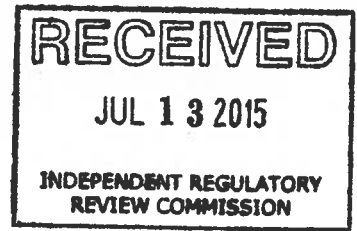


3101



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**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 : Docket No. L-2015-2465942
Natural Gas Suppliers Providing Natural Gas :
Supply to Residential and Small Business :
Customers :**

**Comments of
WGL Energy Services, Inc.**

I. Introduction

WGL Energy Services, Inc. (WGL Energy) is a licensed natural gas supplier (NGS) in the Commonwealth of Pennsylvania and first began serving commercial and residential customers in Pennsylvania in 2010.¹ WGL Energy has served natural gas supply markets since the advent of natural gas retail choice in 1996 in Maryland, the District of Columbia, Virginia, and Delaware. WGL Energy has been an active proponent of fair market rules that will facilitate retail energy competition in the jurisdictions in which it operates including Pennsylvania, and it filed comments on the Gas RMI Final Order² and on the issues identified in the Commission's Tentative Order of August 21, 2014 initiating this investigation, and participated in the Commission's retail electricity market investigation.

In the Proposed Rulemaking Order entered March 26, 2015 in this docket (Order) the Commission proposes to amend its natural gas supplier (NGS) customer information disclosure regulations at 52 Pa. Code §§ 62.72 and 62.75 applicable to residential and small business gas supply customers and to add new regulations at 52 Pa. Code § 62.81 governing NGS notice

¹ WGL Energy was formerly known as Washington Gas Energy Services, Inc.

² WGL Energy Comments, February 2, 2015, Docket No. I-2013-2381742 (Final Order entered December 18, 2014).

requirements also applicable to residential and small business gas supply customers. The revised regulations are set forth at Annex A of the Order.

In the Order the Commission recounts its prior actions addressing disclosure and notice regulations applicable to the electric industry, its solicitation of comments on disclosure and notice applicable to the natural gas industry so as to resolve inconsistencies between the rules for the industries (Tentative Order issued August 21, 2014 in Docket No. I-2013-2381742), its Final Gas RMI Order calling for further comments on the issues and its disposition of the issues with an invitation for further focused comments in this rulemaking. The Commission organized the issues that its proposed revised rules would resolve in the following four categories: (1) Regulation Uniformity, Variable Pricing, and Historical Pricing Information (Order, pp 5 – 14), (2) Contract Summaries (pp. 14 – 16), (3) Notices Regarding Contract Expiration or Changes in Terms (Order, pp. 16-21), and (4) Supplier Requests for Commission Review of Contract Terms (Order, p. 22). In addition, the Commission included a fifth category: Miscellaneous Disclosure Proposals and Concerns (Order, pp. 22 – 25). WGL Energy will address the issues in each of the foregoing categories.

WGL Energy appreciates the Commission's balanced evaluation of the comments proffered by interested parties including those of the Office Consumer Advocate (OCA), the gas utilities (PECO, Peoples, PGW and UGI) as well as supplier comments (RESA, NGS Parties, Valley Energy, NEM, WGL Energy) and the Commission's clear commitment to adopting progressive and workable regulations and guidelines for the enhanced working of competitive retail energy markets in the Commonwealth. WGL Energy views its comments below as recommending enhancement tweaks not broad revisions.

II. Regulation Uniformity, Variable Pricing, and Historical Pricing Information

WGL Energy generally supports the uniformity of the proposed revised gas rules with the adopted electric rules for notices and disclosures to consumers, as set forth in more detail below.

Ceiling on variable-priced products

In the Order the Commission proposes that NGSs provide consumers with an explicit, specific statement that variable-priced offerings have no ceiling if in fact that is the case (Annex A, Section 62.75(c)(2)(iii)). Such a statement is to be highlighted in a larger type size that stands out to the customer. The Commission rejected requiring that variable-priced offers include a ceiling and points out that the proposed gas rule is analogous to the same requirement in the electric rules at 52 Pa. Code § 54.10. WGL Energy does not oppose the adoption of this rule.

