

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**Comments of the Consumer Advisory Council**  
**to the Pennsylvania Public Utility Commission**

RECEIVED  
 PUC  
 2018 MAY 18 P 3:51

**I. INTRODUCTION**

The Consumer Advisory Council (CAC) of the Pennsylvania Public Utility Commission (Commission) submits these Comments in response to the Commission's proposed rulemaking at this docket to strengthen the standards for pricing disclosure and billing practices for retail electric service to residential and small business customers in Pennsylvania. The Commission's proposed regulations are an important and necessary step in ensuring protections for those customers who choose to participate in Pennsylvania's retail electricity market.

The CAC was established to advise the Commission with respect to matters within the PUC's jurisdiction that affect consumer interests. Specifically, the CAC is authorized to advise the Commission on how it may better serve the public and particularly the interests of Pennsylvania utility consumers. 52 Pa. Code §§ 91.2 and 91.3(b).

The CAC commends the Commission for recognizing and seeking to correct a number of concerns that have arisen with respect to the marketing and sales of electricity under the Commission's existing regulations. With one minor exception discussed below, the CAC supports the recommendations contained in the proposed rulemaking and urges the prompt

review and promulgation of these regulations for the protection of Pennsylvania electricity consumers.

## II. COMMENTS

### **A. The CAC Supports the Commission's Proposals to Prohibit the Imposition of Early Termination Fees after an Electric Generation Supplier Provides Notice Regarding the End of the Customer's Contract (Sections 54.3(2), 54.5(c)(11) and 54.10(1)(vi))**

In proposed 52 Pa. Code §§ 54.3(2), 54.5(c)(11) and 54.10(1)(vi), the Commission seeks to correct a serious flaw in the current regulations that permit suppliers to impose substantial early termination fees (ETF's) on customers who choose to switch to another supplier or return to default service after the customer receives notice that their contract with their current supplier is coming to an end. Customers who receive those notices are informed that if they do nothing, they will remain with their current supplier on terms set forth by that supplier. Customers who do not wish to renew their contracts, however, are informed that they must notify their current supplier by a date certain, that is, by the expiration date of their current contract. What is not made clear to customers, however, is that if they contact their supplier prior to the exact expiration date of their original contract they may be hit with an ETF, often amounting to \$50 or \$100 or more. That is, customers who believe they are doing exactly what they are told to do in the customer notice letter can be hit with a substantial penalty that could certainly exceed any savings or benefits they might have received by shopping for electricity in the first place. It is no wonder that the Commission concluded in its proposed rulemaking order that "[t]he imposition of an ETF under these circumstances can understandably frustrate and discourage customers from participating in the competitive market." Proposed Rulemaking at 12.

The CAC strongly supports the Commission's efforts to halt the process under which unsuspecting customers are hit with large penalties simply because they follow the apparent

instructions in the EGS contract expiration notice and let their supplier know that they do not wish to renew their contracts. The CAC supports the proposed changes to sections 54.3(2), 54.5(c)(11) and 54.10(1)(vi) of the proposed regulations. They should be adopted.

**B. The CAC Supports Changes to the Supplier Disclosure Statement That Will Make It Possible for Consumers to Compare Supplier Offers More Accurately (Section 54.5).**

As the Commission is well aware, the focus of the Commission's consumer choice education campaign has long been on the "Price to Compare", that is the price that consumers can use to make an informed comparison of the products that are offered both by the utility default service provider and by the many retail marketers that offer alternatives to the utility default service. Unfortunately, such a price comparison can often be complicated, or in some cases misleading, due to charges that may be imposed by marketers and suppliers that are not reflected in the basic price per kilowatt hour charge used to make a comparison. In this rulemaking, the Commission recognizes this longstanding problem and proposes solutions to reduce customer confusion and enhance the electric shopping process.

The Commission proposes to amend section 54.5(c)(1) to require suppliers to disclose generation charges in "actual prices per kilowatt-hour." Rulemaking Order at 14. This requirement would align the electric rule with the rules for natural gas suppliers. The Commission also proposes new language for Section 54.5(c)(4), in which the Commission would require electric generation suppliers to include all fees in addition to the unit price per kilowatt hour in their disclosure statements and show the resultant average price per kilowatt hour for usages at 500, 1000, and 2000 kwh per month. This requirement will reduce the likelihood that customers will be misled by low kilowatt hour fees that are often coupled with high monthly or

one-time fees that might not be displayed as prominently in the materials provided by some marketers.

An examination of current offers in the PECO service territory reveals the propriety of the Commission proposal. On the PA PowerSwitch Website, for example, the “lowest” price per kilowatt hour offered to regular (Rate R) residential customers is a mere 3.88 cents per kWh, as compared to the much higher PECO default rate of 7.09 cents. That low per kWh rate, however, is coupled with a fixed fee of \$29.95 per month. The offer on the PECO webpage with the second lowest rate of 3.89 cents per kWh has a fixed fee of \$30.41 per month, while the third lowest offer of 3.99 cents per kWh contains no monthly fee, but includes a whopping \$145 upfront “enrollment fee.”

