PENNSYLVANIA

PUBLIC UTILITY COMMISSION

**Harrisburg, PA 17105-3265**

 Public Meeting held October 24, 2012

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

Wayne E. Gardner

James H. Cawley

Pamela A. Witmer

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| Interim Guidelines Regarding Standards For Changing a Customer’s Electricity Generation Supplier  | M-2011-2270442  |

**FINAL ORDER**

**BY THE COMMISSION:**

 Before us for consideration are proposed interim guidelines that are intended to facilitate the timely transfer of a customer’s account from default service provided by an electric distribution company (EDC) to a competitive electric generation supplier (EGS or supplier), from one EGS to another or from an EGS back to an EDC’s default service, while preserving safeguards to prevent the unauthorized switching of a customer’s account, also known as “slamming.” The proposed interim guidelines and other proposals set forth herein were developed by the Pennsylvania Public Utility Commission’s Office of Competitive Market Oversight (OCMO) as a result of meetings held with the working groups, CHARGE[[1]](#footnote-1) (Committee Handling Activities for Retail Growth in Electricity) and the Commission’s *Investigation into Pennsylvania’s Retail Electricity Market* (Retail Markets Investigation or RMI).[[2]](#footnote-2) On November 10, 2011, the Commission issued a Tentative Order at this Docket seeking comment on the proposed guidelines and related issues (*Tentative Order*).

 Seventeen parties filed comments in response to the *Tentative Order*, including AARP/PA Utility Law Project/Community Legal Services Inc. (AARP/PULP/CLS); Columbia Gas of Pa (Columbia); DTE Energy Supply Inc. (DTE); Duquesne Light Company (DLC); Energy Association of Pa. (EAP); FirstEnergy Solutions Corporation (FES); Industrial Customer Groups (Industrials); Metropolitan Edison, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power (FirstEnergy); National Energy Marketers Association (NEM); Office of Consumer Advocate (OCA); PA Energy Marketers Coalition (PEMC); PECO Energy Company (PECO); Philadelphia Gas Works (PGW); PPL Electric Utilities (PPL); Retail Energy Supply Association (RESA); Verde Energy USA (Verde); and Washington Gas Energy Services Inc. (WGES).

 After careful review and consideration of the comments to the *Tentative Order*, the CHARGE discussions and the RMI technical conferences, we issue these final interim guidelines.

**DISCUSSION**

**I. BACKGROUND**

 Based on customer complaints and supplier concerns, and at the request of the Commissioners, OCMO explored options to shorten the timeframe for switching a customer’s account. Presently, a change in supplier can take from 16 to 45 days. This timeframe is a result of a variety of Commission regulations, as well as EGS and EDC procedures that were established in large part to guard against slamming. The delay in transferring a customer’s account has been perceived by consumers to be a lost “savings opportunity” that, in turn, results in customer frustration, disappointment and a less than favorable opinion of the competitive retail market. Because customer opinion is key to the success of any retail market, we believe that the current switching procedures have become an impediment to achieving an effective competitive retail electric generation market in Pennsylvania.

 To understand the mechanics behind the current switching process, OCMO had informal discussions with some EDCs. OCMO also consulted with regulators from Texas and Maryland to learn about their enrollment timeframes and any steps they have taken to accelerate the switching process. Finally, OCMO presented this topic to CHARGE on March 24, 2011, in order to obtain the perspectives of the EGSs, OCA, and any other interested parties. CHARGE discussed this topic further on April 21, May 12, June 23 and July 21, 2011. With the initiation of the Retail Markets Investigation in 2011, it was decided to bring this issue to that forum as well and to give RMI participants an opportunity to present their perspectives and concerns.[[3]](#footnote-3) Consequently, issues relating to switching procedures were discussed during RMI Technical Conferences on August 10, August 31 and September 14, 2011. On November 10, 2011, the Commission issued its *Tentative Order,* which proposed several options to accelerate switching timeframes. This Final Order substantially refines the proposals contained in the *Tentative Order* based upon the comments received to the *Tentative Order* as well as the comments and information provided in both the CHARGE calls and the RMI technical conferences.

 **Applicable Law and Current Regulations**

 The Commission’s statutory authority for the current switching regulations is found in Section 2807(d)(1) of the Public Utility Code, 66 Pa. C.S. § 2807(d)(1). This section requires the Commission to:

…establish regulations to ensure that an electric distribution company does not change a customer’s electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer’s consent to a change of supplier.

66 Pa. C.S. § 2807(d)(1).

 Based on the above statutory directive, in 1998, the Commission promulgated regulations to address the supplier switching process and to guard against “slamming.” These regulations are found at 52 Pa. Code § 57.171 – § 57.179 (relating to standards for changing a customer’s electricity generation supplier) and set forth the following timeframes that are applicable to the switching process:

* Section 57.173 (relating to customer contacts with EGSs) requires the EGS to notify the EDC of the customer’s selection “…by the end of the next business day following the customer contact.” However, the Commission has waived this provision for instances where the customer’s service is not to start until some distant, future date. *See Petition of PP&L Energy Plus Company,* Docket No. P-00991673, 1999 WL 641179 (Order entered June 29, 1999).
* Section 57.173(2) requires the EDC to mail a 10-day confirmation letter to the customer “…by the end of the next business day following the receipt of the notification of the customer’s selection of an EGS.” This regulation also states that “[t]he 10-day waiting period shall begin on the day the letter is mailed.” This 10-day waiting period is intended to give the customer time to contact the EDC to cancel the switch of supplier in cases where the customer did not authorize the switch of supplier. Note that this 10-day waiting period is made available to cancel switches in instances of slamming; it is not intended to act as a contract rescission period. *See Re: Nor Am Energy Management, Inc*., Docket No. P-00981625, 1999 WL 632769 (Order entered February 12, 1999).
* Section 57.174requires the EDC to make the change at the beginning of the first feasible billing period following the 10-day waiting period.

Customer information regulations at 52 Pa. Code § 54.1 –§ 54.9 (relating to customer information) also include some timeframes that affect the switching process for residential/small commercial customers:

* Section 54.5(d) requires that customers be provided “…a 3-day rescission period following receipt of the disclosure statement.”
* Sections 54.5(d)(1) and (2) state that the 3-day rescission period is “3 business days” and “begins when the customer receives the written disclosure.” During OCMO’s exploration of this issue in the CHARGE and RMI forums, it was noted that many suppliers have made it a practice to wait until the customer’s 3-day right of rescission expires before contacting the EDC with the enrollment.

 **EDC Procedures**

 EDC procedures, some of which were adopted to comply with the above-cited Regulations, also affect the time needed for a customer to switch suppliers. Supplier switches are executed based on meter read dates according to the customer’s regular meter-reading schedule. This is the meter read that an EDC obtains for its own billing purposes. EDCs have what is commonly referred to as the “16-day rule,” which includes the 10-day confirmation period required by 52 Pa. Code §57.173(2), plus additional days for the EDC to process the customer account transfer. PJM Interconnection, Inc.’s (PJM) rules related to capacity and transmission obligations also require a minimum of two days’ notice prior to the transfer of customer accounts.

