

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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IRRC

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(1) Agency
Pennsylvania Public Utility Commission

(2) Agency Number: L-2014-2409383
Identification Number: 57-306

IRRC Number: 3054

(3) PA Code Cite: 52 Pa. Code §§ 57.171 – 57.179

(4) Short Title: Final-Omitted Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 57 Regulations Regarding Standards for Changing a Customer's Electricity Generation Supplier

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

Primary Contact: Kenneth R. Stark, Assistant Counsel, Pennsylvania Public Utility Commission, Law Bureau, Commonwealth Keystone Building, P.O. Box 3265, Harrisburg, PA 17105, Phone: (717)787-5558; Fax: (717)783-3458; kenstark@pa.gov.

Secondary Contact: Daniel Mumford, Pennsylvania Public Utility Commission, Bureau of Consumer Services, Commonwealth Keystone Building, P.O. Box 3265, Harrisburg, PA 17105, Phone: (717)783-1957; dmumford@pa.gov

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

- Final Policy Statement
- Proposed Regulation
- Final Regulation
- X 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 adopted a Final-Omitted Rulemaking Order to amend and add regulations at 52 Pa. Code §§ 57.171-57.179 that address the process for transferring a customer's account from a default service provider to a competitive electric supplier (EGS or supplier) and from one supplier to another supplier. The regulations are intended to facilitate this process while preserving safeguards to prevent the unauthorized switching of a customer's account, also known as "slamming." Due to changes in the competitive retail electric market and the advent of new technologies since the adoption of these regulations, the Commission has reviewed these regulations, previous relevant orders, and comments from the public and interested parties seeking to accelerate the switching process. These revised regulations facilitate accelerated switching without endangering safeguards against unauthorized switching.

(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. § 1501 (Character of service and facilities) “Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.”

66 Pa.C.S. § 2807(a) (Duties of electric distribution companies) “Each electric distribution company shall maintain the integrity of the distribution system at least in conformity with the National Electric Safety Code and such other standards practiced by the industry in a manner sufficient to provide safe and reliable service to all customers connected to the system consistent with this title and the Commission’s regulations.”

66 Pa.C.S. § 2807(d)(1) (Duties of electric distribution companies) The Commission is required to, “establish regulations to ensure that an electric distribution company does not change a customer’s electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer’s consent to a change of supplier.”

(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 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 3/28/14, 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. We continue to receive complaints, legislative inquiries, and numerous media reports that highly criticize the current switching procedures and regulations.

This Commission has received a record number of inquiries and informal complaints related to EGS high bills over the last several weeks. 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.

Large fluctuations in wholesale and retail prices again magnified and illuminated the sheer length of time it takes a customer to switch suppliers. A customer's ability to escape from a high-price service with a supplier is often frustrated by the timeframes currently in place, as a customer is often exposed to at least one more entire billing cycle beyond the billing cycle in which the customer requested to switch suppliers.

While the potential cost-savings benefits to consumers from accelerating the switching timeframes are apparent, there are other benefits as well. For example, speeding up switching will help minimize slamming and protect consumers when it does occur.

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 addressing the time it takes for customers to switch from one supplier to another supplier or default service. Senators Tomlinson and Boscola stated that they believe that allowing customers to obtain a switch faster will not only relieve customer frustration but also increase competition, further strengthening the market and customer's confidence in the market.

(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?

Texas is much farther along with advanced metering and they already have switching within seven business days. Once you receive your confirmation of the switch you have three business days to change your mind. The switch to the new provider will happen automatically within seven business days. See Public Utility Commission of Texas website: <http://www.powertochoose.org/en-us/Content/Resource/FAQ>. Additionally, the Public Utility Commission of Texas issued amendments to Customer Protection Rules Relating to Advanced Meters (AMS) as approved at the October 27, 2011 Open meeting that increase the benefits and functionality of the advanced metering system to customers by allowing many service requests for customers served using AMS to be carried out on Saturdays, and requiring transmission and distribution utilities (TDUs) to perform such service requests more quickly. Customers with provisioned advanced meters with remote disconnect/reconnect capability will benefit from an expedited ability to switch from one Retail Electric Provider to another.

These final-omitted switching regulations will help to promote more robust electric competition in Pennsylvania.

(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.)

To understand the mechanics of the switching process, the Commission's Office of Competitive Market Oversight (OCMO) had informal discussions with some EDCs. OCMO consulted with regulators from Texas and Maryland to learn about their enrollment timeframes and any steps they have taken to accelerate the switching process. Finally, OCMO presented this topic to the Committee Handling

Activities for Retail Growth in Electricity (CHARGE) working group on March 24, 2011, in order to obtain the perspectives of the EGSs, OCA, and other interested parties. With the initiation of the Retail Markets Investigation (RMI) in 2011, it was decided to bring this issue to that forum as well and to give RMI participants an opportunity to present their perspectives and concerns. RMI participants include EDCs, EGSs, residential, small business and industrial consumer representatives and other interested parties. OCMO's working group met 19 times between March 24, 2011 and February 7, 2013 to discuss the issue of Accelerated Switching Timeframes.

The Commission discussed the use of advanced metering in the context of supplier switching in the *Final Order* in the Commission's *Investigation of Pennsylvania's Electricity Market: End State of Default Service*. Docket No. I-2011-2337952 (Order entered Feb. 15, 2013). On page 73 of this *Final Order*, the Commission noted that

[t]o date, most of the discussion on the use of advanced metering has centered on their use in billing and load management. However, we believe that this discussion has to be expanded to also consider their role in the supplier switching process.

Current EGS procedures were also examined by OCMO to determine if changes could be made to shorten the switching timeframe. The OCMO exploration of these issues culminated in a November 10, 2011 Tentative Order, which proposed several options to accelerate switching timeframes. *Interim Guidelines Regarding Standards For Changing a Customer's Electricity Generation Supplier*, Docket M-2011-2270442 (Order entered November 14, 2011). Seventeen parties filed comments in response to the Tentative Order.

In an Order adopted at its February 20, 2014 Public Meeting, the Commission opened a proceeding to examine current rules, policies and consumer education measures regarding variable rate retail electric products. *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. *Id.* at 4. Therefore, the Commission sought to learn about and facilitate mid-cycle supplier switching so that customers can respond more rapidly to retail market price offers and mitigate potential price increases associated with variable-priced contracts. *Id.*

In an effort to obtain more feedback from stakeholders on proposed changes to the standards for changing a customer's electric generation supplier included in this Final-Omitted Rulemaking Order, the Commission issued a Secretarial Letter on March 18, 2014, alerting affected parties of the Commission's intent to promulgate a Final-Omitted Rulemaking that would amend the existing regulations at 52 Pa. Code, Chapter 57. On March 18, 2014, the Commission served the Secretarial Letter on all jurisdictional EDCs, OCA, OSBA, and EAP, seeking comments on proposed regulations, within seven business days to allow the Commission to carefully review the comments and further deliberate before issuing this Final-Omitted Rulemaking Order. In an Annex attached to the Secretarial Letter, the Commission included proposed language changes to 52 Pa. Code §§ 57.172 – 57.179.

Comments to the March 18, 2014 Secretarial Letter were filed by Pennsylvania Representatives Robert W. Godshall and Peter J. Daley, the Office of Small Business Advocate (OSBA); NEMA; the Industrial Customer Groups; the Public Utility Law Project (PULP); UGI Utilities, Inc. – Electric Division (UGI Electric); NRG Retail Northeast (NRG); RESA; EAP; PPL; OCA; the Electronic Data Exchange

Working Group (EDEWG); WGES; Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company (Citizens and Wellsboro); FE Solutions; FirstEnergy; PECO; UGI Energy Services, LLC (UGI Energy); Pike County Light & Power Co. (Pike County); Duquesne; and Anna Perederina.

As discussed above, the Commission also received a letter, dated March 18, 2014, from Senators Tomlinson and Boscola suggesting that that we immediately begin revising our regulations regarding switching to another supplier or to default service.

In a March 25, 2014 letter addressed to the Commissioners, Pennsylvania Governor Tom Corbett commended the Commission for quickly advancing this rulemaking to accelerate the switching regulations. The Governor observed that while Pennsylvania has been recognized as having the second-most competitive retail electricity market in North America, there are still ample opportunities to enhance competitive markets and provide more consumer benefits, most critically with respect to accelerating the timeframe for effectuating a customer's choice to select a new EGS.

Four of the eleven EDCs are considered small businesses as defined in Section 3 of the Regulatory Review Act. The four small business EDCs are Citizens, Pike County, UGI, and Wellsboro. OSBA requested additional time to comment, however, initially OSBA is generally supportive of the goal to facilitate more expeditious switching timeframes. UGI requested that the Commission consider exempting smaller EDCs, such as UGI from the regulatory requirements or provide an extended timeline for compliance since UGI does not have smart meters, and due to costs of process and information system changes. In order to address UGI's concern about smart meters, the commission provided a subsection at Section 57.174(b) that states that in instances where an EDC does not have advanced or automated metering capability, "the EDC shall obtain an actual meter read, use an estimated meter read, or use a customer-provided meter read."

(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?

Eleven electric distribution companies will be affected by the rulemaking.

Four of the EDCs are small businesses as noted above in question (14). We have provided a subsection at 57.174(b) that assists with small businesses concern about smart meter technology in the final-omitted regulation.

Also, 5.6 million electric customers will benefit from this rulemaking.

(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.

Eleven electric distribution companies will be required to comply with the final rulemaking. Four of the eleven EDCs are small businesses as noted above in question (14). We have provided a subsection at 57.174(b) that assists with small businesses concerned about smart meter technology in the final-omitted regulation.

(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.

Minimal financial impact is expected since regulations are already in place providing for switching. We are simply shortening the timeline to accomplish this switch. Many EDCs have advanced metering in place or will be deploying this technology. We have provided a subsection at Section 57.174(b) that states that in instances where an EDC does not have advanced or automated metering capability, "the EDC shall obtain an actual meter read, use an estimated meter read, or use a customer-provided meter read."

We acknowledge that there will be costs incurred by the EDCs in adapting EDC metering and billing systems to accommodate off-cycle meter readings. We expect EDCs to implement these new requirements in the most cost-effective manner possible. EDCs should seek recovery of reasonable costs in a future base-rate filing.

Benefits will include increased electric competition in Pennsylvania as well additional consumer protection measures. Also, 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.