Disclosure of an Initial, Starting Price

The Commission proposes to require that NGSs follow a similar rule for disclosing the initial, starting price for variable-priced natural gas supply products (Annex A, Section 62.72) as electric generation suppliers (EGSs) must follow for disclosing the initial starting prices for variable-priced electric supply products (at 52 Ps. Code § 54.5(c)(2)(iii)). Because there is an accelerated three-day switching rule for the electric industry but not for the natural gas supply industry in Pennsylvania, the Commission is specifying that the initial, starting price for natural gas supply products must be disclosed at least for the first full billing “month” as opposed to the first billing “cycle” as in the electric rule (Order, p. 12). The Commission defines a “billing month” as “a period of not less than 26 days and not more than 35 days” a definition borrowed from the same definition at 52 Ps. Code § 56.2 (*Id.*). Further, the Commission solicits comments “on whether a formulaic contract price that

enables a customer to calculate its bill using the contract, publicly available rates or price indices should be considered in compliance with the provision of adequate disclosure for the first billing cycle” (Order, pp. 12, 13).

As the Commission observes, posting an initial starting price for a variable-priced product is problematic because in many instances the actual price is determined after the fact. Hence, requiring such a price is less desirable than adopting a rule with the three options noted by the Commission. WGL Energy submits that each option -- a contract formula, a publicly stated price or an industry index or indices -- should be allowed by the rules. Variable-priced energy products can provide significant savings during warm winter periods or cool summer periods but can produce very high prices during very cold winter periods or very hot summer periods. Imbedding the foregoing options in the rules should facilitate consumer understanding of the starting price for variable-priced products.

Notice of Future Price Changes

The Commission proposes a rule that will require NGSs to notify customers when and how they will be informed of future price changes, but will not require advance notice of all price changes which would be overly burdensome (Annex A, Section 62.75(c)(2)). The Commission did not imbed this requirement in the electricity disclosure regulations but incorporated it into the contract summary (52 Pa. Code § 54.5(i)). In the case of the natural gas industry, the Commission seeks to strengthen the reform and proposes to imbed into the disclosure regulations. WGL Energy does not oppose this rule, and submits that it should be included in future revised disclosure rules for the electric supply industry.

Provision of 24-month Price History

The Commission proposes that NGSs who offer variable-priced natural gas supply products follow the same rule of providing potential customers with a 24-month price history of the product that EGSs must follow for variable-priced electricity supply products (52 Pa. Code § 54.5(c)(14)(i)). The Commission believes historical price history is valuable because it enhances customer understanding of the seasonal variability and magnitude of monthly energy prices. The same disclaimer applicable to EGSs, namely that historical pricing is not indicative of present or future pricing, will apply to NGSs (Order, p. 13).

The Commission asks for comments on how NGSs entering the market or introducing a new product can meet the 24 month historical pricing information. Such NGSs would not possess that information for its own transactions. WGL Energy suggests that such NGSs be permitted to provide publicly available pricing data to the extent it exists. WGL Energy does not oppose the proposed rule and agrees with the Commission that NGSs should not be required to issue new disclosures to their current customers as an inappropriate interference with existing contracts.

III. Contract Summaries

Single-page Contract Summary

The Commission proposes to adopt the same one-page, read-able and reasonably sized graphic/box format contract summary practice for the natural gas industry that it adopted for the electric industry as to key, vital contract terms (Annex A, Section 62.75(i)). However, the proposed gas supply industry regulations will simply refer to the contract summary but will not embed the specifics in the regulations. Rather, the Commission will provide a specific contract summary format with requirements in a Final Rulemaking Order as an attachment, similar to Attachment A of the instant Order. The Commission is adopting

this approach to provide the flexibility and ease of revising the contract summary as energy markets evolve without initiating a formal rulemaking.

