**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held October 2, 2014

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

James H. Cawley

Pamela A. Witmer

Gladys M. Brown

Request for Clarification Docket No. L-2014-2409385

on Notice Requirements for

Combined Electricity and Natural

Gas Disclosure Statements; 52 Pa. Code

Sections 54.5, 54.10 and 62.75.

**FINAL ORDER**

**BY THE COMMISSION:**

Before the Commission is a recommendation from the Commission’s Office of Competitive Market Oversight (OCMO) to address a request for clarification of the applicability of the Commission’s electric disclosure and contract renewal notice regulations at 52 Pa. Code §§ 54.5 and 54.10 and the analogous gas industry regulations at 52 Pa. Code § 62.75. The request for clarification concerns the appropriate contract expiration notice timeframes that should be applied to those customers who obtain competitive electric generation and gas supply service from the same supplier. After careful review and consideration of the comments submitted by the parties, through this Final Order, we respond to the request for clarification.

**Background**

On June 14, 2014, the Commission’s regulations designed to provide electric shopping customers with greater and more uniform detail in electric generation supplier (EGS) disclosure statements and more timely information on “contract renewal” and “change in terms” notices became effective, with an implementation date of July 14, 2014.[[1]](#footnote-1) The changes provide additional information and greater protections for residential and small business customers choosing a competitive supplier for their electric generation. As we implemented the new regulations, suppliers requested informal guidance on various issues. OCMO informally addressed many of the issues that have been raised via a July 1, 2014 conference call in which all EGSs, along with the Committee Handling Activities for Retail Growth in Electricity (CHARGE), were invited to participate.

One of the questions presented to the Commission requires more than informal guidance. On June 16, 2014, Independence Energy Group LLC d/b/a Energy Rewards (Energy Rewards) filed a letter with the Commission’s Secretary to request clarification of the contract renewal/expiration notice requirements applicable to electric and natural gas suppliers. Energy Rewards is licensed by the Commission to serve both retail electricity and retail natural gas customers in the Commonwealth (License Nos. A-2011-2262337 and A-2013-2396449). Energy Rewards sells electricity only products, natural gas only products, and most importantly in the context of this Final Order, combined electricity and natural gas products. In preparing contract documents for its combined electricity and natural gas product offers, Energy Rewards realized that, due to the Commission’s recently promulgated electric disclosure and contract renewal notice regulations at 52 Pa. Code §§ 54.5 and 54.10, Energy Rewards would be required to provide four different notices at different timeframes for customers contracting for both gas and electric supply.

Specifically, Energy Rewards notes that the notice provisions in the natural gas industry disclosure regulations at 52 Pa. Code § 62.75.(g)(1) require two notices to be sent — one at about 90 days and the second at about 60 days — prior to the expiration of a natural gas contract to explain the customer's contract renewal options. However, the Commission's new electric industry rules at 52 Pa. Code § 54.10(a)(1) require an initial notice to be sent 45-60 days prior to contract expiration and an options notice to be sent at least 30 days prior to contract expiration. Energy Rewards is concerned that, in complying with all of these notice timeline requirements, sending four notices to a customer receiving both retail electric and retail natural gas service from the same supplier will cause unnecessary confusion and result in a poor shopping experience for the customer. Accordingly, Energy Rewards proposed to instead send two notices to those customers taking combined electric/natural gas service in accordance with the electric contract expiration notice timeframes included in Sections 54.10 (a) (1) and (2) of the Commission’s regulations.

OCMO agrees with Energy Rewards that sending four renewal notices at varying timeframes to combined electric/natural gas customers could be confusing for those customers receiving both electric and gas services from the same supplier. Since the electric and natural gas restructuring efforts were initiated in the 1990s, the Commission has attempted to keep electric and natural gas consumer protection rules as consistent as possible. Having similar rules for both services, when possible, helps minimize confusion for consumers and avoids unnecessary costs for suppliers. However, recent developments in the electric industry, especially the implementation of advanced metering, have made processes like accelerated switching possible. Similar advances have not occurred in the retail natural gas market. The different technological capabilities between the two industries at times will cause some significant differences between the natural gas and electric rules and procedures that apply to customer switching and disclosure.