The final rulemaking advances measures that the Commission had already begun to put in place to facilitate faster switching. While the potential cost-savings benefits to consumers from accelerating the switching timeframes are apparent, there are other benefits as well. For example, speeding up switching will help minimize slamming and protect consumers when it does occur. Given the urgency, we think it is essential to revise our regulations now so that it takes no more than three days for customers to switch electric suppliers. Over time the cost savings to millions of shopping electric customers realized from accelerated switching will well exceed any implementation costs incurred by EDCs.

(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. Nevertheless, as explained in the Commission's order at page 30, the reasonable and prudent costs incurred may be claimed in the EDCs next base rate case.

UGI requested that the Commission consider exempting smaller EDCs, such as UGI from the regulatory requirements or provide an extended timeline for compliance since UGI does not have smart meters, and due to costs of process and information system changes. In order to address UGI's concern about smart meters, the commission provided a subsection at Section 57.174(b) that states that in instances where an EDC does not have advanced or automated metering capability, "the EDC shall obtain an actual meter read, use an estimated meter read, or use a customer-provided meter read."

(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.

We were not provided with sufficient cost data in the comments that we received to the proposed regulatory language changes. As indicated above any costs incurred would be minimal.

(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 |
|----------------|--------------|--------------|--------------|-------------------|
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(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 four EDCs that are small businesses. We anticipate that any costs incurred would be minimal. However, we have provided a separate subsection at Section 57.174(b) that states that in instances where an EDC does not have advanced or automated metering capability, “the EDC shall obtain an actual meter read, use an estimated meter read, or use a customer-provided meter read.” This would further minimize any costs for small businesses.

(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.

We have provided a separate subsection at Section 57.174(b) that states that in instances where an EDC does not have advanced or automated metering capability, “the EDC shall obtain an actual meter read, use an estimated meter read, or use a customer-provided meter read.” This would further minimize any costs for small businesses. These regulations would benefit small businesses by shortening the switching time, and any other individuals or groups that are likely to shop for electricity.

(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 four EDCs that are small businesses. We anticipate that any costs incurred would be minimal. However, we have provided a separate at Section 57.174(b) that states that in instances where an EDC does not have advanced or automated metering capability, “the EDC shall obtain an actual meter read, use an estimated meter read, or use a customer-provided meter read.” This would further minimize any costs incurred by those small EDCs.

(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.

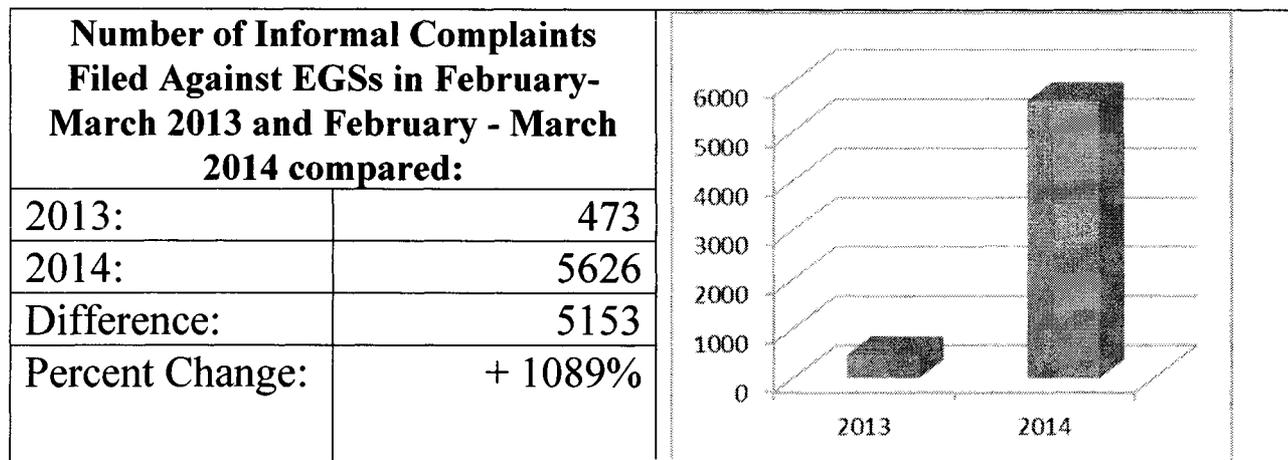
Commission staff has been monitoring the impact of the *October 2012 Interim Guidelines* that reduced the confirmation period from ten days to five days. OCMO’s discussions with the EDCs and its review of 2013 informal complaints have revealed no significant problems resulting from the shortened confirmation period.

While slamming is not a significant concern in the market, the process and timeframe for customers to switch suppliers is a significant concern. We continue to receive complaints legislative inquiries, and numerous media reports that highly criticize the current switching procedures and regulations.¹ It appears our reduction in the confirmation period from ten to five days has not provided sufficient relief.

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:



At least 25 residential customers emailed comments to the March 18, 2014 Secretarial Letter on accelerated switching to the Commission’s website or www.PAPowerSwitch.com. These customers, many who identified themselves as variable-rate customers hit hard by price spikes this past winter, were unanimous in their support to significantly reduce the time to switch to a competitive supplier or return

to default service. The majority of commenters expressed frustration with having to wait an additional billing cycle in order to switch out of their current contract, exposing them to greater market volatility and higher prices (from their current supplier) for up to 30 additional days. Some customers indicated that delays produced by current switching time frames seemed needless and cost them several hundred dollars while they waited to switch.

¹ See, e.g., Associated Press, "Many Pa. electric customers feeling rate shock as temperatures plummet, variable rates rise." *PennLive* (Mar. 9, 2014). Available at http://www.pennlive.com/midstate/index.ssf/2014/03/many_pa_electric_customers_fee.html.

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 6 months 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.

As indicated above, the Commission's OCMO team will continue to examine the switching 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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| <p>Copy below is hereby approved as to form and legality. Attorney General.</p> <p>BY _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached</p> | <p>Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>Pennsylvania Public Utility Commission</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>L-2014-2409383/57-306</u></p> <p>DATE OF ADOPTION <u>April 3, 2014</u></p> <p>BY <u><i>Rosemary Chiavetta</i></u> Rosemary Chiavetta</p> <p>TITLE <u><i>Secy</i></u> (SECRETARY)</p> | <p>Copy below is hereby approved as to form and legality. Executive or independent Agencies.</p> <p>BY <u><i>Bohdan R. Pankiw</i></u> Bohdan R. Pankiw Chief Counsel</p> <p><u>4-3-2014</u> DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p> |
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L-2014-2409383/57-306
Final-Omitted Rulemaking
Amending Regulations Regarding
Standards for Changing a Customer's
Electricity General Supplier
52 Pa Code, Chapter 57

The Pennsylvania Public Utility Commission on April 3, 2014, adopted a final-omitted rulemaking order amending regulations regarding standards for changing a customer's EGS. The contact person is Assistant Counsel Ken Stark, Law Bureau, 717 787-5558.

EXECUTIVE SUMMARY

L-2014-2409383/57-306

Final-Omitted Rulemaking

Amending the Provisions of 52 Pa. Code, Chapter 57
Regulations Regarding Standards for Changing a Customer's
Electricity Generation Supplier

The Commission has issued a Final-Omitted Rulemaking Order to amend and add regulations at 52 Pa. Code §§ 57.171-57.178 that address the process for transferring a customer's account from a default service provider to a competitive electric supplier (EGS or supplier) and from one supplier to another supplier. The regulations are intended to facilitate this process while preserving safeguards to prevent the unauthorized switching of a customer's account, also known as "slamming." Due to changes in the competitive retail electric market and the advent of new technologies since the adoption of these regulations, the Commission has reviewed these regulations, previous relevant orders, and comments from the public and interested parties seeking to accelerate the switching process. These revised regulations facilitate accelerated switching without endangering safeguards against unauthorized switching.

The contact persons for this Final-Omitted Rulemaking are Assistant Counsel Kenneth R. Stark (717) 787-5558 and Bureau of Consumer Services, Supervisor, Daniel Mumford (717) 783-1957.

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, Chapter 57 Regulations
Regarding Standards For Changing a
Customer's Electricity Generation Supplier

L-2014-2409383

FINAL-OMITTED RULEMAKING ORDER

BY THE COMMISSION:

The Commission adopts this Final-Omitted Rulemaking Order to amend and add to our regulations at 52 Pa. Code §§ 57.171 – 57.179 that address the process for transferring a customer's account from a default service provider to a competitive electric generation supplier (EGS or supplier), from one supplier to another supplier and from a supplier to default service. The regulations are intended to facilitate this process while preserving safeguards to prevent the unauthorized switching of a customer's account, also known as "slamming." These regulations were adopted on May 21, 1998 and became effective November 21, 1998.¹ Due to changes in the competitive retail electric market and the advent of new technologies since the adoption of these regulations, the

¹ See Revised Final Rulemaking Order re: Rulemaking Order Establishing Standards for Changing a Customer's Electric Supplier, Docket L-00970121 (entered July 7, 1998); see also 28 Pa.B. 5770.

Commission has reviewed these regulations, previous relevant orders, and comments from the public and interested parties regarding an accelerated switching process. With this Order, the Commission revises its regulations to facilitate accelerated switching without endangering safeguards to protect customers against unauthorized switching.

In adopting the *Interim Guidelines Regarding Standards for Changing a Customer's Electricity Generation Supplier*, the Commission has already considered and implemented a temporary mechanism to shorten the switching process. Final Order, Docket No. M-2011-2270442 (entered Oct. 25, 2012) (hereinafter *October 2012 Interim Guidelines*). In those October 2012 Interim Guidelines, the Commission waived Sections 57.173 and 57.174 of the Commission's regulations at Title 52 of the Pennsylvania Code and reduced the confirmation waiting period from ten days to five days.² *Id.* Additionally, the Commission directed staff to consider permanent changes to the switching regulations. As of June 2013, all of the major electric distribution companies (EDCs) have instituted the shorter confirmation period.³ Through its Office of Competitive Market Oversight (OCMO), the Commission has deliberated over its switching regulations by holding stakeholder initiatives and issuing orders in the past few years. On March 18, 2014 the Commission issued a Secretarial Letter, served on all jurisdictional EDCs, seeking comments on proposed regulations before issuing this Final-Omitted Rulemaking Order. *See Proposed Rulemaking: Standards For Changing a Customer's Electricity Generation Supplier*, Docket No. L-2014-2409383. In light of this deliberation and the recent wave of complaints filed with the Commission concerning energy price increases in the winter of 2014, the Commission believes acting promptly and expeditiously to amend its regulations serves the public interest.

