

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held March 8, 2001

Commissioners Present:

John M. Quain, Chairman  
Robert K. Bloom, Vice-Chairman  
Nora Mead Brownell  
Aaron Wilson, Jr.  
Terrance J. Fitzpatrick

Interim Guidelines Regarding Advance  
Notification by an Electric Generation  
Supplier of Impending Changes Affecting  
Customer Service.

Docket NO. M-00001437

**FINAL ORDER**

**I. INTRODUCTION**

On December 7, 2000, the Commission entered a Tentative Order setting forth proposed interim guidelines seeking to modify the existing written notice requirements with respect to an impending change in a customer's service contract imposed on electric generation suppliers (EGSs) by the Commission's regulations at 52 Pa. Code § 54.5(g). By this Final Order, we waive our existing regulations at 52 Pa. Code § 54.5(g) with respect to the timing of the issuance of the disclosure statements and adopt the interim guidelines as set forth herein. Subsequently, at a separate docket, we will adopt a proposed rulemaking order to revise our regulations in a manner consistent with the interim guidelines.

In the Tentative Order, the Commission set forth interim guidelines which proposed to modify the existing ninety, sixty and thirty day advance notices required to be issued to customers prior to an EGS's proposed change in the terms of service. Moreover, the Tentative Order solicited comments regarding whether the Commission should revisit or modify several similar advance notice requirements, particularly whether an impending change in terms of service should include those instances where a customer's contract is set to expire or where the EGS must terminate a contract. Interested parties were given until January 17, 2001 to submit comments and reply comments were due on January 31, 2001.

Comments to the proposed interim guidelines were filed by Mid-Atlantic Power Supply Association (MAPSA), the Office of Consumer Advocate (OCA), National Energy Marketers Association (NEMA), Energy Association of Pennsylvania (EAP),<sup>1</sup> Exelon Energy Company (Exelon), UGI Utilities, Inc.-Electric Division (UGI), Dominion Retail, Inc. (Dominion), PECO Energy Company (PECO), GPU Energy (GPU), Select Energy, Inc. (Select Energy), PG Energy PowerPlus (PG Energy), PPL Electric Utilities Corporation (PPL), and the New Power Company (New Power). Reply comments were filed by SmartEnergy.com, Inc. (SmartEnergy), New Power, GPU, EAP, and MAPSA.

The Commission thanks all of those who provided comments in response to our Tentative Order, as they have proved instructive in formulating the interim guidelines we

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<sup>1</sup> The Energy Association initially filed Comments on January 17, 2001, and Amended Comments on January 19, 2001.

adopt today. Because many of the comments generally supported the proposed guidelines, we find it unnecessary to direct further discussions within the context of a collaborative group. Moreover, many of the commentators raised similar issues with respect to certain aspects of our proposed guidelines and, as a result, we refrain from individually discussing each comment. However, we do note where commentators have stated opposition to our guidelines and we set forth resolution of that opposition herein.

## **II. INTERIM GUIDELINES**

### **A. Notice of Proposed Changes in Terms of Service**

#### **1. Number of Notices**

In the Tentative Order we proposed that the issuance of two notices, within specific parameters, would be sufficient to ensure that consumers receive adequate notice and have ample time to shop for alternative supply before the effective date of any proposed change in terms of service. In particular, we proposed that an initial notice (“Warning Notice” or “Initial Notice”) be provided forty-five to ninety days prior to the effective date of the proposed change in the terms of service and that a second notice (“Options Notice”) be provided to the customer at least forty-five days prior to the effective date of the change.<sup>2</sup>

In response, commentators generally agreed that a reduction in the number of notices and the time period in which those notices would be provided would serve both

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<sup>2</sup> We acknowledge MAPSA’s comment regarding the nomenclature assigned to the initial, or “warning” notice in our Tentative Order and note that the assignment of the term “warning notice” was merely meant to distinguish the initial notice from the second notice for the purpose of dispelling confusion in our Order and was not meant to imply that each notice must be assigned a specific name. For purposes of this Order, we will refer to the

the interests of the consumers and the industry. No commentators suggested that the existing three-notice requirement was required for the benefit of customers or the industry. However, several commentators suggested that the issuance of one notice would be sufficient to convey accurate and understandable information to customers consistent with the mandate of 66 Pa. C.S. § 2807. MAPSA, p. 3; NEMA, p. 2; PG PowerPlus, p. 2. In a similar vein, Dominion suggested that while two notices should be provided to customers in the case of an expected adverse change in the terms of a customer's contract, one notice of a beneficial change in the terms of a customer's contract, such as a price decrease or the removal of a contract penalty provision, would be sufficient to accurately inform customers. Dominion, p. 2.

