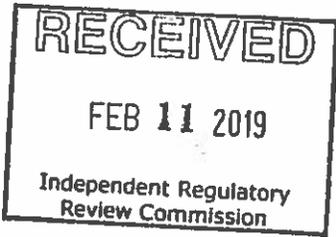


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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**Comments of the
National Energy Marketers Association**

The National Energy Marketers Association (NEM)¹ hereby submits comments pursuant to the Order Seeking Additional Comments entered on July 13, 2017, and published in the July 29, 2017, Pennsylvania Bulletin. This proposed rulemaking pertains to Commission regulations on billing practices for residential utility service. Subsequent to the issuance of the Notice of Proposed Rulemaking on July 21, 2016, and the receipt of responsive comments, the Commission is now seeking additional comments on new issues in the instant proceeding. NEM's comments specifically pertain to the new proposal on third-party notification of supplier switching. The Commission's rules currently permit a third party to receive copies of collection notices so the third party may assist with the matter, such as in the case of an adult child receiving notice related to an elderly parent's utility account. The notices are informational in nature only. The Commission is proposing to expand the notice mechanism to include third party notice of supplier switching. Specifically, a designated third party would receive the supplier switch confirmation notice that is sent by the utility any time a customer has enrolled with a competitive supplier. The Commission also proposes to revise the notification enrollment form related to this change.

¹ The National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.

NEM and its members are strongly committed to compliance with the Commission's Marketing and Sales Practices for the Retail Residential Market.² NEM and its members have also adopted National Marketing Standards of Conduct³ that include a zero tolerance policy for any fraudulent, illegal, or unethical conduct of any employee or agent. NEM's National Marketing Standards of Conduct are founded on the principle that the most effective consumer protection rules are premised on the fundamental requirement of accurate, affirmative statements from marketers that disclose the attributes of contracted-for products and services and likewise require accurate, affirmative statements of marketer identification.

NEM's comments are being submitted because the proposal regarding third-party notification of supplier switching poses logistical issues that are not readily apparent on its face and that could lead to negative unintended consequences including consumer confusion and unwarranted consumer complaints. NEM's comments describe the logistical issues including those associated with restricting account changes to those being made by authorized persons, maintaining privacy of customer information, and adequate supplier notification of account termination, among others. NEM suggests that should the Commission pursue implementation of the third-party notification proposal that it first convene the stakeholders to review, discuss and resolve the logistical issues. The third-party notification of supplier switching appears to require additional corresponding notice and coordination between affected parties, to include the potential development of an EDI transaction.

As a general matter, there is an important difference between the current third-party notice that is sent regarding collection activity as opposed to the proposed third-party notice of supplier

² 52 Pa. Code Chapter 111.

³ Available at: <http://www.energy marketers.com/Documents/ACF74.pdf>

switching activity. In the case of a third party's receipt of notice of collection activity, if the third party receives the collection notice and responds by taking action and paying a past due balance on behalf of the customer, the net result is positive - the customer's account is maintained and restored to good standing. Submission of the third-party payment does not require that the third party have previously been designated as having authority over the account.

In contrast, under the proposal at issue, when a third-party notice is sent regarding supplier switching activity, a conceivable outcome is that the third party will seek to terminate the competitive supplier relationship, whether or not they are authorized to do so and permitted under the regulations. There is a large risk that the net result will not be positive. The third party may become upset and confused if they are unable to cancel the competitive supplier transaction and then lodge a complaint, notwithstanding that no party engaged in improper conduct. Additionally, the customer's account with the supplier could be unjustifiably ended, the customer could lose the benefit of its contracted for products and services and perhaps incur an early termination fee if the rescission period has expired. The supplier may lose the customer and without having engaged in any improper conduct. In other words, the actions prompted by a third-party notice of collection activity versus third-party notice of supplier switching will yield significantly different outcomes for the customer that warrant serious consideration.

The following scenarios are submitted to provide examples of logistical issues that are associated with third party notification of supplier switching:

1) Third Party Authority to Transact Under the Customer's Account

When a third party receives a notice of supplier switching of the customer's account from the utility, a possible and plausible outcome is that they will contact the utility to inquire further. It is

also possible and plausible that the third party may seek to terminate competitive supplier service.⁴ The third party may take such action without first having consulted the customer or obtaining firsthand knowledge of the terms of the supplier's contract with the customer. While the third party in this example is designated to receive the switching notice, for example, as part of a decision to manage family member resources, the third party may not have been designated as having actual authority over the account with any corresponding ability to cancel competitive supplier service. Commission regulations require that when a customer authorizes other persons to make changes to the customer's account that it be accomplished through a signed document.⁵ The third party should not be permitted to cancel the switch to the competitive supplier by contacting the utility unless having been granted specific authorization by the customer to transact on the account and unless permitted by Commission regulations. However, it is foreseeable that the third party could become confused and upset about receiving a notice that they cannot directly act on by contacting the utility that sent it. Indeed, this is likely to lead to the incongruous result of complaints about customer switching that have no underlying basis in supplier misconduct. The contact by a third party to a utility in response to receipt of the switching notice should not

⁴ An electric customer can contact the default service provider (that is currently the utility) to request and effectuate a change from EGS service to default service. 52 Pa. Code §57.172(b). As of now, this is not the case for natural gas customers, but the Commission is currently considering implementing the same provision for natural gas customers. See Docket L-2016-2577413, Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 59 Regulations Regarding Standards for Changing a Customer's Natural Gas Supplier (proposed 52 Pa. Code 59.92(b). For purposes of the regulations setting forth Standards for Changing a Customer Electricity Generation/Natural Gas Supplier, an electric "customer" is defined as "a purchaser of electric power in whose name a service account exists with either an EDC or an EGS. The term includes all persons authorized to act on a customer's behalf." 52 Pa. Code § 57.171. A natural gas "customer" is defined as "[a] retail gas customer as defined by 66 Pa.C.S. § 2202 (relating to definitions.) The term includes all persons identified by the NGDC ratepayer of record, under 59.95 (relating to persons authorized to act on behalf of a customer), as authorized to act on behalf of the NGDC ratepayer of record in changing the NGS for the account."

