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

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|  | Public Meeting held September 23, 2010 |
| Commissioners Present: |  |

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| James H. Cawley, Chairman | |  | |
| Tyrone J. Christy, Vice Chairman | |  | |
| John F. Coleman, Jr. | |  | |
| Wayne E. Gardner | |  | |
| Robert F. Powelson |  | |
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| Interim Guidelines Regarding Advance Notification  by an Electric Generation Supplier of Impending Changes Affecting Customer Service; Amendment re: Supplier Contract Renewal/Change Notices | Docket No. M-2010-2195286  Docket No. M-0001437 | |

**ORDER**

**BY THE COMMISSION:**

Before us for consideration are the comments filed in response to our proposed amendment of the *Interim Guidelines* [[1]](#footnote-1) for providing notice to customers in advance of a change in terms of service for, or the expiration of a contract for electric generation. With this order, we will finalize the amendments to update these *Interim Guidelines* consistent with the discussion herein.

**DISCUSSION**

**Background**

Section 54.5(g) of the Commission’s regulations state that an electric generation supplier (EGS) must send a renewal notice to alert a customer about the pending expiration, or a change in terms of a contract for electric generation. This section reads as follows:

 (g)  Disclosure statements must include the following customer notification:

   (1)  ‘‘If you have a fixed term agreement with us and it is approaching the expiration date or whenever we propose to change our terms of service in any type of agreement, you will receive written notification from us in each of our last three bills for supply charges or in corresponding separate mailings that precede either the expiration date or the effective date of the proposed changes. We will explain your options to you in these three advance notifications.’’

\* \* \*

 (h)  If the default service provider changes, the new default service provider shall notify customers of that change, and provide customers with its name, address, telephone number and Internet address, if available.

52 Pa. Code § 54.5.

Section 54.5(g) was subsequently updated by the *Interim Guidelines* that were issued in 2001. The *Interim Guidelines* provide general guidance on the timing and the content of these notices.

According to the *Interim Guidelines*, an “initial notice” is to be provided to a customer between 52 – 90 days before a contract expires, and is to include a general description of the proposed changes to the terms of service; the effective date of the change; and the reason for the changes. The first notice is to state that the customer will receive a second notice with more details including an explanation of the customer’s options. The second notice (the “options notice”) is to be provided to the customer at least 45 days prior to the expiration of the contract. The options notice is to include the specific changes to the terms of service being proposed; information on new prices; an explanation of the customer’s options and how to exercise those options; the date by which the customer must exercise one of the options; the telephone numbers and website addresses for the Commission and the Office of Consumer Advocate (OCA); and the electric distribution company’s (EDC’s) Price To Compare (PTC)[[2]](#footnote-2).

The Office of Competitive Market Oversight (OCMO)[[3]](#footnote-3), in anticipation of the need for EGSs to notify customers of the impending expiration of, or changes in contracts, reviewed the interim guidelines and identified two urgent issues that needed to be addressed in light of today’s market environment. These issues include: (1) the use of an estimated PTC on customer contract renewal notices when an actual PTC is not yet available from the EDC, and (2) the effect on a customer’s existing contract with a supplier when the customer does not respond to a contract renewal notice.

In June 2010, OCMO brought these issues concerning the contract renewal notices to the attention of the Committee for Handling Activities for Retail Growth in Electricity (CHARGE)[[4]](#footnote-4). After several weeks of discussion and four CHARGE meetings, including a July 29, 2010, conference call coordinated by the EGSs, OCMO staff formulated recommendations for resolving these issues and submitted them to the Commission for its consideration.

On September 3, 2010, the Commission issued a *Tentative Order* that provided notice that it intended to reconsider its order that established the *Interim Guidelines* pursuant to 66 Pa.C.S. § 703(g) and proposed revisions to update the *Interim Guidelines* in light of today’s market environment. The order proposed two changes to the *Interim Guidelines* -- that the options notice include an estimated PTC and information about what will happen to a customer’s current contract if the customer does not respond to the notice; and that the opportunity to cancel any resulting agreement with the EGS without penalty be given to customers who fail to respond to a renewal notice.

The *Tentative Order* established a public comment period that ended on September 13, 2010. The *Tentative Order* also directed that the proposed revisions to the *Interim Guidelines* would be finalized based on the comments received, and that a proposed rulemaking be initiated to incorporate these guidelines into the regulations at 52 Pa. Code Chapter 54 (Electricity Generation Customer Choice) Subchapter A (Customer Information) after the interim guidelines are finalized.

Comments were timely filed by the OCA, OSBA, Pennsylvania Utility Law Project (PULP), PPL Electric Utilities Corporation (PPL), PECO Energy Company (PECO), National Energy Marketers Association (NEMA), Pennsylvania Energy marketers Association (PEMC), Washington Gas & Electric Services, Inc. (WGES), BlueStar Energy Solutions (BlueStar), Dominion Retail, Inc. (Dominion), FirstEnergy Solutions Corporation (FES), and Direct Energy Services, LLC (Direct Energy).

The comments are addressed below under the corresponding proposed revision.

