

Regulatory Analysis Form

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**INDEPENDENT REGULATORY
REVIEW COMMISSION**

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(1) Agency

Pennsylvania Public Utility Commission

(2) Agency Number: L-2015-2465942

Identification Number: 57-309

IRRC Number: 3101

(3) PA Code Cite: 52 Pa. Code §§ 62.72, 62.75, and 62.81

(4) Short Title: Customer Information Disclosure Requirements for Natural Gas Suppliers Providing Natural Gas Supply to Residential and Small Business Customers

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

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

☐ Proposed Regulation

☒ Final Regulation

☐ Final Omitted Regulation

☐ Emergency Certification Regulation;

☐ Certification by the Governor

☐ Certification by the Attorney General

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

The Commission amends its customer information disclosure regulations in Chapter 62 of Title 52 of the Pennsylvania Code. The regulations will require natural gas suppliers (NGSs) to provide residential and small business natural gas customers with clearer and more concise information regarding their NGS contracts, including a Contract Summary with key contractual terms and additional information regarding variable-priced products, historical pricing information, and pricing terms and conditions.

(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."

Natural Gas Choice and Competition Act (66 Pa. C.S. § 2201-2212):

The Public Utility Code grants the Commission the power to license natural gas suppliers (NGSs) and establish standards to govern the conduct of NGSs, including the provision of clear, adequate, accurate, and timely information to customers. *See* 66 Pa. C.S. §§ 2206(c), 2208(a), and 2208(f) (citing Chapter 56 of Commission regulations regarding Standards and Billing Practices).

66 Pa. C.S. § 2206(c) **Customer information.**--The commission shall, by order or regulation, establish requirements that each natural gas distribution company and natural gas supplier provide adequate, accurate customer information to enable retail gas customers to make informed choices regarding the purchase of all natural gas services offered by that provider. Information shall be provided to retail gas customers in an understandable format that enables retail gas customers to compare prices and services on a uniform basis.

66 Pa. C.S. § 2208(a) License requirements.--No entity shall engage in the business of a natural gas supplier unless it holds a license issued by the commission...

66 Pa. C.S. § 2208(f) Availability of the service of natural gas suppliers.--Prior to licensing any natural gas supplier, **the commission shall set forth standards** to ensure that all customer classes may choose to purchase natural gas from a natural gas supplier. **The commission shall also ensure that natural gas suppliers comply with applicable provisions of 52 Pa. Code Ch. 56.** (emphasis added).

(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.

The specific regulations are not mandated by any federal law/regulation or any state law/regulation or any court order. However, Chapter 22 of the Public Utility Code does require the Commission to establish customer information requirements for natural gas suppliers, as stated above in question 8.

This rulemaking follows a similar rulemaking initiated and finalized in 2014 regarding electric generation supplier customer information disclosure requirements. *See Final-Omitted Rulemaking Order: Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Renewal or Changes in Terms*, Docket No. L-2014-2409385 (Order entered Apr. 3, 2014).

(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.

In 2014, an extraordinary number of formal and informal complaints (between 1/1/14 and 3/28/14, 500 formal complaints were filed with the Commission's Secretary's Bureau and between 2/1/14 and 3/28/24, 5,626 informal complaints were filed with the Commission's Bureau of Consumer Services (BCS)) concerning unprecedented spikes in electric generation prices. This caused the Commission to promulgate, through a Final-Omitted Rulemaking Order, new regulations that required Electric Generation Suppliers (EGSs) to provide stronger disclosures that contain more concise, transparent

terms and conditions, especially concerning variable-rate products.

While the events in January 2014 were unprecedented and primarily impacted electric consumers, we believe that an occurrence of similar events in the natural gas market is a possibility. Fluctuations and volatility in both electric and natural gas wholesale energy markets could again contribute to unforeseen and unexpected surges in retail energy prices.

In light of this possibility, the Commission finds that codifying, strengthening, and augmenting the natural gas disclosure rules are in the public interest. Through this Final Rulemaking Order, the Commission seeks to promulgate regulations, as soon as practicable, to require NGSs to provide stronger disclosures that contain more concise, transparent terms and conditions, especially concerning variable-rate products. The Commission seeks to amend its regulations to ensure customers are being provided with the necessary information to make informed decisions when shopping in Pennsylvania's competitive retail natural gas market. Specifically, these regulations will provide increased protection to customers and more adequately inform customers about the scope and limits of price variability, the terms and conditions of an NGS contract, and the customer's options prior to and after the expiration of their current contract for natural gas supply service. The regulations will also bring the requirements for the natural gas industry into substantial alignment with the analogous requirements for the electric industry that the Commission promulgated in 2014. This consistency will benefit those suppliers that sell both gas and electric service and those customers that receive gas and electric service from the same supplier. Consistent cross-industry regulations should decrease the costs of supplier's compliance with the regulations and lessen the customer confusion that can result from inconsistent rules.

In a December 2014 *Gas RMI Final Order*, we determined that enhancing the disclosure rules is a high-priority agenda item in the Commission's Gas Retail Markets Investigation. We concluded that a rulemaking would be necessary to effectuate the aforementioned goals of enhancing notices and disclosures to customers, alleviating customer confusion, and establishing consistent cross-industry rules. In the *Gas RMI Final Order*, we sought from stakeholders comments and recommended revisions to the existing NGS disclosure requirements in Chapter 62 of our regulations. Accordingly, the *Gas RMI Final Order* served, in essence, as an Advance Notice of Proposed Rulemaking Order (ANOPR), enabling us to solicit comments from all parties and then use those comments to frame the issues in this Notice of Proposed Rulemaking Order (NOPR), which we issued on March 26, 2015.

Comments were filed by Columbia Gas of PA (Columbia); Dominion Retail, Inc. d/b/a Dominion Energy Solutions, Shipley Choice, LLC d/b/a Shipley Energy, Rhoads Energy Corp. and AMERIGreen Energy (NGS Parties); the National Energy Marketers Association (NEM); the Office of Consumer Advocate (OCA); PECO Energy Company (PECO); Peoples Natural Gas Company LLC and Peoples TWP LLC (Peoples); Philadelphia Gas Works (PGW); the Retail Energy Supply Association (RESA); UGI Distribution Companies (UGI); Valley Energy, Inc. (Valley Energy); and WGL Energy Services, Inc. (WGL Energy).

Comments were filed by IRRC on August 5, 2015.

Approximately 2.8 million residential and small commercial natural gas customers will benefit from this rulemaking, especially those consumers on variable-price products.

(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?

Not all states have retail natural gas supply competition, let alone thorough regulations governing natural gas supply contracts. Pennsylvania is one of the forerunning states. The regulations, providing increased consumer protections, will help to increase natural gas competition in Pennsylvania as consumers develop more confidence in the natural gas supply market.

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

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

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

Ohio: The Public Utilities Commission of Ohio (PUCO) has promulgated thorough disclosure regulations, including switching fees notifications, contract terminations occurrences, explanations of prices, explanations of consequences of nonpayment, terms and conditions, form language regarding disputes, and other pertinent information. See OH ADC 4901:1-29-11 Contract disclosure.

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

This rulemaking will only affect the regulations that we are amending in the Proposed Rulemaking Order. See 52 Pa. Code §§ 62.72, 62.75, and 62.81.

(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.)

Our review of disclosure requirements in the energy industries started in September of 2010 when the Commission reviewed its customer information regulations and provided *Interim Guidelines* and general guidance on the timing and content of advanced notifications that give customers important information about their options prior to the expiration of or a change in terms of their current contract for electric generation supply.

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

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

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

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

In an effort to obtain feedback from stakeholders on the proposed changes to our electric Disclosure Regulations included in this Final-Omitted Rulemaking Order, the Commission issued a Secretarial Letter on March 19, 2014, in order to give an opportunity for those entities most affected to provide recommendations prior to the issuance of this Final-Omitted Rulemaking Order. These comments were considered as the Commission, on April 3, 2014, approved a Final-Omitted Rulemaking that revised the electric disclosure rules as to require EGSs to display key contractual terms and conditions more prominently, especially for customers on variable-priced products; provide historical pricing data on their products; and mark prominently customer notices prior to contract expiration or changes in terms. The changes were designed to provide additional information and greater protections for residential and small business customers choosing a competitive supplier for their electric generation. See *Final-*

Omitted Rulemaking Order: Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Renewal or Changes in Terms. Docket No. L-2014-2409385 (Order entered Apr. 3, 2014). The regulations were promulgated in June 2014.

Finally, in our December 2014 *Gas RMI Final Order*, we determined that enhancing the disclosure rules in the natural gas industry, as we did in the electric industry, is a high-priority agenda item in the Commission's Gas Retail Markets Investigation. We concluded that a rulemaking would be necessary to effectuate the aforementioned goals of enhancing notices and disclosures to customers, alleviating customer confusion, and establishing consistent cross-industry rules. In the *Gas RMI Final Order*, we sought from stakeholders comments and recommended revisions to the existing NGS disclosure requirements in Chapter 62 of our regulations. Accordingly, the *Gas RMI Final Order* served, in essence, as an Advanced Notice of Proposed Rulemaking Order (ANOPR), enabling us to solicit comments from all parties and then use those comments to frame the issues in this Notice of Proposed Rulemaking Order (NOPR), which we committed to issue in early 2015.

After careful review and consideration of the comments filed in response to the December 2014 Order, we issued the Proposed Rulemaking Order on March 26, 2015, amending the regulations at 52 Pa. Code Sections 62.72, 62.75 and adding a new Section 62.81.

Comments were filed by Columbia Gas of PA (Columbia); Dominion Retail, Inc. d/b/a Dominion Energy Solutions, Shipley Choice, LLC d/b/a Shipley Energy, Rhoads Energy Corp. and AMERIGreen Energy (NGS Parties); the National Energy Marketers Association (NEM); the Office of Consumer Advocate (OCA); PECO Energy Company (PECO); Peoples Natural Gas Company LLC and Peoples TWP LLC (Peoples); Philadelphia Gas Works (PGW); the Retail Energy Supply Association (RESA); UGI Distribution Companies (UGI); Valley Energy, Inc. (Valley Energy); and WGL Energy Services, Inc. (WGL Energy).

Comments were filed by IRRC on August 5, 2015

After review and consideration of the comments filed to the Proposed Rulemaking Order, we entered the Final Rulemaking Order on April 21, 2016.

(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?

Approximately 104 NGSs (serving residential and small commercial customers) will be affected by the regulation. See http://www.puc.pa.gov/consumer_info/natural_gas/natural_gas_shopping/natural_gas_suppliers_list.aspx

The Regulatory Review Act, 71 P.S. § 745.3, invokes a definition of "small business" through a reference to Part 121 of the Code of Federal Regulations, which is carried out by the federal United States Small Business Administration (SBA). The SBA does not provide a category for determining whether a retail supplier of natural gas constitutes a small business, based on specified amount of gross receipts or number of employees.

See <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=71ac907fad82aecd72ed5415a51b0055&rgn=div5&view=text&node=13:1.0.1.1.17&idn o=13>.

Based on an examination of revenues, most of the approximately 104 NGSs (some of which are not very active in Pennsylvania) would not be considered small businesses. Not including brokers, only 15 NGSs report intrastate revenues below \$1,000,000. However, most suppliers operate in other jurisdictions and obtain revenues through those operations in other states. Additionally, existing bonding and security requirements would not be feasible for entities with little financial means. Thus, most NGSs are not small businesses.

Small businesses in the form of commercial gas supply customers will be the beneficiaries of these regulations, as approximately 2.8 million residential and small commercial natural gas customers will benefit from this rulemaking. See

http://www.puc.pa.gov/consumer_info/natural_gas/natural_gas_shopping.aspx.

(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.

Approximately 104 NGSs will be affected by the regulation. All of the NGSs serving residential and/or small commercial customers will need to comply with the regulations.

(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.

The regulations would bring the gas disclosure regulations into alignment with the analogous electric regulations. Many licensed NGSs also have electric supplier (EGS) affiliates – so they are already aware of and are operating under these requirements for their electric operations. As a result, the financial impact may be limited. The harmonization of the electric and gas rules may even create cost-savings and efficiencies for those suppliers that provide both electric and gas service.

Benefits include increased natural gas competition in Pennsylvania as well as additional consumer protection measures. Approximately 2.8 million residential and small commercial natural gas customers will benefit from this rulemaking, especially those consumers on variable-price products.

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

The January 2014 Polar Vortex's impact on competitive energy markets demonstrated some weaknesses in the current disclosure regulations for electric and gas consumers, especially relating to variable-price supplier products. This resulted in an extraordinary 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)). In response, in June 2014 the Commission promulgated, through a Final-Omitted Rulemaking Order, new regulations that required Electric Generation Suppliers (EGSs) to provide stronger disclosures that contain more concise, transparent terms and conditions, especially concerning variable-rate products. See *Final-Omitted Rulemaking Order: Rulemaking to Amend the*

Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Renewal or Changes in Terms. Docket No. L-2014-2409385 (Order entered Apr. 3, 2014).

While the events in January 2014 primarily impacted electric consumers, we believe that an occurrence of similar events in the natural gas market is a real possibility. Fluctuations and volatility in both electric and natural gas wholesale energy markets could again contribute to unforeseen and unexpected surges in retail energy prices that could negatively impact consumers, especially those on variable-price products. With this rulemaking, the Commission is enhancing the disclosure rules to guarantee ample customer protections are in place and that customers are provided with the necessary information to make informed decisions when shopping in Pennsylvania's competitive retail natural gas supply market.

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

No undue costs and/or savings are anticipated since many licensed NGSs also have electric generation supplier (EGS) affiliates and thus are aware of and are operating under these requirements for their electric operations. As a result, the financial impact may be limited. The harmonization of the electric and gas rules may even create cost-savings and efficiencies for those suppliers that provide both electric and gas service.

Some parties (like RESA and IRRC) commented that direct mailing costs may be burdensome and unnecessary. Therefore, we invited comment on this point. We note that no Commentator provided cost estimates quantifying the effect of these costs. In light of the increasing number of customers who prefer electronic mail, we agree with IRRC and RESA, and we will allow the initial and options notices to be transmitted electronically, so long as the customer has affirmatively elected to receive electronic notice. Such treatment should save money and help ensure that customers will receive notice in their preferred format.

The NGS Parties also commented that two contract expiration notices in instances where the supplier is proposing no change in terms can be burdensome. Again, no Commentator quantified these costs. We have maintained the two contract expiration notices as they provide important protection for consumers.

RESA, the NGS Parties, Peoples, and PECO emphasized that consistency between the electric and natural gas industry disclosure rules is important, as unnecessary differences may confuse customers and burden suppliers' operations. The OCA likewise recommends that, at a minimum, the Commission impose the same disclosure requirements on NGSs that are applicable to EGSSs. OCA notes that because many suppliers offer both electric and natural gas service during the same customer marketing presentations, it would be unreasonable for customers to experience different disclosures of the material terms of their agreements with NGSs and EGSSs. As a result, we are proposing amending the natural gas disclosure rules to bring them into substantial alignment with the electric rules.

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

No undue costs and/or savings are anticipated.

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

No undue costs and/or savings are anticipated.

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

As indicated above, any costs incurred would be minimal. We mitigated cost concerns raised by the parties by providing for electronic communication for the initial and options notices, with customer consent.

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

No Commentator provided cost estimates quantifying the effects of compliance with the Regulations, and no NGSs report this information to the Commission. Therefore, the Commission is neither able to quantify any savings that may be achieved by harmonizing the gas and electric supplier disclosure rules nor any costs that would be incurred to comply with the rules.

| | 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.

The NGSs do not report this information; therefore, the Commission does not track this information.

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

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

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed 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 proposed regulation.

