

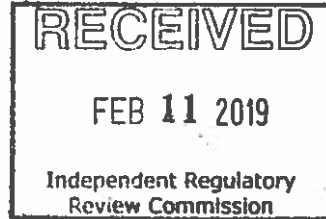
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September 12, 2017



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Via FedEx

Rosemary Chiavetta, Secretary
PA Public Utility Commission
400 North Street
Keystone Building
Harrisburg, PA 17120

Re: Rulemaking to Amend the Provisions the Provisions of 52 Pa. Code, Chapter 56 to
Comply with the Amended Provisions of 66 Pa. C.S. Chapter 14,
Docket No. L-2015-2508421

Dear Secretary Chiavetta:

Enclosed for filing please find the Additional Comments of the Retail Energy Supply
Association ("RESA") with regard to the above-referenced matter.

Sincerely,

Deanne M. O'Dell

DMO/lww
Enclosure

cc: Daniel Mumford (via dmumford@pa.gov)
Matthew Hrivnak (via mhrivnak@pa.gov)
Patricia T. Wiedt (via pwiedt@pa.gov)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Rulemaking to Amend the Provisions of :
52 Pa. Code, Chapter 56 to Comply with : Docket No. L-2015-2508421
the Amended Provisions of 66 Pa. C.S. :
Chapter 14 :

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Review Commission

**ADDITIONAL COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

I. INTRODUCTION

This proceeding involves the Commission's proposed revisions to 52 Pa. Code Chapter 56 regarding the standards and billing practices for residential service. On July 21, 2016, the Commission issued its Notice of Proposed Rulemaking Order setting forth its proposed revisions and inviting interested stakeholders to submit comments.¹ Upon review of the comments, the Commission entered its *Order Seeking Additional Comments* extending a further opportunity to interested stakeholders to submit additional comments. The Retail Energy Supply Association ("RESA"),² a trade association of retail energy suppliers who share the common vision that competitive retail electricity markets deliver a more efficient, customer-oriented outcome than

¹ *Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Amended Provisions of 66 Pa. C.S. Chapter 14, Docket L-2015-2508421, Notice of Proposed Rulemaking Order entered July 21, 2015 ("NOPR").*

² The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

does the monopoly-protected, rate-regulated utility structure, is submitting these comments in response.

As discussed more fully below, RESA supports the Commission's proposal to permit customers to designate third parties to receive a copy of the supplier change confirmation notice and proposes language suggestions for the form to be submitted by the customer. In addition, RESA provides feedback regarding the role of suppliers and their need for access to consumer information in the context of the suggestion of the Office of Consumer Advocate ("OCA") that a customer's alternative contact method be automatically withheld from third parties. Finally, RESA provides further support for the recommendations of NRG Energy, Inc. ("NRG") to: (1) develop revisions to the current regulations that could accommodate and facilitate the implementation of supplier consolidated billing ("SCB") in Pennsylvania; and, (2) revise the Chapter 56 regulations to clarify the applicability of specific sections to energy suppliers.

A. Third-Party Notification of Supplier Switching

In its request for additional comments, the Commission proposes to add language to its existing regulations to permit customers to designate a third party to receive the confirmation letter sent by the utility whenever that customer has elected to enroll with a competitive supplier or return to default service.³ RESA supports the intent of this proposal and the right of customers to elect to share information, such as a decision to shop, with designated third parties. RESA's suggested language below is intended to make the new paragraph more consistent with the existing authorization form set forth in Appendix E.

³ *Order Seeking Additional Comments at 7-8.*

More specifically, the initial paragraph of the existing form is addressed to the customer and explains the roles and responsibilities for the third party. In contrast, the newly added paragraph appears to be directed to the third party designee. Therefore, the revisions proposed below add language directed to the customer with an explanation of what the third party designee would receive. In addition, a new sentence is added to more clearly state that only the customer of record or a person authorized to make changes to the customer's account can address any concern or potential problem with the decision to elect a supplier or return to default service consistent with language already existing in the previous paragraph. To incorporate these to clarification, RESA recommends the following changes to Appendix E:

~~[We will] The utility also [notify] notifies you [anytime the customer switches their competitive supply service to a new supplier. You will receive a copy of the supplier change confirmation notice that we send to the customer]whenever [they] you enroll with a new supplier or return to the default service. This supplier change confirmation notice identifies the new supplier, how to contact [them] the new supplier, the effective date of the change, and what [to] you can do if there is a problem or concern. Through this Third-Party Notification program, the third party will receive a copy of the supplier change confirmation notice. Only you or a person authorized to make changes to your account can direct a change to your decision to elect a supplier or return to default service.~~

B. Privacy Guidelines

In the NOPR, the Commission sought comments on material that should be included in the Commission's privacy guidelines which are intended to safeguard information provided by consumers to the utilities enabling those consumers to receive service termination notices via emails, text messages or other electronic messaging.⁴ Upon review of the comments received,

⁴ NOPR at 4.

the Commission identified a number of concerns related to this topic and stated its intent to prepare a future Tentative Order to initiate a proceeding to develop privacy guidelines. The Commission stated that it would consider comments submitted to date for this purpose and invited parties to submit any further comments for consideration.⁵

RESA fully supports the ability of consumers to receive information via electronic means and in a manner that is desirable to that consumer. It is important to permit a customer's preferences to dictate the manner in which information is communicated to him or her to best ensure that the customer understands when and how to expect the information and knows the importance of reviewing the notices he or she is receiving.

In its comments, OCA suggested that any data provided by the consumer to enable alternative communications in this context not be shared with third parties citing to the Commission's choice regulations allowing a customer to restrict the release of telephone numbers and the Commission's decision to not permit utilities to share customer telephone numbers with suppliers on the Eligible Customer Lists ("ECLs").⁶ As the Commission moves forward to develop privacy guidelines, a few points regarding OCA's proposal should be taken into consideration.