**INTERIM GUIDELINES**

**I. INTERIM GUIDELINE II (b)(iii)**

**The Price To Compare on Option Notices**

Interim Guideline II(b)(iii) provides that a PTC should be included on the renewal options notice. However, the EDC’s PTC may not be known at the time the options notice is sent to the customer, or the EDC’s PTC may change quarterly. This means that the options notice will not provide the customer with accurate information to make informed choices about what action should be taken, if any, when his or her existing contract expires.

After discussing the three options considered by CHARGE, the *Tentative Order* adopted OCMO’s recommendation and proposed to revise Interim Guideline II (b)(iii) to include on the options notice an estimated PTC with the notation that the PTC is subject to change quarterly or as otherwise set forth in the EDC’s default service plan. The interim guideline was also revised to state that the options notice should inform customers about how frequently the PTC will change and that the current PTC can be obtained from the EDC or by accessing the PowerSwitch website at [www.papowerswitch.com](http://www.papowerswitch.com). The *Tentative Order* also revised the interim guideline to make the EDC the source of the estimated PTC.

**Comments**

In the CHARGE Working Group, OCA expressed reservations about providing an estimated price to compare or a current price to compare that will change before the customer makes a decision. OCA’s position was that the information could be incorrect or an estimate off target, which could lead customers to the wrong decision about renewing their contract. OCA stated that bad information can sometimes be worse than no information at all. However, OCA now submits that utilizing an estimated PTC is workable, if the option notice provides adequate information regarding where, when and how to obtain the updated price to compare. If an estimated PTC is adopted, OCA also proposes that a reference to the OCA’s Electric Shopping Guide be included in Guideline II (b)(iii); that the Commission monitor the quality of the estimated PTC that is being provided to the EGSs; and that the Commission should review renewal notices to make sure that the estimated PTC and the information on how to obtain the updated PTC is prominently displayed and understandable.

OSBA submits that under the terms of the settlement of PECO’s default service rate at Docket No. P-2008-2062739 the parties developed a procedure for giving notice of the PTC for small business customers. This notice procedure was further refined in the settlement of PECO’s Purchase of Receivables (POR program) at Docket No. P-2009-2143607. OSBA submits that the *Interim Guidelines*, as revised, should not be construed to relieve any party from following the terms of these two settlements. OSBA also notes that Pike County Light and Power has requirements specific to the aggregation program at Docket No. P-2008-2044561. OSBA requests that the Commission expressly state if, and how, the revisions to the *Interim Guidelines* will apply to those customers.

PULP respectfully disagrees with the use of an estimated PTC and submits the Commission should instead require that no PTC be included on the options notice, but that customers are provided with information on how to obtain it on line or by telephone. PULP believes that providing estimates to customers may lead them to enter into disadvantageous long-term contracts based on flawed information. PULP submits that rather than provide customers with an estimated PTC that is possibly incorrect, the Commission should refer consumers to reliable sources of information. PULP states that if sufficient sources of readily available information do not exist or are not available at the time a customer’s contract expire, customers should return to their default supplier until accurate, reliable information is available.

Dominion also is in favor of not putting the PTC on the renewal notices and providing customers with information on how to obtain an accurate PTC online or by telephone. Dominion submits that customers are likely to ignore warnings that the PTC provided on their renewal notice is an estimate and there is no recourse for customers in the event the PTC is incorrect. Dominion voices concern that the use of an estimated PTC on the renewal notice will put the EGSs in the position of providing potentially inaccurate information, possibly damaging the relationship with their customers. Dominion also believes that, in a competitive market, it is inappropriate to require an EGS to provide its competitor’s price on its bill. Also, the proposed guideline imposes additional costs on the EGSs by requiring them to train their call center personnel to respond to customer inquiries regarding the current PTC. Dominion opines that OCA has a long history of providing accurate information to customers and that the Commission’s recently launched website provides the same type of information. The information on the websites is also timelier than printed notices that need to be prepared several days/weeks in advance of the distribution date. For these reasons, Dominion believes customers should be directed to the OCA and the PUC for PTC information.

NEMA does not favor including estimated PTC information in options notices due to the potential to confuse and mislead customers. NEMA believes that the appropriate means to communicate PTC information to renewing customers is from a neutral, credible source such as the Commission’s website and an automated phone system. NEMA states that the estimated PTC information on the customer renewal notice will be misleading and inaccurate when the renewal offer is of a different term and/or a different product offering. Consumers will likely not appreciate that the PTC is variable and therefore not comparable to a longer term fixed rate offering. NEMA submits that to avoid consumer confusion, consumers need to be educated about PTC from a neutral, credible source, not the utility, and suppliers should provide consumers with explicit information on how to obtain the most current utility PTC on their renewal notices.

PEMC submits that an EGS should not be responsible for providing an estimated PTC to consumers and believes it is more prudent and practical to direct consumers to the Commission’s website, as well as the individual utility website, for this information. PEMC believes it is important for utility price information, estimated or actual, to come directly from the EDC source and not subject prices to any potential interpretation by the EGSs.

BlueStar supports a modified version of the third option that was discussed -- require the inclusion of an estimated PTC on the option notice, with information as to when and where customers can obtain the actual PTC when it is available, but use the Commission’s website to inform customers as to the actual PTC. BlueStar notes that there is precedent for using an estimated PTC. In the autumn of 2009 when suppliers first started marketing in the PPL territory, suppliers used an estimated PTC when providing customers with information about shopping, and they are not aware of any customer complaints regarding this approach. In addition, BlueStar recommends the proposed guideline be modified to make the Commission, and not the EDC, the entity that would provide this information to customers. BlueStar believes that an impartial, neutral source should be responsible for providing the actual PTC when it becomes available.