As noted above, very few NGSs may be considered small businesses. As NGSs do not report expenditures and as no commentators provided costs estimates, we are unable to quantify any projected reporting, recordkeeping or other administrative costs. Nonetheless, we anticipate that any costs incurred would be minimal. We mitigated cost concerns raised by the parties by providing for electronic communication for the initial and options notices, with customer consent.

The revised regulations will provide additional protections to small business customers because the natural gas disclosure regulations apply to both residential and small business customers. For the purposes of these regulations, a *small business customer* is defined at 52 Pa. Code § 62.72:

Small business customer—This term refers to a person, sole proprietorship, partnership, corporation, association or other business entity that receives natural gas service under a small commercial, small industrial or small business rate classification, and whose aggregate maximum registered annual consumption with the NGDC was less than 300 Mcfs, or equivalent, over the last 12 months.

Small businesses will, in effect, receive the same disclosure information and protections as residential consumers. This is in recognition of the reality that many small businesses are not much different than most residential consumers in their level of sophistication and understanding of energy markets. While large commercial businesses and industries often rely on the services of professional energy managers, brokers, and consultants to arrange their energy purchases, small businesses usually have to rely on their

own, limited expertise when making these decisions. As a result, the enhanced level of protection made available by these regulations for small business customers is appropriate and much-needed. In this manner, small businesses will benefit.

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

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

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

N/A – No alternative provisions were considered.

(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 in questions 15 and 24, very few NGSs may be considered small businesses. We anticipate that any costs incurred would be minimal. We mitigated cost concerns raised by the parties by providing for electronic communication for the initial and options notices, with customer consent. Further, bringing gas disclosure requirements into alignment with the electric regulations simplifies compliance for suppliers serving both markets.

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

Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service; Amendment re: Supplier Contract Renewal/Change Notices,

Docket Nos. M-2010-2195286 and M-0001437 (Final Order entered Sep. 23, 2010). See http://www.puc.pa.gov/about_puc/consolidated_case_view.aspx?Docket=M-2010-2195286

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

See http://www.puc.pa.gov/about_puc/consolidated_case_view.aspx?Docket=M-2014-2406134

Final-Omitted Rulemaking Order: Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Renewal or Changes in Terms, Docket No. L-2014-2409385 (Order entered Apr. 3, 2014). See

http://www.puc.pa.gov/about_puc/consolidated_case_view.aspx?Docket=L-2014-2409385

Investigation of Pennsylvania's Retail Natural Gas Supply Market, Docket No. I-2013-2381742 (Final Order entered Dec. 18, 2014). See

http://www.puc.pa.gov/about_puc/consolidated_case_view.aspx?Docket=I-2013-2381742

As a result of high 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. The unprecedented number of complaints and wave of media attention responding to the increase in wholesale electric prices in January 2014 instilled in us a sense of urgency to respond thoroughly and expeditiously. We did so by adopting revised disclosure requirements for the electric industry. See *Final-Omitted Rulemaking Order: Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Renewal or Changes in Terms*, Docket No. L-2014-2409385 (Order entered Apr. 3, 2014).

While natural gas wholesale markets have been relatively stable compared to the electric markets, similar price fluctuations in the natural gas are still possible. This concern may be heightened in coming years as demand for natural gas increases. For example, natural gas is increasingly used for electric generation. The Commission's *Electric Power Outlook for Pennsylvania 2013-2018* report (page 55) notes the recent increase in gas-fired electric generation and its increasingly large role in generating electricity: representing just under 30% of electric generating capacity in 2013. This number is going to increase in coming years. Page 8 of the report notes that:

Natural gas-fired generation continues to increase with over 28 GW of gas-fired capacity planned in the next 10 years and over 108 GW in a conceptual phase. This increased dependence on natural gas-fired generation will require additional planning and operational coordination.

The report also notes on page 5:

Proposed new generating plants and increased capacity of existing plants in Pennsylvania total 12,324 MW. These facilities are under active study by PJM. Natural gas projects make up more than 11,609 MW of this queued capacity.

This report is available on the Commission's website at:

http://www.puc.pa.gov/General/publications_reports/pdf/EPO_2014.pdf .

This dramatic increase in gas-fired electric generation will cause increased demand for natural gas, possibly resulting in upward pressure on natural gas prices. These upward pressures could especially manifest themselves in instances of extreme cold weather – when the supply for natural gas will be competed for by residential consumers heating their homes, commercial customers running their businesses, and electric generators needing gas to increase their generation to meet the increased electric demand. These pressures could result in wholesale gas market price spikes, similar to the spikes we saw in the electric market in January 2014. As a result, the Commission believes that it is critical to protect natural gas consumers with the same type of disclosure regulations we adopted in 2014 for electric consumers.

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

- | | |
|---|-------------------------------------|
| A. The date by which the agency must receive public comments: | N/A |
| B. The date or dates on which public meetings or hearings will be held: | As needed |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | August-September 2016 |
| D. The expected effective date of the final-form regulation: | Upon publication in the PA Bulletin |
| E. The date by which compliance with the final-form regulation will be required: | Upon publication in the PA Bulletin |
| F. The date by which required permits, licenses or other approvals must be obtained: | N/A |

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

The Commission's OCMO team as well as the Commission's Bureau of Consumer Services will continue to examine the disclosure process after its implementation. This includes carefully reviewing informal and formal complaints filed by consumers to determine if the new regulations are being complied with and are benefiting consumers, and also to identify areas where improvement may be needed. 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 regulations. Accordingly, the regulations will be reviewed on an as-needed basis.

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

(Pursuant to Commonwealth Documents Law)

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

BY _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

☐ Check if applicable
Copy not approved. Objections attached

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

Pennsylvania Public Utility Commission
(AGENCY)

DOCUMENT/FISCAL NOTE NO. L-2015-2465942/57-309

DATE OF ADOPTION

BY Rosemary Chiavetta
Rosemary Chiavetta

TITLE Secy
(SECRETARY)

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

BY Bohdan R. Pankiw
Bohdan R. Pankiw
Chief Counsel

4/21/2016
DATE OF APPROVAL

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

L-2015-2465942/57-309
Final Rulemaking
Customer Information Disclosure Requirements
For Natural Gas Suppliers Providing
Natural Gas Supply to Residential
and Small Business Customers
52 Pa Code, Chapter 62

The Pennsylvania Public Utility Commission on April 21, 2016, adopted a final rulemaking order to amend its customer information disclosure regulations for residential and small business natural gas supply customers relating to disclosure statement and notice requirements and expiration or change in contract terms. The contact persons are Assistant Counsel Jennedy S. Johnson, Law Bureau, 717 265-8423 and Acting Director Daniel Mumford, OCMO, 717 783-1957.

EXECUTIVE SUMMARY

L-2015-2465942/57-309

Final Rulemaking

To Amend and Add Regulations to Title 52 of the Pennsylvania Code, Sections 62.72, 62.75, and 62.81 Regarding Customer Information Disclosure Requirements for Natural Gas Suppliers Providing Natural Gas Supply to Residential and Small Business Customers

The Pennsylvania Public Utility Commission (Commission) amends its customer information disclosure regulations at 52 Pa. Code §§ 62.72 and 62.75 for residential and small business natural gas supply customers. Section 62.72 provides regulatory definitions while Section 62.75 discusses the disclosure statement and notice requirements that a Natural Gas Supplier (NGS) must provide to customers. The Commission adds new regulations in Section 62.81, which governs the notice requirements that NGSs must provide to residential and small business customers at the end of a contract or when contract term changes are proposed. These enhanced disclosure requirements resulted from the Commission's broader *Investigation of Pennsylvania's Retail Natural Gas Supply Market*, Docket No. I-2013-2381742 (Final Order entered Dec. 18, 2014) (*Gas RMI Final Order*). In the *Gas RMI Final Order*, the Commission specifically sought from stakeholders comments and recommended revisions to the existing natural gas supplier disclosure requirements in Chapter 62 of the Commission's regulations, which have not been formally reviewed since being promulgated in April 2001.

The contact persons for this rulemaking are Jennedy S. Johnson, Assistant Counsel, (717) 265-8423, and Daniel Mumford, Acting Director of the Office of Competitive Market Oversight, (717) 783-1957.

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

Public Meeting held April 21, 2016

Commissioners Present:

Gladys M. Brown, Chairman
Andrew G. Place, Vice Chairman
Pamela A. Witmer, Statement, recusal
John F. Coleman, Jr.
Robert F. Powelson

Rulemaking to Amend and Add Regulations to Title
52 of the Pennsylvania Code, Sections 62.72, 62.75,
and 62.81 Regarding Customer Information Disclosure
Requirements for Natural Gas Suppliers Providing
Natural Gas Supply to Residential and Small Business
Customers

L-2015-2465942

FINAL RULEMAKING ORDER

BY THE COMMISSION:

In this Rulemaking Order, the Pennsylvania Public Utility Commission (Commission) finalizes its amended customer information disclosure regulations at 52 Pa. Code §§ 62.72 and 62.75 for residential and small business natural gas supply customers. Section 62.72 provides regulatory definitions while Section 62.75 in Title 52 of the Pennsylvania Code discusses the disclosure statement and notice requirements of the natural gas supplier (NGS) to the customer. The Commission also adds new regulations in Section 62.81 governing notice requirements for NGSs regarding the expiration or change in terms for residential and small business customers. The Commission finalizes these enhanced disclosure requirements as part of its broader *Investigation of Pennsylvania's Retail Natural Gas Supply Market*. See Docket No. I-2013-2381742 (Final Order entered December 18, 2014) (hereinafter *Gas RMI Final Order*).

BACKGROUND

The Public Utility Code requires the Commission to establish regulatory requirements for both NGSs and natural gas distribution companies (NGDCs) to ensure that retail gas supply customers receive accurate information in an understandable format so that customers may make informed choices when purchasing retail gas supply. 66 Pa. C.S. § 2206(c). The Commission's disclosure regulations in the electric industry, 52 Pa. Code §§ 54.5 and 54.10, are now significantly different than the analogous natural gas industry regulations at 52 Pa. Code § 62.75 (Disclosure statement for residential and small business customers). The electric disclosure rules were expeditiously promulgated in July 2014 in response to the polar vortex events of the winter of 2014.¹

The natural gas disclosure rules in Section 62.75 were promulgated in April 2001 and have not been formally reviewed since.² The Commission has determined that concerns regarding variable rates and disclosure statements in the electric supply industry are relevant to the customer disclosure information in the natural gas industry. This customer disclosure information includes the availability of historical pricing information, notice of price changes, explicit disclosure of limits or the lack of limits on price variability, supplier contract summary pages, and supply contract expiration notice requirements. We believe that both customers and suppliers benefit from substantially consistent cross-industry rules. Inconsistencies between the two sets of rules can lead to

¹ See *Final-Omitted Rulemaking Order: Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Renewal or Changes in Terms*, Docket No. L-2014-2409385 (Order entered April 3, 2014); see 52 Pa. Code §§ 54.5, 54.10.

² See *Final Rulemaking Order: Customer Information Disclosure Requirements for Natural Gas Distribution Companies and Natural Gas Suppliers*, Docket No. L-00000149 (Adopted November 29, 2000).

customer confusion and inefficiencies for suppliers, especially for those customers who obtain both gas and electric service from the same supplier.³

In the *Gas RMI Final Order*, the Commission specifically sought from stakeholders comments and recommended revisions to the existing natural gas supplier disclosure requirements in Chapter 62 of our regulations. See *Gas RMI Final Order* at 37-40. The Commission directed its Office of Competitive Market Oversight (OCMO) to review any comments submitted and develop a Notice of Proposed Rulemaking to amend the disclosure provisions for natural gas customers. *Id.* at 38-40. Accordingly, the *Gas RMI Final Order* served, in essence, as an Advanced Notice of Proposed Rulemaking Order, enabling the Commission to solicit comments⁴ from all parties and then use those comments to frame the issues in a Notice of Proposed Rulemaking Order. On March 26, 2015, the Commission issued that Proposed Rulemaking Order. *Rulemaking to Amend and Add Regulations To Title 52 of the Pennsylvania Code, Sections 62.72, 62.75, and 62.81 Regarding Customer Information Disclosure Requirements for Natural Gas Suppliers Providing Natural Gas Supply to Residential and Small Business Customers*, Docket No. L-2015-2465942 (entered March 26, 2015) (hereinafter *Proposed Rulemaking Order*).

As required by the Regulatory Review Act (71 P.S. § 745), the *Proposed Rulemaking Order*, Executive Summary thereof, and the Regulatory Analysis Form were submitted to the Office of Attorney General and the Office of Budget on April 15, 2015,

³ We note that the Commission has already examined some of the issues resulting from the current inconsistency between the electric and gas disclosure rules. See *Final Order on Request for Clarification on Notice Requirements for Combined Electricity & Natural Gas Disclosure Statements*, Docket No. L-2014-2409385 (Order entered October 2, 2014).

⁴ Comments to the *Gas RMI Final Order*, pertaining to disclosure statement requirements in the gas industry, were filed by Columbia Gas of PA; Dominion Retail, Inc. d/b/a Dominion Energy Solutions, Shipley Choice, LLC d/b/a Shipley Energy, Rhoads Energy Corp. and AMERIGreen Energy; the National Energy Marketers Association; the Office of Consumer Advocate; PECO Energy Company; Peoples Natural Gas Company LLC and Peoples TWP LLC; Philadelphia Gas Works; the Retail Energy Supply Association; UGI Distribution Companies; Valley Energy, Inc.; and WGL Energy Services, Inc.

receiving approval by the Attorney General as to form and legality on May 8, 2015. The *Proposed Rulemaking Order*, Executive Summary, and Regulatory Analysis Form were submitted on May 20, 2015, to the Independent Regulatory Review Commission (IRRC), the Legislative Reference Bureau, and the legislative committees. *See* 71 P.S. § 745.5a; 1 Pa. Code § 305.1. The Legislative Reference Bureau published the *Proposed Rulemaking Order* in the *Pennsylvania Bulletin*, providing for a 30-day public comment period. 45 Pa.B. 2705 (June 6, 2015).

COMMENTS TO THE PROPOSED RULEMAKING ORDER

As a preliminary matter, the Commission notes that there are three versions of Annex A. The first version is Annex A to the Commission's Proposed Rulemaking Order Entered on March 26, 2015, available on the Commission's website at www.puc.pa.gov/pcdocs/1349995.docx. The second version is proposed-form Annex A, which was published in the *Pennsylvania Bulletin* on June 6, 2015. 45 Pa.B. 2705. The third is final-form Annex A, which is attached to this Final Rulemaking Order. Of importance, Annex A available on the Commission's website and proposed-form Annex A as published in the *Pennsylvania Bulletin* differ in their treatment of proposed Section 62.81. Comments to the Proposed Rulemaking Order were filed by the Office of Consumer Advocate (OCA); the Public Utility Law Project (PULP); WGL Energy Services, Inc. (WGL Energy or WGL); the Pennsylvania Energy Marketers Coalition (PA Marketers); the National Energy Marketers Association (National Marketers); the Retail Energy Supply Association (RESA); and IRRC. Of those who commented on Section 62.81, IRRC, RESA and PULP referred to proposed-form Annex A as published in the *Pennsylvania Bulletin*, while OCA, WGL and NEMA referred to Annex A available on the Commission's website. The Commission believes that the commentators were clear in their references to Section 62.81, and for ease of review we will refer in this document to proposed-form Annex A as published in the *Pennsylvania Bulletin*.

Per the Commonwealth Documents Law, we reviewed the comments, which we will summarize and discuss, as necessary and applicable, to explain the determination of our final-form regulations. *See* 45 P.S. § 1202.