² The October 2012 Interim Guidelines also waived the analogous gas-industry regulations found at 52 Pa. Code §§ 59.93& 59.94. These gas-industry regulations may be addressed in a separate proceeding. *See Investigation of Pennsylvania's Retail Natural Gas Supply Market*, Order at Docket No. I-2013-2381742 (entered Sep. 12, 2013).

³ See Recap of the August 2013 CHARGE conference call, *available at* http://www.puc.pa.gov/utility_industry/electricity/electric_competitive_market_oversight.aspx (discussing EDC implementation of the 5-day confirmation period).

For 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). Upon finding good cause, we issue this Final-Omitted Rulemaking Order to amend and add to our regulations at 52 Pa. Code §§ 57.172 – 57.179 in order to ensure that consumers may easily and quickly switch electric suppliers in an effort to mitigate potential adverse price impacts related to variable contracts and fluctuations in the wholesale and retail energy markets.

BACKGROUND

The Commission’s statutory authority for the existing switching regulations arises from Section 2807(d)(1) of the Public Utility Code, 66 Pa. C.S. § 2807(d)(1). This Section requires the Commission to:

Establish regulations to ensure that an electric distribution company does not change a customer’s electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer’s consent to a change of supplier.

66 Pa. C.S. § 2807(d)(1).

Following this statutory directive, the Commission promulgated regulations in 1998 to address the supplier switching process and to guard against “slamming.” These regulations are found at 52 Pa. Code §§ 57.171 – 57.179 (relating to standards for changing a customer’s EGS) and set forth the following timeframes for the switching process:

- Section 57.173(1) requires the EGS to notify the EDC of the customer’s selection “by the end of the next business day following the customer contact.” However, the Commission has waived this provision for instances where the customer’s service is not to start until some distant, future date. *See Petition of*

PP&L Energy Plus Co., Docket No. P-00991673, 1999 WL 641179 (Order entered June 29, 1999).

- Section 57.173(2) requires the EDC to mail a 10-day confirmation letter to the customer “by the end of the next business day following the receipt of the notification of the customer’s selection of an EGS.” This regulation also states that “[t]he 10-day waiting period shall begin on the day the letter is mailed.” *Id.* This 10-day waiting period is intended to give the customer time to contact the EDC to cancel the switch of supplier in cases where the customer did not authorize the switch of supplier. Notably, this 10-day waiting period is made available to cancel switches in instances of slamming and not intended to act as a contract rescission period. *See Re: Nor Am Energy Management, Inc.*, Docket No. P-00981625, 1999 WL 632769 (Order entered Feb. 12, 1999). As explained above, this 10-day waiting period was reduced to 5-days by the Commission through the Final Order in the *October 2012 Interim Guidelines*, Docket M-2011-2270442.
- Section 57.174 requires the EDC to make the change at the beginning of the first feasible billing period following the 10-day waiting period.

Customer information regulations at 52 Pa. Code §§ 54.1 –54.9 (relating to customer information) also include timeframes that affect the switching process for residential and small commercial customers:

- Section 54.5(d) requires that customers be provided “a 3-day rescission period following receipt of the disclosure statement.”

- Sections 54.5(d)(1) and (2) state that the 3-day rescission period is “3 business days” and “begins when the customer receives the written disclosure.”

History of the Commission’s Review of Its Switching Regulations

Based on customer complaints and supplier concerns and at the request of the Commission, in 2011 OCMO started exploring options to shorten the timeframe for switching a customer to another supplier. At that time, a change in supplier could take from 16 to 45 days. This switching timeframe was the result of a variety of Commission regulations as noted above, as well as EGS and EDC procedures that were established in large part to guard against slamming. The delay in transferring a customer’s account has been perceived by consumers to be a lost “savings opportunity” that results in customer frustration, disappointment, and a less than favorable opinion of the competitive retail market. Because customer satisfaction is key to the success of any retail market, OCMO became concerned that the length of the switching timeframes had become an impediment to achieving an effective competitive retail electric supply market in Pennsylvania.

To understand the mechanics behind the current switching process, OCMO had informal discussions with a number of EDCs. OCMO also consulted with regulators from Texas and Maryland to learn about their enrollment timeframes and any steps they have taken to accelerate the switching process. Finally, OCMO presented this topic to the CHARGE⁴ working group on March 24, 2011, in order to obtain the perspectives of the EGSs, OCA, and other interested parties. With the initiation of the Retail Markets Investigation (RMI) in 2011, it was decided to bring this issue to that forum as well and to give RMI participants an opportunity to present their perspectives and concerns.⁵

⁴ CHARGE participants include EDCs, EGSs, industry trade organizations, consumers, the Office of Consumer Advocate (OCA), and the Office of Small Business Advocate (OSBA).

⁵ RMI participants include EDCs, EGSs, residential, small business and industrial consumer representatives and other interested parties. For more information on the Commission’s RMI, see the

OCMO's working group met 19 times between March 24, 2011 and February 7, 2013 to discuss the issue of Accelerated Supplier Switching Timeframes.⁶

OCMO examined EDC procedures, some of which were adopted to comply with the above-cited regulations but also impact the time needed for a customer to switch suppliers. Supplier switches are executed based on meter read dates according to the customer's regular meter-reading schedule for billing purposes. Before the above mentioned October 2012 *Interim Guidelines* went into effect, EDCs had what was commonly referred to as the "16-day rule," which included the 10-day confirmation period required by 52 Pa. Code § 57.173(2), plus additional days for the EDC to process the customer account transfer. PJM Interconnection, LLC (PJM) rules related to capacity and transmission obligations also require a minimum of two days' notice prior to the transfer of customer accounts.

Under the foregoing procedures, an EDC has to be informed of the customer's supplier selection at least 16-days prior to the customer's next meter read for the switch to occur at the next meter read. If the EDC does not receive at least 16-days' notice, a supplier switch has to wait until the following meter read. This means that under previous rules, a supplier switch could be performed in as little as 16 days, or as long as 45 days.

The possibility of using mid-cycle, off-cycle, or estimated meter reads was considered as a means to shorten the switching timeframe. This solution would be dependent on the current metering capabilities of the EDCs. The capabilities of metering systems currently used by EDCs vary significantly. Some EDCs have advanced metering

Commission's web page at
http://www.puc.pa.gov/utility_industry/electricity/retail_markets_investigation.aspx.

⁶ See Master List of CHARGE Agenda Items. Pa. Public Utility Commission, OCMO, at 16. Available at http://www.puc.pa.gov/electric/pdf/OCMO/CHARGE_Issues-Master_List.pdf.

systems,⁷ while others still utilize traditional basic meters that require field visits and manual readings to obtain metering information. In fact, some EDCs only read customer meters on a bi-monthly basis and issue estimated bills during the non-read months. This range in metering capabilities and practices complicates any attempt at moving immediately to a mid-cycle read protocol.

The implementation of smart meter technology may offer the answer as smart meters may be able to support mid-cycle reads and short-period bills. The Commission discussed the use of advanced metering in the context of supplier switching in the *Final Order* in the Commission's *Investigation of Pennsylvania's Electricity Market: End State of Default Service*. Docket No. I-2011-2237952 (Order entered Feb. 15, 2013). (End State Final Order). On page 73 of the *End State Final Order*, the Commission noted that:

To date, most of the discussion on the use of advanced metering has centered on their use in billing and load management. However, we believe that this discussion has to be expanded to also consider their role in the supplier switching process.

While we acknowledge that it may be several years before all the large EDCs have completed their deployment of advanced metering, this does not prevent us from now considering their role in the switching process. Ideally, we would like to have regulations in place so that these new metering capabilities can be used to their best advantage soon after their deployment.

Current EGS procedures were also examined by OCMO to determine if changes could be made to shorten the switching timeframe. Some supplier practices may adversely affect the switching process timeframes. For example, the practice of batching

⁷ Note that these advanced meters are generally not classified as "smart meter technology" as defined at 66 Pa. C.S. § 2807(g) (relating to duties of electric distribution companies), but have a capability to be read remotely.

enrollments before sending them to the EDC instead of sending enrollments to the utility one at a time may unnecessarily delay account transfers. As noted above, the Commission has waived the provision of 52 Pa. Code § 57.173 that requires the EGS to notify the EDC of the customer's selection "by the end of the next business day following the customer contact" in instances where the customer's service is not to start until some distant, future date. *See October 2012 Interim Guidelines*, Docket No. M-2011-2270442. However, under the color of that waiver, EGSs may be holding enrollments for reasons other than future service dates. Additionally, some EGSs hold enrollments and do not submit them to the EDC until the last day of the 3-day right of rescission period provided for in 52 Pa. Code § 54.5(d).

OCMO's exploration of these issues culminated in a November 10, 2011 Tentative Order, which proposed several options to accelerate switching timeframes. *Interim Guidelines Regarding Standards For Changing a Customer's Electricity Generation Supplier*, Docket M-2011-2270442 (Order entered Nov. 14, 2011). In the Tentative Order we declared that changing the 3-business day rescission period at 52 Pa. Code § 54.5 is not feasible because it reflects existing Pennsylvania consumer contract law. *Id.* at 9; *see Unfair Trade Practices and Consumer Protection Law*, 73 P.S. §§ 201-1 –201-9.3. Federal law also requires a 3-business day "cooling off period" for door-to-door transactions. *Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations*, 16 CFR Part 429. Further, we saw no point in changing the "first feasible billing period" language in 52 Pa. Code § 57.174 unless we first changed all of the other timeframes and requirements that necessitate the current switching timeline.

Instead, we focused on the confirmation waiting period during which the EDC holds the enrollment request in order to give the customer an opportunity to respond to the confirmation letter. In our November 10, 2011 Tentative Order, we proposed to eliminate the 10-day waiting period. We also raised the possibility of off-cycle meter

readings to effectuate switching.

Seventeen parties filed comments in response to the Tentative Order. *October 2012 Interim Guidelines*, at 2. Those parties were AARP/Pennsylvania Utility Law Project/Community Legal Services Inc. (AARP/PULP/CLS); Columbia Gas of Pennsylvania (Columbia Gas); DTE Energy Supply Inc. (DTE Energy); Duquesne Light Company (Duquesne); Energy Association of Pennsylvania (EAP); FirstEnergy Solutions Corp. (FE Solutions); Industrial Customer Groups; Metropolitan Edison, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power (collectively FirstEnergy); National Energy Marketers Association (NEMA); Office of Consumer Advocate (OCA); PA Energy Marketers Coalition (PEMC); PECO Energy Company (PECO); Philadelphia Gas Works (PGW); PPL Electric Utilities (PPL); Retail Energy Supply Association (RESA); Verde Energy USA (Verde Energy); and Washington Gas Energy Services, Inc. (WGES).