Direct Energy supports the Commission’s adoption of revised guideline II(b)(iii). However, Direct Energy urges the Commission and staff to be watchful of manipulation, *i.e*., a utility could use an estimated PTC to discourage shopping by manipulating a higher or lower estimate depending on shopping levels.

FES also supports the use of an estimated PTC on the options notice, with two additional requirements. The EDC is the source of the estimated PTC and clearly lists the components included in the PTC calculation. FES also believes the *Tentative Order* should be modified to require that the calculation of the estimated PTC be subject to Commission review. FES believes this will mitigate concerns about either suppliers or EDCs manipulating the PTC to make prices look more attractive and allow for greater transparency in the process.

PPL is in agreement with the Commission’s proposed modification to Guideline II(b)(iii) to address the notice of an estimated PTC, but recommends four minor modifications. PPL states the interim guidelines should be amended to provide that when an EGS sends out a renewal/change notice, all affected EDCs must be provided with a copy of the notice or communication that the notice has been sent to customers. PPL states that as the EDC will be identified as the entity to contact regarding the PTC, it is fair to assume the customer contact center will receive additional calls and the EDC must adequately staff and train its customer service representatives to respond to these calls. PPL also proposes that if an EDC changes its PTC on a quarterly basis, its obligation to provide an estimated PTC will extend for no more than three months into the future from the date of the request, and that updates of that estimate will not be required more frequently than on a quarterly basis. Finally, PPL submits the guidelines should be amended to provide that EDCs shall not be liable if actual default service prices vary from the estimated PTC.

PECO likewise supports the Commission’s proposal to provide an estimated PTC, and like PPL, also requests that we direct that an EDC will not be required to provide estimates beyond the next quarter. PECO also recommends that EDCs not be held responsible for the differences between the estimated and actual PTCs.

**Resolution**

We agree with OCA, BlueStar, Direct, FES, PECO and PPL that the renewal notices sent to customers should include an estimated PTC. While admittedly providing an estimate is not without its problems, as noted by several of the parties, we believe that this is the most reasonable option. It will provide customers with some idea of what the PTC will be and this is critical information a customer must have when evaluating possible generation supply choices. As BlueStar notes, this is how suppliers handled this in the autumn of 2009 and we are not aware of any significant objections to the practice at that time. To address some of these concerns, we will retain the direction that the PTC be clearly labeled as an estimate, and that there should be a statement that the PTC is subject to change based upon the EDC’s default service plan. Additionally, the notice should inform the customer of an approximate date that the actual PTC will be established, and explain how it can be obtained. The EDCs shall provide this information to the EGSs.

We must disagree with PULP, Dominion, NEMA, and PEMC when they ask us to omit a PTC from the notices and instead direct customers elsewhere for this information. We believe that customers need to have some point of reference, even if it is an estimated PTC, in front of them as they consider their options in regard to renewing an agreement with their current supplier, on the same or different terms, or trying to find another supplier. Forcing customers to go elsewhere to obtain this basic information is unnecessarily burdensome. The risk is that the customer will fail to follow up on the direction to look elsewhere for this basic information, which could result in his making a poor decision or, out of frustration, simply returning to default service.

While we understand Dominion’s concern with being required to place a “competitor’s” price on its notice, in that Dominion apparently considers themselves to be competing with the EDC’s “default service,” we cannot agree that it is “not appropriate” in a competitive market. The PTC is the traditional method of communicating to consumers the price of an EDC’s default generation service, and has been utilized as a shopping tool in consumer education campaigns by the Commission, EDC and OCA since the enactment of the *Electricity Generation Customer Choice and Competition A*ct in 1996.

We agree with OCA that the customer should be referred to the OCA’s website and its Electric Shopping Guide in addition to the EDC and the PUC’s [www.papowerswitch.com](http://www.papowerswitch.com) because, as Dominion points out, the OCA has a long history of providing accurate information to customers. We have revised Guideline II(b) (iii) accordingly[[5]](#footnote-5).

On the other hand, while we understand the concerns of parties like BlueStar, Dominion and NEMA that customers should be directed to a neutral source of information on the PTC, and not the utility, we will keep the EDC as one of the sources customers can access to get the PTC. We believe it is inevitable that many customers will call the EDC for this information regardless of whether we specify this or not. Additionally, as PEMC points out, the PTC is the “utility’s price,” and thus it is only appropriate that the utility provide the price to consumers.

We also agree with PEMC and FES that the EDC should be the party responsible for calculating both the estimated and actual PTCs. The EDC is the entity with the information needed to perform this task, so it is the obvious choice. Again, we understand the concerns expressed with the accuracy of the EDC’s calculation and the potential for manipulation. However, we have the authority to investigate any complaint alleging any action or activity that could have an adverse impact on the proper functioning of the competitive market, and can even initiate such an investigation on our own initiative if needed. *See* 66 Pa.C.S. § 2811(b) (relating to market power remediation; initiation of investigations). As such, we do not think it is necessary to include in the *Interim Guidelines* language that requires the Commission to review the EDC’s PTC calculation as was suggested by FES. We also think that requiring the EDC to routinely list the components of the PTC as suggested by FES is not necessary, but that the EDC should be able to explain its calculation in response to any inquiries, complaints or investigations. Also, EGSs or any other party may informally present their concerns to OCMO in an effort to resolve them in that forum.