First, we will summarize IRRC's comments. Next, we will organize our summaries of comments into five main subject areas: 1) Regulation Uniformity, Variable Pricing, and Historical Pricing Information in the Disclosure Statement; 2) Disclosure Statement Customer Notification Requirements; 3) Contract Summaries; 4) Supplier Requests for Commission Review of Contract Terms; and 5) Notices Regarding Contract Expiration or Changes in Terms. In the Discussion section of this Order, we will provide dispositions of the comments in finalizing the changes to our specific regulatory provisions.

IRRC's Comments

In finalizing this rulemaking, IRRC asks the Commission to provide more details as to the costs and expenses pertaining to the rulemaking in the Regulatory Analysis Form submitted to IRRC with the final rulemaking. IRRC Comments at 1.

As to proposed Section 62.72, IRRC asks the Commission to ensure that terms such as billing cycle and billing month are clear, consistent, and unambiguous. *Id.* at 2.

As to proposed Section 62.75(c)(2)(iii), IRRC asks the Commission to ensure that the specific requirements for the variable pricing statement are clear to the regulated community. As to proposed Section 62.75(c)(2)(iv), IRRC recommends that the Commission revise the final-form regulation to require the NGS to state the guaranteed length of time that the starting price will be in effect and to require the NGS to provide the price to be charged, per billing unit, for the first month of service after the introductory period. IRRC Comments at 2-3. As to proposed Section 62.75(c)(2)(v),

IRRC recommends that the Commission specify not just “when,” but “how” a customer will receive notification of price changes. *Id.* at 3. IRRC recommends deleting “The NGS’s information shall appear first and be prominent” from proposed Section 62.75(c)(10), finding it unnecessary. *Id.* As to proposed Section 62.75(c)(11), IRRC asks the Commission to consider keeping the language about Commission contact information, should a customer have a concern about the NGS disclosure statement. *Id.* at 3-4. Similarly, IRRC asks the Commission to consider retaining the universal service program information in Section 62.75(c)(13) or explaining why it should be removed. *Id.*

As to proposed Section 62.75(i), IRRC asks the Commission to explain in the final rulemaking how the regulated community could access the contract summary and how the regulated community would be made aware of any contract summary changes. IRRC Comments at 4. As to proposed Section 62.75(j), IRRC recommends that the Commission further require the NGS to provide the customer with notice if the contract is assigned and to include the name and contact information of the new NGS. *Id.* at 5.

As to proposed Sections 62.81(a)(1) and (2), IRRC questions the reasonableness of reducing the existing notice timeframes and recommends that the Commission keep the current timeframes in place until the gas industry moves to accelerated switching. IRRC Comments at 5. IRRC also asks that the Commission clarify the phrase “at least 30 days prior” in Section 62.81(a)(2). *Id.* at 5-6. IRRC also asks for clarification on proposed Section 62.81(a)(1)(vi). *Id.* at 6. As to Section 62.81(a)(2), IRRC recommends that the Commission revise the final-form regulation to allow a customer to elect to receive the options notice in electronic form as an alternative to first-class mail. *Id.* IRRC asks the Commission to correct and clarify clauses in Sections 62.81(a)(2)(ii)(C) and (D). As to proposed Section 62.81(b), IRRC recommends requiring the disclosure statement to inform the customer as to the possibility of being rolled onto a variable rate plan at the end of a fixed duration contract if the customer does not respond to the notices. *Id.*

Regulation Uniformity, Variable Pricing, and Historical Pricing Information in the Disclosure Statement: Sections 62.72 and 62.75(c)

RESA urges the Commission to use this rulemaking as an opportunity to establish a set of fair and balanced rules that adequately protect consumers while not stifling natural gas competition. RESA Comments at 1; *see also* National Marketers Comments at 1. RESA notes that consistency in the disclosure rules between the electric and natural gas industries is important since unnecessary differences may confuse customers and burden NGSs' operations. RESA Comments at 3. RESA generally agrees with the Commission that modifications should be made to the rules to reflect "lessons learned," and that the electric rules can later be aligned, as necessary, based on the Commission's final determination in this rulemaking. *Id.*

Although we did not propose in the *Proposed Rulemaking Order* to alter the Section 62.75(c)(2)(ii) requirement that an NGS must provide the starting price in a variable contract, RESA contends that NGSs should not be required to include a starting price in the disclosure statement for a variable price contract. RESA Comments at 2, 4-5. RESA explains that it can be difficult to include a starting price, as some NGSs base their variable prices on the actual costs incurred to purchase natural gas supply in the market. *Id.* at 4. Disclosing the starting price requires those NGSs to estimate future costs and assume the risk for at least one billing cycle. *See id.* In turn, the NGS may need to charge the customer a higher starting price than otherwise necessary to ensure that this risk is covered. *Id.* RESA contends that this could result in an NGS making a business decision not to offer a variable price product or not to offer any products at all. *Id.* at 4-5.

Rather than mandating that NGSs include a starting price in the disclosure statement, RESA believes that the Commission should require NGSs to either include a starting price or prominently disclose to the customer that the starting price will be provided when the first bill is received or through the website of the NGS. RESA Comments at 5. RESA believes this would empower the customer to decide whether or

not to switch to an NGS that does not provide the starting price, thereby allowing the market to dictate when and what pricing information is shared. *Id.* Alternatively, if the Commission retains the starting price requirement in the disclosure statement for the first full billing month per existing Section 62.75(c)(2)(ii), RESA urges the Commission to permit this mandate to be fulfilled through the use of a formulaic contract price that enables the customer to calculate the bill using the contract, publicly available rates, or price indices. *Id.* at 5. RESA further stresses that NGSs should be permitted to decide whether ceiling prices are part of their contracts. *See id.* at 2, 6.

RESA explains that advance notice to customers of variable price changes would be very burdensome to NGSs and unhelpful to customers who will not know about price changes until after receiving their bills. RESA Comments at 6-7. RESA strongly opposes the proposal to provide 24-month historical pricing data, largely based on the proposed disclaimer language itself, “which accurately suggests that the data is essentially meaningless.” *Id.* at 7. RESA contends that providing such historical data will more likely confuse and frustrate customers than effectively educate customers. *Id.* at 7. RESA suggests instead that the Commission could require an NGS to share historical information only in the event that a customer requests that kind of historical data. *Id.* at 8. RESA also urges a less stringent requirement wherein NGSs would only need to disclose general historical trends, such as a range of percentages by which prices have changed over the prior two years. *Id.* Moreover, if the Commission maintains the historical data requirement in the final regulations, RESA asks for an express exemption as to the provision of this historical information for an NGS product that is based on a pre-defined pricing formula or on publicly available market indices. *Id.* at 8. RESA notes that new NGSs and those with new variable priced products would not be able to provide this historical data, thereby placing them on uneven footing with incumbent NGSs. *Id.* at 9.

RESA also believes that NGSs should not be required to include a specific prescribed pricing methodology in the disclosure statement, finding that setting forth general conditions of variability is sufficient and consistent with the rules in the electric industry. RESA Comments at 2, 9-10.

In a similar vein to RESA, the National Marketers express concern that the requirement to include the initial starting price will prevent the offering of certain products in the competitive retail natural gas marketplace. National Marketers Comments at 2 (discussing products that utilize NYMEX-plus pricing, where the initial price will likely not be known when the disclosure statement is provided). The National Marketers note that if a competitive variable priced product is linked to the utility default service price, which changes on a quarterly basis, then the NGS will not know or be able to calculate the initial starting price for a contract term beginning after the next quarterly utility default service price change. *Id.* Similar to RESA, the National Marketers contend that disclosing a formulaic contract price should be sufficient to comply with the initial starting price requirement in the variable pricing disclosure statement. *Id.* The National Marketers also assert that changing to a billing month construct instead of a billing cycle construct for the natural gas industry may present operational problems for suppliers and utilities and unnecessarily and negatively impact the pricing structure of competitive products. The National Marketers believe this change in billing system logic would be costly, time-consuming, and unjustified. *Id.* at 3 (further recommending that these changes to the initial starting price requirements may not be prudent until the accelerated switching process and timeline has been fully vetted by stakeholders).

WGL Energy generally supports the uniformity of the disclosure rules between the gas and electric industries, but emphasizes that its comments focus on “recommending enhancement tweaks” and “not broad revisions.” WGL Energy Comments at 2-3. WGL Energy also contends that disclosing the initial starting price for a variable priced product is problematic. *Id.* at 4. WGL Energy believes a contract formula or a publicly stated

price or an industry index should be sufficient under the rules. *Id.* WGL Energy does not oppose the Commission's proposal in Section 62.75(c)(2)(ii) requiring the NGS to disclose the ceiling price, if applicable, or the proposal in Section 62.75(c)(2)(iii) to conspicuously state that there are no price limits. *Id.* at 3. WGL also does not oppose a rule that will require NGSs to notify customers when and how they will be informed of future price changes, but does think that requiring advance notice of all price changes would be overly burdensome. *Id.* at 4. WGL suggests permitting NGSs to provide publicly available 24-month historical pricing data "to the extent it exists." *Id.* at 5. WGL Energy seeks clarification from the Commission on how new NGSs or new products could meet the 24-month historical pricing requirement. *Id.* at 5.

The PA Marketers agree that informing the customer of the risks and benefits of a variable rate product is critical to ensuring that the customer knows what to expect with respect to price changes. PA Marketers Comments at 2. However, the PA Marketers stress that in a truly competitive marketplace NGSs should have the ability to sell an authorized product without discouraging customer interest and understanding. *Id.* The PA Marketers recommend allowing NGSs to include (beyond the "no ceiling statement") additional educational language that is short, concise, and accurately informs the customer of the potential benefits of a product. *Id.*

The PA Marketers urge the Commission "to chart a middle course between allowing suppliers to only say 'the variable price will vary' and requiring a calculable formula based on public indices." *Id.* at 3. The PA Marketers caution that a specific formula that a customer can use to calculate their bill total for service ahead of receiving the monthly bill may be impossible. *Id.* The PA Marketers explain that the calculation of a variable rate price each month depends on a range of factors: publicly available commodity prices; private factors like hedging and risk mitigation activities; and internal corporate factors (*e.g.*, customer service and operations expenses, legal and regulatory

compliance fees, etc.). *Id.* Therefore, the PA Marketers seek flexibility for suppliers who do not have the advantage of cost recovery and reconciliation like the utilities. *Id.*

The PA Marketers ask the Commission to reconsider requiring suppliers to disclose to a potential new customer the previous 24 months' average monthly billed prices for that customer's rate class and NGDC service territory. The PA Marketers question the efficacy of this information in light of wholesale energy markets subject to unpredictable price patterns and shifts (*e.g.*, the historic drop in natural gas prices due to hydraulic fracturing). PA Marketers Comments at 4-5. If the Commission proceeds with this proposal, the PA Marketers contend that the 24-month price history should be accompanied by a disclaimer noting: (1) that historical pricing is not indicative of present or future pricing; (2) that the utility price to compare (PTC) and the supplier price term may differ, meaning straight comparisons of rates may be misleading; and (3) that the entire value of a supplier's fixed price offer must be considered when comparing to the utility rate. *Id.* at 4. As for a new NGS entering the market, the PA Marketers recommend that the NGS disclose that it has no historic prices to provide, but moving forward will provide historical price information on each bill with an additional disclaimer until 24 months of data is available. *Id.* at 5.

OCA believes that while the proposed additional subparagraphs to Section 62.75(c)(2) are beneficial to consumers, Section 62.75(c)(2) may still not provide the necessary level of protection for consumers since the proposal allows an NGS to state that there is no limit for the pricing. OCA Comments at 4, OCA's Annex A. In OCA's view, this simple statement of no limit to the price does not allow the consumer to make an informed choice or assess the risks in a highly complex market. *Id.* Therefore, OCA recommends that the Commission require that a ceiling price be stated for the maximum price or change that can occur under the variable price plan. *Id.* at 5. OCA further contends that requiring a ceiling price on an NGS offer does not constitute price regulation because the NGS would dictate the ceiling price, not the Commission. OCA

Comments at 5 (explaining that the ceiling price merely serves as notice to the consumer of how high the price could go, thereby offering some protection and knowledge to the consumer). If the Commission allows variable price products to be marketed without specifying a ceiling price, OCA believes that the regulations should be amended to require that the variable pricing statement include a specific statement clearly indicating that there is no limit on how much the price may increase and that the price can fluctuate each billing period. *Id.* at 5-6, OCA's Annex A.

OCA agrees with the proposed change requiring an NGS to disclose the price to be charged for the first billing month, but notes it may be insufficient and misleading in this marketplace where introductory rates are common. Accordingly, OCA recommends that the Commission also require an NGS to specify the guaranteed length of time that the starting price will be in effect. OCA Comments at 6. OCA submits that the description of when consumers will receive notification of price changes, as proposed by Section 62.75(c)(2)(v), is unclear and that without information about what price is being charged, the consumer cannot make an informed decision about energy use and the need for a new price plan or supplier. *Id.* at 7.

OCA supports the proposed addition of Section 62.75(c)(2)(vi) regarding historical prices, but believes that one approach should be used to develop the average price in order to allow customers to properly compare average prices of NGS offers. OCA Comments at 7-8. OCA also believes NGSs should be required to disclose the highest and lowest price that has been charged for the customer's rate class and service territory in the last 60 months to ensure that customers have more complete information. *Id.* at 8, OCA's Annex A.

RESA, WGL, and OCA support the Commission's proposal to amend Section 62.75(c)(7) to facilitate "seamless moves" so that a customer can retain the same supply service instead of having to first receive default service when moving to a new location.

RESA Comments at 20; WGL Comments at 15; OCA Comments at 10, OCA's Annex A.

WGL and RESA agree that leaving the language "Automatic renewal is allowed at the same terms and conditions as long as the new agreement is month-to-month" in Section 62.75(c)(8) invites confusion and conflicting requirements and that the rule pertaining to contract expiration and change in terms notices and procedures is better included in proposed new Section 62.81. WGL Comments at 15-16; RESA Comments at 20.

OCA recommends minor changes to proposed Section 62.75(c)(9) to specify that type size should be no less than 12 point font. OCA Comments at 10, OCA's Annex A. OCA also asks that its website be added to 62.75(c)(11) and proposes other additional changes. *See id.*

RESA and WGL strongly support removing NGDC references in Sections 62.75(c), but agree with including a reference to the Commission's natural gas shopping website, PaGasSwitch.com. RESA Comments at 20; WGL Comments at 16. The PA Marketers and the National Marketers agree that it is now unnecessary to require a prominent display of NGDC information on NGS documents, as this may invite customer confusion and even risk creating the false impression that the NGS is "affiliated with" or "partnering with" the NGDC. PA Marketers at 8; National Marketers at 8 (averring that the current requirements place the NGS in the "unseemly position of promoting the utility even though the utility is not a party to the underlying transaction"). The PA Marketers and the National Marketers also support the proposal to reference the Commission's natural gas shopping website as a source for information and a beneficial shopping tool. *Id.*; National Marketers Comments at 8. OCA agrees that the Commission's PaGasSwitch.com website contains valuable information, but believes NGSs should continue to provide the Commission's telephone number, as only providing a webpage

assumes that all consumers have internet access. *Id.* OCA also recommends referring consumers to its own website where consumers can access OCA's natural gas shopping guide. *Id.*

PULP objects to the proposal to strike Section 62.75(c)(13) (requiring NGSs to include the name and number of the universal service program), as PULP believes it is critical for economically vulnerable customers to receive this information in order to make more informed decisions about their natural gas supply. PULP Comments at 3.