In the comments to the *October 2012 Interim Guidelines*, the parties generally supported reducing customer wait time for switching suppliers. EAP, PECO, PPL, and AARP/PULP/CLS commented that enacting those changes would be better facilitated through the rulemaking process, as we are doing here, instead of through guidelines issued via Commission order. *See* Docket No. M-2011-2270442, at 12. RESA observed that shortening the switching timeframe is important because the current switching process is “grossly out of line with standards for service in other industries.” *Id.* at 13 (citing RESA Comments at 1-2). NEMA supported the proposed guidelines as a reasonable step to achieving customer switching on a timelier basis, recognizing current metering technology. *Id.* (citing NEMA Comments at 2). Similarly, PEMC observed that the proposed guidelines would achieve the delicate balance between strengthening the competitive energy market while ensuring strong consumer protections. *Id.* (citing PEMC Comments at 2). FE Solutions believed that the 16- to 45-day time period for

switching is too long and supported the proposed guidelines. *Id.* (citing FE Solutions Comments at 1-2).

After careful review and consideration of the comments, we decided that instead of the complete *elimination* of the 10-day confirmation period at 52 Pa. Code § 57.17, we would retain the confirmation period but shorten it to five days. We would then gauge the impact of this change before considering the elimination of the confirmation period altogether. In light of other Commission priorities and projects we had recently imposed on the EDCs, we decided not to require the use of off-cycle readings at that time. As such, we issued a Final Order that provided interim guidelines to shorten the confirmation waiting period from 10 to 5 days. *Id.* at 12-14. We believed that a 5-day period provided sufficient notice for customers while also shortening supplier switching timeframes. At the same time, we reserved taking more substantial actions until after we observed the impact of the change from 10 to 5 days.

In an Order adopted at its February 20, 2014 Public Meeting, the Commission opened a proceeding to examine current rules, policies and consumer education measures regarding variable rate retail electric products. *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. *Id.* at 4. Therefore, the Commission sought to learn about and facilitate mid-cycle supplier switching so that customers can respond more rapidly to retail market price offers and mitigate potential price increases associated with variable-priced contracts. *Id.*

The March 18, 2014 Secretarial Letter Seeking Public Comments

In an effort to obtain more feedback from stakeholders on proposed changes to the standards for changing a customer's electric generation supplier included in this Final-Omitted Rulemaking Order, the Commission issued a Secretarial Letter on March 18, 2014, alerting affected parties of the Commission's intent to promulgate a Final-Omitted Rulemaking that would amend the existing regulations at 52 Pa. Code, Chapter 57. On March 18, 2014, the Commission served the Secretarial Letter on all jurisdictional EDCs, OCA, OSBA, and EAP, seeking comments on proposed regulations, within seven business days to allow the Commission to carefully review the comments and further deliberate before issuing this Final-Omitted Rulemaking Order. In an Annex attached to the Secretarial Letter, the Commission included proposed language changes to 52 Pa. Code §§ 57.172 – 57.179.

On March 18, 2014, the Commission received a letter addressed to Chairman Robert F. Powelson from Senators Robert M. Tomlinson and Lisa M. Boscola of the Senate Consumer Protection and Professional Licensure Committee, asking the Commission to begin revising its regulations to accelerate the supplier switching process.

In a March 25, 2014 letter addressed to the Commissioners, Pennsylvania Governor Tom Corbett commended the PUC for advancing this rulemaking to accelerate the timeframe for effectuating a switch in a customer's choice of electric supplier. The Governor observed that while Pennsylvania has been recognized as having the second-most competitive retail electricity market in North America, there are still ample opportunities to enhance competitive markets and provide more consumer benefits.

On March 25, 2014, the Commission also received a letter from Representatives Robert W. Godshall and Peter J. Daley of the House Consumer Affairs Committee, applauding the Commission for moving forward to revise its switching regulations, but

urging caution as to expediting the rulemaking due to the intent of their committee to address those same issues legislatively.⁸

Comments to the March 18, 2014 Secretarial Letter were filed by the Office of Small Business Advocate (OSBA); NEMA; the Industrial Customer Groups; the Public Utility Law Project (PULP); UGI Utilities, Inc. – Electric Division (UGI Electric); NRG Retail Northeast (NRG); RESA; EAP; PPL; OCA; the Electronic Data Exchange Working Group (EDEWG); WGES; Citizens’ Electric Company of Lewisburg, PA and Wellsboro Electric Company (Citizens and Wellsboro); FE Solutions; FirstEnergy; PECO; UGI Energy Services, LLC (UGI Energy); Pike County Light & Power Co. (Pike County); Duquesne; and Anna Perederina.

The Customer Experience

Before moving forward with any regulatory changes, we must first carefully scrutinize the current customer experience with switching suppliers and the impact of the change from a 10-day to a 5-day confirmation period. Mindful that the primary objective of these regulations is to effectuate efficient switching of suppliers while protecting consumers from unauthorized switching, we will first examine “slamming” in the current marketplace.

One of the mechanisms available to gauge the level of slamming in the marketplace is the number of informal complaints filed with the Commission’s Bureau of Consumer Services (BCS) that allege slamming. Since 2010, there have been just over 1,100 such complaints, representing less than 20 percent of all informal complaints against EGSs. In the majority of these cases, after reviewing a customer’s complaint and the EGS’s supporting documentation, BCS determined that the slamming allegation was unfounded. Many of the allegations are merely manifestations of customer confusion, such as a customer misunderstanding the distinctions between the EGS and utility or a

⁸ House Bill No. 2104 was referred to the Committee on Consumer Affairs on March 17, 2014.

customer unaware that a spouse authorized the switch.

In addition, there have been instances of alleged slamming that have necessitated Commission action beyond the informal level.⁹ While the Commission is extremely concerned with and takes seriously any allegation of slamming, we believe that slamming incidents are relatively rare, when considering that over two million Pennsylvania consumers have been shopping for some time. Regardless, we again reiterate our long-standing “zero-tolerance” policy on slamming that we first enunciated in May 1998:

Today, we set in place the ‘rules of the road’ by which customers’ requests to switch electric generation suppliers will be processed. We have observed other industries in which unauthorized customer switching, known as “slamming”, has occurred. We wish to state now, up front and for the record: this Commission will have zero tolerance for slamming by any means and in any form.

Statement of Chairman Quain, Vice Chairman Bloom, Commissioner Hanger, Commissioner Rolka and Commissioner Brownell in *Pennsylvania Electric Association Petition for Reconsideration of Rulemaking Order Establishing Standards for Changing Electric Suppliers*, Docket Number L-00970121 (Public Meeting of May 21, 1998). In that same statement, the Commission continued:

Customer slamming is among the most serious violations of our rules and regulations. There is no grace period. There is no ‘transition period’ as far as slamming is concerned. You can count on this Commission imposing commensurate penalties quickly and without hesitation.

Id.

⁹ See *Pa. Public Utility Commission, Bureau of Investigation & Enforcement v. Energy Services Providers, Inc.* Docket No. M-2013-2325122 (Feb. 6, 2014); *Pa. Public Utility Commission, Bureau of Investigation & Enforcement v. Public Power, LLC*, Docket No. M-2012-2257858 (Dec. 19, 2013); *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. MXenergy Electric Inc.* Docket Number M-2012-2201861 (Dec. 5, 2013); see also *Pa. Public Utility Commission Bureau of Investigation & Enforcement v. IDT Energy Inc.* M-2013-2314312 (Oct. 17, 2013); and *Pa. Public Utility Commission Bureau of Investigation & Enforcement v. AP Gas & Electric (PA), LLC, d/b/a APG&E*, Docket M-2013-2311811 (Oct. 17, 2013)

Additionally, Commission staff has been monitoring the impact of the *October 2012 Interim Guidelines* that reduced the confirmation period from ten days to five days. OCMO's discussions with the EDCs and its review of informal complaints filed during 2013 have revealed no significant problems resulting from the shortened confirmation period. However, we continue to receive numerous complaints, legislative inquiries, and media reports that highly criticize the existing switching procedures and regulations.¹⁰ This strongly demonstrates that our reduction in the confirmation period from ten to five days has not provided sufficient relief to adequately protect the public interest.

The mounting number of complaints¹¹ and recent wave of media attention responding to the increase in wholesale electric prices in January 2014 has magnified the need for urgency to respond thoroughly and expeditiously. Due to extraordinary demand in the PJM¹² market caused by extreme cold weather, average wholesale day-ahead LMP¹³ 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 2014.¹⁴

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

¹⁰ See, e.g., Associated Press, "Many Pa. electric customers feeling rate shock as temperatures plummet, variable rates rise." *PennLive* (Mar. 9, 2014). Available at http://www.pennlive.com/midstate/index.ssf/2014/03/many_pa_electric_customers_fee.html.

¹¹ 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.

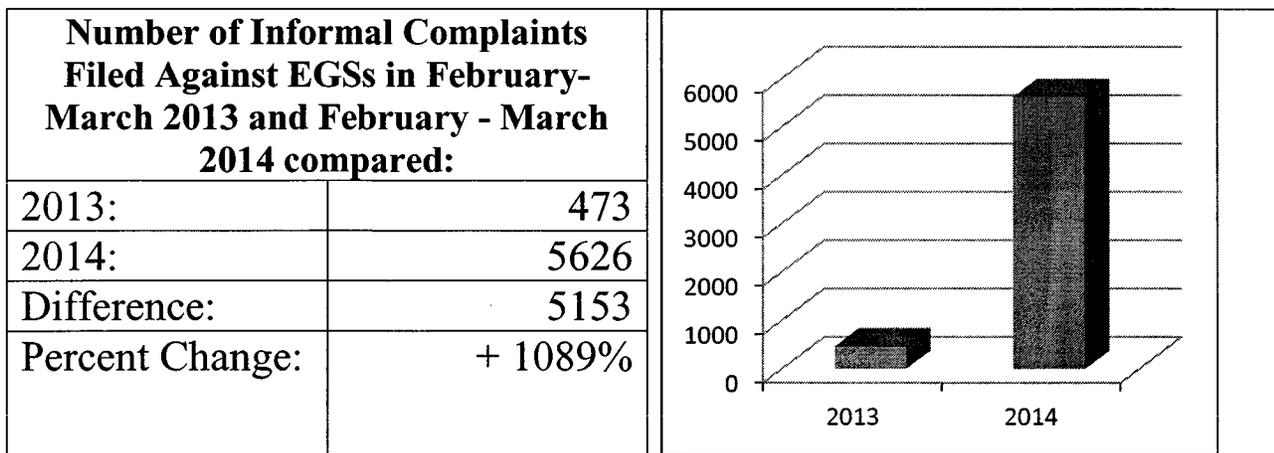
¹² PJM Interconnection is a regional transmission organization that oversees and manages the electricity grid for fifty million consumers in thirteen states and the District of Columbia. *New Jersey Bd. of Public Utilities v. FERC*, -F.3d-, 2014 WL 642943 at *3 (3d Cir. 2014).