Having said this, we agree with PPL and PECO that the EDC should not be held liable if the actual default service price varies from the estimated price, as long as the EDC can demonstrate that the estimate was calculated in a reasonable fashion and in good faith. We also agree with PPL and PECO that if the EDC changes its PTC on a quarterly basis, its obligation to provide an estimated PTC will extend for no more than three months into the future from the date of the request and that updates of that estimate will not be required more frequently than on a quarterly basis. We have revised the Interim Guideline II (b)(iii) to include these two points. We also added the direction that the estimated PTC be posted on the EDC’s website.

In its comments, PPL requests that EDCs be provided with a copy of the renewal notices sent by suppliers or notification that notices have been sent out. While we understand PPL’s concerns, given that the EDCs will be one of the parties identified on the notices as an information source, we believe requiring this notification is impractical. Suppliers will be sending expiration notices to customers throughout the year as contracts expire, and sending copies of each of these notices to the EDCs would be burdensome and of questionable use since this will become a routine activity. However, we do encourage suppliers who plan to send a significant volume of notices within a specific timeframe to contact the EDC with information about what is to occur. This will assist the EDC in arranging call center resources and preparing its staff for customer inquiries. Such a practice will assist suppliers, EDCs and customers alike. The Commission can also revisit this issue in the future rulemaking that will revise the renewal notice regulations. If the EDCs experience difficulties responding to customer contacts concerning the notices, they may bring this issue to the Commission during that proceeding.

In response to OSBA’s concerns about the effect of the *Interim Guidelines* on the settlement agreements approved in the Commission proceedings on PECO’s default service rate, Docket No. P-2008-2062739, and POR program, Docket No. P-2009-2143607, we declare that these guidelines are not intended to supersede or alter these existing settlements and orders. Likewise, the Pike County Light and Power program, Docket No. P-2008-2044561, is a Commission-sanctioned aggregation program that falls outside of the scope of these guidelines. As such, they will not apply to these Pike County aggregation customers.

**II. INTERIM GUIDELINE II (d)**

**Customer Fails To Respond To Renewal/Change Notices**

After discussing four options presented by OCMO, the *Tentative Order* proposed the addition of a new guideline based on an analogous natural gas industry regulation to address situations where a customer does not respond to an options renewal notice (Option 1). Neither the electric customer information regulations on contract renewal at 52 Pa. Code 54.5(g)(1) nor the *Interim Guidelines* address this particular point.

Specifically, the natural gas regulation, Section 62.75(g)(2), requires that the customer affirmatively reselect the supplier for the contract to renew, but provides a rule that is to be followed when a customer does not respond to a renewal notice. This regulation reads as follows:

(2) The NGS may add appropriate language in the notice so that the notice may serve as an amendment to the original agreement if the customer affirmatively reselects the NGS. Affirmative reselection occurs when the customer initiates a telephone call to the NGS and during the conversation the customer accepts the new offer, the NGS initiates a telephone call to the customer and during the conversation the customer accepts the new offer, the customer accepts the new offer by signing a document and returning it to the NGS, or the customer acknowledges the acceptance of the new offer electronically, perhaps by checking a box on a form on the NGS’s website. These are offered as examples and are not meant to be all inclusive. After a customer affirmatively reselects the NGS, the NGS is relieved of its obligation to fulfill outstanding notice requirements. If the change in terms notice is for a reduction in the price of the commodity charges, the NGS is required to send only one written notice at least 60 but not more than 90 days prior to the effective date of the price change. **A fixed term agreement may be converted to a month-to-month agreement, either at the same terms and conditions or at revised terms and conditions, as long as the agreement converts from a fixed term to a month-to-month agreement and contains no cancellation penalties, in the event that the customer does not respond to the notice. A fixed term agreement may be converted to another fixed term agreement as long as the new agreement includes a customer initiated cancellation provision that allows the customer to cancel at any time for any reason and contains no cancellation penalties, in the event that the customer does not respond to the notice.**

52 Pa. Code § 62.75(g)(2)(emphasis added).

The Commission believed that patterning its proposed *Interim Guideline* II (d) on Section 62.75(g)(2) would “better protect customers and encourage competition.” *Tentative Order* at p. 15.

The *Tentative Order* also revised Guideline II (b)(vi) to refer to Guideline II (d), and updated *Interim Guideline* II (b)(vii) by substituting the PAPowerSwitch website address, [www.papowerswitch.com](http://www.papowerswitch.com), for the reference to the ElectriChoice website.

**Comments**

OCA strongly supports the Commission’s adoption of Option 1, which follows the model of the natural gas industry at 52 Pa. Code §62.75(g)(2) and allows the EGS to continue to serve the customer so long as there are no cancellation provisions. OCA believes the Commission correctly captured the key reason for adopting Option 1 as follows:

[W]e believe that it will better protect customers and encourage competition. If customers are unwillingly trapped in a contract which contains penalties for leaving, customers may prefer to stay with their default service suppliers. Competition is strengthened anytime a customer has a choice. Additionally, being locked into a contract means that customers will not have a choice of suppliers.

