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May 22, 2018

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

RE: Rulemaking Regarding Electricity Generation Customer Choice, 52 Pa. Code Chapter 54; Docket No. L-2017-2628991; **COMMENTS OF SHIPLEY CHOICE, LLC,**

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Commission is the Comments of Shipley Choice, LLC d/b/a Shipley Energy ("Shipley") in the above-captioned proceeding.

Thank you for your attention to this matter. If you have any questions related to this filing, please do not hesitate to contact my office.

Very truly yours,

Todd S. Stewart
Counsel for
Shipley Choice, LLC d/b/a Shipley Energy

TSS/jld
Enclosure
cc: Daniel Mumford, Competitive Market Oversight – dmumford@pa.gov
Matthew Hrivnak, Bureau of Consumer Services – mhrivnak@pa.gov
Kriss Brown, Law Bureau – kribrown@pa.gov

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking Regarding Electricity Generation Customer Choice, 52 Pa. Code Chapter 54	: : :	Docket No. L-2017-2628991

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COMMENTS OF
SHIPLEY CHOICE LLC
DBA SHIPLEY ENERGY

On December 7, 2017, the Pennsylvania Public Utility Commission ("Commission") issued a Notice of Proposed Rulemaking Order ("Order") at the above docket, in which it proposes to modify certain requirements of Chapter 54 of the Commission's Regulations, 52 Pa. Code § 54.1, *et seq.*, governing billing and information disclosure for Electric Generation Suppliers ("EGS"). Shipley Choice LLC, d/b/a Shipley Energy ("Shipley") thanks the Commission for its continuing diligence in seeking to ensure that its regulations remain fresh by addressing present market conditions in an ever-evolving retail energy marketplace.

In its Order, the Commission describes in detail the history of Chapter 54, including the post-polar vortex amendments that imposed substantial changes to the manner in which EGSs provide service to their customers. The Commission then explains that more recently it has updated the disclosure regulations for Natural Gas Suppliers and that the effort undertaken in the instant proceeding is at least in part to synchronize the rules for both industries. In large part, Shipley supports or does not have any comment on the changes proposed, and for efficiency's sake does not address those items below. Shipley's comments are limited to those items it believes require further exploration or modification.

While Shipley agrees that consistency between regulations for the electricity and natural gas markets is important, it should only be the goal in situations that are substantially similar. It is ironic, then, that the Commission suggests that the main purpose of the proposed changes is to harmonize the electricity regulations with the Natural Gas regulations, and yet it proposes a substantial change in this Order that will divest EGSs of the benefits of existing and future contracts, by eliminating their ability to charge early termination fees ("ETF") during what could be critical usage and cost periods of a contract – a provision which is not in the Regulations governing Natural Gas Suppliers. Shipley does not support the proposed ETF changes, as discussed more completely below.

I. §§ 54.3(2) & 54.10(vi) – Elimination of Early Termination Fees.

In proposed new sections 54.3(2) and 54.10(vi) the Commission would essentially nullify early termination fees that suppliers have contracted-for, with customers, for the last two months of their contract. Contrary to the speculation in the order that because "the number of days that the customer could exit "early" without an ETF is limited; thus limiting any resulting financial loss an EGS may experience"; the proposed change poses the likelihood that serious supplier harm will result. Note that the period during which a customer could exit a contract without an ETF, would be under the proposed rule, 1/6 of the length of a one-year contract, or 1/3 of a six-month contract, which in either case is substantial, and can mean the difference between a supplier making or losing money. Closing the ETF window early will have more severe consequences depending on the time of the year. For example, if a customer's contract renews in August and the notice is sent in June, and the customer leaves in early July after receiving the first notice, the supplier will lose the revenue for the high consumption months of July and August, which load could be partially or even fully hedged, thus inflicting even more substantial loss, which the ETF is intended to mitigate. In response, one might suggest that suppliers simply not hedge for the last two months of a contract – a strategy which exponentially increases risk and consequently increases the rates the supplier must charge. There simply is no credible basis to assume that prohibiting suppliers from charging ETFs over the last 60 days of a contract will not inflict serious harm on the suppliers. One of the reasons suppliers are able to offer fixed term contracts, which is what seems to be the Commission's preferred model, is the ability to manage the risk over time by locking in supply. If a customer leaves, the supplier's only option is to sell back the supply in the open market, which can often result in substantial financial loss. Suppliers are willing to offer fixed prices because they can at least somewhat insure against loss with an ETF. Eliminating that bargain will harm consumers more than the few customers who end up paying ETFs because they switched after they received a notice that their contract was ending.

There is a solution to the problem that does not effectively kill the fair use of ETFs to ensure that parties receive the fair benefit of their bargain, or substantially increase risk to suppliers. The solution is to change to a single notice, at 30-45 days before the end of the contract; a notice that includes the renewal price. That way the customer would not be concerned about the possibility of having to watch for the next notice or forgetting to switch later and getting stuck in a "bad deal", and would be aware of the renewal price, so they could competently shop for power with a real benchmark. Suppliers might lose part of the last month of a contract, but if they did it would likely be because another supplier made a better offer, not because the customer was scared into shopping prematurely. Shipley urges to Commission to reconsider its position on ETFs.

II. § 54.7 – Marketing/Sales Activities.

The primary change in section 54.7 is to now require that suppliers include in marketing materials, a table that shows prices at usage levels of 500, 1000 and 2000 kWh when the rate the customer would be charged varies based upon customer usage or includes fees in addition to unit prices. The revision would also remove the requirement to present the table if charging a fixed rate. The table would be required in all marketing materials that offer terms of service for acceptance by customers.

While Shipley agrees that this provision is somewhat anachronistic at this point, since most utility rates are not declining block rates; that is, the rate remains constant regardless of customer usage; it also believes that the proposed change is a solution in search of a problem. Shipley is not suggesting that no supplier offers rates that vary in a manner that could be considered to "vary with customer usage", but there are few examples. One possible example could be time-of-use rates – but it is not at all clear if that sort of rate is what the Commission intended to be covered by this regulation, because time of use rates change based on the time of day, or possibly also on the price of electricity – but not usually on usage alone. And while a chart providing a more accessible representation of the expected costs to customers of this sort of rate (time-of-use) might be useful, the chart suggested by the regulations would not help. In fact, such a chart would require multiple assumptions that would make it more complex, not less. Shipley simply questions the need for the chart at all given the shear lack of such rates in the market.

If the chart is to be required, however, Shipley suggests that clarification of the phrase, "that offer terms of service for acceptance by customers" may be warranted. Suppliers could reasonably assume, and probably have assumed that the phrase means if you provide marketing materials to customers that allow them to execute and return something they will have the effect of enrolling them as a customer – such as a letter with a return postcard included – that would qualify, and the chart would be required. The same could be said of an internet enrollment if the web page is "marketing materials". However, such a chart would not need to be provided in a telemarketing environment, and Shipley is not suggesting it should be provided. To the contrary, Shipley again questions the need for the chart. It also is not clear whether the supplier must include the chart if its rates do not vary on usage, but it does charge a monthly customer charge-like fee. It would seem odd to do so, but the requirement seems somewhat ambiguous on the point.

III. § 54.10 – Attachment A – Contract Summary

Shipley generally agrees with the contract summary. However, Shipley would suggest making sure that the format includes the "Right of Rescission" section directly adjacent to the "Cancellation" section, simply because the two are similar and it will be easier for customers to understand if they can read them together.

IV. CONCLUSION

Shipley would like to thank the Commission for this opportunity to Comment and will make itself available for further clarification if needed.

Respectfully submitted,

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DATED: May 22, 2018