In our July 9 Tentative Order,[[2]](#footnote-2) the Commission asked parties to comment on OCMO’s proposed response to Energy Reward’s proposal. OCMO agreed with Energy Reward’s proposal to send only two renewal notices to combined electric/natural gas customers as being reasonable when the customer’s expiration date for each service are within 30 days of each other and assuming the combined service is for the same customer and service location. However, OCMO disagreed with Energy Reward’s suggestion to use the timeframes found in the electric regulations (Section 54.10 (a) (1) and (2)) for this purpose as it would not provide adequate notice to the customers regarding their natural gas service. The electric rule specifies an initial notice at 45 – 60 days followed by the options notice at 30 days; these compressed timeframes are now possible in the electric industry due to the 3-day supplier switching that is to be implemented by the end of 2014.[[3]](#footnote-3) Importantly, supplier switching in the gas industry is not accelerated and it can still take several weeks to effectuate a switch. This important distinction is the reason OCMO proposed that the two renewal notices provided to combined electric/natural gas customers must comply with the extended timeframes found in the natural gas disclosure regulations.[[4]](#footnote-4)

While OCMO proposed the use of two notices that will be issued per the natural gas regulation timeframes, we emphasized that the other provisions of the relevant electric regulation, 52 Pa Code § 54.10, still apply. This means that when presenting notice information for the customer’s electric generation service, the contents of the notice and how the customer’s non-response is treated, suppliers must comply with Section 54.10. We acknowledged that this means that the customer will have certain rights regarding their electric service that technically do not apply to their natural gas service.[[5]](#footnote-5) To maintain consistency and minimize customer confusion, OCMO recommended the following: if a supplier wants to make the terms of the customer’s electric and natural gas service more similar, the supplier is free to provide the customer with the same rights for the natural gas service that apply to the electric service (generally, it is acceptable to provide a customer with a greater level of protection than required by a regulation – it is not acceptable to provide a lesser level of protection than required).

We further noted that OCMO’s proposal is the same regardless of whether the customer receives both electric and gas distribution service from the same utility or two different utilities. In instances where natural gas and electric service is distributed by two different utilities, it is very unlikely that the customer’s electric and gas expiration dates will align. In the notices, suppliers are obligated to clearly communicate the differing expiration dates for each service.  The two notices, initial and options, must always be provided as the contract nears expiration, regardless if terms and conditions are changing.  The notices must clearly make the needed distinctions between the prices and terms of the customer’s electric service and their natural gas service. Additionally, while OCMO proposed allowing a supplier to use two notices instead of four in these limited circumstances, suppliers may continue to follow the separate regulations for electric and natural gas supply notice requirements.

Finally, regarding the different notice timeframe requirements between the natural gas and electric regulations noted above, OCMO proposed examining these issues in a more comprehensive manner as part of the Natural Gas Retail Markets Investigation that the Commission initiated in September 2013.[[6]](#footnote-6) We note that the Commission announced on August 21, 2014 that it does intend to include an examination of these issues in that Investigation.[[7]](#footnote-7)

**Comments**

Six parties filed comments to the July 9 Tentative Order. Comments were filed by the Independence Energy Group LC d/b/a Energy Rewards (Energy Rewards); National Energy Marketers Association (NEMA); Office of Consumer Advocate (OCA); Retail Energy Supply Association (RESA); UGI Energy Services LLC (UGIES); and Washington Gas Energy Services (WGES).

OCA is in general agreement with the Commission's proposed rules and agrees that sending four renewal notices at different times to combined electric/natural gas customers is likely to lead to confusion. OCA thinks that authorizing combined electric/natural gas providers to comply with the extended timeframes in 52 Pa. Code §62.75 (g)(1) as proposed in the Commission's Tentative Order is the most reasonable course of action. OCA agrees that providing these notices on the abbreviated timeframes in 52 Pa. Code §§ 54.5 and 54.10 would not provide customers with enough time to make an informed decision regarding their combined electric/natural gas service because of the time it takes to switch natural gas supplies. OCA Comments at 2.

Likewise, OCA supports the Commission's emphasis that the other provisions of 52 Pa Code § 54.10 still apply to combined electric/natural gas providers when presenting notice information for the customer's electric generation service. OCA also supports the Commission's recommendation that suppliers provide combined electric/natural gas customers with the same rights for the natural gas service that they are required to provide for electric service. OCA Comments at 2-3.

NEMA appreciates the Commission’s identification and review of the different notice timeframes resulting from the implementation of the new electric regulations. NEMA supports the Commission’s flexible approach in its proposed solution. NEMA asserts that consistency in the electric and natural gas regulations, where appropriate and technologically feasible, is beneficial to all stakeholders by allowing for more efficient, lower cost operations; streamlined rule administration and compliance procedures; and opportunities for clearer, less confusing and less duplicative communications with consumers. NEMA thinks that by also allowing those suppliers that so choose in this situation to continue to follow the separate electric and natural gas regulations and send four notices, the Commission will preserve supplier flexibility. This will permit suppliers to utilize their information systems in a way that the suppliers believe will best serve their customers. NEMA also supports the Commission’s announced intention to pursue electric/gas standardization further in the Natural Gas Markets Investigation. NEMA Comments at 2-3.