Disclosure Statement Customer Notification Requirements: Sections 62.75(d), 62.75(g), and 62.75(j)

Although we did not propose any changes to Section 62.75(d) regarding the three-day right of rescission that provides a level of consumer protection, PULP urges the Commission to require NGSs to inform the customer of this three-day rescission period at the time the customer contracts with the supplier and again in the disclosure statement. PULP Comments at 3-4. PULP avers that the three-day rescission period is a critical protection for consumers, particularly for those who agree to move to a competitive supplier during an in-person or telephone sales solicitation or other high-pressure sales pitch. *Id.* at 4.

As to proposed Section 62.75(g), OCA recommends that this provision include two notices, one sent “60 to 45 days” before and the second sent “30 days” before the expiration date or the effective date of the proposed changes. OCA Comments at 11, 14, OCA’s Annex A. OCA also notes that the phrase “whenever we propose to change the terms of service in any type of contract” could be misleading to consumers, as it suggests that an NGS has the ability to unilaterally change the terms of a contract. *Id.*

As to proposed Section 62.75(j), OCA agrees that an NGS should be required to inform the consumer that the contract is assignable. OCA Comments at 14. OCA

submits that the NGS should be required to disclose this information at the time the consumer enters into the agreement and also be required to provide the consumer with written notice if the contract is assigned to another supplier. *Id.* WGL believes that an assignment clause in a consumer contract is standard in the natural gas industry and that including assignment clauses in contracts should be sufficient disclosure to comply with the revised rule. WGL Comments at 16-17. In contrast, RESA believes that it is reasonable to require NGSs to note in the disclosure statement that the contract is assignable, as disclosing this information when enrolling the customer should minimize complaints in the future. RESA Comments at 21.

Contract Summaries: Section 62.75(i)

RESA supports the proposed basic framework for the one-page contract summary, but stresses that the finalized contract summary should be updated in accordance with the finalized regulations. RESA Comments at 10-11; *see also* WGL Comments at 5-6. RESA stresses that any periodic Commission revisions to the sample contract summary should be served on each licensed NGS and published in the *Pennsylvania Bulletin* in order to effectuate proper notice. *Id.* at 11. RESA states that the Commission should maintain its position to not require NGDC information on the contract summary, as including that information could lead one to falsely conclude that a business relationship between the NGS and the NGDC exists. *Id.* RESA also submits that including information on renewals of contracts and changes in contract terms is unnecessary in the one-page summary. *Id.* RESA supports including a general description of the expected start date of NGS service in the contract summary. *Id.* at 12.

As to the Commission's proposal that a contract start date be expressed as a generalized statement and not with reference to a specific date, the National Marketers and WGL submit that this approach would facilitate supplier compliance because the

actual contract start date depends on the utility switching processes outside of the supplier's control. National Marketers Comments at 5; WGL Comments at 6-7.

WGL also believes that the contract summary need not be reflected in a distinct document that is separated from the contract itself or from other marketing and disclosure materials, as this adds costs to suppliers without adding significant value to the customer. WGL Comments at 6 (adding that including renewal and change of terms notices in a one-page contract summary is confusing and unnecessary); *see also* PA Marketers Comments at 5-6.

The PA Marketers agree with the Commission's position that: (1) the contract summary should be a brief, single-page document in a graphic/box format, summarizing only the key contract terms necessary to assist a customer when comparison-shopping; and (2) that the inclusion of NGDC contact information is unnecessary and lacks relevance to the customer when shopping, as the inclusion of NGDC information leads some customers to wrongly believe that a utility endorsement or affiliation with the supplier exists. PA Marketers Comments at 5. The PA Marketers suggest that the contract term field for month-to-month variable contracts simply state that the customer will be renewed on a monthly basis. *Id.* at 6.

OCA agrees that a one-page contract summary can benefit the customer, but submits that the following additional information should be included to aid consumers:

- Natural Gas Supplier Information: Inform the customer that "the NGS charges will replace the PTC identified on the customer's bill or the NGS charges of the customer's prior supplier."
- Natural Gas Price Structure: Add "a statement of the highest and lowest price charged by the NGS to this customer class served by this NGDC over the past 60 months."

- Natural Gas Supply Price: Add language indicating that “any introductory rate must be so identified and state the rate that will be in effect following any introductory or promotional rate. If the price has not been set for the first month after the introductory period, a statement on how the rate will be established, whether or not it is a variable rate, when the rate will be provided to the consumer and state that the rate may be higher than the introductory rate.”
- Statement Regarding Savings: Add “compared to the PTC” to the end.
- Incentives: Add “and any criteria for obtaining any incentive or bonus.”

OCA Comments at 12-14.

Supplier Requests for Commission Review of Contract Terms

WGL submits that voluntary, informal reviews of contract summaries are a helpful service. WGL Comments at 7. WGL points out that Commission staff is already obligated to provide informal reviews and non-binding opinions on request as an aid. *See* 52 Pa. Code § 1.96 (relating to unofficial statements and opinions by Commission personnel). WGL believes that all suppliers have an independent duty to be knowledgeable of Commission regulations for compliance purposes per 66 Pa. C.S. § 2208. *Id.* at 14-15.

The PA Marketers support the Commission’s proposal to informally review sample contract summaries for all NGSs before they are implemented, just as the Commission did with the electric disclosure regulations. The PA Marketers explain that this will allow the Commission to make any necessary clarifications or corrections to ensure that the contract summary is implemented and disclosed with the interests of the customer in mind. PA Marketers Comments at 5-6.

RESA believes staff review of the contract summary is more beneficial if the staff review carries some weight and authority. RESA Comments at 12. If an NGS seeks informal staff review, RESA believes the NGS should receive a form letter acknowledging the consultation, a copy of which would be included in the NGS's Commission record folder. *Id.* As to any subsequent challenge of the adequacy of the contract summary, RESA suggests that “the fact that the NGS made the effort to seek and obtain staff consultation before acting would be documented.” *Id.* at 12-13. RESA also recommends that the Commission require its Bureau of Investigation & Enforcement (I&E) to review disclosure statements and issue private letters that no action of an enforcement nature will be taken based on the facts presented if I&E deems the proposed terms and conditions to be compliant with current regulations. *Id.* at 19.

Notices Regarding Contract Expiration or Changes in Terms: Section 62.81

RESA and the National Marketers support the proposed time periods for the initial and options notices because they align with the rules applicable to the electric industry. RESA Comments at 13; National Marketers Comments at 5. By implementing the same rules, the Commission avoids potential confusion or frustration for customers receiving multiple notices at different times from their combined NGS/EGS. RESA Comments at 13-14. RESA further contends that uniformity avoids subjecting NGSs serving in a combined role to an overly burdensome administrative process, which discourages the offering of combined products and otherwise interferes with the development of a competitive retail energy market. *Id.*; *see also* National Marketers Comments at 5-6. RESA believes that mirroring the timeframes in the electric industry outweighs any concerns about the customer possibly not being able to expeditiously switch suppliers. *Id.* at 14. RESA states that, at most, the customer would have to remain with the NGS for an additional month, but since changes currently occur within 11-40 days, a customer would have sufficient time to switch to another NGS upon receipt of the options notice 30 days prior to the change. *Id.* RESA recommends that the Commission consider other

alternatives, such as requiring NGSs to add content to the initial notice explaining that if the customer waits for the options notice, the customer may not be able to switch to another NGS until the following month. *Id.* at 15.

The PA Marketers also recommend adopting the 60-day and 30-day notice time frames from the electric rules, with similar caveats expressed by RESA and the National Marketers. *See* PA Marketers Comments at 6. While the 60-day and 30-day notice timeframes of the electric rules should easily apply to the natural gas rules, WGL strongly believes that one notice provided forty-five days before the end of a fixed duration contract (of at least one year) should be sufficient. WGL Comments at 8.

RESA opposes the proposed 30-day advance notice of a price change to a customer who was on a fixed term contract and was then converted to a month-to-month contract as a result of not responding to an options notice. RESA Comments at 15. RESA opines that even if NGSs were able to accomplish the “formidable task of accurately forecasting prices far enough in advance to satisfy the 30-day notice requirement, the cost of mailing this would be extremely high.” *Id.* The resulting inundation of information on a frequent basis would likely confuse most customers. *Id.* RESA believes that the NGSs would likely need to charge higher rates, making them less competitive, and resulting in higher prices for customers. *Id.* Instead, RESA recommends requiring NGSs “to inform customers that a failure to respond may result in conversion of a fixed term contract to a month-to-month contract with no advance notice of price changes.” *Id.* at 15-16 (adding that NGSs that do not plan to use this option would simply leave this information out of the options notice).

As to the automatic re-enrollment provision in proposed Section 62.81(a)(2)(ii)(A)(I), RESA urges the Commission to permit conversion of a fixed term contract to a month-to-month contract without requiring advance notice of price changes. RESA Comments at 17 (adding that requiring advance notice of prices would hinder the

Commission's goal of promoting the retail natural gas market). The National Marketers contend that this requirement for advance notice of price changes for variable priced products is particularly problematic because the supplier cannot forecast the market changes that would be required to provide advance notice. National Marketers Comments at 6 (explaining that this would require more hedging by the supplier). Critically, the National Marketers assert that this increases the costs and risks of providing the product. *Id.* at 7. Since a customer would be free to leave the next day without an early termination fee, the supplier's costs and risks are even greater. *Id.*

The PA Marketers also believe NGSs should not be required to provide 30-day advance notice of a price change to a customer who is on a fixed price contract that automatically renews to a month-to-month product. PA Marketers Comments at 6. The PA Marketers explain that since significant technical challenges limit an NGS's ability to predict wholesale market prices 30 days in advance, the Commission should focus on moving forward to solve the comparably simpler technical challenge of accelerated switching for gas customers. *Id.* Faster switching will ensure that customers have the ability to respond in near-real time to new preferences and opportunities without putting an unreasonable burden on suppliers – “a burden that could have the unintended consequence of driving suppliers away from the marketplace all together.” *Id.* at 6. The PA Marketers urge the Commission to adopt a more reasonable timeframe for the price notification notice, such as 10-15 days, and to include the option of email or SMS text notification to ensure that the customer still receives notice in a timely manner. *Id.* at 6. The PA Marketers also believe that the NGSs should have a more reasonable timeframe by which to determine the variable price for the next billing cycle. *Id.*

RESA, the PA Marketers, and WGL urge the Commission to permit the options notices to be sent electronically, provided that the customer has agreed to accept electronic communications. RESA Comments at 18; PA Marketers Comments at 7; WGL Comments at 14. RESA and the PA Marketers believe that in today's world of

ever-increasing electronic communication, embedding a first class mail requirement in the regulations would be imprudent as that form of communication may become outdated. RESA Comments at 18; PA Marketers Comments at 7. RESA, the PA Marketers, and WGL also believe that the options notice is unnecessary in a situation where the NGS does not propose any changes in terms of service. RESA Comments at 19 (suggesting that the content of the initial notice should be revised to note that an options notice will be sent only if there is a proposed change in the terms of service); PA Marketers Comments at 7; WGL Comments at 14. The National Marketers suggest that if the customer has provided the NGS with an alternative means of contact besides mailing address (*e.g.*, email address or cellular phone number for text notifications), the supplier should be allowed to honor the customer's expressed preferred means of contact for receiving the options notice. National Marketers Comments at 7-8.

In contrast to the Commission's assertion in the *Proposed Rulemaking Order* at this Docket regarding proposed Section 62.81(b)(1)(i), WGL contends that auto-renewals that include cancellation fees are sound public policy. WGL Comments at 10. WGL notes that similar processes have been in place in Maryland since the inception of choice programs there (1997 for gas choice and 2001 for electric choice) and have worked effectively and efficiently. *Id.* WGL, which has one of the largest shopping customer bases in Maryland, reports that the average WGL customer in Maryland has been with the company under a contract with fixed price auto-renewal for seven years. *Id.* at 10-11. In 2014, approximately 90% of WGL Energy customers auto-renewed at a fixed price, about 5% chose to terminate their contract, and the remaining 5% proactively chose to stay with WGL under a new contract with a different pricing option. WGL points out that auto-renewals provided price protection for WGL customers during the polar vortex and other times when prices have spiked. *Id.* at 11. WGL contends that mandating affirmative signatures and disallowing auto-renewals with early cancellation fees will lead to reduced supplier retention rates and diminished competitive markets and product offerings in Pennsylvania. *Id.* at 12.

WGL supports the clarification of the word “term” in Section 62.81 of the regulations to reflect “duration” for the time length of the contract. WGL Comments at 9. The PA Marketers also support the Commission’s proposal to change the word “term” to “duration,” as “duration” is more accurate than using “length.” PA Marketers Comments at 7. While RESA does not necessarily object to the phrase “fixed duration contracts,” RESA believes that the change may raise more questions since it is not commonly used in other industries. RESA Comments at 16 (opining that “fixed length contracts” may be preferable from the perspective of plain language, as it is more easily understood by the average consumer than “fixed duration contracts”).

PULP recommends that the Commission require NGSs to include information about universal service programs in the options notice so that consumers are made aware of all options, including possible financial assistance or energy efficiency and conservation measures, to help reduce monthly bills. PULP Comments at 4-5.

OCA supports the Commission’s proposed Section 62.81, especially the requirement that consumers receive 30 days’ advance notice of a price change if the NGS is placing the customer on a month-to-month contract. OCA Comments at 14. While OCA does not propose thorough language revisions to Section 62.81, it requests that the Commission provide clarification that a customer whose fixed-term contract has expired and who will be placed in a variable priced month-to-month contract receive 30 days’ notice of pricing changes. *Id.* at 15 (citing *Final-Omitted Rulemaking Order Re 52 Pa. Code §§ 54.5, 54.10*, Docket No. L-2014-2409385 at pp. 33-36 (Order entered April 3, 2014)).

DISCUSSION AND DISPOSITION

The Public Utility Code grants the Commission the power to license NGSs and establish standards to govern the conduct of NGSs, including requiring the provision of

clear, adequate, accurate, and timely information to customers. *See* 66 Pa. C.S. §§ 2208(a) and 2208(f) (citing Chapter 56 of Commission regulations regarding Standards and Billing Practices). Under its mission statement, the Commission “balances the needs of consumers and utilities; ensures safe and reliable utility service at reasonable rates; protects the public interest; educates consumers to make independent and informed utility choices; furthers economic development; and fosters new technologies and competitive markets in an environmentally sound manner.”⁵ The Commission has a duty to facilitate the competitive natural gas supply market and to remove any impediments to market development without compromising consumer protection. *See* 66 Pa. C.S. §§ 2203, 2206, 2208; *see also* 52 Pa. Code Chapter 62 (generally).

Section 501 of the Public Utility Code empowers the Commission to promulgate regulations that are necessary or proper to exercise its powers and perform its duties. 66 Pa. C.S. § 501. The Commission need not “consider expressly and at length each contention and authority marshalled by a party to the [rulemaking] proceeding,” but must fully explain its decision in accepting the thesis of one party and rejecting the contentions of another party. *University of Pennsylvania v. Pa. Public Utility Commission*, 485 A.2d 1217, 1222-23 (Pa. Cmwlth. 1984). Through this Order, we finalize revisions to our existing natural gas customer disclosure information regulations at 52 Pa. Code §§ 62.72 and 62.75, and add Section 62.81.

Disposition of Section 62.72

As to proposed Section 62.72, IRRC asked the Commission to ensure that terms such as billing cycle and billing month are clear, consistent, and unambiguous throughout the regulations. IRRC Comments at 2. *Billing cycle* is a term of art in the industry, which refers to billing time periods and the frequency of billing. *See* National Marketers Comments at 3. In addition to defining what constituted a *billing month*, we used the term twice in these regulations, in both instances referring to the first time period in

⁵ *See* PUC Mission Statement, available at http://www.puc.state.pa.us/about_puc.aspx.

which the customer is billed, which must be at least 26-35 days. *See* Annex A, Sections 62.75(c)(2)(iv) , 62.81(a)(2)(ii). The distinction was proposed to ensure that customers who have an introductory rate receive that rate for at least one full month. This issue can arise in the electric industry where customers have accelerated switching that can result in a first bill being issued for less than a full month.