OCA states that the model established for the natural gas industry is particularly appropriate, as the electric service price to compare will change quarterly as does the price for natural gas service. OCA believes Option 1 strikes the right balance between having a non-responsive customer returned to default service and having the customer locked into a contract without his consent.

OSBA supports the Commission’s changes to the Guidelines regarding the effect of a customer’s failure to respond to a renewal notice. OSBA notes that changes in PPL’s procurement procedures in 2011 may diminish the disparity between default service rates and the market price. In view of this anticipated end of the extra incentive to shop, OSBA believes that it is critical to provide small businesses with adequate time in which to decide to remain with its existing EGS or switch to another, or return to default service. This proposal should provide the customer with the necessary opportunity to learn about the changes in the default service rate relative to the market price and EGS offerings and to weigh options.

PULP strongly supports the Commission’s decision to adopt a consumer friendly policy in regard to contract renewal because it provides solid consumer protections while still enabling EGSs to offer competitive, alternative supply service. Providing customers with the ability to exit a converted contract without penalty will give customers the time and opportunity to search out accurate information about prevailing prices and seek out the best deal, without the fear of incurring anti-competitive penalties designed to lock in customers and prevent them from going to lower priced competitors.

PPL fully supports the Commission’s proposal to address situations when a customer does not respond to the renewal/changes notices and agrees with the Commission’s observation that this option will better protect customers and encourage competition. PPL agrees that if customers are unwillingly trapped in a contract which contains penalties for leaving, customers may prefer to stay with their default suppliers. PPL believes that competition is strengthened anytime a customer has a choice.

PECO supports the Commission’s proposal to allow EGSs to retain customers who fail to opt-out as long as the customer can cancel without penalty, but is concerned that customers may complain to their EDCs about the rate charged by their supplier. PECO is concerned that customers may expect a refund of the difference between the supplier’s charge and the EDC’s charge for the period of time before the contract cancellation becomes effective. PECO asks the Commission to specify in the guidelines that EDCs are not required to provide retroactive rate relief to customers who fail to opt-out of their contracts.

NEMA is concerned that the Commission not unnecessarily interfere with a consumer’s right to enter into informed contractual agreements. NEMA urges the Commission not to overly restrict the product options available to them in the marketplace, including evergreen contracts. NEMA believes consumers must be informed about an automatic renewal provision in contract at the time they enter into a contract, but if a consumer makes the informed decision to enter one of those agreements, he or she should be permitted to do so.

PEMC believes that fixed term contracts should be allowed to renew automatically if the only item that changes is the price. However, in instances where any other term of the contract is being modified, such as a change in length of term, termination fees, affirmative customer consent should be required. Ideally, PEMC would prefer to see the options notice provided to customers closer to thirty days prior to the expiration date to allow for the calculation of a better marketplace price.

WGES supports the compromise option that contains an “escape window” that was discussed in the *Tentative Order*. This option would enable an EGS to renew a customer’s contract with a new price without an affirmative act so long as the customer can cancel without penalty within the first 30 days after receiving a first bill. WGES is not in favor of adopting the gas rule for electricity and believes the gas regulation should be revised to mirror the compromise option that was proposed.

WGES believes requiring an affirmative act to renew a contract at a new price will limit the choices available to customers, and argues that limiting customer choices is not customer protection when the limitation denies customers the ability to choose what they want. WGES states a customer who signs a contract with an automatic renewal clause understands that no action is required for the renewal to take effect and if the customer becomes dissatisfied, he may take action not to renew the contract, thereby cancelling service with the supplier. WGES believes requiring the customer to take an affirmative action would force the customer to do something they already decided they did not want to have to do. WGES notes that in neighboring jurisdictions automatic contract renewal is permitted. WGES submits that if the Commission decides to adopt the renewal rule, existing signed contracts should be grandfathered and not abrogated by the adoption of this new rule.

BlueStar recommends that the Commission adopt Option 3 that would allow new agreements to go into effect, including cancellation penalties. In BlueStar’s opinion, the two notices the customer receives provides sufficient information that if the customer fails to respond to a notice, a new contact should go into effect, including cancellation penalties. BlueStar believes this approach properly balances customer protections and EGS business operations. BlueStar cites a December 2000 tentative order that stated that “the issuance of two notices is sufficient to ensure that consumers receive adequate notice and have time to shop for alternative supply before the effective date any proposed change in the terms of service.” BlueStar objects to Options 1 and 2 that were discussed in the *Tentative Order* as being variations on the same theme that allows the customer to cancel a contract and not pay cancellation fees.

BlueStar states that cancellation fees are designed to compensate EGSs for the expenses incurred had the term of the contract been fulfilled. Once a contract is renewed, the EGS must procure the necessary energy from the wholesale market. If a contract is cancelled before the contract term expires, the EGS will have incurred actual damages since they are still financially responsible for the full term of procured energy. Additionally, BlueStar objects to adopting the “gas rule” for electric since the gas and electric markets provide two distinctly different commodities and should be treated as such. Most EGSs have hedging practices that dictate that an EGS pre-purchase most of the estimated usage for the contract term within a few days of contract execution. Additionally, BlueStar notes, gas can be stored while electricity cannot.