WGL Energy agrees that a succinct, one page contract summary would assist customers in understanding their contracts and supports the proposed revised contract summary rule. However, WGL Energy continues to believe that the contract summary need not be reflected in a separate and distinct document that is separated from the contract itself or from other marketing and disclosure materials. In WGL Energy's view such a requirement adds to the costs that suppliers must incur without adding significant value to the customer. WGL Energy does not oppose the use of distinct and separate contract summary sheets or documents, but submits that it should not be mandated. In crafting a contract summary for its electricity supply contracts, WGL Energy was able to work with the Commission's Staff to create an acceptable presentation without having to create a separate and distinct document.

In the electric contract summary, the Commission included renewal and change of terms notices and the Commission indicates that it now believes that including this information in the contract summary may confuse customers and invites further comments on this issue (Order, p. 16). WGL Energy agrees that including such information in a one page contract summary may be confusing and likely unnecessary as well. Such notices are best made in transmittals to customers as renewal of contracts approaches or when changes to material terms of the contract are made. Renewal and change of terms notices should not be part of a one page contract summary.

The Commission invites comments as to whether the contract summary should specify a "contract start date" (Order, p. 16). WGL Energy submits that such a requirement

is unnecessary as the start date is negotiated up front with the customer and may be dependent upon utility processes.

The Commission invites comments on whether it should informally review sample contract summaries for all NGSs before they are implemented as it did with the electric industry (Order, p. 16). WGL Energy submits that voluntary, informal reviews of contract summaries are helpful services that it supports.

IV. Notices Regarding Contract Expiration or Changes in Terms

A Separate Section For Supplier-to-Customer Notice Procedures

In adopting rules governing notices that customers should receive from an EGS as the end of a fixed-term contract approaches or when if the EGS proposes a change in contract terms, the Commission determined that EGS-to-customer notice procedures were sufficiently important to warrant a separate section in the regulations rather than being imbedded in disclosure regulations and guidelines (52 Pa. Code §§ 54.5, 54.10). Finding that NGS-to-customer notice requirements also warrant a new section, the Commission proposes a new Section 62.81 to replace current EGS notice provisions in 52 Pa. Code § 62.75(g). For consistency, new Section 62.81 will be substantially similar to 52 Pa. Code § 54.10. WGL Energy supports a separate section in the regulations for gas supplier-to-customer notice procedures.

Achievement of Consistency in Supplier Notices for Electricity and Natural Gas

Because of supplier switching timeframes that differ for the electric and natural gas supply industry, the Commission notes that achieving consistency is complicated. Accelerated supplier switching can occur in three days for electricity supply customers (52 Pa. Code § 57.174) and up to several weeks depending on meter read dates for natural gas

supply customers. The Commission has addressed these inconsistent notice timeframes before (see *Final Order on Clarification on Notice Requirements for Electricity & Natural Gas Disclosure Statements*, Docket No. L-2014-2409385 (Order adopted Oct. 2, 2014)) and indicates it intends to explore the possibility of accelerating gas supplier switching in the coming months since it is unclear what switching timeframes are achievable in the gas industry at this time. In the meantime, the Commission seeks comments from utilities and suppliers as to whether the 60-day and 30-day timeframes in the electric rules can be applied in the gas industry, and if not, what notice requirements would be appropriate in the gas industry and for dual-energy supplier customers. In particular, the Commission refers WGL Energy's prior comments that the electric notice rules are "very difficult to interpret," and invites interested parties to provide specific language to improve the rules.

WGL Energy observes that the electric industry benefits from having well-established EDI protocols to implement customer switching rules while the natural gas industry does not have such protocols. This may explain why a three day switching rule has been adopted for EGS-to-customer switching notices, but not for NGS-to-customer switching notices. As the Commission notes, there may be protocols that the natural gas industry can adopt to improve the switching notice times in the future.

The 60-day and 30-day notice timeframes in the electric rules apply to the notice periods that suppliers must meet as contract terms (i.e. durations) approach. While these timeframes should easily apply to the natural gas rules, WGL Energy continues to believe that one notice provided forty-five days before the end of a fixed contract term (duration of one year or longer) with a renewal price and cancellation fee should be allowed under the rules and that the auto-renewal process should be applicable to the foregoing if that is what customers want.

