerning the above-captioned rulemaking. Under Section 745.5a(c) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15), the Commission today is serving a copy of this rulemaking on the Office of the Budget, the Office of Attorney General, IRRC and the legislative standing committees.

Sincerely,

A handwritten signature in black ink that reads "Robert F. Powelson".

Robert F. Powelson

Enclosures

cc: The Honorable Robert M. Tomlinson
The Honorable Lisa Boscola
The Honorable Robert Godshall
The Honorable Peter J. Daley, II
Legislative Affairs Director Perry
Chief Counsel Pankiw
Assistant Counsel Wiedt
Mr. Hrivnak
Regulatory Coordinator DelBiondo

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE REGULATORY REVIEW ACT

ID Number: L-2014-2409385/57-305

Subject:

Final-Omitted Rulemaking Amending Regulations Regarding
Disclosure Statement for Residential and Small Business
Customers and the Provision of Notices of Contract Expiration
or Changes in Terms for Residential and Small Business
Customers
52 Pa. Code, Chapter 57

Pennsylvania Public Utility Commission


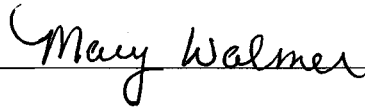
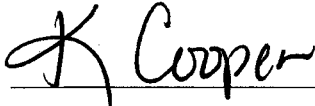
2014 APR - 8 AM 10: 54

RECEIVED
IRRC

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted.
- Final Regulation
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

FILING OF REPORT

<u>Date</u>	<u>Signature</u>	<u>Designation</u>
4/8/14		<u>HOUSE COMMITTEE</u> (Godshall) Consumer Affairs
4/8/14		<u>SENATE COMMITTEE</u> (Tomlinson) Consumer Protection and Professional Licensure
4/8/14		Independent Regulatory Review Commission
		Attorney General
		Legislative Reference Bureau