 The impact of the foregoing procedures is that an EDC must be informed of the customer’s supplier selection at least 16-days prior to the customer’s next meter read for the switch to occur at the next meter read. If the EDC does not receive at least 16-days’ notice, the supplier switch must wait until the following meter read. This means a supplier switch can be performed in as little as 16 days, or as long as 45 days.

 The possibility of using a mid-cycle, off-cycle or estimated meter read was considered as a means to shorten the switching timeframe. This solution would be dependent on the current metering capabilities of the EDCs. The capabilities of metering systems currently used by EDCs vary significantly. Some EDCs have advanced (automated) metering systems,[[4]](#footnote-4) while others still utilize traditional basic meters that require field visits and manual readings to obtain metering information. In fact, some EDCs only read customer meters on a bi-monthly basis and issue estimated bills during the non-read months. This range in metering capabilities and practices complicates any attempt at moving immediately to a mid-cycle read protocol.

The implementation of smart meter technology may offer the answer as mid-cycle reads, short-period bills, etc. become possible. To that end, the Commission has proposed that OCMO explore the possibility of mid-cycle switching in its End State Proposal that was circulated by Secretarial Letter issued September 27, 2012, in the RMI proceeding at Docket No. I-2011-2237952. There, the Commission proposed: “*Accelerated Switching*. By October 1, 2013, OCMO will provide the Commission with a recommendation to move forward with a plan that permits customers to switch to EGSs between meter reads.” The purpose of this Final Order is to provide interim guidelines that are intended to work with current EDC systems. The opportunity to develop mid-cycle switching capabilities is a natural outgrowth of the interim guidelines provided in this Final Order.

**EGS Procedures**

 Current EGS procedures were also examined to determine if changes could be made to shorten the switching time frame. Some supplier practices may adversely affect the switching process timeframes. For example, the practice of batching enrollments before sending them to the EDC instead of sending them to the utility one at a time may unnecessarily delay account transfers. As noted above, the Commission has waived the provision of 52 Pa. Code § 57.173 that requires the EGS to notify the EDC of the customer’s selection “by the end of the next business day following the customer contact” in instances where the customer’s service is not to start until some distant, future date. However, under the color of that waiver, EGSs may be holding enrollments for reasons other than future service dates. Additionally, some EGSs hold enrollments and do not submit them to the EDC until the last day of the 3-day right of rescission period provided for in 52 Pa. Code § 54.5(d).

 **Other Issues**

 The Commission also considered the extent to which customer frustrations with timing issues can be reduced through consumer education. Educating customers on how the switching process works, specifically the enrollment procedure’s dependence on meter reads, may help provide more realistic customer expectations and decrease frustration. Increased customer education efforts on the issue can be supported by EDCs, EGSs and the Commission via website Frequently Asked Questions (FAQs), mailings, and customer service representative scripting. To some extent, revisions to the switching process may require some coordination with Electronic Data Interchange (EDI) procedures. However, given the limited changes contained in this Order, we do not perceive this to be an impediment to moving forward quickly.

**II. OPTIONS**

 In the *Tentative Order*, the Commission explored different options for accelerating supplier switching time frames. These different approaches can be generally described as follows:

* Revising regulatory requirements
* Revising utility procedures
* Revising supplier procedures
* Consumer education

As noted above, **v**arious regulations have requirements that affect switching timeframes. The Commission examined these requirements to determine which ones could be modified to accelerate the process. Changing the 3-business day rescission period at 52 Pa. Code § 54.5 is not feasible because it reflects existing Pennsylvania consumer contract law. *See Unfair Trade Practices and Consumer Protection Law*, 73 P.S. § 201.1-201 – § 201-9.2. There is also, in federal law, a 3-business day “cooling off period” for door-to-door transactions. *See Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations*, 16 CFR Part 429. Further, changing the “first feasible billing period” language in 52 Pa. Code § 57.174 is pointless unless one first changes all of the other time frames and requirements that necessitate the current switching timeline. Additionally, every EDC has different operational conditions and system requirements.

 After carefully reviewing the available options for accelerating the transfer of customer accounts to EGSs, the Commission proposed changes in its *Tentative Order* that appeared to offer the most promising ways to accelerate supplier switching. First, elimination of the 10-day confirmation waiting period and the resulting reduction in the “16-day rule,” provides for the easiest option to physically shorten the length of time for transferring customer accounts. Second, the Commission proposed that EGSs should implement measures to ensure that they send completed enrollment transactions to EDCs before the window closes before the next meter read date. Third, EDCs, EGSs, and the Commission should provide consumer education focused on an explanation of switching time frames in order to improve customer understanding of the process. Finally, as part of a long-term solution, smart-meter implementation should incorporate faster switching procedures. *See* *Tentative Order* at 11-22.

**The Proposed Interim Guidelines:**

 Much of the time frame for switching suppliers is dedicated to the 10-day period during which the EDC holds the enrollment request in order to give the customer an opportunity to respond to the confirmation letter. We proposed to eliminate the 10-day waiting period. A consequence of eliminating the 10-day waiting period is the elimination of the confirmation letter that the EDC sends to the customer that initiates the waiting period. Because the customer needs to be notified when his or her account will be transferred to the selected EGS, we proposed that the EDC send a customer account transfer letter to the customer. The letter would alert the customer to the change in EGS, would provide pertinent information about the EGS and direct the customer to contact the EGS with questions and concerns. With the proposed elimination of the confirmation letter, the Commission believed it was important to include other provisions in the Interim Guidelines that are consistent with Commission regulations that provide consumer protection. These included proposed Interim Guidelines G (relating to customer receipt of a written disclosure statement); Interim Guideline I (relating to a customer’s authorization to transfer his or her account); Interim Guideline L (relating to the Notice of Account Transfer); and, Interim Guideline O (relating to customer disputes; slamming). *See* *Tentative Order* at 17-19, 20, 22.

 We also included provisions in the proposed guidelines to encourage EGSs to implement measures to ensure that completed enrollment transactions are sent to an EDC or Default Service Provider (DSP) before the window closes before the customer’s next meter read date. Specifically, we proposed that the EDCs or DSPs establish a switching deadline, which is the date by which an EGS must submit a customer account transfer notice so that the customer’s account can be transferred to the EGS at the next meter read date. *See* Interim Guideline F (relating to EGS notification for customer account transfer notice), *Tentative Order* at 16. We also proposed placing the responsibility on the EGS to obtain information about the customer’s meter read date and the switching deadline. *See* Interim Guideline E (relating to meter read date; switching deadline), *Tentative Order* at 15-16. The EGS could then advise the customer about the time frame needed to switch the customer’s account in its marketing and sales efforts, and could include in its disclosure statement an estimated date that the customer’s service will be initiated with the EGS as required by Commission regulations at 52 Pa. Code § 54.5 (c)(4)(i). The EGS could then notify the EDC or DSP of the customer’s change in suppliers before the switching deadline. *See,* Interim Guideline F, *Tentative Order* at 16.