Clarification of the Meaning of Words in the Regulations

The Commission notes potential confusion between “fixed term” and “fixed price” and clarifies a “fixed term” refers to the length or duration of a contract for a specific period like six months or one year.(*e.g.*, six months, 12 months) and a “fixed price” refers to a price that is fixed and does not change (as opposed to a “variable price”). WGL Energy supports these clarifications.

The Commission points that use of the word “term” can be confusing because the use can refer to the “conditions” as part of the “terms and conditions” of a contract, or it can refer to the length or duration of the contract (a “term” of six months for example). For clarity the Commission proposes to changing the word “term” to “duration” in the regulations, and asks for comments on this proposal or whether the word “length” or any other word is more appropriate as these words are proposed in Section 62.81 (Annex A). WGL Energy supports the clarification of the word “term” in the regulations to reflect “duration” when the time length of the contract is meant. No such clarification is required with “term” is within the phrase “terms and conditions” which is well understood in contracts.

Auto-renewal Processes

The Commission notes WGL Energy’s prior request that auto-renewal contract processes be retained with reasonable cancellation fees, and explains that it has a public policy concern if it were to allow suppliers to automatically re-enroll customers into a new product with cancellation fees without affirmative customer consent (Order, p. 20). However, WGL Energy has been advocating that auto-renewal procedures should apply to customers under long term, fixed term contract renewals primarily because such procedures are what most customers prefer.

The Commission notes that WGL Energy advocates “reasonable cancellation fees” but the Commission does not have authority to set or regulate the amount of cancellation fees, and that while customers should be alert for and act on expiration notices from suppliers, some customers either through neglect or inadvertence, overlook and ignore notices and find themselves automatically enrolled in a new product that potentially has a higher price and a cancellation fee (Order, p. 20). WGL Energy would only note that cancellation fees are competitive features of consumer contracts and consumers have choices if they do not like a particular supplier’s cancellation fees. Moreover, the facts noted by the Commission to support its opposition to the auto-renewal of fixed term contracts are not entirely on point. A renewal of a fixed term contract at a new (and many times lower price depending on market circumstances) is not a new product. Such renewal represents a continuation of the same product at a different price.

The Commission rejects an auto-renewal process applicable to long term contracts with new prices and cancellation fees as potentially harming individual customers and adversely affecting the overall impression of the competitive gas supply market. However, WGL Energy does not believe that auto-renewals that include cancellation fees are contrary to sound public policy. Such 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. In WGL Energy’s view, these processes have been a significant factor in the growth of customer choice programs in that State and have likely saved consumers thousands or even millions of dollars. WGL Energy has one of the largest customer bases among competitive energy suppliers in Maryland, and 96% of these customers are on fixed price auto-renewal contracts. Because WGL Energy clearly communicates to the customer the details of auto-

renewal contract provisions, customers are aware of their options and appreciate the ease and convenience of the fixed price auto-renewal feature.

The average WGL Energy customer in Maryland has been with the company under a contract with fixed price auto-renewal for 7 years. 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 Energy but under a new contract with a different pricing option. Importantly, fixed rate auto-renewals provided price protection for WGL Energy customers during the polar vortex and other times when prices have spiked. In addition, the Early Renewal Program was created by WGL Energy to help electricity customers receive lower prices when wholesale energy pricing fell. This program allows customers to cancel their higher fixed priced contracts prior to the expiration date with no cancellation penalty, and renews the customer's contract early at a lower new price. These benefits and safeguards should be taken in to consideration by the Commission when evaluating whether auto-renewals with early cancellation fees should be permitted by the Commission.

Imposing an affirmative approval requirement may seem to be an appropriate way to protect consumers, particularly those that do not read notices, but limiting auto-renewal processes likely creates greater consumer harm than any burden of dealing with complaints. Where auto-renewal processes that allow cancellation fees are part of the working of the market, customers understand the processes, namely that if they do not act on a renewal notice, they will be automatically be renewed at a supplier's new contract rate and that they may be subject to an early cancellation fee. Customers will be provided with notice of the end of their current contract term, and they will know that if they do not like the new contract rate, they can cancel their contract by notifying the supplier and avoid the new price as well as a cancellation fee.

