

Comments of the Independent Regulatory Review Commission



Pennsylvania Public Utility Commission Regulation #57-309 (IRRC #3101)

Customer Information Disclosure Requirements for Natural Gas Suppliers Providing Natural Gas Supply to Residential and Small Business Customers

August 5, 2015

We submit for your consideration the following comments on the proposed rulemaking published in the June 6, 2015 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA)(71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (PUC) to respond to all comments received from us or any other source.

1. Determining whether the regulation is in the public interest; Economic or fiscal impacts; Compliance with the RRA.

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the Preamble and proposed regulation and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under Section 745.5(a) in the Regulatory Analysis Form (RAF). Some of the information contained in the RAF submitted with this rulemaking is not sufficient to allow this Commission to determine if the regulation is in the public interest. For example:

- RAF #19 asks for a specific estimate of the costs and/or savings to the regulated community associated with compliance. In its response, the PUC notes that the regulated community commented that direct mailing costs may be burdensome. The PUC does not provide a specific estimate, but rather invites comments on this point.
- RAF #23 asks for an estimate of the fiscal savings and costs associated with the implementation and compliance for the regulated community, local government and state government. The PUC responds “N/A.”
- RAF #23a asks for the past three-year expenditure history for programs affected by the regulation. The PUC responds “N/A.”

We recommend that the PUC review the RAF and provide more detailed and complete responses to assist us in our determination of whether the regulation is in the public interest. If the appropriate response is “N/A,” then we ask that the PUC explain why a particular RAF request is not applicable.

2. Section 62.72. Definitions. – Clarity and lack of ambiguity.

The existing regulation defines the term *billed prices* and *marketed prices*, and the PUC is proposing to add a definition for the term *billing month*. However, we find several other terms in the regulation which are similar to these defined terms and seem to be interchangeable with them. For example:

- 62.75(c)(2)(iii) references “billing cycle”
- 62.81(a)(2)(ii) references “new price or renewal price”
- 62.81(a)(2)(ii)(A)(I) references “new price”
- 62.81(a)(2)(ii)(A)(II) references “pricing”
- 62.81(a)(2)(ii)(B) references “price to be charged”

We ask the PUC to consider whether these similar terms should be replaced by already defined terms or added to Section 62.72 as new defined terms. We ask the PUC to ensure that terms used throughout the final-form regulation are clearly defined and used consistently.

3. Section 62.75. Disclosure statement for residential and small business customers. – Determining whether the regulation is in the public interest; Nature of required reports, forms or other paperwork; Protection of the public health, safety and welfare; Clarity and lack of ambiguity; Reasonableness of requirements.

Subparagraph (c)(2)(iii)

Subparagraph (c)(2)(iii) requires that if there is not a limit on price variability, the natural gas distribution company (NGDC) must provide a clear and conspicuous statement that there is no limit on how the price may change from one billing cycle to the next. In the analogous electricity disclosure regulations, it is the electric generation supplier—rather than the distribution company—who is required to provide the variable pricing statement. Should Subparagraph (c)(2)(iii) reference the natural gas supplier (NGS) rather than the NGDC?

The PUC states in the Preamble that the statement in Subparagraph (c)(2)(iii) “provides vital information” for a potential customer considering a variable-priced product. While the regulation requires the statement to be “conspicuous,” the PUC states in the Preamble its intent that the statement “should also be highlighted in a larger type size.” Requiring a conspicuous statement may or may not lead the regulated community to utilize a larger type size as intended by the PUC. We ask the PUC to ensure that the final-form regulation contains specific requirements for the variable pricing statement that are clear for the regulated community to follow and which adequately protect the public welfare.

Subparagraph (c)(2)(iv)

Subparagraph (c)(2)(iv) requires a variable pricing statement to include the price to be charged, per billing unit, for the first billing month of service. A commentator believes this information may be insufficient in a marketplace where introductory rates are common. We agree that it is reasonable and in the public interest for the disclosure to include additional information related

to introductory rates. We recommend that the PUC 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 provide the price to be charged, per billing unit, for the first month of service after the introductory period.

Related to this requirement to provide the price to be charged for the first billing month, the PUC solicits comments in the Preamble on whether a formulaic contract price that enables a customer to calculate a bill using either the contract, publicly available rates or price indices should be considered to be in compliance with this provision. One commentator states that such a formula may be impossible. Other commentators state that providing an initial starting price is problematic, and advocate for the option to provide a customer with a formula. It is unclear how a customer can be expected to calculate the first month's bill if an NGS has difficulty doing so. If the PUC revises this provision in the final-form regulation to include alternative methods of compliance, we ask the PUC to explain how the changes protect the public welfare and are reasonable.