Direct Energy believes that the guidelines must allow for flexibility in market changes that affect price, but not other terms and conditions. Customers should be free to agree to terms and conditions in their initial contracts that would govern the renewal products, including the automatic renewal of the contract in the event that the customer fails to respond to a renewal notice (negative option renewal contract). Direct Energy believes that the Commission clearly has the power to expand the scope of the negative option renewal contract provisions and as such, an EGS should not be prohibited from using a negative –option contract renewal because the customer is already an EGS customer. Direct Energy agrees with the Commission’s concerns with locking customers into renewal contracts with higher prices. However, customers may also exercise choice by accepting a renewal contract by choosing not to respond to a renewal offer. Direct Energy proposes additional provisions to provide for contract renewal situations not addressed in the proposed revisions and to give effect to the “beneficial change” concept in the *Interim Guidelines*. When the renewal contract is beneficial to the customer because of a lower price or removal of a fee, the contract should become effective if the customer does not respond. When the change is a higher price or something else not to the customer’s benefit, the contract may become effective if the customer responds or does not respond, but the customer can cancel the contract within three business days after receiving the first bill. Direct Energy believes that the three-day period is consistent with the right of rescission under the Commission’s regulations at 52 Pa. Code § 54.5(d) and with recently enacted regulations in New York.

FES states that it is not aware of any customers complaining about being unfairly entered into another fixed term agreement in those EDC territories where customers have experienced contract renewals following the expiration of rate caps. Requiring customers to change their behavior and affirmatively agree to the new fixed term contract creates an unnecessary roadblock for customers who chose not to respond to notices. FES strongly supports Option 3, letting the new agreement go into effect including cancellation penalties. Alternatively, FES submits that Options 2 and 4 are not ideal, but represent a reasonable compromise for all parties involved. FES does not oppose either of these options, but cautions that there would be a premium risk associated with this extra risk that would result in a higher price to the customer. FES strongly opposes Option 1 because the supplier would be taking on extra risk and its contract offer would have to be priced accordingly.

Dominion agrees with the Commission’s proposed resolution of this matter and believes that it is rational and logical to impose the same requirements in the electric industry as the natural gas industry in this regard.

**Resolution**

OCA, OSBA, PULP, PPL, PECO and Dominion support the Commission’s proposal to adopt the gas rule for the electric market, i.e., in the instance where a customer fails to respond to a renewal notice, the new contract can go into effect as long as it can be cancelled without penalty at anytime. Both OCA and PPL believe that this proposal will protect customers and encourage competition because if customers are unwillingly trapped in a contract they may prefer to stay with default service. Dominion states that it is logical to impose the same requirements on the electric industry as in the natural gas industry.

OCA adds that following the gas industry rule is appropriate because, starting in 2011, the electric PTC will change quarterly as does the PTC for gas. OSBA likewise notes the change to the default procurement process and the PTC in 2011 and believes these changes may diminish the disparity between default rates and supplier market rates. This change makes the Commission’s proposed guideline even more critical in that it will give small business customers the time they need learn about the changes in the default service rate and to weigh EGS offerings. Both PULP and PPL believe that competition is strengthened anytime a customer has choice and that being locked into a contract means that the customer will not have a choice. For all these reasons, we will maintain the position we proposed in the *Tentative Order*. Guideline II (d) is drafted to be consistent with this position and provides that the customer may cancel a contract that is automatically renewed because of the customer’s failure to respond to a renewal notice.  Note that continuing notice of the customer’s ability to cancel such a contract is to be provided in the renewal notice and in subsequent notices regarding the customer’s contract, or contract terms, and that such notice shall continue until the customer affirmatively enters into a new agreement with the EGS, or with another EGS or returns to default service with the EDC. It is understood that the physical transfer of the customer’s service to another EGS, or to EDC default service will be subject to the applicable switching rules and procedures as set forth in the EDC tariff.

In response to NEM’s concern with the Commission not unnecessarily restricting the product options made available to customers, we note again, as we did in the *Tentative Order*, that nothing in the proposed guidelines prevents a supplier from entering into multi-year contracts with customers. However, contracts with “automatic renewal clauses” or “evergreen contracts” as mentioned by NEM, WGES and FES, may be contrary to existing regulations, depending on how they are structured. In the order adopting the Chapter 54 regulations, *Final Rulemaking Order Establishing Customer Information Disclosure Requirements for Electricity Providers*, 52 Pa. Code, Chapter 54, L-00970126, April 30, 1998, the Commission noted on pages 20-21:

A number of commentors question the rationale behind allowing automatic renewals for fixed term agreements to result in another fixed term agreement. We emphasize that we have not proposed that a customer’s failure to act can result in the automatic renewal of another fixed term agreement. However, our regulations do allow for a renewal clause in a fixed term agreement, provided that the renewal occurs with proper customer notice and the new agreement is open-ended.

Per the above, automatic renewal provisions are permitted, as long as the new agreement is “open-ended.” We believe this is consistent with what is being adopted in these guidelines.