 We also requested comments on the feasibility of applying these proposed Interim Guidelines to natural gas distribution companies (NGDCs) and natural gas suppliers (NGSs). In addition, recognizing that the proposed revisions to the switching process may necessitate changes to EDI procedures, we specifically solicited comments from Electronic Data Exchange Working Group (EDEWG) members on these matters. *See* *Tentative Order* at 23.

 We also proposed that more should be done with consumer education to help ease customer frustration about the switching process. Specifically, customers need to understand the association between the timing of their enrollment decision and their meter read date. Providing more information on the switching process on the Commission’s PaPowerSwitch.com website is an obvious start. As initially proposed, information would be included on the website about the EDC account transfer letter, its purpose, and what to look for on the letter (*i.e.* supplier, date service will start, etc.). The role of the meter read cycle in switching would also be explained, and guidance should be provided on the questions that consumers should ask EGSs about switching time frames and effective dates for the transfer of accounts. *See* *Tentative Order* at 24.

Additionally, we proposed that the Commission’s Office of Communications review its educational materials to make sure that they accurately reflect new procedures that are implemented for switching. We also recommended that EDCs and EGSs review and update their education materials to make sure the information provided to consumers reflects any changes in the switching process. This should entail a review of marketing materials, including sales scripts, to ensure that they are consistent with any new procedures that may be adopted in this proceeding, and that they provide realistic information to customers at the time of enrollment about account transfer dates. We invited comments on these recommendations for improving consumer education efforts in this area. *See* *Tentative Order* at 25.

In considering long-term solutions, we dismissed for now the use of mid-cycle meter reads as an interim measure to shorten the switching process for customers as we consider it to be impractical. As explained above, the implementation of smart meter technology may very well be the appropriate vehicle to enable such protocols. While the full deployment of smart meters system-wide is a statewide requirement, the parameters for, and design of, these systems are now being developed. For this reason, we proposed that supplier switching be fully integrated into all smart meter deployment plans, with the expectation that, once smart meters are in use, supplier switching will be able to occur at any given point in time. We asked parties for their comments on this proposal. *See* *Tentative Order* at 25-26.

**III. COMMENTS**

**General and Procedural Considerations:**

The proposed interim guidelines set forth procedures that were intended to shorten the time period that it takes to transfer customer accounts from an EDC or DSP to an EGS and from one EGS to another EGS while protecting customers against slamming, the unauthorized transfer of a customer’s account. The guidelines were proposed to be applicable to EDCs, EGSs, and DSPs, and to their employees, agents and representatives.

Many of the parties who represent consumers and EDCs oppose the Commission’s proposal to use Interim Guidelines as the method for changing the timeframe for supplier switching. Some of these parties, while not opposing a reduction in the customer wait time for switching suppliers, argue that a better avenue to make these changes would be through the formal rulemaking process.

PPL warns that, although the changes sought are in guideline/policy statement format, because the Commission “intends the guidelines to have general application and to be binding on all EDCs, EGSs, and customers…they must be adopted pursuant to the formal rulemaking requirements for regulations [and] must conform to the Commonwealth Documents Law.” (PPL at 5-6).[[5]](#footnote-5) EAP agrees with this view. In support, EAP cites the Commission’s use of the term “shall” several times throughout the guidelines and the inclusion of an “effective date” to bolster the argument that the Interim Guidelines are requiring binding norms as opposed to an “announcement of Commission intentions.”[[6]](#footnote-6) (EAP at 3). Moreover, EAP points out that Interim Guideline D proposes to waive existing regulations and that such a waiver (or “suspension”) violates the Code’s admonition against a document which “may not amend, repeal, or suspend a published regulation…” (EAP at 4). FirstEnergy, PECO and AARP/PULP/CLS also submitted comments that questioned moving forward with interim guidelines as opposed to a formal regulatory process. (FirstEnergy at 3; PECO at 3; AARP/PULP/CLS at 7).

The Industrial parties urge the Commission to weigh the benefits of any changed procedures against the costs of implementing them. The Industrials note that large commercial and industrial customers already participate in the competitive market and usually have contract arrangements with EGSs that require more notice of termination than the 16-day switching time frame. Additionally, because the EGSs are the major proponents of revising these procedures and they are the ones to profit from these changes, the Industrials believe it is appropriate for EGSs to finance any costs these procedural changes may cause. (Industrials at 5).

 RESA believes that shortening the switching timeframe is an important issue because the current switching process is “grossly out of line with standards for service in other industries.” (RESA at 1-2). NEM supports the proposed guidelines as a reasonable step to achieving customer switching on a timelier basis, recognizing current metering technology. (NEM at 2). Likewise, PEMC “wholeheartedly” supports the proposed guidelines and believes that they achieve the delicate balance between strengthening the competitive energy market while ensuring strong consumer protections. (PEMC at 2). FES believes that the current 16- to 45-day time period for switching is too long and supports the proposed guidelines. (FES at 1-2).

**Guideline B: Scope**

Guideline B stated that the proposed guidelines are applicable to customer-authorized transfers of service accounts from an EDC or DSP to an EGS and between EGSs.

RESA would clarify that specific language requirements for marketing materials and disclosure statements only apply to residential and small business consumers. (RESA at 5).

**Guideline C: Definitions**

Proposed Guideline C set forth definitions for terms used in the proposed interim guidelines.

PPL agrees that the “switching deadline” be included in an EDC/DSP tariff but the switching deadline should account for each EDC’s particular circumstances due to its operational requirements (*i.e.* introduction of automated meter reading, changed requirements at PJM regarding capacity and transmission obligations.). (PPL at 16.) RESA suggests the addition of the definition for the terms “customer account transfer notice” and “customer notice of account transfer” as both terms relate to specific items throughout the Guidelines. (RESA at 5-6).

FES believes that the definition of the term “switching deadline” should be clarified to require an EDC/DSP to have one switching deadline for each meter read cycle rather than the gas industry’s practice of one deadline per month. In addition, it should be required that the meter read cycle and switching deadline data be made available to energy suppliers via download or in an electronic file format, that certain data formatting be standardized, and that meter read cycle and switching deadline dates be published within the same document or at the same locations online. (FES at 3.) FES would add the terms “rescind” and “rescission” and these terms would only refer to cancellations during the three day rescission period or cancellations due to a slamming allegation.