In order to address IRRC's concerns regarding language consistency and unambiguity, we will remove references to *billing month* throughout the final regulations. *See* Annex A, Sections 62.72, 62.75(c)(2)(ii), 62.81(a)(2)(ii). This is consistent with the electric regulations where neither *billing month* nor *billing cycle* are defined. *See* 52 Pa. Code § 54.2 (relating to definitions). The Commission is unaware of any issues resulting from the lack of definition of these terms in the electric regulations. The Commission also notes that the supplier switching processes are much different in the gas industry than in the electric industry due to differences in industry operations and markets. Therefore, to the extent that the Commission remains concerned about the length of a customer's introductory rate, it can be raised as part of a future rulemaking on the subject of accelerated switching in the natural gas industry, should such a rulemaking be initiated by the Commission.

In this section on definitions, *billed prices* is defined as "the disclosed NGS prices on the customer bill." 52 Pa. Code § 62.72. Since we use both singular and plural of *billed price(s)*, we will add appropriate parentheticals to the finalized definition for purposes of clarification. *See* Annex A, Section 62.72. We will change "price" to "billed price" in Section 62.81 for purposes of clarification. *See* Annex A, Sections 62.81(a)(2)(ii), 62.81(a)(2)(ii)(A)(I), and 62.81(a)(2)(ii)(A)(II).

Disposition of Section 62.75

Section 62.75(c)(2)(ii)

Although we did not propose altering the Section 62.75(c)(2)(ii) requirement that

an NGS must provide the starting price in a variable contract, RESA, the National Marketers, and WGL contend that NGSs should not be required to include a starting price in the disclosure statement for a variable price contract. RESA Comments at 2, 4-5; National Marketers Comments at 2; WGL Comments at 2-4. RESA contends that this requirement could result in NGSs making business decisions not to offer variable price products or not to offer any products at all. RESA Comments at 4-5. Instead, RESA proposes that the Commission should require NGSs to either include a starting price or prominently disclose to the customer that the starting price will be provided either when the first bill is received or through the website. *Id.* at 5. RESA adds that this would empower the customer to decide whether or not to switch to an NGS that does not provide the starting price, thereby allowing the market to dictate when and what pricing information is shared. *Id.* If the Commission retains the starting price requirement in the disclosure statement for the first full billing month per existing Section 62.75(c)(2)(ii), RESA urges the Commission to permit this mandate to be fulfilled through the use of a formulaic contract price that enables the customer to calculate the bill using the contract, publicly available rates, or price indices. *Id.* at 5.

The National Marketers suggest that making changes to the initial starting price requirements may not be prudent until the accelerated switching process and timeline has been fully vetted by stakeholders. National Marketers Comments at 3.

In contrast to the NGS community, OCA recommends requiring that the actual maximum potential ceiling price be stated to offer more protection and knowledge to the consumer. OCA Comments at 5. OCA contends that this would not result in price regulation by the Commission because the NGS (and not the Commission) would dictate the ceiling price.

In its Comments, IRRC notes concerns with the ability of customers to calculate the first month's bill if alternative methods, such as formulas, are used in lieu of an actual

projection. IRRC Comments at 3. The Commission has declined to adopt the alternative methods for calculation of the first month's bill that were proposed by the NGS commentators. While we appreciate the comments and concerns of the NGS community that this requirement could impede market development and the availability of certain variable priced products, we believe this requirement governing starting prices and ceiling prices is an important consumer protection, hence our decision not to propose any amendments to Section 62.75(c)(2)(ii). Other stakeholders, such as OCA and PULP, have filed comments seeking more consumer protection measures in this section. *See* OCA Comments at 4-5; PULP Comments at 2-3. However, we will not require an NGS to provide a ceiling price for the maximum price change that could occur under a variable price plan. While this may not constitute direct price regulation, as OCA seeks to assure us, this requirement would still potentially interfere with certain product offerings and thus indirectly interfere with or affect the prices and products offered in the market. *See* OCA Comments at 4. Importantly, the statement in Section 62.75(c)(2)(iii) that "there is no limit on how much the price may change" is a simple, clear, and direct notice/alert to the customer.

Furthermore, Sections 62.75(c)(2)(iii)-(vi) also provide more customer protections. The disclosure statement for residential and small business electric supply customers also does not require disclosure of a maximum ceiling price. *See* 52 Pa. Code § 54.4 (relating to bill format for residential and small business customers). We will also not make any sweeping changes to this provision until the accelerated switching process and timeline has been fully vetted by stakeholders, should the Commission proceed with initiating changes to the regulations relating to supplier switching. *See* National Marketers Comments at 3. Accordingly, we find that retaining the existing starting and ceiling price provisions is reasonable and balances stakeholder interests. *See* Annex A, Section 62.75(c)(2)(ii). As will be discussed below, deleted Section 62.75(c)(2)(iv) has been incorporated into final Section 62.75(c)(2)(ii).

Section 62.75(c)(2)(iii)

As IRRC points out, in proposing this Section, we inadvertently referred to the NGDC instead of the NGS. IRRC Comments at 2. Therefore, we will replace NGDC with NGS, as the supplier is the entity responsible for providing “a clear and conspicuous statement that there is not a limit on how much the price may change” from one billing month to the next. *See* Annex A, Section 62.75(c)(2)(iii).

The National Marketers assert that changing to a billing month construct instead of a billing cycle construct for the natural gas industry may present operational problems for suppliers and utilities and negatively impact the pricing structure of competitive products. The National Marketers believe this change in billing system logic would be costly, time-consuming, and unjustified. National Marketers Comments at 3. As was discussed above, to address the *billing month* vs. *billing cycle* concern, we will retain *billing cycle* in order to avoid any potential operational problems for suppliers and utilities.

OCA believes that the statement proposed in Section 62.75(c)(2)(iii) does not allow the consumer to make an informed choice or assess the risks in a highly complex market. Specifically, OCA requests that the phrase “or on how high the price may go” should be added to the end of Section 62.75(c)(2)(iii). *See* OCA’s Annex A. We appreciate OCA’s comments, but find that the requested additional phrase is duplicative and unnecessary, especially since we already propose requiring “a clear and conspicuous statement that there is not a limit on how much the price may change from one billing cycle to the next.” *See* Annex A, Section 62.75(c)(2)(iii). Furthermore, this language mirrors the language in our electric regulations. *See* 52 Pa. Code § 54.5(c)(2)(ii)(B). Therefore, in an effort to prevent redundancies and to maintain unity and harmony between the electric and gas disclosure regulations, we will retain this language. *See* Annex A, Section 62.75(c)(2)(iii).

Section 62.75(c)(2)(iv)

OCA agrees with the proposed change requiring NGSs to disclose the price to be charged for the first billing month, but notes it may be insufficient and misleading in this marketplace where introductory rates are common. Accordingly, OCA recommends that the Commission also require an NGS to specify the guaranteed length of time that the starting price will be in effect. OCA Comments at 6-7. IRRC and OCA recommended that the Commission revise the final-form regulation to require the NGS to state the guaranteed length of time that the starting price will be in effect and to require the NGS to provide the price to be charged, per billing unit, for the first month of service after the introductory period if the starting price is introductory. IRRC Comments at 2-3; OCA's Annex A. OCA also requests that the phrase "a statement that the price could change in the second month" be added this provision.

The NGS community does not voice opposition specific to the language in this provision, but RESA believes that setting forth general conditions of variability is sufficient and consistent with the rules in the electric industry. RESA Comments at 2, 9-10; *see also* PA Marketers Comments at 2-3 (seeking flexibility for suppliers who do not have the advantage of cost recovery and reconciliation like the utilities).

We agree with OCA and IRRC that adding information pertinent to a product with an introductory price would provide the consumer with more knowledge when making a decision about a particular product. Therefore, we will add OCA's recommended language pertaining to introductory prices, modified to use *billing cycle* in lieu of *billing month*, as discussed above. *See* Annex A, Section 62.75(c)(2)(ii). However, we will not add OCA's desired additional phrase that "a statement that the price could change in the second month," as that language is unnecessary and duplicative in light of Section 62.75(c)(2)(iii)'s requirement that an NGS "shall provide a clear and conspicuous statement that there is not a limit on how much the price may change from one billing cycle to the next." *See* Annex A, Sections 62.75(c)(2)(ii)-(iii). Also, upon review, we

determined that Section 62.75(c)(2)(iv) was duplicative of Section 62.75(c)(2)(ii). Therefore we have revised Section 62.75(c)(2)(ii) to include the pertinent provisions of Section 62.75(c)(2)(iv). We have also renumbered subsequent Sections 62.75(c)(2)(v)-(vii) to account for this change.

New Finalized Section 62.75(c)(2)(iv)

As to succeeding Section 62.75(c)(2)(iv) (which was previously Section 62.75(c)(2)(v)), the PA Marketers urge the Commission “to chart a middle course between allowing suppliers to only say ‘the variable price will vary’ and requiring a calculable formula based on public indices.” PA Marketers Comments at 3. The PA Marketers caution that requiring a specific formula that a customer can use to calculate their bill total for service ahead of receiving the monthly bill may be impossible. *Id.* The PA Marketers explain that the calculation of a variable rate price each month depends on a range of factors. *Id.* The NGS community desires flexibility for suppliers who do not have the advantage of cost recovery and reconciliation like the utilities. *See id.*; *see also* RESA Comments at 6-7; *see also* National Marketers Comments at 2.

WGL Energy does not oppose requiring NGSs to notify customers when and how they will be informed of future price changes, but thinks that requiring advance notice of all price changes would be overly burdensome. WGL Comments at 4. OCA seeks to add the language “before such price change goes into effect” in order to require some kind of advance notification of a price change to the consumer. *See* OCA Comments at 7.

IRRC recommends that the Commission specify not just “when,” but “how” a customer will receive notification of price changes. IRRC Comments at 3. We find this reasonable additional language may help consumers and not overly burden suppliers. Therefore, we added “and how” to the final-form regulation. *See* Annex A, Section 62.75(c)(2)(iv). Mindful of the flexibility sought by the suppliers, this description of when and how the customer will receive notification of price changes must be clear and

concise, but need not contain a specific formula. We appreciate OCA's desire for consumers to be made aware of all price changes in advance, but we believe that the imposition of such a requirement may be overly burdensome to suppliers and may significantly restrict their product offerings.

New Finalized Section 62.75(c)(2)(v)

Succeeding Section 62.75(c)(2)(v) (which was previously Section 62.75(c)(2)(vi)), pertains to the requirement that a customer may request, from an NGS, historical average prices from the past 24 months for that customer's rate class and NGDC service territory. A similar provision is found in our electric regulations. *See* 52 Pa. Code § 54.5(c)(14)(i). The intent behind this historical price requirement is to provide customers with helpful information regarding price variability from month-to-month, season-to-season and between suppliers.

RESA strongly opposes this requirement, contending that the historical data "is essentially meaningless," especially in light of Section 62.75(c)(2)(vi), which requires a statement that "historical pricing is not indicative of present or future pricing." RESA Comments at 7. RESA instead offers a less stringent requirement wherein the NGS would disclose general historical trends, such as a range of percentages by which prices have changed over the past two years, upon request by a customer. *Id.* at 8. The PA Marketers question the efficacy of this information as wholesale energy markets are subject to unpredictable price patterns and shifts (*e.g.*, the historic drop in natural gas prices due to hydraulic fracturing). PA Marketers Comments at 4-5. The NGS community also points out that this requirement potentially places new NGSs, who do not have 24 months' worth of historical data, on uneven footing with incumbent NGSs. RESA Comments at 9; WGL Comments at 4-5; PA Marketers Comments at 5.

In contrast with the NGS community, OCA supports this regulatory provision and seeks even more additional language to ensure adequate disclosure. *See* OCA Comments at 8 (seeking to require the previous 60 months of historical price information).

The Natural Gas Choice and Competition Act, 66 Pa. C.S. §§ 2201 to 2212, charged the Commission with overseeing restructuring in the natural gas industry and promoting the competitive retail gas supply market while still ensuring consumer protection. *See* 66 Pa. C.S. § 2206 (relating to consumer protections and customer service). In the *Proposed Rulemaking Order*, we acknowledged that the 24-month price history requirement does not necessarily provide demonstrative information to consumers. *Proposed Rulemaking Order*, Docket No. L-2015-2465942, at p. 13. However, we kept it as a proposal in an effort to educate consumers on the seasonal variability and magnitude of volatility of energy prices. *See id.*; *see also* 52 Pa. Code § 54.5(c)(14)(i). We appreciate OCA's concerns and proposals, but we do not believe that adding the additional language will necessarily assist the consumer in understanding more about a particular supplier contract or product offering. Importantly, imposing more costs and burdens on suppliers may curtail the ability of suppliers to offer lower, competitive retail prices, which are beneficial to consumers. *See* RESA Comments at 1-2; WGL Comments at 18; PA Marketers Comments at 3-5; National Marketers Comments at 1.

Therefore, in balancing the comments of OCA and the supplier community, we will retain the historical price requirement as proposed and not enhance or reduce the requirement. *See* Annex A, Section 62.74(c)(2)(v). This requirement ensures that a consumer is empowered and has access to historical price information from a particular NGS and the means to learn about possible historical price trends, relative price levels, and the degree of any volatility in the gas supply market. Additionally, Section 62.75(c)(2)(vi) provides clear knowledge to consumers about variable prices by requiring

in the disclosure statement the phrase “historical pricing is not indicative of present or future pricing.”

We are persuaded by the supplier community’s comments that this requirement potentially places new NGSs (who do not have 24 months of historical data) on uneven footing with incumbent NGSs. RESA Comments at 9; WGL Comments at 4-5; PA Marketers Comments at 5. Therefore, if no price history or no representative price information is available for the product, then the NGS shall inform the customer of this fact. Accordingly, the final-form version of Section 62.75(c)(2)(v) has been amended by adding a sentence as follows:

(v) A telephone number and Internet address at which a customer may obtain the previous 24 months’ average monthly billed prices for that customer’s rate class and NGDC service territory. If an NGS has not been providing service in a rate class and NGDC service territory for 24 months, the NGS shall provide the average monthly billed prices for the months available to date. **If no price history or no representative price information is available for the product, the NGS shall inform the customer of this fact.**

Annex A, Section 62.75(c)(2)(v). We believe the provision, as amended, balances the interests of suppliers and consumers.

New Finalized Section 62.75(c)(2)(vi)

Succeeding Section 62.75(c)(2)(vi) (which was previously Section 62.75(c)(2)(vii)) proposes requiring the NGS to provide in “plain language, a statement that historical pricing is not indicative of present or future pricing.” We strongly believe this is an important consumer protection that is not a burdensome requirement on suppliers, hence our recent addition of this provision in our electric disclosure statement regulations. *See* 52 Pa. Code § 54.5(c)(14)(ii). OCA supports this provision, while other parties do not contest this provision. *See* OCA Comments at 9. Therefore, we will retain this provision as proposed. *See* Annex A, Section 62.75(c)(2)(vi).

Section 62.75(c)(7)

In Section 62.75(c)(7), we proposed removing the requirement that the NGS must cancel the contractual agreement if the consumer moves from one physical residence to another. We made this proposal in order to facilitate *seamless moves*, wherein a customer has the opportunity to retain the same NGS when moving from one physical residence to another without first having to go on default supply service provided by the NGDC. *See Investigation of Pennsylvania's Retail Natural Gas Supply Market*, Docket No. I-2013-2381742, at p. 22 (Final Order entered December 18, 2014).