The approach suggested by Dominion has already been adopted by the Commission with regard to notices provided to natural gas supply customers in the *Rulemaking Regarding Customer Information Disclosure Requirements for Natural Gas Distribution Companies and Natural Gas Suppliers*, Docket No. L-00000149 (Order Entered November 30, 2000), and we find its application to EGS customer disclosures as consistent with the intent of our original proposal. Requiring two notices in cases where a change in the terms of a customer's service contract are beneficial to the customer, particularly where the customer will receive the benefit of a price decrease, is burdensome without a corresponding public benefit. In such an instance, the customer is likely to continue to stay with the EGS and a second notice of a beneficial change is not

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"Warning Notice" as the "Initial Notice" such as to avoid any misconceptions with respect to the implications that may arise as a result of the name given to the notice.

likely to result in any substantial benefit to either the customer or the EGS. Likewise, the timing of this notice is less significant, although the customer should still be afforded the opportunity to shop for comparison prices upon being notified that a price decrease is imminent.

Based upon these considerations, we modify our initial proposal to allow EGSs to provide one advance notice of a change in the terms of a customer contract only where the proposed change in terms is a reduction in the price to be charged to the customer (“Beneficial Notice”). Consistent with our intention to allow customers the opportunity to shop for comparison prices no matter what the circumstances, we reject Dominion’s suggestion that the Beneficial Notice be allowed to precede the change by as little as thirty days and, instead, direct that the Beneficial Notice be provided at least forty-five and no later than ninety days prior to the effective date of the proposed change.

However, despite the comments to the contrary, we continue to be persuaded that the issuance of two notices, within specific parameters, is the minimal number sufficient to ensure that consumers receive adequate notice of a proposed adverse change in the terms of service.

## **2. Timing of Notices**

As noted above, the Tentative Order proposes that the Initial Notice must be provided forty-five to ninety days prior to the effective date of the proposed change and that the Options Notice must precede the effective date of change by at least forty-five days. UGI and EAP suggested that if the Commission should decide to reduce the number of notices from three to two, in order to allow customer’s sufficient shopping

time, we should require these notices to precede the proposed change by a firm forty-five and ninety days, respectively. UGI, p. 2; EAP, p. 4 (PECO, PPL and GPU concur in this comment by way of their support for the EAP's comments). For similar reasons, OCA submitted that it remains concerned about shortening the notice period to customers such as to allow a customer to receive a notice of change only forty-five days prior to such change. OCA, p. 4. Given these concerns, OCA suggested that the Commission should require that the Options Notice be *received* by the customer forty-five days before the change in terms of service as opposed to being mailed forty-five days prior. OCA, p. 5

At the other end of the spectrum, SmartEnergy opposes any notice requirements for customers relating to a change in the terms of service that are in excess of thirty days. SmartEnergy Reply, pp. 2-6. In support of this position, SmartEnergy argues that the EGSs are in the best position to determine what constitutes adequate notice and excessive notice requirements only serve to increase costs and chill competition. SmartEnergy Reply, pp. 2-6. Dominion and Exelon suggest that the Options Notice should be provided to the customer thirty days prior to the proposed change. Dominion, p. 3, Exelon, p. 5.

Most commentators agreed that at least forty-five days notice must be provided to allow the customer sufficient shopping time to avoid a return to POLR service, even those suggesting that one advance notice of a change in terms would be sufficient. In specific reply to OCA's concerns regarding sufficiency of shopping time, New Power argued that the customer is receiving two notices of an impending change within as much as ninety days prior to the proposed change and, as such, will have sufficient notice of an

impending change to contemplate and effectuate a change in service. New Power Reply, p. 2.

In view of the general support of the commentators, and the stated goal of the Commission to provide a practical and flexible approach to advance customer notification, we decline to modify our initial proposal regarding the timing of the notices. Despite the concerns asserted by OCA, the EAP and its members, the Commission is of the opinion that forty-five days advance notice of an impending change is adequate time for a customer to contemplate and effectuate a change in suppliers. As New Power points out, the final decision of the consumer will have been preceded by two notices alerting the customer that an impending change in terms of service is proposed to occur. Moreover, as set forth more fully below, we are encouraging EGSs to include a general statement of the proposed change in terms of service in the Initial Notice such as to place the customer on notice as to what terms may be expected in the Options Notice, thereby allowing the customer additional time to contemplate those changes.