**Guideline D: Elimination of 10 day waiting period/Waiver of Regulations**

 Proposed Guideline D listed the provisions of Sections 57.173 and 57.174 of the Commission’s regulations that need to be waived to implement these proposed guidelines. These provisions included: (1) the elimination of the requirement that an EGS notify an EDC that a customer selected the EGS as a new supplier by the end of the next immediate business day; (2) the elimination of the letter sent from the EDC to the customer to confirm the transfer of the customer’s account to an EGS; (3) the elimination of the 10-day period wherein a customer can contact the EDC to dispute that consent was given for the transfer of his or her service account to an EGS.

OCA does not support the waiver of the 10-day waiting requirements. OCA believes that:

Catching an improper switch (due to mistake or slamming) ***before*** a customer’s service is switched saves money, time and hassle for all involved…[and therefore under the current regulations] the Commission must ensure that the EDC does not change the supplier without the customer’s consent. In other words, without confirmation of the consent of the customer, the EDC should not act.

(OCA at 3).

By eliminating the 10-day confirmation letter, OCA believes an EDC will lose the “only means to determine if the change was authorized by the customer before it acts to transfer the account.” (OCA at 3.) AARP/PULP/CLS presented concerns similar to those advanced by OCA. (AARP/PULP/CLS at 9).

Notably, AARP/PULP/CLS would support a shortened EDC confirmation period from 10-days to 5-days if this proposal is explored in a formal rulemaking. (AARP/PULP/CLS at 4).

PECO believes that the elimination of the 10-day confirmation period would lead to increased customer frustration with shopping, increased customer complaints, billing issues, and additional, unnecessary costs. (PECO at 2). In its comments, PPL agrees with this view; however, PPL notes that the greatest danger in eliminating the 10-day waiting requirement is the loss in consumer confidence associated with an increase in unauthorized switches. In support of its position, PPL cites the Retail Markets Investigation consumer survey information presented to the Commission at a November 10, 2011 *en banc* hearing, which indicated that “a significant contributor to customer reluctance to select an EGS is rooted in lack of consumer confidence…” (PPL at 10). For this reason, PPL believes that the confirmation letter and waiting period should be shortened rather than eliminated. Additionally, while the 10-day requirement gives a customer time to contact an EDC to question the legitimacy of a change in suppliers, the time period also allows an EDC time to rescind a customer enrollment at the request of the customer and/or supplier which may occur after the switching deadline but before the meter read date. These “rescinds” may occur because either the customer failed to understand their decision to switch or “they center around a customer receiving notification of a cancellation fee.” (PPL at 15).

Based upon its experience, FirstEnergy has no opposition to the proposed elimination of the 10-day waiting period due to the minimal number of consumer complaints of unauthorized switching. However, their support is qualified by the adoption of their suggested changes to Interim Guidelines M, N, and P. FirstEnergy supports the elimination of the 10-day period only if an EDC/DSP is permitted to recover all unauthorized switching expenditures from the responsible EGS and if language is included which would eliminate penalties against an EDC/DSP for unauthorized switches made upon the receipt of customer authorization from an EGS. “The imposition of such penalties should be strictly limited to EGSs.” (FirstEnergy at 6). FirstEnergy would recover the administrative costs associated with this type of rescission as a standard fee contained in the EGS/DSP tariff.

DLC does not support the elimination of the 10-day letter/rescission process. Due to a high amount of shopping in the DLC service territory, “[DLC] believes that the confirmation letter is an important consumer protection. Currently 11% of the customers selecting an EGS in DLC’s service territory rescind their enrollment within that 10-day confirmation period.” (DLC at 1). (Emphasis deleted). DLC believes that it would expect to see an increase in customer dissatisfaction and that “it is clear that customers are utilizing the time period to rescind or change their minds and that [it] is serving a legitimate purpose to effectuate customer wishes.” (DLC at 2).

Industrials believe that the Commission should “carefully balance the importance of switching quickly versus the importance of switching accurately…[the Industrials] cannot support the accelerated switching timeframe and eliminating the 10-day waiting period if customers will become more vulnerable to slamming with no recourse.” (Industrials at 4). The Industrials would include language in the Guidelines that would provide cost recovery for slamming from those who profit from the new changes. Cost recovery would be available to both EDCs and customers. The Industrials would require the EGSs to finance the procedures for implementing accelerated switching and would implement such a system on a trial basis to be revisited if it resulted in the submission of excessive unauthorized switches by EGSs. (Industrials at 4-5).

RESA fully supports the elimination of the 10-day waiting period and agrees with the creation of a “switching deadline.” However, because the *Tentative Order* does not include a timeline for the establishment of a “switching deadline,” RESA supports a stakeholder process to include EDCs and EGSs who would be tasked with addressing all operational issues and to determine the shortest possible switching deadline. The switching deadline should be generally applicable to all EDCs and, once determined, the switching deadline would be included within the Interim Guidelines. (RESA at 7-9).

PEMC supports the waiver of the 10-day waiting requirement because slamming is rare and can “alwaysbe addressed through customer communication with the EGS, the EDC, and when necessary and appropriate, through the Commission’s complaint and dispute resolution process.” (PEMC at 3).

NEM agrees with the necessity of removing the 10-day waiting period because it is viewed as an unnecessary delay in the switching process. “[T]he ten day waiting period is not a cure for the practice of slamming per se…any potential slamming incident will have taken place regardless of a ten day waiting period because the supplier did not properly effectuate a customer switch prior to that point.” (NEM at 2). NEM believes that Commission regulations and penalty provisions provide sufficient protections against slamming.

WGES supports the removal of the 10-day waiting period. WGES cites the experience of Maryland and the District of Columbia as examples where the 10-day waiting period unfairly disadvantaged suppliers. WGES argues that customers treated the waiting period as a rescission period and this created an invitation for customers to cancel their contracts after the cancellation period had expired. (WGES at 1-2). Likewise, FES supports the waiver of the 10-day waiting period because they believe it is often the cause of customer confusion “resulting in unnecessary cancellations.” (FES at 2).

Several of the parties who disagree with eliminating the 10-day waiting period are willing to accept a shorter time-frame in the interests of streamlining the existing switching process. PECO believes that this 10-day waiting period can be reduced to 4 days as opposed to its total elimination. (PECO at 1-2). OCA believes that the waiting period can be reduced from 10 to 5 days. Moreover, OCA would agree to permit electronic mail to serve as the means for a customer to receive confirmation if the customer has agreed to this method of receipt and recommends the language of the confirmation letter be clarified to ensure that customers understand that the purpose of the confirmation letter is to confirm the decision to switch suppliers. (OCA at 4, 7-8). We noted above that AARP/PULP/CLS could support a shortened EDC confirmation period from 10-days to 5-days, but only if this proposal is explored in a formal rulemaking. DLC would not object to shortening the waiting period to “4 or 5 days.” (DLC at 6). PPL believes that the OCA-recommended 5-day letter would be a good starting point for discussion in order to determine if the elimination of the 10-day waiting period will achieve the intended result without lessening the protections offered to consumers against unauthorized switches. (PPL at 10-11).