First, although the Commission did decide – for policy reasons – not to require distribution companies to provide telephone numbers on their ECLs, it made clear that the Commission has the legal authority to include the customer telephone number on the ECL.⁷

⁵ *Order Seeking Additional Comments* at 5.

⁶ OCA Comments at 3, citing 52 Pa Code §§ 54.8 and 62.78.

⁷ *Interim Guidelines for Eligible Customer Lists*, Docket No. M-2010-2183412, Final Order on Reconsideration entered November 15, 2011 at 20.

Such legal authority is consistent with the clear text of the current choice privacy regulations which permit a customer to “restrict” the release of telephone numbers to third parties; thus, permitting the release of telephone numbers to third parties upon customer consent. As such, there is no support in this precedent to automatically apply the Commission’s policy decision in the ECL context (which involved substantial litigation on the electric side) to the alternative forms of communication under discussion here.

Second, as the Commission has already concluded, customers of suppliers are those suppliers’ customers and; therefore, these suppliers should not be denied access to their customer’s information that is maintained by the utility.⁸ EGSs are licensed by the Commission and required to comply with various Commission regulations. This includes the regulatory requirements governing their release of customer information to third parties and maintaining the confidentiality of a consumer’s personal information.⁹ As the Commission has recognized in various contexts, supplier access to consumer information maintained by the utilities is an important part of developing a workably competitive market.¹⁰ Therefore, ensuring suppliers have equal access to consumer information must remain a core principle underlying the future development of privacy guidelines.

⁸ *EDI – Providing Customer Payment Information*, Docket No. M-00960890 F.0015, Secretarial Letter dated February 5, 1999 at 2-3 (“Since the non-billing party is providing electric service to the customer, it would not be viewed as third party and is certainly entitled to know whether the customer is making payments toward its charges.”)

⁹ 52 Pa. Code §§ 54.8 and 54.43(d).

¹⁰ *Submission of the Electronic Data Exchange Working Group’s Solution Framework for Historical Interval Usage and Billing Quality Interval Use*, Docket No. M-2009-2092655, Final Order entered June 30, 2016.

C. NRG Comments

In its comments, NRG recommended that the Commission: (1) develop revisions to the current regulations that could accommodate and facilitate the implementation of supplier consolidated billing (“SCB”) in Pennsylvania; and, (2) revise the Chapter 56 regulations to clarify the applicability of specific sections to energy suppliers. RESA fully supports the implementation of SCB in Pennsylvania as an additional billing option for suppliers. As set forth more fully in its comments and reply comments regarding NRG’s pending SCB petition before the Commission,¹¹ enabling the entities providing generation service to directly bill their customers through the implementation of SCB is an important and necessary evolution of the retail electricity marketplace which will allow EGSs to begin to deliver on the original promises of technological and services-related innovation that were an integral part of the Electricity Generation Customer Choice and Competition Act.¹² Using this opportunity to modernize the existing Chapter 56 regulations to accommodate suppliers billing their own customers is logical and forward-looking. As such, NRG’s recommendations regarding revisions to the specific sections of Chapter 56 to accomplish this purpose are reasonable and RESA supports them.

In addition to accommodating SCB, NRG proposes revisions to the existing regulations to clarify the applicability of various Chapter 56 provisions to energy suppliers.¹³ These revisions would provide welcome clarity to suppliers attempting to decipher which specific sections of Chapter 56 apply to them. As NRG notes, the Commission directs suppliers to

¹¹ *Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing*, Docket No. P-2016-2579249, Comments of the Retail Energy Supply Association dated January 23, 2017 and Reply Comments of the Retail Energy Supply Association dated February 22, 2017.

¹² 66 Pa. C.S. §§ 2801-2812.

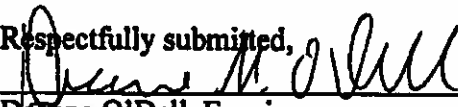
¹³ NRG Comments at 24-27.

comply with Chapter 56 "as applicable" but the vast majority of the sections in Chapter 56 are not applicable to entities that do not bill or terminate service.¹⁴ As such, it can be difficult for companies to determine whether a specific section is applicable to them and, if so, how it applies to the particular service they are offering customers. This lack of certainty and clarity about regulatory requirements can create compliance difficulties and increase the time needed for staff to provide assistance and guidance to companies about the Commission's expectations. For these reasons, RESA appreciates the efforts of NRG in this regard, supports the proposed revisions, and respectfully suggests that the effort to identify the specific sections applicable to suppliers and make that clear in the text of the section is a worthy endeavor for the Commission.

II. CONCLUSION

As discussed more fully above, RESA proposes language suggestions for the form to be submitted by the customer to permit another person to receive supplier confirmation notices. In addition, RESA provides feedback regarding the role of suppliers and their need for access to consumer information as the Commission moves forward to develop privacy guidelines. Finally, RESA supports the recommendations of NRG regarding SCB and updating the current Chapter 56 sections to specify which sections are applicable to energy suppliers.

Respectfully submitted,



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Date: September 12, 2017

Attorneys for the Retail Energy Supply Association

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¹⁴ NRG Comments at 24-25.

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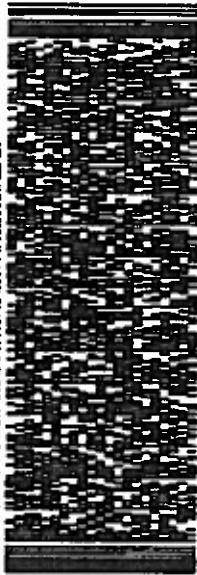
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