It is essential that these types of fees be readily identified, incorporated into the unit price of energy (cost/kWh), and the information provided to consumers so that they can make intelligent choices for their retail electric service. The CAC therefore supports the Commission’s proposal to ensure that these monthly and one-time fees are reflected appropriately in all marketer disclosure materials.

The CAC also agrees with the Commission proposal at section 54.5(c)(2) to require marketers who offer “introductory” rates to include in their disclosure statements the duration of the introductory period and the price for the first billing cycle after the introductory period. While the Commission has long required marketers to identify whether their initial “teaser” rates are merely “introductory” in nature, it is equally important for customers to know how long the introductory rate will last and what the real rate will be after the initial teaser period is over. In the absence of such information – which would be required for the first time under this proposed regulation – the customers really have no idea what they are purchasing. The CAC therefore

supports the Commission proposal at section 54.5(c)(2) to require marketers to inform customers what they will actually be paying after any introductory offer expires.

The CAC also supports the Commission proposal at section 54.5(c)(3) that requires marketers who offer variable price products to disclose their “specific prescribed variable pricing methodology.” As the Commission learned during the Polar Vortex in 2014, variable price products can change dramatically and without any apparent limit other than the pricing decision of the individual marketer. The Commission’s proposal here would impose some discipline on marketers – and some protection for consumers – by requiring the marketer to specify the formula or factors that the marketer will follow in implementing variable rate changes. This is similar to the approach used by variable rate mortgage lenders who may change their interest rates, for example, based on a previously disclosed formula tied to the prime rate or other published benchmark. Customers who accept variable retail electric rate offers know they are taking a risk of future price changes, but at least they should know what the specific bases for those price changes will be rather than rely on the arbitrary whim of the marketer on a monthly basis. The Commission’s proposal to require such information at section 54.5(c)(3) should therefore be adopted.

**C. The CAC Urges the Commission to Reconsider the Proposed Provisions That Would Remove References That Provide Consumers Necessary Information Regarding Their Electric Distribution Companies and Default Service Providers (Section 54.5(c) (9), (12)-(13)).**

The Commission proposes to eliminate the requirement that EGSs disclose information about the customer’s Electric Distribution Company (EDC), as well as information about universal service programs which help low income households to afford energy services. Rulemaking Order at 16-17, 18. It reasons that disclosure of EDC and universal service information is no longer necessary and that it invites confusion by creating the false impression

that the EGS is endorsed by or affiliated with the EDC, or that the EGS is responsible for the administration of universal service programs.

Instead, the Commission proposes to amend section 54.5(c)(13) to require that suppliers inform consumers that shopping information is available at [papowerswitch.com](http://papowerswitch.com), by calling the Commission, or on the OCA's website. Rulemaking Order at 18. In light of this proposed addition, the Commission otherwise proposes to eliminate the requirement that disclosure statements "direct[] a customer to the Commission if the customer is not satisfied after discussing the terms of service with the EGS." Rulemaking Order at 18.

The CAC understands that the PUC desires to eliminate consumer confusion. This is an appropriate and admirable goal and one that the CAC generally supports. However we are concerned that elimination of information about the EDC and available universal service programming from the disclosure statement may create more confusion than it eliminates.

Consumers are often confused about the relationship between the EDC and the EGS, but it remains critical that they know who to call in the event that they have service, billing, and collection questions. Rather than eliminate mention of the EDC, the CAC recommends that the PUC revise the language to disclose EDC contact information and require the EGS to state that the customer should continue to contact the EDC for quality of service, billing, collections and termination questions. The same is true for available universal service programming. It is critically important that this information continue to be provided so that consumers struggling to pay the cost of basic electric service can be directed to appropriate assistance.

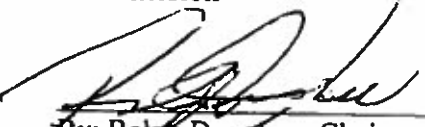
Finally, while the CAC supports including information about [papowerswitch.com](http://papowerswitch.com), the Commission, and the Office of Consumer Advocate, we oppose elimination of the requirement

that consumers be directed to the Commission “if the customer is not satisfied after discussing the terms of service with the EGS.” Rulemaking Order at 18. This information remains critical to enabling consumers who have complaints about EGS marketing practices and contract practices to know who they may call to initiate a complaint. We urge the Commission to retain this statement.

### **III. CONCLUSION**

The CAC thanks the Commission for undertaking this revision of its electric generation supplier marketing rules. The Commission’s proposed revisions to its marketing regulations are an important and necessary step in ensuring protections and clarity for those customers who choose to participate in Pennsylvania’s retail electricity market. With the minor exception noted above, the CAC supports the proposed revisions and urges that Commission to act swiftly to seek full adoption of these proposals.

Respectfully submitted,  
**On Behalf of the Consumer Advisory Council to the Pennsylvania Public Utility  
Commission**

  
By: Ralph Douglass, Chairperson,  
Consumer Advisory Council

Dated: May 21, 2018