The automatic renewal of contracts is a contentious issue, and an issue that is more properly addressed in the context of a rulemaking. The current proceeding is focused on the urgent matter of updating the *Interim Guidelines* for renewal notices. If a party wants the Commission to expand the use of automatic renewal provisions (or “evergreen contracts”), this can be addressed in a more appropriate proceeding, possibly the rulemaking that we directed be initiated to revise the renewal notice regulations at 52 Pa. Code § 54.5. *See Tentative Order*, p. 18. PEMC’s suggestion of changing the options notice to 30-days; is likewise more appropriately addressed in this rulemaking.

As for WGES’s concern with grandfathering existing contracts, we reply that this should not be a concern as long as the contract is consistent with the regulations, and the customer had been given sufficient and accurate information about the terms of the contract so he or she could make an informed decision before signing the contract. However, we would dissuade a supplier from attempting to enforce a contract that is not consistent with these standards.

While PEMC and Direct Energy may have some worthwhile suggestions about flexible renewal terms that are contingent on what type of contract renewal is being offered and what terms are changing (if any), we believe that these types of provisions are too complex to be properly considered in this proceeding. This complexity stems from the value judgments that need to be made in developing such provisions. After all, whether a change in a contract term is “beneficial” to a customer is a judgment that is subjective in nature and one that may be influenced by outside forces or the passage of time. For example, Direct Energy’s concept of a lower price being “beneficial” may not be as simple as it appears. What if the customer’s supplier price does indeed drop, but the EDC’s PTC drops even more and is now less than the supplier’s price? Can reduction in the supplier’s price be properly be described as “beneficial” from the customer’s perspective? Given these complexities, we believe these type of contingency provisions are more appropriately considered in a rulemaking that will provide all parties with the opportunity to weigh in with their views on these matters.

While we understand BlueStar and FES’s comments about the costs a supplier incurs when a customer cancels a contract, we believe that these concerns may be overstated. While such concerns may be valid with large commercial and industrial customers with large usage profiles, these guidelines are limited to residential and small business customers with comparatively low usage profiles. We also believe that a supplier may be able to mitigate any loss caused by a residential or small business customer cancelling a contract by using the generation to supply a new customer or by selling the generation elsewhere. As for BlueStar’s point that gas can be stored unlike electric, we have to agree. However, we also have to point out that gas storage comes at a cost, thus negating some of the difference between electric and gas markets that concerns BlueStar. Ultimately, we understand that there may indeed be an additional “risk premium” added to the prices that suppliers offer customers if they are permitted to cancel contracts without penalty, but we believe that for residential and small business customers this should be minimal and is not enough counter the benefits we see in preserving “choice options” for these customers.

Finally, while we understand PECO’s concerns with being pressured by customers to refund the difference between the supplier and the EDC’s charges if a customer fails to opt-out before his new contract terms go into effect, we point out that there is no existing statutory or regulatory requirement that would compel an EDC to do this. There are provisions that may require refunds in some instances of “slamming” (the unauthorized switching of a customer’s generation service). *See* 52 Pa. Code § 57.177. However, this provision only applies to specific instances of slamming, and it is the entity that “slammed” the customer that is obligated to provide the refund. A customer that has failed to respond to a renewal notice has not been “slammed” and in no way is an EDC responsible to apply the provisions of 52 Pa. Code § 57.177 in such instances. As such, we do not see a need to explicitly declare this in the guidelines in Appendix A.

**CONCLUSION**

The revisions made to the *Interim Guidelines* on customer renewal notices are intended to provide customers with important information about their options prior to the expiration of their current agreements for generation supply. The *Interim Guidelines* as revised now provide for the inclusion on renewal options notices of an estimated PTC, and information about what will happen to a customer’s current supply agreement if the customer does not respond to the notice. This information will ensure that customers will have this important information at hand to use when considering the various alternatives for future electric generation supply. Additionally, a new guideline has been adopted that will preserve “choice” for customers who fail to respond to a renewal notice from their current supplier by providing them with the opportunity to cancel, without penalty, any resulting agreement with that supplier.

Customers are essential participants in the competitive market. By updating these interim guidelines to provide customers with pertinent pricing information when they are most in need of it to shop, and with the option to preserve their prerogative to choose, we have attempted to create a more user-friendly marketplace that should attract increased numbers of customers. The Commission thanks all of the parties who submitted comments to the *Tentative Order*; **THEREFORE,**

**IT IS ORDERED:**

1. That, pursuant to 66 Pa.C.S. § 703(g), the *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Contractual Changes Affecting Customer Service* as set forth in this Order and in Appendix A are adopted.

2. That this Order and Appendix A shall be served on all Electric Distribution Companies, all licensed Electric Generation Suppliers, the Office of Trial Staff, the Office of Consumer Advocate, the Office of Small Business Advocate and the Energy Association of Pennsylvania.

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

4. That a copy of this Order and Annex A 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 Daniel Mumford, Bureau of Consumer Services, 717-783-1957, and Patricia Krise Burket, Law Bureau, 717-787-3464.

6. That the Office of Competitive Market Oversight, in consultation with the Law Bureau, shall initiate a rulemaking to incorporate the interim guidelines into the regulations at 52 Pa. Code Chapter 54 (Electricity Generation Customer Choice) Subchapter A (Customer Information).