**Guideline E: Meter Read Date and Guideline L: Customer Notice of Account Transfer.**

Proposed Guideline E required that the EGS obtain information about the customer’s meter read cycle so that the EGS is able to advise a customer about the date that the customer’s account can be transferred to the EGS. An EDC or DSP, when authorized by the customer or directed to do so by a Commission regulation and order, is required to provide to the EGS upon request the next immediate meter read date and the switching deadline for a customer’s account. With this information, the EGS or its employees, agents or representatives were expected to provide the customer with a good faith estimate of the date when the customer’s account will be transferred to the supplier.

Proposed Guideline L proposed the use of an account transfer letter to inform a customer about the transfer of his or her account to an EGS. An EDC or DSP would have sent this letter to the customer by the end of the next business day after receiving an account transfer notice from an EGS. The letter notice would have replaced the confirmation letter that EDCs currently send to confirm the customer’s consent to change suppliers.

OCA believes that, if this approach is adopted, the sample account transfer notice should include: an indication that immediate action must be taken if the information contained in the letter is incorrect, and an indication that the incorrect information should be reported to the EDC rather than the EGS, as the customer has had no contact with the EGS. (OCA at 10-11). AARP/PULP/CLS agrees with OCA that the customer should be able to contact the EDC rather than the EGS. According to AARP/PULP/CLS, the customer would not have a disclosure statement from the EGS and would not understand the account transfer letter. AARP/PULP/CLS argue that on this basis, the customer would not have information that Section 2807(d)(1) of the Code, 66 Pa. C.S. §2807 (d) (1), provides for - allowing a customer to file a dispute with an EDC regarding an alleged error or improper enrollment by an EDC. (AARP/PULP/CLS at 11.)

PPL suggests that the proper party to contact regarding an error in switching should remain with the EGS as was the case with the old confirmation letter. PPL currently sends a confirmation letter to a customer by the end of the next business day after receiving a customer enrollment to notify the customer of the switch. (PPL at 22-23). PECO suggests that the transfer letter should be tailored for each EDC because of previous Commission-related notification requirements.[[7]](#footnote-7) (PECO at 6).

FES believes that requiring an EDC to send an account transfer letter to a customer is unnecessary because the mailing of a disclosure statement/welcome letter by the new EGS is sufficient notice to the customer of the switch and therefore recommends the deletion of Guideline L. If the account transfer letter remains, FES recommends that, to promote consistency, the language of the Guideline state that the EDC is required to use the sample Commission letter (as opposed to the discretionary “may”). Secondly, the Guideline letter should remove EDC information in order to discourage contact with the EDC, which would eliminate the identification of such contacts as allegations of slamming by the EDC. (FES at 7-8).

Verde supports the sample account transfer letter attached to Appendix B of the proposed Guidelines. However, Verde believes that this letter should contain information related to the customer’s meter read date and the switching date because such information is controlled by the EDC. (Verde at 3).

PEMC supports Guideline L and offers minor editing changes to the Appendix B sample transfer letter. (PEMC at 7-9).

Guideline E requires an EDC to provide an EGS-requested customer meter read date and provides for a “switching deadline.” OCA agrees with the contents of this Guideline but believes an EGS should be requiredto provide the customer with a good faith estimate of account enrollment dates and an explanation of the factors which affect the switching timeline. (OCA at 11). AARP/PULP/CLS also supports this guideline and believes that having the EGS explain to customers when the switch date will occur would eliminate much customer confusion and frustration. (AARP/PULP/CLS at 8).

FirstEnergy agrees that a switching deadline should be established in the EDC’s tariff, which should also include the operational requirements that necessitate the switching deadline timeframe. FirstEnergy adds that it is important to clarify that, because of these operational requirements, the removal of the 10-day waiting period from the current 16-day rule may not automatically result in a 6-day switching period. FirstEnergy also notes that changes beyond the control of the EDC, such as PJM changes, may require the EDC to adjust the switching deadline from time to time. (FirstEnergy at 6-8).

NEM is concerned that requiring an EGS to provide a specific switching date would restrict an EGS’s ability to communicate to mass market residential consumers. Due to the manner in which an EGS accesses customer meter read cycles, from a marketing perspective it would be difficult, if not impossible, to know each individual customer’s switch date in order to mass market energy supply services to customers. Given the logistical difficulty in obtaining and effectively utilizing meter switching date information, the meter read information should reside with the utility and the EGS should be required to provide a “generalized explanation to the consumer that service will commence on the next utility meter date.” (NEM at 6). As such, NEM does not support the requirement that the customer’s start date be included in its marketing materials or in its disclosure statement. Likewise, WGES believes that, while it may be sensible for the EGS to provide an estimated transfer date, it may not be feasible for an EGS to provide this information at the time of an initial contact with a prospective customer. (WGES at 2)

FES requests that an EGS be permitted to enroll a customer with a date range when the switch would occur and would refer the customer to PAPowerSwitch.com or to the EDC for more specific switching deadline information. (FES at 5). FES would not require Guideline E to be applicable to those customers who enroll via direct mail solicitations or the internet. To do so would have a chilling effect upon such enrollments because experience has shown that “requiring customers to enter meter read cycles in order to complete an internet enrollment is a significant barrier to sales and results in fewer enrollments.” (FES at 5).

RESA supports the Commission’s proposal to eliminate the 10-day confirmation period. However, RESA points out that the Guidelines, as drafted, fail to create a specific switching deadline. To do so, RESA recommends holding a “stakeholder process” in order to establish the shortest switching deadline possible with the goal of shortening the overall switching timeframe. In RESA’s view, to “replace the current enrollment window with a 7, 10, or 12-day switching deadline under the guise of ‘operational’ needs would not be a reasonable outcome.” (RESA at 8). RESA suggests that a broad stakeholder process would create a cooperative and effective forum where operational issues can be identified and addressed to make sure that the switching deadline is feasible for all involved.

RESA believes that Guideline E is not feasible to implement because an EGS does not have access to a customer’s switching date until after it receives an EDI transaction from the EDC/DSP; the EGS must first have authorization from the customer to enroll, must send an EDI enrollment transaction to the EDC, and then receive confirmation/switching date information from the EDC. According to RESA, there is no method today for an EGS to obtain an actual date to switch a customer. Although it may be quicker to utilize an Eligible Customer List (ECL) to effectuate a faster switch, an ECL has limited practical use. An ECL only identifies a meter read group for that customer but does not provide a specific meter read date; this requires an EGS to cross reference the ECL with other data provided by the EDCs in order to approximate a meter read date. Moreover, the ECL is updated quarterly, which does not provide information related to customers who have moved and would not include those customers who have opted out of the ECL altogether. Taken alone, reliance upon an ECL does not provide the actual meter read date that a customer can be switched. (RESA at 10).