Subparagraph (c)(2)(v)

Subparagraph (c)(2)(v) requires a description of when the customer will receive notification of price changes. This information is also proposed to be a component of the contract summary referenced in Subsection (i). The PUC states in the Preamble that the key piece of customer information is "knowledge as to when **and how** the customer will know the price the customer will pay for natural gas supply." [Emphasis added.] However, neither this Subparagraph nor the contract summary requires a description of "how" a customer will receive notification of price changes. We recommend that the final-form regulation be amended to require that the variable pricing statement specifies how a customer will receive notification of price changes.

Paragraph (c)(8)

Paragraph (c)(8) requires the disclosure notice to include "renewal notices, **if applicable.**" [Emphasis added.] The use of the phrase "if applicable" indicates that an NGS may not renew a customer at the end of a contract. What happens to a customer at the end of a contract if an NGS does not include a renewal provision in the terms of service?

Paragraph (c)(10)

In Paragraph (c)(10) we recommend deleting the following sentence: "The NGS's information shall appear first and be prominent." Since the amended language is requiring that only the NGS contact information be provided, the sentence is no longer needed.

Paragraph (c)(11)

Paragraph (c)(11) proposes that the disclosure statement must include a statement directing consumers to the PUC's PaGasSwitch website for natural gas shopping information. The PUC states in the Preamble that it intends to "alleviate potential customer confusion" by adding the statement in Paragraph (c)(11) and removing the language in existing Paragraph (c)(12), which

requires a statement directing consumers to the PUC if they are not satisfied after discussing the terms of service contained in the disclosure statement with the NGS.

Some commentators expressed concern with removing the PUC contact information as not all consumers will have access to the Internet, and we agree. Further, the language in existing Paragraph (c)(12) addresses customer dissatisfaction, and it is unclear how directing a customer to the natural gas shopping website would help a customer in this regard, or alleviate customer confusion. We ask the PUC either to keep the requirement in existing Paragraph (c)(12) in addition to the proposed Paragraph (c)(11), or to revise proposed Paragraph (c)(11) to incorporate the customer satisfaction information in existing Paragraph (c)(12).

Existing Paragraph (c)(13)

The PUC proposes to remove the requirement to provide the name and telephone number for universal service program information found in existing Paragraph (c)(13). Commentators believe it is important for economically vulnerable customers to be able to obtain information about universal service programs that provide financial assistance and energy conservation measures. We ask the PUC either to retain the requirement in existing Paragraph (c)(13), or to explain in the Preamble of the final rulemaking how removing universal service program information is reasonable and protects the public welfare.

Subsection (i)

Subsection (i) requires the NGS to provide with the disclosure statement a separate NGS contract summary in a format provided by the PUC. The PUC explains in the Preamble that the contract summary is referenced in the regulation but is not part of the regulation. This approach, the PUC points out, allows it flexibility to “more easily and readily revise the contract summary in the future to reflect the evolving energy markets without initiating a formal rulemaking.” However, since the proposed contract summary is a discrete document, it would not be subject to the regulatory review process. We have concerns that the regulated community and the public would not have formal opportunities to provide input on the type of information required to be contained in the contract summary. We recommend the PUC include the contract summary requirements in the final rulemaking. If the contract summary requirements remain separate from the regulation, we ask the PUC to explain how it is reasonable to make future amendments to this document without providing an opportunity for formal public comment and how such an approach is in the public interest.

A commentator expressed concern with the PUC’s approach regarding the contract summary and suggested that any revisions to the summary should be served to each licensed NGS and be published in the *Pennsylvania Bulletin*. We note that publishing a contract summary template in the *Pennsylvania Bulletin* does not give the industry or the public a formal opportunity to provide input into the required elements. If the PUC does not include in the final-form regulation the items required to be provided in the contract summary, we ask the PUC to specify in the final-form rulemaking where the regulated community can access the contract summary and how the regulated community will be made aware of any changes to the summary.

Subsection (j)

Subsection (j) requires the NGS to inform the customer if the contract is assignable. In order to protect the public welfare, we recommend that the PUC further require the NGS to provide the customer with notice if the contract is assigned and include the name of the new NGS and contact information.