¹³ 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)).

¹⁴ 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>.

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 a number of 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:



At least 25 residential customers emailed comments to the March 18, 2014 Secretarial Letter on accelerated switching to the Commission’s website or www.PAPowerSwitch.com. These customers, many whom identified themselves as variable-rate customers hit hard by price spikes this past winter, were unanimous in their

support to significantly reduce the time to switch to a competitive supplier or return to default service. The majority of commenters expressed frustration with having to wait an additional billing cycle in order to switch out of their current contract, exposing them to greater market volatility and higher prices (from their current supplier) for up to 30 additional days. Some customers indicated that delays produced by current switching time frames seemed needless and cost them several hundred dollars while they waited to exercise their ability to switch suppliers.

DISCUSSION

While the events in the wholesale electricity market in January 2014 were unprecedented, we believe that the re-occurrence of similar events is a clear possibility. In fact, the January 2014 price-spikes were rare in that they occurred in the winter, as electric price spikes are typically much more common in the summer. Furthermore, fluctuations and volatility in the wholesale interstate 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 summer. It is also possible that the increasingly rapid shift in the electric generation market to gas-fired generation has produced increased uncertainty in electric wholesale markets. We simply do not have the experience with large-scale gas generation to predict with substantial certainty the implications in this rapidly changing market. While the movement to and greater reliance on natural gas certainly has its benefits (e.g., an abundant source of fuel coming from Pennsylvania) the impacts of this shift on wholesale and retail markets are not yet fully apparent or understood.¹⁵

Large fluctuations in wholesale and retail electricity prices again magnified and illuminated the sheer length of time it takes a customer to switch suppliers. A customer's ability to escape from a high-price product with a supplier is often frustrated by the

¹⁵ For more information on current and future electric generation sources in Pennsylvania, see the Commission's "Electric Power Outlook for Pennsylvania 2012-17 Report," available at http://www.puc.state.pa.us/General/publications_reports/pdf/EPO_2013.pdf.

switching timeframes currently in place, as a customer is often exposed to at least one more entire billing cycle beyond the billing cycle in which the customer requested to switch suppliers. This lag when switching is unacceptable. We routinely advise consumers impacted by high electric prices to “select a lower-cost supplier.” However, for this to be an effective, meaningful course of action, switching must be easier and faster. We can no longer tolerate a scenario in which a customer is held captive for another entire billing cycle. This situation not only imposes unacceptable financial burdens on consumers, but also chills current consumer confidence in the competitive retail electric market and discourages potential shoppers from entering the market.

While the potential cost-savings benefits to consumers from accelerating the switching timeframes are readily apparent, we believe there are other benefits as well. For example, speeding up switching will help minimize impacts due to slamming and protect consumers when it does occur. With the current switching timeframes, a customer has to remain captive to the supplier that slammed them for an entire billing period, sometimes longer. This is unacceptable. If a customer can quickly escape a supplier that has “slammed” them, the customer’s exposure to financial harm will be significantly reduced. Furthermore, when a customer can quickly escape a “slammer” there will be less incentive for a supplier to slam a customer in the first place.

Furthermore, via a March 19, 2014 Secretarial Letter, the Commission initiated amendments to the regulations regarding disclosure statements for residential and small business customers through a concurrent Final-Omitted Rulemaking Order. *See 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*, at Docket No. L-2014-2409385. The intent of that proceeding is to

increase consumer protections 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 Commission believes that these enhanced disclosures will ensure that customers have the information they need when considering the various options for purchasing future electric generation supply. The Commission also believes that the additional disclosure requirements will further reduce the occurrence of slamming since customers will have more information about the options available to them.

Revisions To 52 Pa. Code §§ 57.171-179

Given the urgency, we think it is essential to revise our regulations as promptly and expeditiously as possible so that it takes no more than three days for customers to switch electric suppliers. Upon careful review and consideration of the aforementioned proceedings, stakeholder processes, and comments to the March 18, 2014 Secretarial Letter, and upon Commission review and deliberation, we find that the following changes and additions to 52 Pa. Code §§ 57.171 – 57.179 are essential and in the public interest.

§ 57.171. Definitions.

For clarification purposes only, we proposed new definitions in the March 18, 2014 Secretarial Letter for the following terms: *Default service provider*, *Current EGS Product*, and *Selected EGS Product*.

Comments

In response to our proposed new definitions, NRG recommends that the rules be revised to create two separate processes – one to switch suppliers and one to switch products. NRG believes that a separate process is needed for switch of product because the EDC, while involved in a switch of supplier, is not involved in a switch of product.

NRG Comments at 2-3. RESA thinks that the switch in a supplier's product should first be addressed in a stakeholder process and not in the current proceeding. RESA Comments at 2. FE Solutions likewise objects to including the switching of supplier products because it adds complexity and costs. FE Solutions Comments at 2-4. NEMA also expressed concern that applying the switching regulations to changes in products would be overly burdensome and contrary to the intent of the Commission's regulations. NEMA Comments at 4. WGES finds the inclusion of "products" in these regulations is confusing. WGES Comments at 2. RESA recommends new definitions of "Customer Account Transfer Notice" for the notice an EGS must provide an EDC and "Customer Notice of Account Transfer" to refer to the notice that the EDC provides to the customer. RESA Comments, Attachment A at 1. FirstEnergy, PPL, OCA and PECO ask that the term "default service provider" be used consistently and correctly. *See, e.g.*, PPL Comments at 8.

Resolution

In addition to the switching of suppliers, we considered also including the switching of products in these regulations. However, after careful consideration, we agree with the above commenters that the focus of these regulation changes should be on the change of supplier and not a supplier's products.

We think the two new definitions suggested by RESA are not necessary. We are unaware of any problems resulting from the absence of these definitions. For clarification purposes only, we add definitions for the following terms: *Default service provider*, *Current EGS*, and *Selected EGS*. We distinguish between a customer's Current EGS and a customer's Selected EGS to avoid potential confusion. We agree that *default service provider* should be used consistently in our regulations, as well as the Public Utility Code, by incorporating the statutory definition at 66 Pa. C.S. § 2803.

§ 57.172. Customer contacts with the EDC.

Comments

PPL believes that, with the exception of responding to slamming complaints, the EDC should avoid placing itself between the customer and the customer's current EGS. PPL Comments at 8-9. PECO thinks the last sentence in paragraph (1) should specify the "standard offer program" instead of the proposed language which they believe is overly-broad. PECO Comments at 10-11.

OCA strongly supports allowing customers to contact the EDC to return to default service in order to address the situation where a customer is unable to reach anyone at the EGS. For clarity, OCA recommends using the terms "cancellation fee" or "early termination fee" instead of "financial penalty." OCA Comments at 5-6. PULP thinks that the reference to a person authorized to act on a customer's behalf is unnecessary, as this phrase is already included in the definition of *customer*. PULP Comments at 4. RESA suggests using the term "cancelling service" instead of "terminate" as to avoid confusion with the physical disconnection of service. RESA Comments at 3-4.

Resolution

We agree with the comments that suggest that this regulation needs to be revised by adding language providing for exceptions in the case of Commission-approved programs, such as the standard-offer programs that all of the major EDCs are currently operating. Accordingly, we will add the following sentence: "This notification requirement may not apply when a Commission-approved program requires the EDC to initiate a change in EGS service." We disagree with PECO's suggestion and decline to identify specific programs in regulations because this would deprive us of flexibility to accommodate future programs without necessitating a regulation change.

We agree with OCA's comments regarding the allowance of a customer to contact an EDC in order to effectuate a switch and will include a provision allowing the customer to return to default service by contacting the EDC. We also agree with OCA and RESA and have used the term "cancellation" instead of "termination." We agree with PULP that a reference to "person authorized to act on a customer's behalf" is unnecessary and redundant, and therefore have removed this phrase.

§ 57.173. Customer contacts with EGSs.

Comments

PPL notes that while its metering will support accelerated switching times, their current billing system will not. PPL Comments at 4. PPL has initially determined that supporting 3-day switching and off-cycle switching will require significant modifications to the logic of their billing system, substantial capital investment, and an in-depth analysis to determine the most efficient means to implement the proposed changes. As an interim measure, PPL proposes to reduce the current minimum 11-day rule to 3-business days, meaning that PPL would need a 3-business day notice before the next meter read to switch the service. PPL reports that they could implement this in six to eight weeks. PPL also reports that while their current billing system cannot support multiple off-cycle switches, it could support a single mid-cycle switch. PPL could implement this over a 9-12 month period at a cost of approximately \$ 1.5 million (including the 3-business day notice rule). *Id.* at 4-7.

PECO and PPL suggest that the 3 days be 3 business days to accommodate PJM requirements. *See e.g., id.* PECO suggests customers be limited to one off-cycle switch. PECO Comments at 2.

Citizens and Wellsboro likewise want customers limited to one switch per month. Citizens and Wellsboro Comments at 5. These companies also note that they are in the

process of becoming EDI-compliant, but they will not have mid-cycle functionality until the second quarter of 2015. *Id.* at 2-4. UGI Electric also asks the Commission to limit the number of switches per a defined time period. UGI Electric Comments at 5.

PPL and PECO object to the elimination of the confirmation period due to perceived increased risks of slamming and all the subsequent remedial action, including re-billings. *See* PECO Comments at 7 and PPL Comments at 11. During 2014, PECO has experienced between 100 and 150 customer requests per week to stop a switch. *Id.* PPL contends that it is not feasible to have EDCs send confirmation notices in instances where a customer is only changing a product with an EGS. PPL Comments at 11.