RESA, WGL, and OCA support the Commission's proposal to amend Section 62.75(c)(7) to facilitate *seamless moves* so that a customer can retain the same supply service instead of having to first receive default service when moving to a new location. RESA Comments at 20; WGL Comments at 15; OCA Comments at 10, OCA's Annex A. In light of that agreement and our belief that *seamless moves* promote the retail competitive natural gas supply market, we will retain this provision as proposed. *See Annex A, Section 62.75(c)(7)*.

Section 62.75(c)(8)

In Section 62.75(c)(8), we proposed removing the sentence that allows for automatic renewal of contracts at the same terms and conditions so long as the new agreement is a month-to-month contract. WGL and RESA agree with the Commission in that leaving this language in the regulations invites confusion and conflicting requirements and that the rule pertaining to contract expiration and notices in Section 62.81 is a better place to provide automatic renewal standards. *See WGL Comments at 15-16; see RESA Comments at 20*. OCA asks the Commission to require that renewal provisions be provided for all contractual supplier agreements so that the consumer understands what occurs at the end of the agreement. *See OCA Comments at 9*.

On review, we agree with RESA and WGL that removing this provision avoids potential confusion, especially in light of our proposed standards in Section 62.81. We appreciate OCA's concern, but do not believe renewal provisions need to be provided for all contracts, as certain contracts may not have renewal provisions and this requirement could improperly interfere with such contracts. Furthermore, Section 62.75(g) regarding the end-of-contract disclosure statement notification also provides a comparable consumer protection. Therefore, we will retain this provision as proposed. *See Annex A, Section 62.75(c)(8).*

Deletion of Existing Section 62.75(c)(9)

In our *Proposed Rulemaking Order*, we proposed deleting the current Section 62.75(c)(9), believing that an NGS need not provide the name and telephone number of the supplier of last resort, which is most likely the NGDC in that customer's service territory. This requirement could confuse a customer as to the relationship between the NGS and the NGDC. RESA and WGL strongly support removing the NGDC or supplier of last resort reference. RESA Comments at 20; WGL Comments at 16. Other parties did not comment on this proposal. Therefore, we will delete existing Section 62.75(c)(9). *See Annex A.*

New Finalized Section 62.75(c)(9)

As to the succeeding Section 62.75(c)(9) (which was previously Section 62.75(c)(10)), we proposed adding the requirement that the NGS explain the "limits on price variability" in type size larger than the type size for the terms of service. IRRC asks the Commission to ensure that it was being specific in the requirements for the variable pricing statement, so that such requirements are clear for the regulated community. IRRC Comments at 2. OCA recommends adding the phrase "but no less than 12 point" font to the regulation. OCA Comments at 10. Other parties do not comment on this subsection. We appreciate OCA's proposed addition, the intent of which is to ensure that the disclosure statement is in a readable font size. We expect that this explanation of the

limits on price variability, penalties, fees or exceptions will be clearly legible and stand out.

While we acknowledge IRRC's concerns, in our parallel electric disclosure regulation at 52 Pa. Code § 54.5(c)(10), we do not mandate a particular font size for this explanation of limits on price variability. In order to maintain uniformity, especially if consumers receive gas and electric from the same supplier, we will not mandate a minimum 12-point font size in these regulations.

New Finalized Section 62.75(c)(10)

As to the new Section 62.75(c)(10) (which was previously Section 62.75(c)(11)), IRRC recommended deletion of the sentence: "The NGS's information shall appear first and be prominent." IRRC Comments at 3. Since that sentence is extraneous in light of our determination that only the NGS contact information needs to be provided, we will delete that sentence in the final rule. *See* Annex A, Section 62.75(c)(10).

Deletion of Existing Sections 62.75(c)(12)-(13)

In the *Proposed Rulemaking*, we proposed deleting Section 62.75(c)(12), which requires a statement directing the customer to the Commission due to dissatisfaction with the contract's terms of service. We believe referring the customer to the natural gas shopping website, PaGasSwitch.com, is more helpful than referring the customer to the Commission, as self-diagnosis of a customer's concern or question may be more effective and quicker in resolving an issue than first calling the Commission. IRRC also asked the Commission to consider keeping this requirement, as some consumers may not have access to the Internet. We understand IRRC's concern and will therefore add the Commission's general information telephone number in the newly finalized Section 62.75(c)(11). Section 62.75(c)(11) will require "[a] statement providing that information about shopping for a gas supplier is available at www.PaGasSwitch.com or other successor media platform as determined by the Commission, by calling the

Commission's telephone number at 1-800-692-7380, and at www.oca.state.pa.us." The customer may also call the supplier, as the supplier's phone number must be provided on the contract disclosure statement. *See* Annex A, Section 62.75(c)(11).

We also proposed deleting Section 62.75(c)(13), which requires a statement providing universal service program information. PULP objects to the deletion of 62.75(c)(13), as PULP believes it is critical for economically vulnerable customers to receive this information in order to make more informed decisions. We understand PULP's concern and agree that it is critical for economically vulnerable customers to have access to such information. However, there are other avenues to access this information, such as the Commission's website and phone number and OCA's website,⁶ which we will incorporate into these regulations in the newly finalized Section 62.75(c)(11).

In order to alleviate customer confusion, we believe it is important to minimize the inclusion of any contact information other than NGS contact information, as including universal service program information may give the impression that the NGS has customer assistance programs or that the supplier is affiliated with the utility.⁷ The Commission has a duty to facilitate the competitive gas supply market and to remove any impediments to market development without compromising consumer protection. *See* 66 Pa. C.S. §§ 2203, 2206, 2208; *see also* 52 Pa. Code Chapter 62 (generally). We stress that this disclosure statement governs the contract between the supplier and the customer; it is not a contract with the utility or for any customer assistance program services. Requiring extraneous information and third party information may place unnecessary restraints on these contracts. *See* RESA Comments at 1-3, 20; PA Marketers Comments at 1, 8; National Marketers Comments at 1, 8; WGL Comments at 2, 16.

⁶ *See* http://www.oca.state.pa.us/information_links/UniversalServNos.htm.

⁷ The Commission's Bureau of Consumer Services has experienced customer confusion regarding this parallel universal service program requirement in the electric regulations at 52 Pa. Code § 54.5(c)(10).

New Finalized Section 62.75(c)(11)

OCA requests that its website be added to this section (which was previously Section 62.75(c)(12)), along with the Commission's telephone number, in order to provide consumers with more access to information and resources. *See* OCA Comments at 10-11. We agree with OCA that including this information could aid consumers without adding unnecessary information to the disclosure statement. Therefore, in addition to the reference to PaGasSwitch.com, we will add OCA's website and the Commission's general telephone number to Section 62.75(c)(11). *See* Annex A, Section 62.75(c)(11).

Sections 62.75(d), 62.75(g), and 62.75(j)

Although we did not propose any changes to Section 62.75(d), PULP urges the Commission to require NGSs to inform the customer of the three-day rescission period at the time the customer contracts with the supplier and again in the disclosure statement. PULP Comments at 3-4. We believe that requiring the notification of the three-day right of rescission, as currently established in Section 62.75(d), is sufficient customer protection. As the subject matter of Section 62.75 is "Disclosure statement for residential and small business customers," adding another requirement to inform the customer of the three-day rescission period at another point in time is also beyond the scope of this rulemaking and therefore other parties to this proceeding would not have been provided an opportunity to comment on this proposal by PULP. Furthermore, Chapter 111 of the Commission's regulations (relating to marketing sales practices for the retail residential energy market) already require a supplier to inform the customer of the three-day rescission period⁸ and to provide the customer with accurate and timely information.⁹ Therefore, we will not amend existing Section 62.75(d).

⁸ "A customer shall be informed of the 3-business-day right of rescission of the transaction under §§ 54.5(d) and 62.75(d) (relating to disclosure statement for residential and small business customers) and the customer's rights under section 7 of the Unfair Trade Practices and Consumer Protection Law (73 P. S. § 201-7) at the end of the verification process contact." 52 Pa. Code § 111.7(b)(3).

As to Section 62.75(g), OCA recommends that this provision include the “45 to 60 days” and the “30 days” timeframes in which consumers will receive the notices. OCA Comments at 11, 14, OCA’s Annex A. OCA also notes that the phrase “whenever we propose to change the terms of service in any type of contract” could be misleading to consumers, as it suggests that an NGS has the ability to unilaterally change the terms of a contract. *Id.* We agree with OCA’s suggested language clarifications as provided in OCA’s Annex A. Therefore, we will incorporate those language suggestions into the final-form regulation, noting the change in the notice timeframes, given our disposition of Section 62.81. *See* Annex A, Section 62.75(g).

As to Section 62.75(j), IRRC recommends that the Commission further require the NGS to provide the customer with notice if the contract is assigned to another supplier and to include the name of the new NGS and contact information. IRRC Comments at 5; *see also* OCA Comments at 14. With IRRC’s and OCA’s suggestions for clarification in mind, we will amend and finalize this section as follows:

If the contract is assignable, the NGS shall inform the customer accordingly at the time the parties enter into the contract. Prior to any contract assignment, the NGS shall provide notice to the affected customer, the affected NGDC and the Commission. The customer notice shall include the name of the new NGS, the contact information of the new NGS and language informing the customer that their contract terms and conditions remain unchanged.

See Annex A, Section 62.75(j).

Disposition of Contract Summaries and Supplier Requests for Commission Review

Contract Summaries Referenced in Section 62.75(i)

The Commission will not change the proposed language in Section 62.75(i), which will be finalized as follows: “The NGS shall provide, with the disclosure statement, a

⁹ A supplier “[s]hall provide accurate and timely information about services and products being offered. Information includes rates being offered, contract terms, early termination fees and right of cancellation and rescission.” 52 Pa. Code § 111.12(d)(4).

separate NGS contract summary in a format provided by the Commission.” See Annex A, Section 62.75(i). We emphasize that the contract summary will not be embedded in the regulations, as this will allow the Commission the flexibility to more easily and readily revise the contract summary in the future, with stakeholder input, to address arising issues or changes in the evolving energy markets. See *Proposed Rulemaking Order*, Docket L-2015-246594 at p. 16; see also *Final Omitted Rulemaking Order Re Electric Disclosure Statement*, Docket No. L-2014-2409385 at pp. 15, 21, 25-27 (Final Order entered April 3, 2014). In response to IRRC’s concern that stakeholders may not be provided an opportunity to comment on any proposed revisions to the contract summary, the Commission notes that as the contract summary is being adopted as written in Attachment A to this Order. The Commission is required to give all stakeholders notice and an opportunity to be heard prior to rescinding or amending this contract summary. See 66 Pa. C.S. § 703(g) (relating to rescission or amendment of orders). The Commission has and will continue to comply with this statutory requirement.

The parties generally agree as to the basic proposed framework for and benefits of the one-page contract summary. See RESA Comments at 10-12, WGL Comments at 5-6, National Marketers Comments at 5, PA Marketers Comments at 5-6, OCA Comments at 12-14. RESA contends that Commission revisions to the contract summary should be published in the *Pennsylvania Bulletin* in order to effectuate proper notice. In response to this concern, the Commission will include a copy of the most updated contract summary on its website. If the Commission or any other stakeholder seeks to revise the contract summary, the Commission will ensure that proper notice is given to all interested stakeholders as required by law.

The supplier community requests that *Contract Start Date* in the summary be expressed as a generalized statement and not with reference to a specific date, as the actual contract start date depends on the utility switching processes outside the supplier’s control. In light of this valid concern, we will add “the approximate” to the start date row

as follows: *Plain language regarding the approximate start of NGS service. See Attachment A.*

In light of our replacement of the word “term” with “duration” throughout these final-form regulations, we will also replace “term” with “duration” in the contract summary. *See id.; see Annex A, Section 62.81.*

The supplier community also contends that including any information on renewal and change of terms notices in a one-page contract summary is confusing and unnecessary. *See RESA Comments at 12; National Marketers Comments at 5; WGL Comments at 6-7.* The purpose of this requirement is to make customers aware of what happens at the end of the contract and to take steps necessary to avoid any unexpected and potentially adverse outcome that the customer may encounter upon expiration of the contract. Accordingly, we will maintain this section within the contract summary, but add the label “End of Contract” and shorten the description to “Treatment of customer at the end of contract in plain language.” *See Attachment A.* Suppliers will be afforded more flexibility to provide a general, concise statement in this portion of the contract summary.

OCA requests the inclusion of additional information to the one-page contract summary in order to aid consumers. *See OCA Comments at 12-14.* We appreciate OCA’s suggestions, but caution that inclusion of too much information potentially undermines the very purpose of the contract summary: to be a concise and effective tool for easily understanding the significant terms and conditions of the supply contract. However, we do agree with some of OCA’s suggestions and will make the following clarifications to the contract summary. For the Natural Gas Supplier Information section, we will change “gas commodity charges” to “gas commodity/supply charges.” *See Attachment A.* For Natural Gas Price Structure, we will change “fixed or variable” to “fixed, variable or other,” as the supplier may offer a product with a price structure, such

as a flat price product, that does not neatly align with either a fixed or variable pricing scheme. For the Natural Gas Supply Price section, we will add the phrase “full disclosure” to the description of any introductory rate. *See id.* For the Incentives section, we will add “criteria” and “conditions” to the description. *See id.*

Supplier Requests for Commission Review of Contract Terms

As WGL soundly notes in its comments, Commission staff may provide informal, non-binding opinions as to the form and legality of supplier contracts and supplier contract summaries. *See* 52 Pa. Code § 1.96 (relating to unofficial statements and opinions by Commission personnel), WGL Comments at 14-15. Suppliers do have an independent duty to know and understand Commission regulations for compliance purposes under 66 Pa. C.S. § 2208(b). *See* WGL Comments at 14-15. Commission staff and the Commission’s Office of Competitive Market Oversight will continue to provide informal feedback to reasonable requests by suppliers to review contract statements.

RESA contends that Commission staff review of the contract summary would be more beneficial if the staff review carried some weight and authority. RESA Comments at 12. RESA suggests that the Commission require I&E to review disclosure statements and issue private letters that no action of an enforcement nature will be taken based on the facts presented – if I&E deems the proposed terms and conditions to be compliant with current regulations. *Id.* at 19. We note that I&E is an independent bureau that prosecutes service and rate complaints pertaining to utilities and suppliers under the Commission’s jurisdiction. Requiring I&E to issue these private “no action” letters, which are advisory in nature, could hamper and improperly interfere with I&E’s enforcement efforts. *See* 66 Pa. C.S. § 308.2(b) (relating to prohibition on commingling of functions). Therefore, we will not direct I&E to review disclosure statements for form and legality.

Disposition of Section 62.81

Use of the Term “Fixed Duration/Length Contract” in Section 62.81

Most parties endorse the Commission’s proposal to change the word “term” to “duration” in this section for clarification purposes. WGL Comments at 9; PA Marketers Comments at 7. While RESA does not object to “fixed duration,” RESA opines that “fixed length” may be more easily understood by the average consumer. RESA Comments at 16. As “fixed duration contract” is definitionally more precise and less ambiguous than “fixed term” or “fixed length” contract, we will retain “fixed duration contract.”¹⁰ *See* Annex A, Section 62.81. However, in light of RESA’s concern, we note that the contract summary will refer to the duration/length of the contract in order to facilitate the consumer’s understanding. *See* Attachment A.