To ensure that the customer remains adequately informed and to discourage rolling the two notices into one, in the Tentative Order we proposed that while the EGSs would be afforded flexibility regarding the exact timing of the Initial Notice, the two notices must be sent at least seven days apart. Only MAPSA explicitly addressed and supported our proposal to require that the two notices be spaced as such, while the majority of other commentators failed to respond to this requirement. In fact, in the case of several commentators, it would appear that some parties either misunderstood the timing parameters or just overlooked them. In any case, we wish to clarify in this Order

that the Initial Notice must precede the Options Notice by at least seven days. Given that the Options Notice must issue at least forty-five days prior to effective date of change in terms, this necessarily requires that the Initial Notice must precede the effective date of change by fifty-two to ninety days.

### **3. Content of Notices**

In the Tentative Order, we proposed that the Initial Notice should contain a statement informing the customer that a proposed change in the terms of service is expected to occur on a date certain, explain why such a change is necessary, indicate when a second notice will be issued with details regarding the proposed change, and note that the customer's options would be described in the subsequent notice. Similarly, we proposed that the Options Notice should advise the consumer of the specific change and inform the customer of its options, including the customer's ability to select another EGS within a certain time period or return to the EDC for provider of last resort service.

In response, OCA suggested that in addition to the information specified in the Tentative Order, the Options Notice should contain:

1. information about any new pricing or renewal pricing;
2. the EDC's or POLR's price to compare;
3. any rules that might apply to a return to POLR service, e.g., a mandatory twelve-month stay rule;
4. instructions on selecting an alternative supplier;
5. a date certain for any action if the customer elects a new alternative provider or elects the changes in the terms, and;

6. appropriate telephone numbers and internet addresses for the OCA and Commission's websites regarding ElectriChoice.

We adopt the suggestion of OCA and require that the advance notices adopted here today include the information as described above. In doing so, we concur with the sentiment of OCA in stressing that it is critical that these notices contain full and accurate information to the customers regarding their options.

In addition, we believe it would be helpful if the Initial Notice generally indicated the proposed change in terms of service so that the customer is aware of what may be expected in the Options Notice and has additional time to contemplate any reaction to the proposed change. Comprehensive disclosure of terms and options in the Option Notice will foster customer comprehension and increase the likelihood that customers will actively participate in the selection of their electricity supplier rather than simply accepting a return to POLR service. In the past, OCA and the Commission's Bureau of Consumer Services (BCS) has offered to work with suppliers in developing notices that sufficiently set forth a customers' options and we would encourage suppliers to work with OCA and BCS in drafting appropriate notices that meet the guidelines we adopt here today

**B. Notice of Expiration Date of Fixed Term Agreements**

In the Tentative Order, we suggested that it would be reasonable to additionally modify the notice requirements for the approaching expiration date of fixed term agreements so that they are consistent with the notices provided for proposed changes in the terms of service. Accordingly, we solicited comments on whether EGSs should be

required to issue only two notices, as opposed to three notices, of the impending expiration date of a fixed term agreement at the same intervals allowed for notices of changes in terms of service.

Rather than commenting on our proposal to reduce the number of notices in this situation, MAPSA, Select Energy and PG Energy PowerPlus challenged the validity of the existing, and our proposed, requirements, arguing that they impose an undue financial burden on EGSs without a corresponding public benefit. MAPSA, p. 4; Select Energy, p. 1; PG Energy, p. 3. As indicated by MAPSA, the requirement that more than one notice be provided to the customer of an impending contract expiration date is unnecessary because, even in the rare instance where a residential or small business customer is under a fixed term agreement, that customer is already aware of the expiration date of the fixed term agreement. MAPSA, p. 4. PG Energy stresses that it believes that it is simply a courtesy to the customer to send a “reminder” notice that their contract is expiring and EGSs should not be required to send multiple reminders for information that was previously disclosed. Although Select Energy echoed the concerns of MAPSA and PG Energy, it limited its concerns to non-residential customers and supported a ninety-day notification requirement for residential customers. As with notices of proposed changes, OCA supports a reduction in the number of notices, but disagrees with the timing of those notices. OCA, pp. 4-5.

We understand some of the concerns expressed by MAPSA, Select Energy and PG Energy, which is why we are proposing to reduce the number of notices in these circumstances. However, we decline to further relax or eliminate the customer

notification requirement for impending fixed term contract expiration dates beyond what we have suggested in our Tentative Order. While we recognize that those customers taking service under a fixed term agreement are often aware of an impending contract expiration, it is certainly preferable to provide those customers with reminders of upcoming contract expirations in the interest of promoting electricity competition rather than risk losing a customer to POLR service. The requirement we adopt here today is less burdensome than that formerly mandated by Commission regulations and will reduce the burdens placed on the EGS, particularly in light of the fact that not many residential and small business customers are subject to fixed term agreements.