4. Section 62.81. Notice of contract expiration or change in terms for residential and small business customers. – Determining whether the regulation is in the public interest; Economic or fiscal impacts; Protection of the public health, safety and welfare; Clarity and lack of ambiguity; Need for the regulation; Reasonableness of requirements.

Paragraphs (a)(1) and (2)

Paragraphs (a)(1) and (a)(2) address requirements for the initial and options notices, including the timeframes for providing customer notices. Paragraph (a)(1) proposes that the initial notice shall be provided to each affected customer **45 to 60 days** prior to the expiration date of the fixed duration contract or the effective date of the proposed change in terms. [Emphasis added.] Paragraph (a)(2) states that an options notice shall be provided by first-class mail to each affected customer at least **30 days** prior to the expiration date of the fixed duration contract or the effective date of the proposed change in terms. [Emphasis added.] Existing regulations require these two notices to be given to customers at 90 and 60 days, respectively.

In the Preamble, the PUC notes there are currently inconsistencies between the notice timeframes found in the electric and gas industry rules. The PUC seeks comments as to whether the 60-day and 30-day timeframes in the electric industry (which has accelerated switching) can, at this time, be applied in the gas industry (which does not have accelerated switching). One commentator that supports the implementation of accelerated switching for gas customers states that the PUC has not begun the regulatory process of making such a change nor has it identified the manner in which it will be implemented by the utilities. We understand from the PUC that switching natural gas suppliers typically takes between four and six weeks, which means that it would be unlikely for a customer who receives the options notice at 30 days to be able to complete a switch prior to the end of the fixed duration contract or effective date of the proposed change in terms.

While we commend the PUC for working to achieve consistency for dual-energy supplier customers, given the current state of switching within the gas industry, we question the need for and reasonableness of reducing the existing notice timeframes. In order to protect the public welfare and reduce the economic impact on customers, we recommend the PUC keep the current timeframes in place until the gas industry moves to accelerated switching.

We have an additional concern related to the timeframes referenced above. Subsection (a) states, “An NGS shall provide **the following notices . . .**” and then, as noted above, lists the initial notice in Paragraph (a)(1) and the options notice in Paragraph (a)(2). While Section 62.75 (g) requires the NGS to state in the disclosure statement that the customer will receive two **separate** written notifications, we have concerns that the phrase “**at least 30 days prior**” used in the

options notice allows for the possibility that a customer could receive the initial notice and the options notice separately but on the same day. What precludes an NGS from sending the initial notice as part of a single mailing or the options notice in separate mailings but at the same time?

Subparagraph (a)(1)(vi)

Subparagraph (a)(1)(vi) proposes that the initial notice must include: “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 fee, if possible**, including . . .” [Emphasis added.] Is it possible that a customer could be charged a cancellation fee even if the customer has fulfilled all of the requirements of the fixed duration contract? We ask the PUC to explain under what circumstance(s) this situation would be possible, or clarify the language as appropriate.

Paragraph (a)(2)

Paragraph (a)(2) requires that the options notice is sent via first-class mail. The regulated community states that first-class mail is becoming an outmoded form of communication and that alternatives should be allowed. Since a customer may opt to receive electronic notifications under Paragraph (a)(1) and Subclause (a)(2)(ii)(A)(II), why is electronic notification not permitted for the options notice in Paragraph (a)(2)? We recommend that the PUC 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.

Clauses (a)(2)(ii)(C) and (D)

We ask the PUC to consider whether the PUC contact information in Clause (a)(2)(ii)(C) is intended to be provided in the options notice, in which case it would be identified as (a)(2)(iii). Likewise, it appears that the requirement in Clause (a)(2)(ii)(D) relating to envelopes should be identified as (a)(2)(iv).

Clause (b)

The PUC requires an NGS to convert a customer’s fixed duration contract to a month-to-month contract or another fixed duration contract when a customer fails to respond to the initial and options notices. This establishes a class of customers who do not enroll affirmatively in a variable price product, but rather are rolled onto a variable price product due to their non-response. We ask the PUC to explain why it is reasonable to allow an NGS to convert a customer from a fixed rate plan to a variable rate plan without affirmative customer consent. We recommend the PUC require that the disclosure statement inform customers that they may be rolled onto a variable rate plan at the end of a fixed duration contract if they do not respond to the notices.