Timeframes for Initial and Options Notices in Sections 62.81(a)(1) and 62.81(a)(2)

The supplier community generally supports the proposed time period for the initial and options notices because the 45-60 day advance notice for the initial notice and the 30-day advance notice for the options notice align with the rules applicable to the electric industry. RESA Comments at 13, National Marketers Comments at 5; PA Marketers Comments at 6. WGL believes one 45-day options notice is sufficient. WGL Comments at 8. OCA and PULP do not provide language changes or suggestions to the notice timeframes. However, IRRC questions the reasonableness of reducing the existing notice timeframes and recommended that the Commission keep the current timeframes in place until the gas industry moves to accelerated switching. IRRC Comments at 5. Currently, the Commission’s regulations require NGSs to send notices to customers at about 90 days and 60 days prior to the expiration of a contract or the effective date of a proposed change in terms. *See* 52 Pa. Code § 62.75(g).

¹⁰ We also note that Ohio’s disclosure statement regulations refer to the “contract duration.” *See* OHIO ADMIN. CODE 4901:1-29-11(O).

This Commission is concerned about forcing uniform notice requirements at this time, since supplier switching standards and timeframes are much different in the gas industry than in the electric industry. However, we still believe it is important to improve internal switching processes and notice timeframes, to the extent possible. The twin goals of uniform gas/electric notice requirements are 1) to avoid subjecting NGSs to more burdensome and costly administrative requirements and 2) to avoid inundating and confusing consumers with multiple notices regarding their dual electric and gas supply contracts. As RESA attests, most switches usually occur within 11-40 days of a request. *See RESA Comments at 14.* Therefore, a customer who receives an options notice 30 days prior to the contract expiration may have to wait another month before effectuating a switch to a new supplier. Therefore, in finding middle ground between the current 60 day requirement and the proposed 30 day requirement, we will adjust the options notice requirement to “at least 45 days prior to the expiration date of the fixed duration contract or the effective date of the proposed change in terms.” *See Annex A, Section 62.81(a)(2).* This timeframe will better ensure that in most scenarios a customer will not have to wait until the following month if the customer switches soon after receiving the options notice.

Based on the adjustment to the options notice, we will adjust the 90-day initial notice requirement to “60 to 75 days prior to the expiration date of the fixed duration contract or the effective date of the proposed change in terms.” *See Annex A, Section 62.81(a)(1).* The electric regulations require the initial notice 45-60 days in advance of the contract expiration or change in terms and options notice at least 30 days prior. *See 52 Pa. Code § 54.10(1), (2)(ii)(A)(I).* Therefore, a supplier providing a dual gas/electric contract can send the dual gas/electric initial notice at least 60 days prior and the dual gas/electric options notice at least 45 days prior in compliance with both regulations. If a dual gas/electric supplier is concerned about the timing of its notices, the supplier may seek informal advice or a formal determination from the Commission. *See 52 Pa. Code §§ 1.96, 5.42.*

IRRC also expresses a concern that an NGS may attempt to send both the initial and options notice in the same mailing or at the same time. *See* IRRC Comments at 6. We believe the regulation, as written, indicates that two separate notices are required. However, to clarify that these notices must be disseminated at separate times, we will rewrite Section 62.81(a)(2) to indicate that the options notice must be disseminated after the initial notice: “An options notice shall be provided *after the initial notice* to each affected customer...” *See* Annex A, Section 62.81(a)(2).

Use of Electronic Notices in Sections 62.81(a)(1) and 62.81(a)(2)

RESA, the PA Marketers, and WGL Energy urge the Commission to permit the options notices to be sent electronically, provided that the customer has agreed to accept electronic communications. RESA Comments at 18; PA Marketers Comments at 7; WGL Comments at 14. IRRC also asked the Commission to revise the final-form regulation to allow a customer to elect to receive the options notice in an electronic form as an alternative to first-class mail. IRRC Comments at 6. In light of the increasing number of customers who prefer electronic mail, we agree with IRRC and we will allow the options notice to be transmitted electronically, so long as the customer has affirmatively elected to receive electronic notice. Therefore, we will revise and edit Section 62.81(a)(2) to state: “the notice shall be provided by first class mail unless the customer has affirmatively elected to receive electronic communications from the NGS.” *See* Annex A, Sections 62.81(a)(2).

Clarification in Section 62.81(a)(1)(vi)

IRRC asks the Commission for clarification on the language “how to avoid the fee, if possible” in proposed Section 62.81(a)(1)(vi), specifically inquiring as to whether a customer could be charged a cancellation fee, even if the customer has fulfilled all the requirements of the fixed duration contract. If a customer fulfills all the requirements of the fixed duration contract, the customer should not be charged an early cancellation fee. This language is similar to the language in our electric disclosure statement regulations.

See 52 Pa. Code § 54.10(1)(vi). As we stated in the electric disclosure statement final rulemaking order, the Commission strongly believes that customers nearing the end of a fixed duration contract need to be made aware if their existing contract has a cancellation fee. *See Chapter 54 Regulations Regarding Electric Disclosure Statement for Residential and Small Business Customers*, Docket No. L-2014-2409385 at p. 32 (Final-Omitted Rulemaking Order entered April 3, 2014). If the customer desires to switch suppliers, then the customer needs to know how to avoid any cancellation fee and not switch before the end of the contractual agreement with the current supplier. We have not received any complaints related to this language, but in light of IRRC's concerns, we will slightly modify and clarify the language in Section 62.81(a)(1)(vi). The final-form regulation will provide:

(vi) A statement indicating whether the existing fixed duration contract has a cancellation fee and an explanation of the fee amount and how to avoid the **cancellation** fee, ~~if possible~~, including notice of the date when the customer can choose a different product from the customer's existing NGS, choose an alternative NGS or return to the supplier of last resort.

Annex A, Section 62.81(a)(1)(vi).

Notice of Price Changes and Month-to-Month Contract Conversions in Section 62.81(a)(2)(ii)

Due to technical and administrative challenges, an increase in mailing costs, and an increase in business risks, the supplier community generally opposes requiring a supplier to provide a 30-day notice of a price change if a customer fails to respond to the options notice and is converted to a month-to-month contract. *See* PA Marketers Comments at 6; RESA Comments at 15-16 (contending this would lead to higher prices for consumers); National Marketers Comments at 7. In suggesting that a 10-15 day notice timeframe of price changes is more reasonable, the PA Marketers also note that suppliers could provide the option of email or SMS text notification to ensure that the customer still receives notice in a timely manner. PA Marketers Comments at 6.

The supplier community also urges the Commission to permit conversion of a fixed duration contract to a month-to-month contract without requiring advance notice of price changes. RESA Comments at 17-18; National Marketers Comments at 7. RESA contends that requiring this advance notice of the price change would “obliterate” the opportunity to convert a customer to a month-to-month contract after the customer fails to respond to the options notice. RESA Comments at 15.

OCA supports the 30-day notice of a price change in proposed Section 62.81(a)(2)(ii)(A)(I). *See* OCA Comments at 14. The purpose of the provision is to provide additional protection to those customers who do not respond to the options notice and are thereby converted to a month-to-month fixed or variable price contract without affirmatively agreeing to that type of product. *See Proposed Rulemaking Order*, Docket L-2015-2465942, at p. 21 (Order entered March 26, 2015).

IRRC questions whether it was still reasonable to allow an NGS to convert a customer from a fixed rate plan to a variable rate plan without affirmative customer consent. IRRC Comments at 6. Our electric disclosure regulations currently require the same 30-day notice of a price change and allow for conversion from a fixed rate plan to a variable rate plan. *See* 52 Pa. Code § 54.10(2)(ii)(A)(I). The conversion from a fixed rate plan to a variable rate plan has been a contractual practice in the retail energy markets since 2001. Accordingly, we implemented and will now finalize important additional consumer protections, such as the revised Section 62.75 on the required disclosure statement and this additional Section 62.81 on required customer notices regarding contract expiration or a change in contractual terms. Further, we agree with IRRC and will require the options notice to inform the customer of what will occur if the customer fails to respond to the notices. IRRC Comments at 6. Critically, a customer may still cancel the variable rate plan at any time without a penalty, as a month-to-month contract in this scenario must not, under these finalized regulations, include a cancellation fee. *See* Annex A, Section 62.81(b)(1)(i).

With respect to IRRC's question as to what happens to a customer if the NGS declines to renew a contract upon expiration, we note that the NGS is obligated to inform the customer of the available options in the options notice. In this scenario, a customer cannot remain with the current NGS; so, if the customer does nothing, the customer would return seamlessly to the supplier of last resort. We will add the following language to the regulation to address this scenario:

(i) A statement advising the customer of the specific changes being proposed by the NGS and informing the customer of how to exercise the customer's options, including the customer's ability to accept the proposed changes, to choose another product offering from the customer's existing NGS, to select another NGS or to return to the supplier of last resort, **and what will occur if the customer fails to respond to the notice. If the NGS intends to discontinue service to the customer at the end of the contract, the options notice must include a statement that the NGS will no longer serve the customer at the end of the contract and that the customer will be returned to the supplier of last resort if the customer does not select another NGS.**

See Annex A, Section 62.81(a)(2)(i).

We understand that the 30-day notice requirement in Section 62.81(a)(2)(ii)(A)(I) may impede the ability of suppliers to offer certain products, especially variable rate products. However, based on the above comments, and at this stage in the development of the market, the Commission believes the 30-day advance notice of price changes is still an important consumer protection. As noted in our Electric Disclosure Statement Final-Omitted Rulemaking Order, because many of the customers enrolled in fixed-term contracts have affirmatively chosen a fixed rate, these customers may need more information regarding the potential variability in rates they may experience upon contract expiration or when the terms of the contract are changed. *See Chapter 54 Regulations Regarding Electric Disclosure Statement for Residential and Small Business Customers*, Docket No. L-2014-2409385 at p. 32 (Final-Omitted Rulemaking Order entered April 3, 2014). We believe this same rationale applies in the competitive natural gas marketplace,

as well. Therefore, we will retain the language in Section 62.81(a)(2)(ii)(A)(I). *See* Annex A, Section 62.81(a)(2)(ii)(A)(I).

IRRC also asks the Commission to ensure certain terms, such as billed prices and marketed prices, are clear and consistent throughout these regulations. *See* IRRC Comments at 2. Under the definition in Section 62.72, a “billed price” is the “disclosed NGS price[] on the customer bill.” For purposes of clarity, we have inserted the word “billed” into the regulations Sections 62.81(a)(2)(ii), 62.81(a)(2)(ii)(A)(I), 62.81(a)(2)(ii)(A)(II), and 62.81(a)(2)(ii)(B). *See* Annex A, Sections 62.81(a)(2)(ii), 62.81(a)(2)(ii)(A)(I), 62.81(a)(2)(ii)(A)(II), and 62.81(a)(2)(ii)(B).

Cancellation Fees in Section 62.81(b)

Overall, commentators suggest few changes to proposed Section 62.81(b). Proposed Section 62.81(b) specifies that if a customer does not respond to the initial notice or options notice, then the fixed duration contract shall be converted into another fixed duration contract or a month-to-month contract, so long as neither converted contract contains cancellation fees. In contrast to that proposal, WGL Energy contends that auto-renewals that include cancellation fees are sound public policy and important features of a competitive market. WGL Comments at 9-13 (asserting that energy choice programs in Maryland that include these processes have been a success). WGL believes that disallowing auto-renewals with early cancellation fees will lead to reduced supplier retention rates and diminished competitive markets and product offerings in Pennsylvania. *Id.* at 12.

Similar to our rationale for Section 62.81(a)(2), the Commission proposed this provision to provide additional protection to those customers who do not respond to the options notice and are thereby converted to a month-to-month fixed or variable price contract without affirmatively agreeing to that type of product. WGL states that about 50% of customers do not re-sign due to inertia or the hassle of signing and returning a

new contract. WGL Comments at 12. WGL argues that allowing auto-renewals with cancellation fees in a regulatory environment with fair rules will benefit the retail energy market and provide customers with more competitive product offerings. *See id.*

We must balance our role of facilitating the market while still protecting the consumer. Notably, this consumer protection provision still exists in our electric regulations, 52 Pa. Code § 54.10(3)(i), and the retail electric supply market continues to grow and remain competitive. As we stated in the *Proposed Rulemaking Order*, the Commission does not have clear authority to set or regulate the amount of cancellation fees. Docket No. L-2015-2465942, at p. 21 (Order entered March 26, 2015). We expect and ask customers to stay alert for and act on expiration notices from suppliers. However, as WGL notes in its comments, approximately half of the customers, whether through neglect or inadvertence, will still overlook and ignore notices, later finding themselves automatically enrolled in a new product that potentially has a higher price and a cancellation fee. We do not want to establish rules that more easily allow a customer to be ensnared and held captive to hidden cancellation fees that are bundled with an auto-renewal. Aside from harm to individual customers, this could also freeze customer migration and cause serious harm to the overall impression of the competitive gas retail supply market. Therefore, we will retain the proposed language, which prohibits auto-renewals with cancellation fees. *See Annex A, Section 62.81(b).* Importantly, this regulation does not preclude a supplier from offering the customer a new product with cancellation fees, though the customer must affirmatively agree to that product.

CONCLUSION

Similar to our 2014 revisions and regulatory reforms in the electric industry, the Commission finalizes regulations at 52 Pa. Code §§ 62.72, 62.75, and 62.81 regarding customer disclosure information in the natural gas supply market. During the polar vortex in the winter of 2014, we observed first-hand the frustrations of customers

enrolled in variable priced electric supply contracts who were not sufficiently aware of potentially significant price increases due to fluctuating wholesale market conditions. We want to avoid this kind of occurrence in the retail gas supply market. We finalize these regulations in order to protect consumers and better inform customers about the scope and limits of rate variability, the terms and conditions of an NGS contract, and a customer's options prior to and after the expiration of their current contract for gas supply.

The finalized regulations, which are substantially similar to the finalized electric disclosure regulations, require enhanced disclosure information and notices from NGSs to customers. Well-informed customers are essential participants in a successful competitive retail market. Therefore, we finalize the attached updates and revisions to our regulations in order to create a more user-friendly marketplace that should continue to attract increased numbers of customers. *See* Annex A, Proposed 52 Pa. Code §§ 62.72, 62.75, and 62.81.

Accordingly, pursuant to Sections 501 and 2208 of the Public Utility Code, 66 Pa. C.S. §§ 501 and 2208; the Commonwealth Documents Law, 45 P.S. §§ 1201-1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; Section 204(b) of the Commonwealth Attorneys Act, 71 P.S. 732-204(b); Section 745.5a of the Regulatory Review Act, 71 P.S. § 745.5a; and Section 612 of the Administrative Code of 1929, 71 P.S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231, 7.232, and 7.234, we seek to finalize the regulations set forth in Annex A, attached hereto; **THEREFORE**,

IT IS ORDERED:

1. That the regulations at 52 Pa. Code Chapter 62 are amended as set forth in Annex A.

2. That the natural gas supplier contract summary is adopted as set forth in Attachment A to this Final Rulemaking Order.

3. That the Law Bureau shall submit this Final Rulemaking Order, Attachment A, and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.

4. That the Law Bureau shall submit this Final Rulemaking Order, Attachment A, and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review by the Independent Regulatory Review Commission.

5. That the Law Bureau shall deposit this Final Rulemaking Order, Attachment A, and Annex A with the Legislative Reference Bureau for final publication in the *Pennsylvania Bulletin*.

6. That these regulations shall become effective upon publication in the *Pennsylvania Bulletin*.

7. That the Commission's Office of Competitive Market Oversight shall provide further direction to currently licensed natural gas suppliers serving residential and/or small business customers regarding the submission of NGS Contract Summaries to the Commission for informal review.

8. That this Order and Annex A, revising the regulations appearing in Title 52 of the Pennsylvania Code Chapter 54 relating to Natural Gas Choice, be served on all licensed Natural Gas Suppliers, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and those parties who

submitted comments to the December 18, 2014 Final Order at Docket No. I-2013-2381742 and the Proposed Rulemaking Order at Docket No. L-2015-2465942.