WGES supports OCMO's recommendation to the Commission to provide suppliers with the flexibility and efficiency to combine gas and electricity customer notice requirements for contract renewals/expirations while preserving important customer notice requirements. WGES notes that it provides both electric and gas supplier services; and, therefore has customers who receive both services from it. Upon adoption of OCMO's recommendation as set forth in the Tentative Order, WGES would welcome the flexibility to modify its current processes for its electric and gas customers to provide these customers with two notices in accordance with OMCO's recommendation, instead of four separate notices. WGES Comments at 2-3.

UGIES agrees with and offers its full support of OCMO's recommendation as they believe the Commission’s approach will provide timely and accurate information to customers in making service renewal decisions, while minimizing the burden on suppliers and avoiding potential customer confusion. UGIES Comments at 2.

RESA notes that the Commission agreed with the concerns expressed by Energy Rewards – but rather than adopting Energy Rewards' proposal, the Commission proposed a different resolution. While RESA commends the Commission for its efforts to resolve a situation that would likely confuse and frustrate customers who are receiving both electric and natural gas services from a combined EGS/NGS - RESA urges the Commission to adopt uniform requirements that align with the newly-revised electric regulations. RESA suggests that the contract renewal notice requirements applicable to the electric industry, including the timeframe and content, be applied to EGSs, NGSs and combined EGSs/NGSs. Under RESA's proposal, all EGSs, NGSs and combined EGSs/NGSs would send an initial notice 45-60 days prior to contract expiration date or the effective date of proposed changes. Additionally, all EGSs, NGSs and combined EGSs/NGSs would provide the same content in those notices, as currently required by Section 54.10 of the Commission's regulations, 52 Pa. Code § 54.10. Further, RESA proposes that combined EGSs/NGSs would have the option of sending separate or combined notices, provided that the timing and content of the notices comply with the Commission's requirements. RESA Comments at 4-5.

RESA notes that the Commission justified differences in the renewal notice requirements on the basis of different technological capabilities between the two industries, pointing to advanced metering capability in the electric industry. While RESA appreciates that at times differences between the industries require different sets of rules, RESA argues that this situation is not one of those times. As to the 3-day switching rules that have been directed by the Commission for the electric industry, RESA notes that those rules have not been implemented and are not required to be implemented until the end of 2014. Also, even prior to the recent changes to accelerate switching in the electric industry, the Commission had adopted guidelines for issuance by EGSs of an initial notice 52-90 days prior to the contract expiration date and an options notice 45 days before the date on which the contract was set to expire. RESA argues that since the Commission reduced the options notice to 45 days, even though it could take up to 45 days to make a switch, it is appropriate to reduce the options notice to 30 days for NGSs and combined EGSs/NGSs. RESA Comments at 6-7.

Finally, RESA notes that the adoption of the resolution proposed by the Tentative Order means that NGSs, as well as combined EGSs/NGSs, would be continuing to follow the outdated notice timeframes that the Commission recently rejected for good reasons in adopting the new regulations for the retail electric market. In particular, initial notices would continue being issued 90 days before the contract expires, negating the implied urgency of the situation requiring consumer attention. RESA Comments at 8.

Energy Rewards appreciates and supports OCMO's proposal. They believe that allowing suppliers the flexibility —under the appropriate circumstances — to send two contract expiration notices instead of four will facilitate a more positive shopping experience for retail customers contracting for combined gas and electricity service from licensed retail suppliers. Energy Rewards also support OCMO's proposal to review these issues more thoroughly as part of the Commission's Natural Gas Retail Markets Investigation. Energy Rewards Comments at 2.

**Disposition**

We thank the parties for their carefully considered and concise comments. Upon careful review of these comments, we agree with Energy Rewards, NEMA, OCA, UGIES and WGES that our proposal as stated in the Tentative Order strikes the proper balance between providing suppliers with an efficient, cost-effective procedure while at the same time making sure consumers receive timely notices that allow them to make informed decisions about their energy options.

While we understand RESA’s drive for standardization and uniformity of the gas and electric regulations, we find that a 30-day notice is simply insufficient time for a customer to act on their natural gas supply choice, given the prolonged timeframe it currently takes to switch suppliers in the gas industry. A review of gas utility supplier tariffs indicates that, in some cases, switching timeframes are even more prolonged than anything ever seen in the electric industry. Many gas utilities have monthly “deadlines” in which all enrollments must be received – and if these deadlines are missed – a customer may not be enrolled until several weeks or months have passed. Some gas utilities have other rules that can prolong the process even further, such as black-out dates for submitting enrollments.