**C. Notice of Contract Termination**

In the Tentative Order, we noted that we were aware that customers are frequently not apprised of an EGS's contract termination until thirty days prior to the effective date, which almost ensures that those customers would be returned to the EDC for POLR service since there is insufficient time to choose another EGS. We recognized that while such thirty-day notice might be consistent with an EGS's contractual obligations, we suggested that a customer who is being dropped by an EGS needs at least as much time to secure generation service as one who is facing a change in the terms of service.

In responding to our suggestions, it is clear that many commentators mistakenly understood our proposal as applying in the case of contract terminations for nonpayment or wholesale abandonment of service by the EGS. This is not the case and we do not intend to apply the guidelines we adopt here today in either of those situations. Rather, as the commentators noted, in the case of nonpayment less notice is necessary while in the

case of wholesale abandonment of service, compliance with the ninety-day provisions in our licensing regulations would be required.

Our focus here is on what we have witnessed in the past that may be termed as partial abandonment of service where, for example, an EGS has decided that it is no longer desirable to serve a specific class of customers. In such an instance, we believe, and OCA concurs in its comments, that the advance notice requirements we adopt here today would be particularly applicable for such customers. *See* OCA, p. 3.

Accordingly, we tailor our interim guidelines to require that customers who are being dropped by an EGS, for reasons other than nonpayment or wholesale abandonment, must receive advance notice consistent with those notice requirements applicable to a proposed change in the terms of service. In the Commission's view, we believe that this represents the most direct method for ensuring that dropped customers are afforded sufficient notice to allow them the opportunity to shop for a competitive supplier.

**D. Notice to EDCs**

We also noted in the Tentative Order that it had come to our attention that EDCs are frequently not given notice of the approaching expiration date of fixed term agreements or proposed changes in the terms of service when EGSs provide this notice to customers. In our view, such notice would be particularly helpful to the EDC in terms of planning supply in instances where a large return of customers to POLR service is likely. Accordingly, in order to address this issue, we suggested that our interim guidelines have a provision directing EGSs to add EDCs to their notice obligations.

In response, generally both EGSs and EDCs commented that copies of every notice of a proposed change in the terms of service or expiration date of a fixed term agreement would provide no useful benefit and, in most instances, would result in unnecessary burdens for both EGSs and EDCs. *See, e.g.* PECO, p. 2. Exelon, SmartEnergy and New Power commented that such notices may not provide useful information to the EDC because the EGS cannot predict how many customers may accept a contract term change, renew contracts or secure service from another supplier. Exelon, p. 8, SmartEnergy, p. 14; New Power, p. 5. Moreover, these commentators point out that the EDC is already provided with a sixteen-day advance notice in the form of an EDI drop transaction notice. PECO, p. 2; NEMA, p. 3; SmartEnergy, p. 16. Despite similar misgivings regarding predictability, MAPSA stressed that should the Commission decide to require advance notice to EDCs, it should tailor any requirement so as not to unduly impact the competitive market. MAPSA, p. 8.

Conversely, several commentators agreed that for purposes of load forecasting, it would be useful to provide EDCs with some advance notice of partial or wholesale abandonment of service and/or impending contract expirations or changes in terms of service where it is likely to result in a large amount of customers returning to POLR service. EAP, p. 5; GPU, p. 2; PPL, p. 3. These commentators noted that at least one notice of change, expiration or abandonment, whether provided as an EDI transaction or generic notice, should precede the proposed EGS action. Additionally, OCA strongly supported our proposal, noting that POLR suppliers should be given the opportunity to

adequately plan supply so that they can continue to operate within the existing rate caps. OCA, p. 4.

Despite the apparent disparity of comments received on this issue, there can be no doubt that there is some usefulness in providing advance notification to the EDC where it is expected that a large amount of customers may be returning to POLR service. However, some issues remain as to the method, timing and applicability of such a notice requirement. Given these immediate issues, we propose that this requirement be more thoroughly addressed in the context of the further proposed rulemaking which we will adopt to amend our regulations consistent with the interim guidelines. While we will not adopt guidelines today addressing the content and method of notices by EGSs to EDCs, we nonetheless strongly encourage EGSs to communicate with the EDCs such as to aid in load forecasting and supply planning.

**E. Applicability of Notice Requirements to All Classes of Customers**

Lastly, we solicited comments as to whether any or all of the notice requirements proposed in the Tentative Order should be implemented for all customers, rather than only residential and small business customers. Those commentators who replied to our inquiry generally opposed any expansion of the notice requirements beyond residential and small business customers, noting that large commercial and industrial customers do not warrant the same regulatory protection as small business and residential customers. *See* MAPSA, p. 9; Exelon, p. 5. However, EAP, speaking on behalf of its member companies supported the expansion of the requirement to include all classes of customers. EAP, p. 4.