RESA suggests that Guideline E(2) be amended to include a requirement that an EDC/DSP develop an EDI information field as part of the enrollment response transaction to communicate to an EGS the customer-specific meter read date when the customer’s EGS selection date will become effective. (RESA at 11).[[8]](#footnote-8) RESA requests the Commission grant an EGS flexibility in the manner in which the switching date information is provided to the customer because such notification can be made orally, electronically, or via the EGS welcome packet. RESA would have Guideline E (3) revised to provide standardized language to be included in marketing materials as to avoid customer confusion about the switching process. (RESA at 9-12).

PEMC points out the logistical difficulty of marketing to customers without having a specific switch date as required by Guideline E (3). PEMC recommends that the language of E (3) be changed to require an EGS to provide a good faith estimate of the switch to be active “after a customer has authorized such a switch to take place, but before the EGS submits the EDI enrollment transaction to the EDC.” (PEMC at 5).

DTE asks the Commission to clarify whether or not exact service start dates are required, or if general dates are sufficient. If specific dates are required, DTE believes that it would be very burdensome for EGSs to change dates in documents every month. (DTE at 3).

**Guideline F: Meter Read Date; Switching Deadline**

Proposed Guideline F required the EGS to submit an account transfer notice to the EDC or DSP before the switching deadline to ensure that the customer’s account is transferred at the customer’s next immediate meter read date.

NEM requests that the language of Guideline F (2) be modified to permit an EGS to withhold the submission of a customer enrollment so long as it does not go past the next switching deadline. Withholding enrollments may occur for a variety of reasons; moreover, it is common for EGSs to get enrollments just prior to the switching deadline. (NEM at 6). NEM would add a “safe harbor” provision within Guideline F because there are times when an EGS has a valid operational justification for a delay in providing a utility with new enrollments after the switching deadline has passed. (*Id*.). DTE would add a safe harbor provision which would allow an EGS to have a few days to properly process a customer switch when a switch is requested immediately preceding the deadline for switching. This would reduce the risk of an EGS violation of the new rules while shortening the time-frame for customer switching. (DTE at 3).

PEMC recommends that a new subsection be added to Guideline F that would provide additional clarification regarding how an EDC handles an EGS enrollment request that is received after the customer’s billing cycle switching deadline. PEMC would add the following subsection (3): “[i]f an EDC receives a new enrollment transaction on behalf of a customer after the switching deadline for the customer’s current billing cycle, the EDC will treat the transaction request as having been received prior to the immediately subsequent switching deadline in the customer’s *next* billing cycle, and effectuate the switch accordingly.” (PEMC at 6).

PPL fails to see the difference between an “account transfer notice” and an EDI 814 enrollment transaction and recommends including the definition of the term account transfer notice in Interim Guideline C. Receipt of an EDI 814 enrollment transaction is required from an EGS prior to the switching deadline to ensure that a customer’s account is transferred to the EGS at the customer’s next immediate meter read date. (PPL at 19).

**Guideline G: Customer Receipt of Written Disclosure Statement**

Proposed Guideline G repeats the long-standing requirement that the 3 day period when a customer may rescind a contract with an EGS for electric generation supply begins to run when the customer receives a written disclosure statement from the EGS.

One area that concerns commenters regarding the length of time to switch relates to the 3-day contract rescission period. As RESA notes, the 3-day period can easily translate into a 9-day waiting period. (RESA at 16). RESA would add language that creates a rebuttable presumption for instances when a customer enrolls online. In those instances, and if the customer agrees to receive the disclosure statement via email, the presumption would be that it was received on the date it was sent to the customer. (RESA at 16-17). DTE requests clarification if the Commission wishes to have the EGS wait until the rescission period ends before the EGS notifies the EDC of the switch. If that clarification is not made, DTE would like a determination of which party will be responsible for the costs involved if the customer rescinds during the 3-day period. (DTE at 3-4). Likewise, FES requests guidance on whether the account transfer notices should be held until after the expiration of the 3-day rescission period as the switching deadline may fall during the 3-day rescission period. (FES at 5). PPL also requests guidance on whether an EGS can send in an enrollment prior to the end of the 3 business days or if the EGS must wait to send the enrollment until the end of the rescission period. If the EGS is to wait 3 business days after the receipt of the disclosure statement before sending an EDI enrollment transaction to the EDC, then the Commission must understand there is no way of monitoring EGS compliance with the 3-day rescission period because it is not possible for the EDC to know the initial time of customer contact with the EGS. (PPL at 19-21).

Because of proposed changes to be made to the United States Postal Service, OCA and AARP/PULP/CLS suggest that the presumption that a customer has received the rescission letter three days after mailing be reconsidered. (OCA at 15; AARP/PULP/CLS at 8).

WGES supports Guideline G. (WGES at 2).

**Guideline H: Disclosure Statement**

Proposed Guideline H addresses the contents of the EGS disclosure statement by referencing Commission regulations at 52 Pa. Code § 54.5(c)(4)(i)(relating to disclosure statement for residential and small business customers). The proposed guideline made a specific point at subsection (2) that the EGS include in the disclosure statement a good faith estimate of the starting date of service for the customer’s service based on the customer’s next immediate meter read date and the switching deadline for that date.

OCA supports this Guideline. (OCA at 5, 11, 15).

DTE requests that the disclosure statements provided to customers be pre-approved by the Commission in order to avoid disputes related to unclear or ambiguous language. If the Commission finds the language in the disclosure clear or unambiguous, the EGS will receive an approval from the Commission that will be used to find in favor of the EGS with respect to any disputes of this nature. DTE also asks the Commission to clarify if this guideline expands the disclosure requirements to all classes of customers; not just residential and small business. (DTE at 4).

RESA would remove any mention of the term “actual starting date” from the disclosure statement because “EGSs cannot obtain accurate, customer-specific meter read information prior to receiving the enrollment confirmation from the EDC and, therefore requiring this information to be a part of the disclosure statement is operationally impossible and costly.” (RESA at 17). Moreover, RESA believes that because the purpose of these Guidelines is to reduce the amount of time for a customer to switch suppliers, requiring an actual start date would slow the switching time down due to an increased time to prepare and send a disclosure statement. Rather, RESA believes that the disclosure statement should be deemed “received” as soon as possible to start the clock for the customer’s rescission period and then after expiration the EDI enrollment transaction can be sent to the EDC. (RESA at 17).

NEM is also concerned with the requirement to have EGSs incorporate the use of specific starting dates in disclosure statements. NEM points out that meter read dates are often unknown because not all customers participate in the ECL and consumers often do not have ready access to their billing statements. NEM believes customers would be just as well served by the EGS providing a general explanation in marketing materials and disclosure statements that their service will commence on the next utility meter read date. (NEM at 4-5).