FE Solutions believes that EGSs should notify the EDC by the end of the next business day and that any delay introduces unneeded complexity and expense, especially since the “vast majority” of customers do not exercise their rights to rescind. FE Solutions Comments at 4-5. NEMA supports the elimination of the confirmation period, citing their belief that the current confirmation period only delays the customer switching process. NEMA Comments at 2. However, NEMA has concerns with the proposal to allow switching based on estimated readings because misestimates could yield problems and complaints. *Id.* at 3. WGES asks that any change in the timeframes in this section be carefully considered and that EGSs should have at least 90 days to implement any changes. WGES Comments at 3-4. RESA fully supports the elimination of the 10-day waiting period. To address possible slamming, RESA recommends a new expedited procedure for resolving customer complaints involving switching. RESA also asks the Commission to clarify when a supplier can consider a disclosure statement as being “received” by the customer. RESA Comments at 4-5. NRG believes speeding the switching process to five days or less will yield greater customer satisfaction in the marketplace and positively impact how EGSs behave in the market. NRG Comments at 2. If an EGS knows a customer can quickly leave the EGS, an EGS will have a strong

incentive to work even harder to meet their customers' needs and offer better products and services. *Id.*

OCA objects to removing the provision requiring authorization before proceeding with the switch of service. OCA Comments at 7. OCA and PULP also want three additional days to be added to the process in order to accommodate the 3-day right of rescission at 52 Pa Code § 54.5. *See* PULP Comments at 3-7. OCA, along with PULP, wants to retain the 5-day confirmation period as an anti-slamming mechanism. *See* OCA Comments at 8-9. The Industrial Customer Groups are also concerned that a 3-day switching timeframe may not allow sufficient time for a customer to catch an unauthorized change of supplier. Industrial Customer Groups Comments at 2-3. PULP asks that EGSs be required to notify customers of their 3-day right of rescission. PULP Comments at 5.

Resolution

This section will require extensive revisions to make faster switching a reality. First, we will incorporate exceptions into paragraph (1) that provide for the 3-day rescission period in 52 Pa. Code 54.5(d). This will allow an EGS, if it prefers and with the consent of the customer, to send the customer's enrollment the day after the customer contact. If, however, the customer does not give consent, the EGS must wait until the end of the 3-day rescission period. This delay is at the choice of the customer. The existing regulations do not require the holding of the notification for these 3-days; in fact, the existing regulation requires notifying the EDC "by the end of the next business day." *See* 52 Pa. Code 57.173(1). Requiring EGSs to "hold" the selection for 3 days would prolong the switching timeframes and run counter to what we are trying to accomplish. We disagree with the OCA that this impermissibly permits a customer to "waive" their 3-day rescission right. A customer retains their 3-day rescission right regardless of when the EGS notifies the EDC of their selection. If the EGS notifies the EDC immediately, regardless of whether the EGS has customer consent, the EGS assumes the risk that the

customer could cancel the agreement and that the EGS would then be obligated to do what they have to do to cancel the enrollment.

We will also include an exception for those instances when, again with the consent of the customer, the customer's enrollment is deliberately held until some future, distant date. This will accommodate those suppliers and customers who may want to enter into service at a future date, possibly to avoid early termination of a contract that would result in additional charges such as early termination fees.

We will revise Section 57.173(2) to omit any waiting period. While we will still require the EDC to send a confirmation letter – there will be no waiting period. As discussed above, with faster switching, we believe that a waiting period is unnecessary. If a customer, upon the receipt of the confirmation letter, believes that he or she was “slammed,” the customer can be quickly returned to their supplier of choice with minimal harm to them. By allowing faster switching, a “slammer” will not be able to hold onto the victim, thereby minimizing the incentive to “slam.” Additionally, the dispute procedures below in § 57.177 will assist the customer in avoiding liability for even the minimal charges that may have accrued.

We agree with NRG that faster switching would result in better EGS behavior and better products and services. By allowing customers to more freely and quickly switch suppliers, EGSs will have to offer better services and products to hold onto their customers. EGSs will no longer be able to count on the extra month or two of revenue from a departing customer. We find that the cumulative benefits attendant to faster switching outweigh the risk of a few isolated cases of slamming that a lengthy confirmation period would otherwise protect.

We agree with PECO and PPL that, given PJM requirements, as well as holidays and weekends, we should refer to “business days” and not “calendar days.” In response

to OCA's concern with the removal of the phrase "upon receiving direct oral confirmation or written authorization from the customer to change the EGS," we note that we are removing this language only because it is redundant and found in § 57.174. See 52 Pa. Code 57.174.

§ 57.174. Time frame requirement.

Comments

FirstEnergy notes that "significant" time for research, development, and implementation will be needed to meet the proposed timeframes. FirstEnergy Comments at 5. FirstEnergy reports that current business processes require them to calculate each EGS's capacity and transmission obligation 3 business days prior to the market day and report results to PJM the following morning by noon in order to meet PJM reporting deadlines. PJM market rules require each day's posting from FirstEnergy to reflect each supplier's obligations 2 days into the future. Since there is no process at PJM to reconcile or correct the NSPL and PLC obligations, FirstEnergy is concerned that using estimates could lead to widespread inaccuracies in the reported obligations. *Id.* at 5-8.

PPL likewise notes considerable amount of time and resources will be needed. PPL Comments at 12. PECO asks that customers who are not metered (lighting service) be excluded from off-cycle switching due to the complexity of their formulaic billing. PECO Comments at 8-9. PPL likewise asks for street lighting to wait until a future "second phase." PPL Comments at 14.

NEMA is concerned with the proposal that would permit a switch of supply based on an estimated meter reading. Concerned that a gross misestimate could significantly harm either or both the customer and the supplier, NEMA recommends only allowing actual meter readings. NEMA Comments at 3. WGES also opposes the use of estimated meter readings. WGES is not convinced that a 3-day switching timeframe is possible

given PJM, EDI and EDC protocols – in light of the lack of the utility billing infrastructure. WGES Comments at 4.

RESA applauds the proposal for off-cycle switches and does not believe full smart meter deployment is necessary to allow off-cycle switching since the EDC can pro-rate the usage for billing and PJM settlement purposes. RESA Comments at 7. NRG also supports this proposal and suggests that EDCs report to the Commission annually the percentage of actual and estimated meter readings used for switching purposes. NRG Comments at 5-7. NRG also suggests that the EDC be required to “look back” when they get a switching request and if there has been a meter reading obtained within the past 3 days, then the switch should be dated to that meter read. *Id.*

Concerned about the use of estimated meter reads, OCA believes the matter should be considered further. OCA Comments at 12-13. EDEWG asks the Commission to confirm that mid-cycle switching would be available for all customer classes and seeks clarification as to whether the 3-day timeframe applies only to mid-cycle switching or all switching. EDEWG also notes that new “stacking rules” will need to be established in order to handle multiple pending enrollment and rescission requests to determine which switch will be honored and in what order. EDEWG Comments at 3-4.

Resolution

To achieve our objective of accelerating switching, we will need to extensively revise this section to specify the new timeframes and how those timeframes should be achieved. Since the existing language “first feasible billing period” is vague and permissive, we reject OCA’s suggestion that we retain this phrase, which would simply perpetuate the unacceptable status quo of the current 11 – 40 day switching period.

While we acknowledge PJM capacity assignment requirements necessitate a few days, we still believe a switch can be performed within three business days. As smart

meter technology is deployed, EDCs can more easily obtain accurate meter readings at any time without sending personnel into the field to read meters. Utilities with automated metering (AMRs) can do likewise. With all the money and effort currently being spent on deploying smart meter technology in the Commonwealth, it is unacceptable not to use the technology and information as available to directly benefit customers.

We agree with RESA that EDCs that do not have advanced or AMR metering can use either estimated or customer-provided meter reads for the purpose of switching EGSs. This section will be revised by adding language directing utilities to use either a meter reading obtained by an advanced or AMR meter. When these options are not available, an estimated or customer-provided reading shall be used, subject to revision and correction upon an actual meter read. This will allow these EDCs to avoid costly field visits to implement these regulations since personnel will not have to be dispatched to read the meter. We decline to put in place a reporting requirement like that proposed by NRG, but we could revisit this suggestion in the future if we become aware of problems with the estimated readings. We also decline NRG's suggestion to "look back" and base the switch on a past meter reading. We are concerned that this could have serious billing impacts and PJM complications.

In response to the requests of Duquesne, EDEWG, PECO, and PPL that we address the applicability of these timeframes to all rate classes, we decline to provide a blanket exemption to specific rate classes in these regulations. The EDCs that provided comments failed to identify a particular technical barrier to off-cycle switching for customer accounts that are not metered. An EDC can seek a waiver for off-cycle switching for non-metered accounts by demonstrating the need for such a waiver in its request. We note that the second paragraph only applies to metered accounts. We acknowledge that multiple switches could occur within a single billing period. This may even be necessary in some instances – such as returning to a customer to the appropriate supplier to reverse a "slam." We also decline to specify the "stacking rules"

mentioned by EDEWG in these regulations, but acknowledge that this will have to be addressed in the future.

§ 57.179. Record maintenance.

Comments

Citizens and Wellsboro believe that the EDC record-keeping needed to comply with this section could be burdensome since EDI-related transactions are easily maintained but other records are not. Citizens and Wellsboro Comments at 5-6. PPL notes that they currently only retain customer recordings for 120 days (or 1 year in the case of a dispute). Expanding this to 3 years will require additional resources. PPL Comments at 16.

If EDCs have a role in switching consumers, WGES agrees that EDCs should maintain appropriate records. WGES thinks it is inevitable that Commission staff would need these records to resolve disputes as to what information was discussed and what representations were made in those customer contacts. WGES Comments at 5-6.

OCA recommends removal of the provision directed to default service providers as to avoid conflict with other record retention requirements. OCA Comments at 14.

Resolution

Since we are now allowing EDCs to switch customers to the default service provider (see § 56.172), we agree with WGES that the EDC should have a record-keeping requirement similar to the EGSs. In response to concerns that this is burdensome, we emphasize that the record-keeping requirement only pertains to *disputes* and not all switching.

Implementation and Cost Recovery

In the March 18, 2014 Secretarial Letter we proposed a six-month implementation timeframe for the EDCs, allowing for cost recovery in an EDC's next base rate proceeding.

Comments

Commenters expressed concern over the implementation timeframe, but also expressed a willingness to work within the Commission's timeframe. *See e.g.*, PECO Comments at 3 (stating that PECO "is fully committed to complying with the proposed regulations within the [six-month] timeframe stated in the [March 18, 2014] Secretarial Letter"); *cf.* Pike County Comments at 3 (implementation would take at least one year due to complexities of its billing system).