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

10. That the contact person for legal issues related to this rulemaking is Jennedy S. Johnson, Assistant Counsel, Law Bureau, 717-265-8423. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Alyson Zerbe, Regulatory Coordinator, Law Bureau, 717-772-4597.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta", written in a cursive style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: April 21, 2016

ORDER ENTERED: April 21, 2016

ATTACHMENT A

Natural Gas Supplier Contract Summary

| | |
|-------------------------------------|---|
| Natural Gas Supplier Information | <i>Name, telephone number, website, etc. Plain language statement that NGS is responsible for gas commodity/supply charges.</i> |
| Natural Gas Price Structure | <i>Fixed, variable or other. If variable, based on what? If variable, how often is the price expected to vary? If variable, give any applicable ranges/ceilings. If no ranges/ceilings, a plain language statement indicating this fact. If variable, describe when the customer will receive notification of price changes in relation to time of month, final monthly meter read, billing cycle or when the price takes effect.</i> |
| Natural Gas Supply Price | <i>\$/unit or ¢/unit. If variable price, the first billing cycle's rate. Full disclosure of any introductory rate.</i> |
| Statement Regarding Savings | <i>Plain language that the supply price may not always provide savings to the customer.</i> |
| Deposit Requirements | <i>Any deposit requirements necessary for a customer and any terms associated with that deposit, in plain language.</i> |
| Incentives | <i>Any bonuses, discounts, cashback, offers, etc. and any associated terms, criteria and conditions, in plain language.</i> |
| Contract Start Date | <i>Plain language regarding the approximate start of NGS service.</i> |
| Contract Duration/Length | <i>In months, billing cycles, etc.</i> |
| Cancellation/Early Termination Fees | <i>Yes or no. If yes, describe the amount of the fee and how to avoid that fee, if possible.</i> |
| End of Contract | <i>Treatment of customer at the end of contract in plain language.</i> |

ANNEX A
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 62: NATURAL GAS CHOICE
Subchapter C. CUSTOMER INFORMATION DISCLOSURE

§ 62.72. Definitions.

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

Basic services—Services necessary for the physical delivery of natural gas to a retail customer, consisting of natural gas distribution services and natural gas supply services.

Billed ~~prices~~ PRICE(S)—The disclosed NGS ~~prices~~ PRICE(S) on the customer bill.

~~Billing month~~—~~A period of not less than 26 days and not more than 35 days.~~

City gate—The point where interstate pipelines deliver gas into NGDC facilities.

* * * * *

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

* * * * *

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

(1) Commodity charges shall be disclosed according to the actual prices and be presented in the standard pricing unit of the NGDC or other Commission-approved standard pricing unit. Commodity charges shall include estimated total state taxes. Commodity charges exclude State Sales Tax and county tax.

(2) The variable pricing statement (if applicable) shall include:

(i) Conditions of variability (state on what basis prices will vary) including the NGS's specific prescribed variable pricing methodology.

(ii) The starting price and the ceiling price, if the ceiling price is applicable. **IF THE PRICE IS INTRODUCTORY, THE VARIABLE PRICING STATEMENT SHALL INCLUDE A STATEMENT THAT THE PRICE IS AN INTRODUCTORY PRICE, THE DURATION OF THE**

INTRODUCTORY PERIOD AND THE PRICE FOR THE FIRST BILLING CYCLE AFTER THE INTRODUCTORY PERIOD.

(iii) If there is not a limit on price variability, the NGDC NGS shall provide a clear and conspicuous statement that there is not a limit on how much the price may change from one billing cycle to the next.

(iv) The price to be charged, per billing unit, for the first billing month of service.

(v)(iv) A description of when AND HOW the customer will receive notification of price changes.

(vi)(v) A telephone number and Internet address at which a customer may obtain the previous 24 months' average monthly billed prices for that customer's rate class and NGDC service territory. If an NGS has not been providing service in a rate class and NGDC service territory for 24 months, the NGS shall provide the average monthly billed prices for the months available to date. IF NO PRICE HISTORY OR NO REPRESENTATIVE PRICE INFORMATION IS AVAILABLE FOR THE PRODUCT, THE NGS SHALL INFORM THE CUSTOMER OF THIS FACT.

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

(3) An itemization of basic and nonbasic charges distinctly separate and clearly labeled.

(4) The length of the agreement, which includes:

(i) The starting date.

(ii) The expiration date, if applicable.

(5) An explanation of sign-up bonuses, add-ons, limited time offers, other sales promotions and exclusions, if applicable.

(6) An explanation of prices, terms and conditions for special services, if applicable.

(7) The cancellation provisions, if applicable. [When a customer moves from one location to another, even if the move is within an NGDC's service territory, the agreement is cancelled.]

(8) The renewal provisions, if applicable. [Automatic renewal is allowed at the same terms and conditions as long as the new agreement is month-to-month.

(9) The name and telephone number of the supplier of last resort.

(10)] (9) An explanation of limits on price variability, penalties, fees or exceptions, printed in type size larger than the type size appearing in the terms of service. Penalties shall be disclosed in actual dollars or a specific method for determining the actual dollars shall be disclosed.

[(11)] (10) Customer contact information that includes the name of the [NGDC and] NGS, and the NGS's address, telephone number, Commission license number and Internet address, if available. ~~The NGS's information shall appear first and be prominent.~~

[(12) A statement that directs a customer to the Commission if the customer is not satisfied after discussing the terms of service contained in the disclosure statement with the NGS.

(13) The names and telephone number for universal service program information.]

(11) A statement providing that information about shopping for a gas supplier is available at www.PaGasSwitch.com or other successor media platform as determined by the Commission. **BY CALLING THE COMMISSION'S TELEPHONE NUMBER AT 1-800-692-7380, AND AT WWW.OCA.STATE.PA.US.**

(d) Customers shall be provided a 3-day right of rescission period following receipt of the disclosure statement from the NGS.

* * * * *

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

[(1) "If you have a fixed term agreement with us that is longer than 3 months and it is approaching the expiration date, we will send you advance written notices at about 90 days and 60 days before the expiration date. If we propose to change our terms of service in any type of agreement, we will send you advance written notices at about 90 days and 60 days before the effective date of the change. If we are billing you directly for our services, then we will provide the notices as a bill message, a bill insert, or in a separate corresponding mailing. If the NGDC is billing our charges for us, then we will provide the notices in separate corresponding mailings. We will explain your options to you in these two advance notifications."

(2) The NGS may add appropriate language in the notice so that the notice may serve as an amendment to the original agreement if the customer affirmatively reselects the NGS. Affirmative reselection occurs when the customer initiates a telephone call to the NGS and during the conversation the customer accepts the new offer, the NGS initiates a telephone call to the customer and during the conversation the customer accepts the new offer, the customer accepts the new offer by signing a document and returning it to the NGS, or the customer acknowledges the acceptance of the new offer electronically, perhaps by checking a box on a form on the NGS's website. These are offered as examples and are not meant to be all inclusive. After a customer affirmatively reselects the NGS, the NGS is relieved of its obligation to fulfill outstanding notice requirements. If the change in terms notice is for a reduction in the price of the commodity charges, the NGS is required to send only one written notice at least 60 but not more than 90 days prior to the effective date of the price change. A fixed term agreement may be converted to a month-to-month agreement, either at the same terms and conditions or at revised terms and conditions, as long as the agreement converts from a fixed term to a month-to-month agreement and contains no cancellation penalties, in the event that the customer does not respond to the notice. A fixed term agreement may be converted to another fixed term agreement as long as the new agreement includes a customer initiated cancellation provision that allows the customer to cancel at any time

for any reason and contains no cancellation penalties, in the event that the customer does not respond to the notice.]

“If you have a fixed duration contract approaching the expiration date, or whenever we propose to change the terms of service in any type of contract, you will receive two separate written notifications, THE FIRST APPROXIMATELY 60 TO 75 DAYS IN ADVANCE AND THE SECOND 45 DAYS IN ADVANCE OF that precede either the expiration date or the effective date of the proposed changes. These notifications will explain your options going forward.”

(h) If the supplier of last resort changes, the new supplier of last resort shall notify customers of that change, and shall provide customers with the name, address, telephone number and Internet address, if available.

(i) The NGS shall provide, with the disclosure statement, a separate NGS contract summary in a format provided by the Commission.

(j) If the contract is assignable, the NGS shall inform the customer accordingly. AT THE TIME THE PARTIES ENTER INTO THE CONTRACT. PRIOR TO ANY CONTRACT ASSIGNMENT, THE NGS SHALL PROVIDE NOTICE TO THE AFFECTED CUSTOMER, THE AFFECTED NGDC AND THE COMMISSION. THE CUSTOMER NOTICE SHALL INCLUDE THE NAME OF THE NEW NGS, THE CONTACT INFORMATION FOR THE NEW NGS, AND LANGUAGE INFORMING THE CUSTOMER THAT THEIR CONTRACT TERMS AND CONDITIONS REMAIN UNCHANGED.

* * * * *

§ 62.81. Notice of contract expiration or change in terms for residential and small business customers.

(a) An NGS shall provide the following notices to customers prior to the expiration of a fixed duration contract or prior to a change in contract terms:

(1) An initial notice shall be provided to each affected customer 45 to 60 60 TO 75 days prior to the expiration date of the fixed duration contract or the effective date of the proposed change in terms. For a customer who has elected to receive electronic communications from the NGS, the notice shall be transmitted in the manner chosen by the customer. The initial notice must include:

(i) A general description of the proposed change in terms of service.

(ii) The date a change shall be effective or when the fixed duration contract is to expire.

(iii) An explanation of why a change in contract terms is necessary.

(iv) A statement indicating when a follow-up options notice shall be issued with details regarding the proposed change.

(v) A statement explaining that the options notice must discuss the customer's options to the proposed change in terms of service or expiring fixed duration contract.

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

(2) An options notice shall be provided by first class mail AFTER THE INITIAL NOTICE to each affected customer at least 30 45 days prior to the expiration date of the fixed duration contract or the effective date of the proposed change in terms. THE NOTICE SHALL BE PROVIDED BY FIRST CLASS MAIL UNLESS THE CUSTOMER HAS AFFIRMATIVELY ELECTED TO RECEIVE ELECTRONIC COMMUNICATIONS FROM THE NGS. The options notice must include:

(i) A statement advising the customer of the specific changes being proposed by the NGS and informing the customer of how to exercise the customer's options, including the customer's ability to accept the proposed changes, to choose another product offering from the customer's existing NGS, to select another NGS or to return to the supplier of last resort, AND WHAT WILL OCCUR IF THE CUSTOMER FAILS TO RESPOND TO THE NOTICE. IF THE NGS INTENDS TO DISCONTINUE SERVICE TO THE CUSTOMER AT THE END OF THE CONTRACT, THE OPTIONS NOTICE MUST INCLUDE A STATEMENT THAT THE NGS WILL NO LONGER SERVE THE CUSTOMER AT THE END OF THE CONTRACT AND THAT THE CUSTOMER WILL BE RETURNED TO THE SUPPLIER OF LAST RESORT IF THE CUSTOMER DOES NOT SELECT ANOTHER NGS.

(ii) Information regarding the new BILLED price or renewal BILLED price, including the price to be charged for the first billing month CYCLE of commodity service:

(A) If a customer fails to respond to the options notice and is converted to a month-to-month contract, the NGS shall provide a disclosure statement under § 62.75 (relating to disclosure statement for residential and small business customers).

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

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

(B) If a customer fails to respond to the options notice and is entered into a new fixed duration contract, the NGS shall provide the BILLED price to be charged and the length of the contract.

(iii)(C) The telephone numbers and Internet addresses, as applicable, for the Office of Consumer Advocate, the Commission, and PaGasSwitch.com.

(iv)(D) Language clearly visible on the front of the envelope used to provide the options notice stating that it contains important information regarding the expiration or changes in terms of the customer's natural gas supply contract.

(b) When a customer fails to respond to the initial notice and the options notice, the following apply:

(1) A fixed duration contract shall be converted to one of the following:

(i) A month-to-month contract, either at the same terms and conditions or at revised terms and conditions, as long as the contract does not contain cancellation fees.

(ii) Another fixed duration contract, as long as the new contract includes a customer-initiated cancellation provision that allows the customer to cancel at any time, for any reason, and does not contain cancellation fees.

(2) The converted contracts shall remain in place until the customer chooses one of the following options:

(i) Selects another product offering from the existing NGS.

(ii) Enrolls with another NGS.

(iii) Returns to the supplier of last resort.

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

**Rulemaking to Amend and Add Regulations to
Title 52 of the Pennsylvania Code, Sections 62.72,
62.75, and 62.81 Regarding Customer
Information Disclosure Requirements for Natural
Gas Suppliers Providing Natural Gas Supply to
Residential and Small Business Customers**

**Public Meeting – April 21, 2016
2465942 – OCM
Docket No. L-2015-2465942**

**STATEMENT OF
COMMISSIONER PAMELA A. WITMER**

In accordance with Section 1102 of the Commonwealth's Ethics Act, 65 Pa. C.S.A. § 1102, I will recuse myself from this Rulemaking due to my future employment with UGI Energy Services, a Natural Gas Supplier licensed in Pennsylvania.

DATE: April 21, 2016


**PAMELA A. WITMER
COMMISSIONER**

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COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION
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GLADYS M. BROWN
CHAIRMAN

May 18, 2016

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

Re: L-2015-2465942/57-309
Final Rulemaking
Customer Information Disclosure Requirements for Natural Gas
Suppliers Providing Natural Gas Supply to Residential and Small Business Customers
52 Pa. Code, Chapter 62

Dear Chairman Mizner:

Enclosed please find one (1) copy of the regulatory documents concerning the above-captioned rulemaking. Under Section 745.5(a) 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, on May 20, 2015, submitted a copy of the Notice of Proposed Rulemaking to the Senate Committee on Consumer Protection and Professional Licensure, the House Consumer Affairs Committee and the Independent Regulatory Review Commission (IRRC). This notice was published at 45 Pa.B. 2705 on June 6, 2015. The Commission also provided the Committees and IRRC with copies of all comments received in compliance with Section 745.5(b.1).

In preparing this final form rulemaking, the Commission has considered all comments received from the Committees, IRRC and the public.

Sincerely,

Gladys M. Brown
Chairman

Enclosures

pc: The Honorable Robert M. Tomlinson
The Honorable Lisa Boscola
The Honorable Robert Godshall
The Honorable Peter J. Daley, II
June Perry, Legislative Affairs Director
Bohdan Pankiw, Chief Counsel
Jennedy S. Johnson, Assistant Counsel
Daniel Mumford, OCMO Acting Director
Alyson Zerbe, Regulatory Coordinator

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE REGULATORY REVIEW ACT

ID Number: L-2015-2465942/57-309

Subject: Final Rulemaking
Customer Information Disclosure Requirements for Natural
Gas Suppliers Providing Natural Gas Supply to Residential
and Small Business Customers
52 Pa. Code Chapter 62
Pennsylvania Public Utility Commission


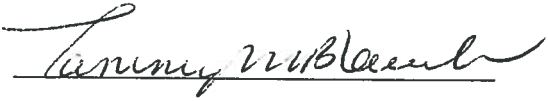

2016 MAY 18 PM 2:51

RECEIVED
IRRC

TYPE OF REGULATION

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

FILING OF REPORT

| <u>Date</u> | <u>Signature</u> | <u>Designation</u> |
|-------------|---|---|
| 5/18/16 |  | HOUSE COMMITTEE (Godshall) Consumer Affairs |
| 5/18/16 |  | SENATE COMMITTEE (Tomlinson) Consumer Protection and Professional Licensure |
| 5/18/16 |  | Independent Regulatory Review Commission |
| | | Attorney General |
| | | Legislative Reference Bureau |