FES agrees that requiring the inclusion of a starting date in the disclosure statement is “administratively impractical” because this provision could potentially require EGSs to produce numerous disclosure statements such as different ones for each cycle per EDC. Accordingly, FES asks that subparagraph 2 of Guideline H be deleted. FES also believes subparagraph 3 should be deleted because this is not relevant to accelerating switching timeframes. (FES at 5-6). Likewise, RESA would delete Guideline H (3) because it is outside the scope of these Guidelines and the provision does not provide any useful guidance for a trier of fact as to the issue of ambiguity of language in a disclosure statement. (RESA at 18).

**Guideline I: Evidence of Customer’s Authorization to Transfer Account**

Section 2807(d)(1) of the Public Utility Code, 66 Pa.C.S. § 2807(d)(1)(relating to consumer protections and customer service), requires that the Commission establish regulations to ensure that an EDC does not change a customer’s electricity supplier without written evidence of the customer’s consent. Guideline I was proposed to streamline procedures so that the procurement of written evidence of the customer’s consent to transfer his or her account would be made the responsibility of the EGS and not the EDC. Removing the EDC from this role in the switching process will also facilitate EGS-to-EGS transfers of a customer’s account.

OCA and WGES support this Guideline. (OCA at 16; WGES at 2).

RESA believes that the Guideline should be updated to include the many different ways that a customer can authorize a switch, to include an oral authorization that is recorded, a written form, or an electronic authorization. (RESA at 18).

DTE would not change the language of the existing regulation 52 Pa. Code §173; direct oral confirmation should be permitted to show customer consent to change an EGS. DTE is concerned that the proposed language of Guideline I would require a separate document to indicate a customer’s desire to switch. (DTE at 4-5).

PEMC would modify Guideline I (3) to permit direct oral confirmation of the switch so long as a recording of such oral confirmation is used as evidence of the authorization to switch. (PEMC at 6).

NEM would clarify the language of the Guideline for the terms “document signed by the customer” and “written evidence” to encompass all currently valid forms of consumer enrollment, such as telephonic and electronic enrollments as well as wet signature enrollments. (NEM at 7).

PPL agrees that the EGS should be responsible for obtaining and retaining the evidence of consumer authorization. (PPL at 21).

FES believes that the letter in Appendix B is unnecessary but if the Commission requires an EDC to communicate with switching customers, the EDC communication should not include the contact information of the EDC. The purpose of this letter is to notify the customer of their new supplier; this may encourage a customer to change his mind upon contact with an EDC after the three-day rescission period has expired and would require the EDC to treat this as an allegation of slamming. This will increase slamming complaints when in actuality the incidence of slamming may not have increased. (FES at 7-8, 10-11).

**Guideline J: Records**

This proposed guideline restated Commission regulations at 52 Pa. Code § 57.177 (relating to customer dispute procedures) and § 57.179 (relating to record maintenance). It required that documents, paper or electronic, relating to the customer’s authorization to transfer his or her service account to an EGS or DSP shall be retained for a period of time equivalent to at least 6 billing cycles.

RESA supports this Guideline. (RESA at 19). PPL notes that it retains all EDIs for seven years and only records instances where a customer alleges an unauthorized transfer of service account to an EGS. These records are retained for six years. (PPL at 21-22).

**Guideline K: EDC Transfer of Customer Account**

Proposed Guideline K stated that an EDC or DSP shall transfer a customer’s account to the selected EGS at the beginning of the first feasible billing period following the submission of the transfer notice from the EGS.

PPL processes EDI enrollment transactions submitted by an EGS prior to the 16-day window and is prepared to make changes to billing systems to accommodate different requirements but reiterates its position that the best method of reducing switching timeframes is to shorten rather than eliminate the 10-day waiting period. (PPL at 22). RESA requests a minor change to K (1), which would coordinate the enrollment switch date with the actual transfer date. (RESA at 19).

FirstEnergy would add language to address situations when the EGS fails to submit an account transfer notice to an EDC/DSP before the switching deadline. (FirstEnergy at 8).

OCA opposes the waiver provisions related to the 10-day confirmation period contained in the Guideline and restates its support of a reduction to a 5-day confirmation period and providing the customer with a date-certain by which to notify an EDC of an erroneous switch. (OCA at 16).

**Guideline M: EGS Rescission of Account Transfer and N: EDC Rescission of the Account Transfer.**

Proposed Guideline M stated that an EGS may rescind the transfer of a customer’s account no later than 3 business days prior to the switching deadline established by the EDC or DSP for the customer’s account. After that time, only an EDC or DSP may rescind the transfer of a customer account. The proposed guideline also provided that an EGS shall use an established EDI transaction to rescind the account transfer, and that an EGS shall reimburse an EDC or DSP for reasonable costs related directly to the rescission of a customer account transfer notice by the EDC or DSP. Proposed Guideline N stated that an EDC or DSP may rescind the transfer of a customer’s account upon the request of an EGS, and provides for reimbursement of reasonable costs directly related to the rescission to be paid by the EGS to the EDC or DSP.

PPL does not agree with this proposed guideline because it puts the EDC in the position of having to “chase” an EGS for recovery of costs. There is a risk that such costs will not be recoverable. PPL believes it more appropriate to recover the costs from customers through base rates. In addition, PPL believes that the language in Guideline N should be reconsidered as many customer-initiated rescissions are not due to unauthorized switches; to consider them all as slamming complaints would add unnecessary cost and expense to the EDC/DSP. (PPL at 24-25).

FirstEnergy believes that if the 10-day confirmation period is eliminated, the language of Guideline M should be amended to include a clause that would require an “EDC…[to] develop and seek approval of tariff terms outlining a standard fee representing the administrative costs of such a rescission for inclusion in their supplier tariffs.” (FirstEnergy at 5). In addition to the inclusion of similar cost recovery language in Guideline N, FirstEnergy would add the phrase “or upon request of a customer that was subject to transfer without the customer’s consent” within Guideline N (1) to expressly deal with the situation when a customer notifies an EDC/DSP of an unauthorized switch. *(Id*.)

OCA supports Guidelines M and N but would permit a customer to recover costs associated with the rescission of a customer account transfer due to an unauthorized switch. (OCA at 18). OCA supports a change to Guideline N that would permit a customer to rescind the transfer based upon an unauthorized switch by contacting the EDC/DSP rather than the EGS. (OCA at 19).

DTE would change Guideline M to specify how the “reasonable costs” to be recovered by an EDC/DSP would be determined and whether those costs would be fixed so as to be known by the EGS. In addition, DTE suggests that the evidence necessary to rescind a customer account can be a recorded oral statement in addition to written evidence of the customer’s authorization. (DTE at 5).

PEMC believes that the language of Guideline N (3) should be changed to allow for instances when the switch is due to an honest mistake. They suggest a fact-finding procedure be implemented which would permit the separation of honest mistakes from clear cases of slamming. (PEMC at 7).

PECO requests that Guideline M rescission requirements be stated in terms of calendar days as opposed to business days. This is due to the complexities and variability of the system that would result in order to account for holidays and weekends. In addition, PECO believes the current EDI transaction could be used by an EGS to initiate rescissions. (PECO at 6). PECO believes that the recovery of costs from an EGS for rescissions should be mandatory and should include IT and labor costs associated with processing the rescission. (PECO at 7).