EAP thinks that the failure to allow timely cost recovery is problematic, contending that the steps necessary to comply with stringent switching deadlines will likely entail greater implementation costs than previously considered. EAP Comments at 3-5. UGI Electric requests that, given their small customer base and that variable pricing issues have not been a problem in their market, that they be exempt from any new switching rules until it implements its next default service plan. *See* UGI Electric Comments at 2, 5. FirstEnergy claims that initial costs will be \$1.5 – 2 million and that these costs must be recoverable on a full and current basis through a reconcilable rider mechanism. FirstEnergy Comments at 2-3. PECO likewise asks for full and current cost recovery under an appropriate rate adjustment mechanism. PECO Comments at 5-6. Duquesne estimates implementation costs at \$10 million. Duquesne Comments at 10. PPL is concerned that in submitting these costs in a base rate case, a party could propose disallowance of some or all of these costs. PPL believes this is unfair because they are simply complying with the Commission's regulations, and that the Commission should declare that EDCs will be permitted to fully recover all reasonable costs. PPL Comments at 16-17.

FE Solutions believes that these changes are for the overall promotion of retail customer choice which will benefit all customers, and as such, cost recovery should be addressed in EDC base rate filing. FE Solutions Comments at 6. RESA also supports the use of base rate filings to recover costs. RESA Comments at 8.

Resolution

EDCs and EGSs shall implement the revised regulations within 6 months of the date these revised regulations become effective. Any EGS or EDC unable to comply within this timeframe must file a petition with the Commission to explain their inability to comply and to propose alternatives, including the estimated timeframe for implementation. We understand the concerns of the smaller electric utilities. *See* UGI Electric Comments at 2, 5; Pike County Comments at 3-4; and Citizens and Wellsboro Comments at 2-3.

We also acknowledge that there will be costs incurred by the EDCs in adapting EDC metering and billing systems to accommodate off-cycle meter readings. We expect EDCs to implement these new requirements in the most cost-effective manner possible. EDCs should seek recovery of reasonable costs in a future base-rate filing, which will receive the usual full scrutiny of review by the Commission and interested parties.

We also note PECO's suggestion that, as an alternative to cost recovery through an adjustment clause exercisable at the EDC's option, the Commission could provide that EDCs may request approval for a deferral of implementation and ongoing costs resulting from this rulemaking, establish a regulatory asset for such costs and seek recovery in a future base rate case. PECO Comments at 6. PECO's suggestion of deferral, with the establishment of a regulatory asset with recovery in a future base rate proceeding is consistent with our intent regarding cost recovery. We agree that EDCs may seek approval of a deferral of costs and the establishment of a regulatory asset for recovery in

a future base rate proceeding. However, we caution that any such requests will be governed by the applicable standards set forth in *Petition of Duquesne Light Company*, Docket No. P-2012-2333760, at 6 (Order entered April 17, 2013).

Accordingly, we will add Section 57.180 to our regulations to require EDCs and EGSs to implement the provisions of Sections 57.172, 57.173, 57.174, and 57.179 within 6 months of the effective date of these regulations.

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. *Logsden 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.*

When necessary for the public interest 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 and adding to our standards for changing a customer’s electricity generation supplier, 52 Pa. Code §§ 57.171-57.179, 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 pricing contracts and fluctuations in wholesale and retail 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). Additionally, pursuant Section 1204(2) all of the EDCs that will be obligated to alter their switching procedures will be served and provided with actual notice of these final-omitted regulations. *See* 45 P.S. § 1204(2).

Traditional 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 in order to allow customers to more quickly and easily switch electric suppliers, which will allow customers to more fully realize the benefits of a fully functioning retail market through quicker and easier access to a more favorable retail rate. These changes will also allow customers to avoid being trapped on unfavorable and volatile rate plans as many were this past winter. Furthermore, these

changes will advance competition in the retail market as EGSs will need to respond more quickly to customer concerns or risk losing them to more agile competitors.

Traditional 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 a record-breaking 500 complaints concerning variable rates with the Commission's Secretary's Bureau between January 1, 2014 and March 28, 2014, and the filing of over 5,600 informal complaints with the Commission's Bureau of Consumer Services regarding EGSs. Moreover, the media has raised this issue throughout the Commonwealth. The public is indeed on high notice and constituents have reached out to their legislators, who are proposing legislative amendments to accelerate the switching process. Throughout February and March of this year, the Commission has held numerous conference calls and meetings with interested parties, including customers, suppliers, utilities, legislative committees, and the media.

As discussed, the Commission has already accepted and reviewed formal comments on its switching regulations via a previous Commission order. *See October 2012 Interim Guidelines*, Docket No. M-2011-2270442. In the *October 2012 Interim Guidelines* order, seventeen parties filed comments in response to the November 14, 2011 Tentative Order, including AARP/PULP/CLS; Columbia Gas; DTE Energy; Duquesne; EAP; FE Solutions; Industrial Customer Groups; FirstEnergy; NEMA; OCA; PEMC; PECO; PGW; PPL; RESA; Verde Energy; and WGES.

In the comments to the *October 2012 Interim Guidelines*, the parties generally supported reducing customer wait time for switching suppliers. EAP, PECO, PPL, and AARP/PULP/CLS commented that enacting those changes would be better facilitated through the rulemaking process, as we are doing here, instead of through guidelines issued via Commission order. *See* Docket No. M-2011-2270442, at 12. RESA observed

that shortening the switching timeframe is important because the current switching process is “grossly out of line with standards for service in other industries.” *Id.* at 13 (citing RESA Comments at 1-2). NEMA supported the proposed guidelines as a reasonable step to achieving customer switching on a timelier basis, recognizing current metering technology. *Id.* (citing NEMA Comments at 2). Similarly, PEMC observed that the proposed guidelines would achieve the delicate balance between strengthening the competitive energy market while ensuring strong consumer protections. *Id.* at 13 (citing PEMC comments at 2). FE Solutions believed that the 16- to 45-day time period for switching is too long and supported the proposed guidelines. *Id.* (citing FE Solutions Comments at 1-2).

The March 18, 2014 Secretarial Letter

On March 18, 2014 the Commission issued a Secretarial Letter, served on all jurisdictional EDCs, OCA, OSBA, and EAP, seeking comments on proposed regulations, and invite and promote public participation in the rulemaking process and to allow the Commission to further deliberate before issuing this Final-Omitted Rulemaking Order. On March 18, 2014 the Commission received a letter from Senators Robert M. Tomlinson and Lisa M. Boscola of the Senate Consumer Protection and Professional Licensure Committee, asking the Commission to begin revising its regulations to accelerate the supplier switching process. In a March 25, 2014 letter addressed to the Commissioners, Governor Corbett commended the PUC for advancing this rulemaking to accelerate the timeframe for effectuating a switch in a customer’s choice of electric supplier. Also, on March 25, 2014, the Commission received a letter from Representatives Robert W. Godshall and Peter J. Daley of the House Consumer Affairs Committee, applauding the Commission for moving forward to revise its switching regulations, but urging caution as to expediting the rulemaking due to the intent of their committee to address those same issues legislatively.

Comments to the March 18, 2014 Secretarial Letter were filed by OSBA; NEMA; the Industrial Customer Groups; PULP; UGI Electric; NRG; RESA; EAP; PPL; OCA; EDEWG) WGES; Citizens and Wellsboro; FE Solutions; FirstEnergy; PECO; UGI Energy; Pike County; Duquesne; and Anna Perederina. Many residential customers emailed comments to the March 18, 2014 Secretarial Letter on accelerated switching to the Commission's website or www.PAPowerSwitch.com. These customers, many who identified themselves as variable-rate customers hit hard by price spikes this past winter, were unanimous in their support to significantly reduce the time to switch to a competitive supplier or return to default service.

The Commission has reviewed the comments to the Secretarial Letter. We have incorporated beneficial suggestions and clarifications to the language we proposed to 52 Pa. Code §§ 57.171-57.180 in the attached Annex to the March 18, 2014 Secretarial Letter.

Some commenters expressed concern over the Commission's decision to embark on this expedited final-omitted rulemaking process. *See* OSBA Comments at 1; PULP Comments at 2; UGI Electric Comments at 1-5; EAP Comments at 6-7; PPL at 3-4, 17; OCA Comments at 2-4; EDEWG Comments at 2; WGES Comments at 1; FE Solutions Comments at 2, 6-7; and FirstEnergy Comments at 2-3, 9-10. Some commenters contended that the seven-day comment period provided for in the March 18, 2014 Secretarial Letter was insufficient to flush out the issues and properly estimate the implementation costs from a practical, technical, and financial standpoint. *See id.* *See also* EAP Comments at 4 and Pike County Comments at 3-4. However, most EDCs did provide numerical implementation cost estimates. *See* PPL Comments at 6; Duquesne Comments at 10-11; FirstEnergy Comments at 2-3; PECO Comments at 5, fn. 3; and Pike County Comments at 3. Some commenters requested a longer stakeholder process or working group to evaluate regulations and share information regarding accelerated

switching. *See e.g.*, OCA Comments at 4.

The Commission appreciates the above concerns regarding the Commission's decision to embark on a faster, streamlined rulemaking through the Final-Omitted process.

As PULP emphasized, the purpose of the Commonwealth Documents Law is to invite and promote public participation in the promulgation of a regulation. *See* PULP Comments at 2. The Commission believes it has invited and promoted sufficient public participation over the past few years through OCMO, the Retail Markets Investigation, and the *October 2012 Interim Guidelines*. OCMO's working group met 19 times between March 24, 2011 and February 7, 2013 to discuss the narrowed issue here: Accelerated Supplier Switching Timeframes. Furthermore, the Commission went above and beyond the procedures required by a Final-Omitted Rulemaking by issuing its March 18, 2014 Secretarial Letter to invite public comment on specific, proposed regulatory language. As a result, the Commission received 22 sets of comments, including letters from the General Assembly and a letter of endorsement from the Governor.

While additional comments obtained through a more extended proposed rulemaking have the potential to provide more insight and analysis, the Commission believes it has received sufficient information and comments from the diverse and represented perspectives of the stakeholders in this matter. The Commission has considered these comments and incorporated the Commission's deliberation of those comments in this Order. Indeed, the Commission has created a "democratic process for participation" in the formulation of Standards for Changing a Customer's Electricity Generation Supplier at 52 Pa. Code §§ 57.171-57.179 "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. Governmental and other stakeholder resources will be saved by forgoing the extensive proposed notice and comment

rulemaking process to achieve this urgent public interest objective of accelerated switching. Therefore, this final-omitted rulemaking still meets the intent of a *de novo* rulemaking with formal notice and comment procedures without risking promulgation of an agency regulation not in the public interest. *See* 45 P.S. § 1204.