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: September 23, 2010

ORDER ENTERED: September 23, 2010

**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. If the price to compare is subject to change quarterly or otherwise as set forth in the EDC’s default service plan, the notice should inform the customer of the frequency of the change and that the current price to compare can be obtained by contacting the EDC or accessing [www.pa.powerswitch.com](http://www.pa.powerswitch.com) OR THE OFFICE OF CONSUMER ADVOCATE’S “ELECTRIC SHOPPING GUIDE AT [WWW.OCA.STATE.PA.US](http://WWW.OCA.STATE.PA.US). If the EDC’s price to compare for the proposed contract term is not yet established, an estimated price to compare should be provided and should be clearly labeled as an “estimated” price to compare. The notice should also include an approximate date that the actual price to compare will be established, and a statement that the customer can contact the EDC or access [www.papowerswitch.com](http://www.papowerswitch.com) OR USE THE OFFICE OF CONSUMER ADVOCATE’S “ELECTRIC SHOPPING GUIDE” AT [WWW.OCA.STATE.PA.US](http://WWW.OCA.STATE.PA.US) to obtain this information when it is available. The EDC shall be the source of the estimated AND ACTUAL price to compare AND SHALL BE RESPONSIBLE FOR CALCULATING THE ESTIMATED AND ACTUAL PRICE TO COMPARE. THE EDC SHALL CALCULATE AND POST ON ITS WEBSITE THE ESTIMATED PRICE TO COMPARE NO MORE OFTEN THAN QUARTERLY AND NO EARLIER THAN THREE MONTHS BEFORE THE EFFECTIVE DATE OF THE ACTUAL PRICE TO COMPARE. THE EDC SHOULD EXERCISE GOOD FAITH AND USE A REASONABLE METHOD TO CALCULATE THE ESTIMATED PRICE TO COMPARE, AND AS LONG AS THIS IS THE CASE, THE EDC SHOULD NOT BE HELD LIABLE FOR THE ERROR IF THE ACTUAL PRICE TO COMPARE VARIES FROM THE ESTIMATED 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, including what will occur if customers fails to respond to the notice as set forth in paragraph (d), and;

(vii) Appropriate telephone numbers and internet addresses for the Office of Consumer Advocate ([WWW.OCA.STATE.PA.US](http://WWW.OCA.STATE.PA.US)) and Commission’s websites regarding ~~ElectriChoice~~ choice (http://www.papowerswitch.com).

(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.

(d) In the event that the customer does not respond to the renewal notice, a fixed term agreement may be converted to a month-to-month agreement, either at the same terms and conditions or at revised terms and conditions, as long as the agreement converts from a fixed term to a month-to-month agreement and contains no cancellation penalties. Alternatively, a fixed term agreement may be converted to another fixed term agreement as long as the new agreement includes a customer-initiated cancellation provision that allows the customer to cancel at any time for any reason and contains no cancellation penalties, in the event that the customer does not respond to the notice. THE RENEWAL NOTICE AND ANY SUBSEQUENT NOTICES TO THE CUSTOMER CONCERNING THE CUSTOMER’S CONTRACT OR CONTRACT TERMS, SHALL INCLUDE A STATEMENT WHICH INFORMS THE CUSTOMER THAT THE NEW MONTH-TO-MONTH OR FIXED TERM AGREEMENT MAY BE CANCELLED AT ANY TIME (SUBJECT TO THE APPLICABLE SWITCHING RULES AND PROCEDURES AS SET FORTH IN THE EDC’S TARIFF) BY THE CUSTOMER FOR ANY REASON WITHOUT PENALTY.  THIS STATEMENT MUST BE PROMINENTLY DISPLAYED ON THE NOTICE.  IF THE EGS CONTACTS THE CUSTOMER OR THE CUSTOMER CONTACTS THE EGS BY TELEPHONE CONCERNING THE CUSTOMER’S CONTRACT, THE EGS MUST, DURING THE CALL, INFORM THE CUSTOMER THAT THEY MAY CANCEL AT ANY TIME WITHOUT PENALTY (SUBJECT TO THE APPLICABLE SWITCHING RULES AND PROCEDURES AS SET FORTH IN THE EDC’S TARIFF).  THESE REQUIREMENTS SHALL REMAIN IN PLACE UNTIL THE CUSTOMER AFFIRMATIVELY ENTERS INTO A NEW AGREEMENT WITH THE EGS, OR ANOTHER EGS, OR RETURNS TO DEFAULT SERVICE WITH THE EDC.

1. *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service*, order entered March 8, 2001at Docket No. M-0001437 (*Interim Guidelines*). [↑](#footnote-ref-1)
2. The Price to Compare or PTC is defined as: “[a] line item that appears on a retail customer’s monthly bill for default service. The PTC is equal to the sum of all unbundled generation and transmission related charges to a default service customer for that month of service.” 52 Pa. Code § 54.182 (definitions). [↑](#footnote-ref-2)
3. The OCMO is Commission office that operates under the leadership of the Director of Operations, and is comprised of legal, technical and policy staff members from various Commission bureaus and offices. The office is responsible for analyzing issues concerning energy competition and making recommendations to the Commission. [↑](#footnote-ref-3)
4. CHARGE is a working group composed of Commission staff from OCMO, electric generation suppliers, default service providers the statutory consumer advocates – OCA and the Office of Small Business Advocate (OSBA) - and other interested parties. [↑](#footnote-ref-4)
5. In Annex A, additions to the guidelines appear in upper case font. [↑](#footnote-ref-5)