Importantly, it is WGL Energy's experience that many consumers like the option of not having to do anything if they like the renewal price.

It is WGL Energy's experience that if customers are required by rule to provide affirmative signatures for a new contract at the end of an existing contract, about 50% of such customers do not re-sign due to inertia or the hassle of signing and returning a new contract. This harms customers economically when the renewal prices are lower than the prior contract price due to market conditions. This has been WGL Energy's experience in Pennsylvania in electricity markets since the electricity rules barring auto-renewal contracts with cancellation fees became effective. On the other hand, where auto-renewal evergreen contract rules are in place and such rules are fairly administered and followed, suppliers are able to secure sound retention rates and consumers benefit because retail energy markets are very competitive and sustainable.

Not adopting rules that allow auto-renewals with early cancellation fees ignores an important market factor. To succeed in competitive retail energy markets, suppliers must incur and recover their cost to acquire customers. Mandating affirmative signatures and disallowing auto-renewals with early cancellation fees will lead to reduced supplier retention rates and diminished competitive markets. This would not promote the creation of competitive energy markets. Rather, it would limit the further development of competitive energy markets and promote utility default service in lieu of competition. WGL Energy submits that continued rejection of a process that allows for auto-renewals with early cancellation fees will cause suppliers to exit consumer markets in Pennsylvania and/or limit the variety of offers available to customers.

WGL Energy strongly supports the rejection of the OCA recommendation that customers who fail to respond to a renewal notice should be returned to an NGDC's supplier of last resort service rather than receiving month to month service at the expired contract price as is the current rule.

Prior Notice If Any Price Changes

For price changes under natural gas supply contracts with consumers, the Commission proposes to adopt the current electric rule that requires prior notice of any price changes for a customer that is rolled onto a "new product" due to that customer's non-response (Annex A, Section 62.81(b)(2)). The "new product" that is referred to here is a month-to-month variable price product that replaces the long term, fixed price contract the renewal notice of which the customer ignored, whether purposely or inadvertently. The Commission believes that the added protection of actual notice of even month-to-month variable price changes is necessary to protect customers who end up on this product without affirmatively agreement. The Commission notes that "this kind of product may require hedging by the supplier," and that deliberately the rule creates two classes of variable-price customers, namely those customers "that affirmatively enroll in a variable-price product and do not receive advance notice of routine price changes," and those customers "that end up on a variable-price product due to their failure to respond to expiration notices and receive advance notice of price changes." According to the Commission the former customer having sought the product understands and submits to the effects of a variable-price product, while the latter customer may not have desired the variable product and received it due to a failure to act on expiration notices.

With due respect to the Commission's consumer protection concerns, and successful suppliers must have similar concerns, WGL Energy submits that the advance notice rule for

customers who inadvertently (or even purposely) find themselves on a month-to-month variable-priced product will likely cause suppliers to expressly exclude offering such a product (and return the customer to the NGDC) or even exit the fixed term (duration), fixed price market.

Second Options Notice

The Commission proposes to carry over the electric rule requiring the second “options notice” to be delivered by first-class mail in a prominently labeled envelope to the companion natural gas rule and invites comment on whether first-class mail is an increasingly outmoded form of communication and that alternatives should be permitted and on whether only one notice should be required if a supplier does not propose any changes upon contract expiration (Order, p. 21).

WGL Energy supports the delivery of the second options notice via email (if the customer has affirmatively elected to receive notices from a supplier in that form) instead of via first-class mail. The regulations should be revised to provide for customer choice on the manner of receiving supplier notices. Further WGL Energy supports a rule where only one supplier notice would be required where no contract changes (including price) are proposed in the renewal notice. However, as noted above, WGL Energy submits that only one notice should be required for any renewal notice to be given forty-five days before the end of the contract term.

V. Supplier Requests for Commission Review of Contract Terms

The Commission notes one suggestion that it allow suppliers to ask its staff to review of proposed disclosure statements as a mechanism of ensuring compliance (Order, p. 22). WGL Energy agrees that the request is unnecessary as its staff is already obligated to provide informal reviews and non-binding opinions on request as an aid (52 Pa Code §1.96).