A few commenters have advised the Commission to wait or delay this rulemaking because the General Assembly may enact legislation that conflicts with or is redundant to the Commission's regulations promulgated in this Final-Omitted Rulemaking. *See, e.g.*, UGI Electric Comments at 3 and PPL Comments at 2-3; *see also* March 25, 2014 Letter from the House Consumer Affairs Committee. The Commission appreciates these concerns. However, the Commission is under a duty to act pursuant to its existing governing statutes that have already been enacted in the Public Utility Code; the Commission believes that it is imprudent to wait on legislation that may not be enacted for months or never enacted. While the House Consumer Affairs Committee has urged caution, the Senate Consumer Protection and Professional Licensure Committee and the Governor have implicitly directed and endorsed the Commission's advanced rulemaking. We note that should legislation effecting these regulations be enacted, the Commission is obligated to revise its existing regulations to conform with the law.

Statutory Safeguards Prevent Promulgation of Agency Regulation Not In The 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 Commission has deliberated on its switching regulations in the past few years and received numerous comments on these regulations in various channels, including formal comments to the Commission's Final Order for the *October 2012 Interim Guidelines*, which have been in effect for approximately thirteen months, and formal comments to the March 18, 2014 Secretarial Letter. *See* Docket Nos. M-2011-2270442 and L-2014-2409383. We believe our switching regulations should be updated in the context of today's marketplace and the available metering technology. Throughout this order and the attached Annex, we discuss various issues and carefully craft new rules to accelerate the supplier switching process for retail electric customers in Pennsylvania. Importantly, we revise our regulations to facilitate accelerated switching without endangering safeguards to protect customers against slamming or unauthorized switching.

The Commission believes that this final-omitted rulemaking is prudent and in the public interest. For the above reasons, the exceptions to the notice of proposed

rulemaking requirements enunciated in Section 1204(3) of the Commonwealth Documents Law justify promulgation of these final-omitted regulations. Accordingly, under Sections 501, 1501, and 2807 of the Public Utility Code, 66 Pa. C.S. §§ 501, 1501, and 2807; 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 §§ 57.171-57.180, as set forth in Annex A; **THEREFORE,**

IT IS ORDERED:

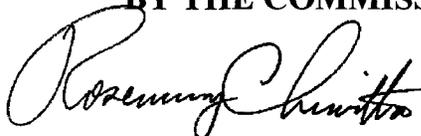
1. That this Final-Omitted Rulemaking Order, together with Annex A, be published as final in the *Pennsylvania Bulletin*.
2. That the Secretary shall submit this order and Annex A to the Attorney General for review and approval and to the Governor's Budget Office for fiscal review.
3. That the Secretary shall submit this Order 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 and Annex A and deposit them with the Legislative Reference Bureau for final publication upon approval by the Independent Regulatory Review Commission.
5. That this Order and Annex A revising the regulations appearing in Title 52 of the Pennsylvania Code Chapter 57 relating to Standards for Changing a Customer's Electricity Generation Supplier, be served on all jurisdictional electric utilities, 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 No. L-2014-2409383.

6. That the Office of Competitive Market Oversight shall electronically send a copy of this Final-Omitted Rulemaking Order and the Annex to all persons on the contact list for the Committee Handling Activities for Retail Growth in Electricity; 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; and to all persons on the contact list for Stakeholders Exploring Avenues to Remove Competitive Hurdles.

7. That a copy of this Order and Annex 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*.

8. The contact persons for this matter are Daniel Mumford in the Bureau of Consumer Services (717) 783-1957 and Ken Stark in the Law Bureau (717) 787-5558.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: April 3, 2014

ORDER ENTERED: April 3, 2014

ANNEX A
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 57. ELECTRIC SERVICE
Subchapter M. STANDARDS FOR CHANGING A CUSTOMER'S ELECTRICITY
GENERATION SUPPLIER

§ 57.171. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801—2812.

CURRENT EGS—THE EGS AT THE TIME OF THE CUSTOMER CONTACT.

Customer—A purchaser of electric power in whose name a service account exists with either an EDC or an EGS. In addition, the term includes all persons authorized to act on a customer's behalf.

DEFAULT SERVICE PROVIDER—AS DEFINED IN SECTION 2803 (RELATING TO DEFINITIONS) OF THE ACT.

EDC—~~Electric distribution company—An electric distribution company as~~ AS defined in section 2803 (~~relating to definitions~~) OF THE ACT.

EGS—~~Electric generation supplier—A supplier as~~ AS defined in section 2803 of the act ACT.

SELECTED EGS—THE EGS FROM WHICH THE CUSTOMER SEEKS NEW ELECTRIC GENERATION SUPPLY SERVICE.

§ 57.172. Customer contacts with the EDC.

(A) When a customer or a person authorized to act on the customer's behalf orally contacts the EDC to request a change FROM THE CURRENT ~~of~~ EGS OR DEFAULT

SERVICE PROVIDER TO A SELECTED EGS, the EDC shall notify the customer that the selected EGS shall be contacted directly BY THE CUSTOMER to initiate the change. THIS NOTIFICATION REQUIREMENT MAY NOT APPLY WHEN A COMMISSION-APPROVED PROGRAM REQUIRES THE EDC TO INITIATE A CHANGE IN EGS SERVICE.

(B) WHEN A CUSTOMER CONTACTS THE DEFAULT SERVICE PROVIDER TO REQUEST A CHANGE FROM THE CURRENT EGS TO DEFAULT SERVICE, THE DEFAULT SERVICE PROVIDER SHALL NOTIFY THE CUSTOMER THAT THERE MAY BE A CANCELLATION PENALTY TO CANCEL SERVICE WITH THE CURRENT EGS. SUBSEQUENT TO THIS NOTICE AND UPON EXPRESS OR WRITTEN CONSENT FROM THE CUSTOMER, THE DEFAULT SERVICE PROVIDER SHALL ENROLL THE CUSTOMER IN DEFAULT SERVICE.

§ 57.173. Customer contacts with EGSs- THE EGS TO REQUEST A CHANGE IN ELECTRIC SUPPLY SERVICE.

~~When a contact occurs between a customer or a person authorized to act on the customer's behalf and~~ CONTACTS an EGS to request a change ~~of~~ FROM the CURRENT EGS OR DEFAULT SERVICE PROVIDER TO A NEW SELECTED EGS, ~~upon receiving direct oral confirmation or written authorization from the customer to change the EGS, the contacted EGS shall~~ THE FOLLOWING ACTIONS SHALL BE TAKEN BY THE SELECTED EGS AND THE CUSTOMER'S EDC:

(1) THE SELECTED EGS SHALL ~~Notify~~ NOTIFY the EDC of the customer's EGS selection ~~by~~ AT the end of the ~~3~~next-business day RESCISSION PERIOD UNDER 52 PA. CODE § 54.5(D) (RELATING TO DISCLOSURE STATEMENT FOR RESIDENTIAL AND SMALL BUSINESS CUSTOMERS) OR A FUTURE DATE SPECIFIED BY ~~following~~ the customer ~~contact~~. THE SELECTED EGS MAY NOTIFY THE EDC BY THE END OF THE NEXT BUSINESS DAY FOLLOWING THE CUSTOMER CONTACT UPON CUSTOMER CONSENT.

(2) Upon receipt of this notification, OR NOTIFICATION THAT THE CUSTOMER HAS AUTHORIZED A SWITCH TO DEFAULT SERVICE, the EDC shall send the customer a confirmation letter noting the proposed change of EGS OR CHANGE TO DEFAULT SERVICE. ~~This letter shall include notice of a 10-day waiting period in which the order may be canceled before the change of the EGS takes place.~~ The notice shall include the date service with the new SELECTED EGS OR DEFAULT SERVICE PROVIDER will begin ~~unless the customer contacts the EDC to cancel the change.~~ The ~~10-day waiting period shall begin on the day the letter is mailed.~~ The letter shall be

mailed by the end of the next business day following the receipt of the notification of the customer's selection of an EGS OR DEFAULT SERVICE PROVIDER.

§ 57.174. Time-frame requirement.

(A) When a customer ~~or authorized party~~ has provided the SELECTED EGS OR CURRENT EGS with oral confirmation or written authorization to SELECT ~~change~~ THE NEW EGSs EGS OR DEFAULT SERVICE PROVIDER, consistent with electric data transfer and exchange standards, the EDC shall make the change at the beginning of the first feasible billing period following the 10-day waiting period, as prescribed in § 57.173 (a)(2) (relating to customer contacts with EGSs) WITHIN 3 BUSINESS DAYS OF THE RECEIPT BY THE EDC OF THE ELECTRONIC ENROLLMENT TRANSACTION.

(B) THE EDC SHALL OBTAIN A METER READ TO EFFECTUATE THE SWITCH OF SERVICE WITHIN THE TIME PERIOD PROVIDED FOR IN SUBSECTION (A). IN INSTANCES WHEN THE EDC DOES NOT HAVE ADVANCED OR AUTOMATED METERING CAPABILITY, THE EDC SHALL OBTAIN AN ACTUAL METER READ, USE AN ESTIMATED METER READ, OR USE A CUSTOMER-PROVIDED METER READ. WHEN AN ESTIMATED METER READ IS USED, THE ESTIMATED METER READ SHALL BE UPDATED WHEN AN ACTUAL METER READ IS OBTAINED.

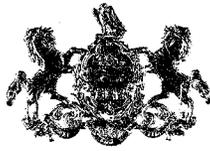
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§ 57.179. Record maintenance.

Each EDC and each EGS shall preserve all records relating to unauthorized change of EGS AND DEFAULT SERVICE PROVIDER disputes for 3 years from the date the customers filed the dispute. These records shall be made available to the Commission or its staff upon request.

§ 57.180. IMPLEMENTATION

EACH EDC AND EGS SHALL IMPLEMENT THE PROVISIONS OF SECTIONS 57.172, 57.173, 57.174, AND 57.179 WITHIN SIX MONTHS OF THE EFFECTIVE DATE OF THESE REGULATIONS.



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, Harrisstown II
333 Market Street
Harrisburg, PA 17101

Re: L-2014-2409383/57-306; Final-Omitted Rulemaking Amending Regulations Regarding Standards for Changing a Customer's Electricity Generation Supplier; 52 Pa. Code, Chapter 57

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 Stark
Mr. Mumford
Regulatory Coordinator DeIBiondo