Given the increase in regulatory burdens and associated costs without any noticeable corresponding public benefit, we decline to expand our interim guidelines to require advance notifications of impending contract changes to large commercial and industrial customers. As argued by MAPSA, these customers are in a position to best protect their interests regarding their choice of electricity suppliers and are not in need of special regulatory protection.

### **III. CONCLUSION**

We believe that the interim guidelines we adopt here today serve the intended, dual purpose of serving both the interests of the consumers and the industry. As we indicated, the adoption of the advance customer notification approach herein has not changed the overall objective of the assuring that customers receive accurate and adequate information to allow them to meaningfully participate in a competitive generation market. Again, we thank the commentators for their suggestions and insight and encourage the same level of participation in the formal rulemaking we will be initiating to formally adopt the interim guidelines as set forth herein; THEREFORE, IT IS ORDERED:

1. That application of 52 Pa. Code § 54.5(g) is hereby suspended as it applies to advance customer notifications.

2. That the Interim Guidelines Regarding Advance Customer Notification by an Electric Generation Supplier of Impending Contractual Changes Affecting Customer Service as set forth in this Order and Appendix are adopted as final.

3. That these Interim Guidelines are effective upon the entry date of this Order and shall remain in effect until they are superseded by regulations promulgated on this same subject matter.

4. That the Commission's Law Bureau shall draft a proposed rulemaking to amend the existing regulations at 52 Pa. Code § 54.5(g) to incorporate these Interim Guidelines.

5. That a copy of this Order and any accompanying statements of the Commissioners be served upon all jurisdictional electric distribution companies, all licensed electric generation suppliers, the Energy Association of Pennsylvania, the Office of Small Business Advocate, and the Office of Trial Staff, and shall be made available to all other interested parties.

6. That all pending Petitions for Waiver of 52 Pa. Code § 54.5(g) seeking Commission approval of a modified advance notification schedule filed prior to our adoption of these Interim Guidelines are hereby declared moot and accordingly dismissed.

BY THE COMMISSION

James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: March 8, 2001

ORDER ENTERED: March 9, 2001

## APPENDIX A

### Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Contractual Changes Affecting Customer Service

- I. The purpose of these interim guidelines is to set forth advance customer notification schedules for the following:
  - (a) Approaching expiration of a fixed term agreement, or;
  - (c) Proposed changes in terms of service, including, but not limited to, an increase in generation charges or contract termination for reasons other than failure to pay for services rendered and/or EGS service abandonment.
  
- II. An electricity generation supplier shall provide advance notification to its residential and small business customers of an approaching expiration of a fixed term agreement or any proposed changes in terms of service in accordance with the following guidelines:
  - (a) An Initial Notice shall be provided to each affected customer fifty-two to ninety days prior to the expiration date of the fixed term agreement or the effective date of the proposed change in terms. The Initial Notice shall include the following:
    - (i) A general description of the proposed change in terms of service;
    - (ii) The date when such change is to be effective or when the fixed term agreement is to expire;
    - (iii) An explanation of why such a change is necessary;
    - (iv) A statement indicating when a follow-up Options Notice will be issued with details regarding the proposed change, and;
    - (v) A statement explaining that the Options Notice will discuss the customer's options with respect to such proposed change in terms of service or expiring fixed term agreement.
  
  - (b) The Options Notice shall be provided to each affected customer at least forty-five days prior to the expiration date of the fixed term agreement or the effective date of the proposed change in terms. This notice shall include the following:
    - (i) A statement advising the consumer of the specific changes being proposed by the EGS and informing the customer of its options, including the customer's ability to select another EGS within a certain time period, accept the proposed changes, or return to the EDC for provider of last resort service;
    - (ii) Information regarding any new pricing or renewal pricing;
    - (iii) The EDC's or provider of last resort supplier's price to compare;
    - (iv) Any rules that might apply to a customer's return to provider of last resort service, including, for example, but not limited to, a mandatory twelve-month stay rule;

(v) Instructions on exercising its options, including selecting an alternative supplier;

(vi) A date certain for any action required by customers to exercise their available options, and;

(vii) Appropriate telephone numbers and internet addresses for the Office of Consumer Advocate and Commission's websites regarding ElectriChoice.

(c) In the instance where the proposed change in terms of service is beneficial to the consumer, such as in the case of a decrease in generation charges or the removal of a contract penalty provision, the EGS may, at its option, provide the customer with one advance notification forty-five to ninety days prior to the effective date of the proposed change.