Moreover, WGL Energy agrees that all suppliers have an independent duty to be knowledgeable of Commission regulations for compliance purposes (66 Pa. C.S. § 2208).

VI. Miscellaneous Disclosure Proposals and Concerns

The Commission identifies a number of other proposed revisions to its natural gas supply disclosure regulations that were not necessarily addressed in its electric disclosure regulations and on which it seeks comments.

Seamless Moves

To facilitate “seamless moves” for gas customers the Commission proposes to delete the second sentence at 52 Pa. Code § 62.75(c)(7) which currently requires the cancellation of an agreement when a customer moves from one location to another in the same utility service territory (Annex A). A “seamless move” refers to a customer’s ability to transfer their supply service contract from one address to another in the same NGDC service territory. This is currently not possible, as reflected in the current regulation in Section 62.75(c)(7). The Commission had announced in the *Gas RMI Final Order*, that it would explore this issue and in proposing the foregoing revision, the Commission states that it is not prejudging the seamless move issue, but is proposing to remove potential impediment if a seamless moves rule is found to be in the public interest in a separate proceeding. (*Gas RMI Final Order*, Docket No. I-2013-2381742, at 22-24.) WGL Energy supports the foregoing modification to the current rule.

Relocation of Automatic Month-to-Month Renewal Rule

The Commission proposes to delete the second sentence at 52 Pa. Code § 62.75(c)(8) and place the removed language in the new proposed Section 62.81 (Annex A). The language to be relocated reads: “Automatic renewal is allowed at the same terms and conditions as long as the new agreement is month-to-month.” WGL Energy agrees that leaving this rule in Section 62.75

invites confusion and conflicting requirements and that the a rule pertaining to contract expiration and change in terms notices and procedures is better included in proposed new Section 62.81 (Annex A).

Identification of NGDC in NGS Disclosures

Promulgated fourteen years ago Sections 62.75(9), 62.75(11), and 62.75(13) currently require that all NGS disclosures identify the NGDC and provide NGDC contact information. The Commission proposes to revise these provisions by removing the NGDC references. WGL Energy agrees that the regulations may have made sense when NGDCs had robust consumer education programs and were expected to inform consumers about the competitive market, but that references to NGDCs in NGS disclosures to customers is no longer necessary and may in fact now invite customer confusion and even the risk of creating a false impression that an NGS is “affiliated with” or “partnering with” the NGDC. WGL Energy strongly supports removing NGDC references in Sections 62.75(9), 62.75(11), and 62.75(13) (Annex A).

Referring Customers to PaGasSwitch.com

The Commission proposes to revise Section 62.75(c)(12) to refer customers to its natural gas shopping website, PaGasSwitch.com (Annex A). WGL Energy supports this revision and agrees that referencing the Commission’s natural gas shopping website will alleviate potential customer confusion and provide customers with an information resource that will be more effective than directing customers to call the Commission.

Disclosure of Whether a Customer Contract is Assignable

The Commission proposes to add an NGS disclosure requirement that if a NGS’s contract with a customer is assignable, that fact should be disclosed (Annex A, Section 62.75(j)). WGL Energy believes that an assignment clause in a consumer contract is standard in the natural gas

industry and that inclusion of such clauses in contracts should be sufficient disclosure to comply with the revised rule. Otherwise, WGL Energy believes the proposed revision to the current rule to expressly add disclosure of an assignment clause is unnecessary. Presumably the purpose of the revision to the current rule is to make sure the customer knows that a supply may assign a contract to another supplier such as when the current supplier leaves the market. If that is the case, WGL Energy believes a better rule would be to impose notice requirements on old and new suppliers if such an assignment were to take place, rather than specifically require a disclosure of an obvious, standard clause already in a contract.

VII. Conclusion

WGL Energy continues to support the Commission's initiatives and commitment to develop sound market rules that will improve the competitiveness and working of retail energy markets in the Commonwealth with sound consumer protections so that consumers can obtain the benefits and savings available in competitive markets. WGL Energy supports final rules in this docket that are consistent with its comments submitted herein.

Respectfully Submitted,



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