⁵ 52 Pa. Code § 57.175. "A person may identify persons authorized to make changes to the customer's account. To accomplish this, the customer shall provide the EDC with a signed document identifying by name those persons who have the authority to initiate a change of the customer's EGS." See also 52 Pa. Code 59.95 (with respect to customer's designation of authorized persons on a gas account).

automatically trigger customer dispute procedures.⁶ Indeed, the third party may not have direct knowledge of whether the customer was switched without the customer's consent. Thus, the third-party notification of supplier switching should direct the third party to contact the competitive supplier with inquiries and questions about the notice.

2) Communication to the Supplier of the Customer Cancellation

If a third party contacts the utility to cancel the competitive supplier transaction on behalf of the customer (assuming the third party is authorized to do so and permitted under the regulations), the supplier will not have knowledge of why the customer was dropped. The supplier may contact the customer after receiving notice of the drop. The customer may at that point reaffirm that s/he wishes to switch to the competitive supplier. The customer may or may not know that the third party has independently intervened to cancel the supplier transaction, and neither will the supplier. This scenario could lead to customer and third party confusion and complaints, even though there has been no improper conduct. This scenario highlights the importance of requiring that the third-party notice direct the third party to contact the competitive supplier with inquiries and questions about the notice. It also brings to light the need to develop an EDI transaction through which the reason for the cancellation is identified to the supplier.

3) Protecting Customer Privacy When a Third Party Inquires About the Switching Notice

The best resource for the third party to contact about the switching notice (aside from the customer) is the competitive supplier itself, and the switching notice should include such a statement that is specifically directed to the third party. That being said, the competitive supplier must not violate

⁶ 52 Pa. Code § 57.177 and § 59.97.

the privacy of the customer in its discussions with the third party. EGSs and NGSs have an obligation to maintain the confidentiality of customer information under Commission regulations.⁷ The Commission regulations restrict EGSs, NGSs, EDCs and NGDCs from releasing customer information to a third party unless the customer has been notified and provided a method to deny release.⁸ If the third party has not been authorized to receive the information about the customer's account but is asking questions of the supplier after being prompted to do so because of receipt of the switching notice, the competitive supplier is placed in the difficult position of wanting to be responsive to the third party's questions while simultaneously being required to maintain customer privacy and comply with Commission regulations. This could create a situation rife with confusion and misunderstanding. Moreover, it also has the potential to create a negative misimpression with the third party that the supplier is withholding information or is being unresponsive and uncooperative when the supplier is only fulfilling its responsibilities to protect customer privacy as required by the Commission regulations. If the Commission proceeds with implementation of third party notice of supplier switching, NEM requests that the Commission provide guidance to competitive suppliers as to how to navigate these privacy concerns consistent with the supplier's compliance obligations.

4) Consent to Switch Suppliers and Customer Dispute Procedures

The third party may respond to the switching notice by alleging to the competitive supplier that the change in the account was made without the customer's consent. NEM requests that

⁷ See 52 Pa. Code § 54.43(d) and § 62.114 regarding the responsibility of electric and natural gas supplier licensees, respectively, to "maintain the confidentiality of a consumer's personal information including the name, address and telephone number, and historic payment information, and provide the right of access by the consumer to his own load and billing information."

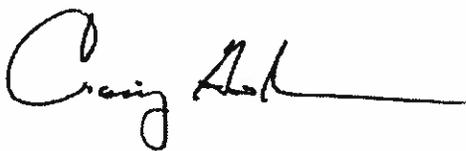
⁸ See 52 Pa. Code § 54.8 and § 62.78 regarding the responsibility of electric utilities and electric suppliers and natural gas utilities and natural gas suppliers, respectively, to deny release of private customer information to a third party unless the customer has been notified and been given a convenient method of notifying the entity of its desire to restrict the release of the private information.

competitive suppliers be provided with guidance as to how to respond to third party inquiries consistent with customer dispute procedures related to customer slamming. While the regulations currently set forth procedures for suppliers to follow when a “customer” alleges a change in supplier was made without consent, it does not address inquiries received by third parties (that may or may not be authorized to transact on the customer account). There is a delicate balance between responding to legitimate third party inquiries without instituting what becomes a de facto presumption of supplier wrongdoing without direct knowledge or proof. Commission guidance in navigating this issue is necessary.

Conclusion

For the foregoing reasons, NEM suggests that if the Commission decides to proceed with implementation of the proposal on third-party notification of supplier switching that it first convene the stakeholders to review, discuss and resolve the logistical issues to ensure that potential unintended negative consequences to consumers are avoided.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig Goodman", with a long horizontal flourish extending to the right.

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