In order to address these concerns, the Commission believes a review of natural gas switching timeframes is needed, and has directed OCMO to specifically include this review as part of the Natural Gas Retail Market Investigation. However, any change to the natural gas switching timeframes will require additional consideration as well as time to develop and implement. Until that time, we must take into consideration the switching timeframes we currently have. Accordingly, the contract expiration notices and the timing of those notices must take into account this reality. If and when the switching timeframes in the natural gas industry improve, we will revisit the notice timeframes, as appropriate.

**Conclusion**

Through this Final Order, the Commission provides the following guidance for contract renewal notice timeframes for those customers receiving both competitive retail electric generation and natural gas supply service from the same supplier. In instances where a customer is receiving both electric generation and natural gas supply service from the same competitive supplier and the terms for both services expire within 30 days of each other:

* It is acceptable to send two contract expiration notices that address both services. The timing of the two notices shall, at a minimum, comply with the timeframes found in the natural gas disclosure regulations at 52 Pa. Code §62.75(g)(1) — one at 90 days and the second at 60 days.
* The notices must clearly make the needed distinctions between the prices and conditions of their electric service and their natural gas service.
* All other aspects of the electric regulations at 52 Pa. Code §§ 54.5 and 54.10 must be applied to the customer’s electric generation service. It is acceptable for suppliers to provide their gas customers with the additional protections found in these electric rules.
* Our finding here is limited to circumstances in which a customer contracts for both electric and gas services from one supplier at the same time under contracts that expire within 30 days of each other.
* Suppliers retain the option of providing the four separate notices if they so choose: two per the natural gas regulations and two per the electric regulations.

Finally, we note that OCMO has been directed to explore the inconsistencies in the electric and gas disclosure regulations as part of the Natural Gas Retail Markets Investigation. The objective of that examination will be to make the two sets of rules as consistent as possible while ensuring that the consumer protections currently found in each are kept fully intact and effective; **THEREFORE,**

**IT IS ORDERED:**

1. That this Final Order shall be served on the Office of Consumer Advocate, the Office of Small Business Advocate, the Bureau of Investigation & Enforcement and all parties that filed comments at Docket No. L-2014-2409385.

2. That the Secretary shall deposit a copy of this Final Order with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin.*

3. That the Office of Competitive Market Oversight shall electronically serve a copy of this Final Order on all persons on the contact list for the Committee Handling Activities for Retail Growth in Electricity.

4. That a copy of this Final Order shall be posted on the Commission’s website at the Office of Competitive Market Oversight’s web page.

5. That the contact persons for this matter are Dan Mumford, Deputy Director, Office of Competitive Market Oversight, 717-783-1957 or dmumford@pa.gov or H. Kirk House, Director, Office of Competitive Market Oversight, 717-772-8495 or hhouse@pa.gov.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

ORDER ADOPTED: October 2, 2014

ORDER ENTERED: October 2, 2014

1. *See* 52 Pa. Code §§ 54.5 and 54.10, relating to Disclosure Statements and notices to customers; *Rulemaking to Amend the Provisions of 52 Pa. Code*, *Final-Omitted Rulemaking Order*, Docket No. L-2014-2409385 (Order entered April 3, 2014) at 39. [↑](#footnote-ref-1)
2. *See Request for Clarification on Notice Requirements for Combined Electricity and Natural Gas Disclosure Statements; 52 Pa. Code Sections 54.5, 54.10 and 62.75.* Docket No. L-2014-2409385 (entered July 9, 2014) [↑](#footnote-ref-2)
3. *See* 52 Pa. Code § 57.174, relating to the timeframe to process a switch request. [↑](#footnote-ref-3)
4. 52 Pa. Code §62.75.(g)(1) requires two notices to be sent—one at 90 days and the second at 60 days. [↑](#footnote-ref-4)
5. For example, electric consumers that fail to respond to their notices and are rolled-off onto a variable-price product are to receive 30-day notice of subsequent price changes. The analogous gas regulations do not have this same requirement. [↑](#footnote-ref-5)
6. *See Investigation of Pennsylvania’s Retail Natural Gas Supply Market*, Docket I-2013-2381742, (Order entered September 12, 2013). [↑](#footnote-ref-6)
7. *See Investigation of Pennsylvania’s Retail Natural Gas Supply Market*, Docket I-2013-2381742, (Order entered August 21, 2014). [↑](#footnote-ref-7)