According to PECO, Guideline N should be specific as to rescission requests and that rescission requests should be sent via EDI transaction. In addition, PECO would require the recovery of costs associated with EGS rescission to be mandatory. Lastly, because slamming disputes are handled differently than typical customer account rescissions, PECO would not support the language of Guideline N which treats all customer account rescission as slamming disputes. PECO notes that,

At present, if a customer makes a rescission request and PECO has sufficient time to prevent the transfer from occurring, no slamming dispute is initiated because the customer remains with its existing supplier. . . . Once a slamming dispute is initiated, supplier payment for customer charges is automatically withheld until the dispute is resolved or 30-days after the dispute is opened.

(PECO at 7). PECO asserts that the proposed Guideline would result in unnecessary administrative expense and EGS account holds. (*Id.* at 7-8).

Verde requests guidance on the definition of “reasonable costs” contained in Guideline M. (Verde at 3).

FES recommends the substitution of the terms “cancellation” and “cancel” for the terms “rescission” and “rescind.” (FES at 8). FES would change the term “three business days” to “one business day” as it relates to the applicable time period that a customer’s account transfer can be rescinded in Guideline M(1) because “there is no reason that an account transfer could not be cancelled by an EGS closer to the switching deadline, up to the day before the transfer is to occur.” (*Id*.) Lastly, FES suggests that the provision should include language specifying that a cancellation at any time would only be done upon request of the EGS or the customer. (FES at 8).

**Guideline O: Customer Disputes; Slamming Complaints**

Proposed Guideline O required that all EDCs, DSP and EGSs treat all slamming allegations as disputes in accordance with Commission regulations at 52 Pa. Code § 56.151 (relating to general rule) and § 56.152 (relating to contents of the utility company report).

OCA and WGES agree with this proposed Guideline. (OCA at 19; WGES at 2).

PPL restates its position regarding disputes and slamming complaints as set forth in their comments to Guideline N. PPL supports treating all slamming complaints as disputes, but does not support the language in the Guideline that treats requests to an EDC to rescind a customer’s account transfer as a slamming allegation because there are numerous reasons why a rescission may occur that do not always include an allegation of slamming. (PPL at 25).

PEMC is concerned that an EGS will be subject to severe consequences for an honest mistake in transferring a customer’s account. PEMC requests that a procedure be created that will allow an EGS to provide the EDC/DSP and/or the Commission with the facts of a situation before an EGS is punished. RESA also believes that suppliers should be given an opportunity to show that a switch was inadvertent and that penalties should be reasonably tailored in such instances. RESA explains that there may be instances where an EGS accidently switches the wrong customer or switches the customer on a date earlier than intended. RESA asks that the definition of slamming be modified to account for accidental switches. (RESA at 6-7).

**Guideline P: Penalties for Unauthorized Transfer of Customer Accounts**

Proposed Guideline P stated that an EDC, DSP or EGS shall not change a customer’s electricity supplier without evidence of the customer’s consent to the change in supplier. The proposed guideline further explained that the Commission has a long-standing zero tolerance policy for slamming and lays out the penalties that the Commission may impose on EDCs, DSPs and EGSs for slamming.

OCA believes that the language “can result” should be changed to the mandatory language “will result” to reflect the Commission’s long standing zero tolerance policy toward slamming. In addition, OCA suggests that language be included that would provide guidance on how and under what conditions an EDC could make an unauthorized transfer of a customer account without being subject to the penalty provisions of Guideline P. Under the current process, the only method an EDC can utilize to verify the validity of an enrollment is by contacting the customer after receipt of the confirmation letter. OCA believes the elimination of this letter will cause an EDC to be fined in the event they transfer the account in reliance upon an erroneous account transfer notice from an EGS. (OCA at 19-20).

The Industrials note that, when slamming occurs, customers are faced with costs to remedy the situation, including the costs of employee/consultant/legal time to detect the switch and pursuing a complaint with the EGS/EDC/Commission. While the proposed Guidelines specify the EGS is required to compensate the EDC for costs resulting from slamming, the Industrials recommend that the Commission specify that EGSs must also “compensate customers for all costs incurred while resolving the unauthorized switching incident.” (Industrials at 4).

RESA believes that the language of the Guideline should be modified to provide the Commission with flexibility in cases where a customer’s account was switched in error. An example cited by RESA would be when a customer’s account has been switched on a date earlier than provided for in the customer’s agreement. (RESA at 20).

PPL is concerned that a possible interpretation of Guideline P may result in the unjust result of an EDC/DSP being penalized for an unauthorized switch “regardless of whether it caused, contributed to, or was in no way involved in [the] unauthorized switch.” (PPL at 25). In addition, PPL notes the words “can result” are used in P (2)(b) with regard to penalties and suggests that “will result” in P (2)(a) should be changed from “will result” to either “can result” or “may result.” (*Id*. at 26.)

FirstEnergy requests the removal of any risk of penalty to an EDC. Due to the elimination of the 10-day confirmation letter, an EDC will have to rely upon an EGS demonstration that the customer’s switch was authorized. Otherwise, an EDC would be punished for an action over which the EDC has no control. Penalties should be limited to EGSs only. (FirstEnergy at 6).

PECO would revise the Guideline to clarify “when penalties will be imposed and to provide some indication as to the nature of the penalties.” (PECO at 13). PECO disagrees with the proposed Guideline’s imposition of mandatory penalties against an EDC/DSP while providing that penalties against an EGS are discretionary. Moreover, PECO believes that the EDC/DSP penalties for an unauthorized switch are unfair because the Interim Guidelines allow an EDC/DSP to rely upon EGS account transfer notices as evidence of customer intent and only after the switch has been made and the customer contacts the EDC/DSP will the EDC/DSP have any indication that the switch was unauthorized. “The EDC would have already completed the conduct warranting the penalty (the transfer itself) even though it was following the process established by the Interim Guidelines.” (PECO at 14).

 **Commissioner Cawley’s Request for Comments**

 **Question 1: How important is it to consumers that they have a good faith estimate of the projected starting date for EGS service in the Disclosure Statement?**

FES notes that the inclusion of a specific estimated start date for each customer is nearly impossible to administer. To do so would require the preparation and maintenance of a different disclosure statement for each day of each month for each different EDC service territory. (FES at 12).

OCA believes that the inclusion of a starting date is important because it adds certainty to the shopping experience and providing the meter read date, an explanation of the importance of the date, and a projected starting date will alleviate the confusion of complexity for customers.

**Question 2: Are there other means or timelines that would more beneficially provide information to customers regarding the service starting date?**

FES recommends that each individual EDC supplier-service website and the Commission’s PaPowerSwitch.com website include specific timelines for each EDC as part of the education process, with sufficient detail for the customer to calculate an estimated date of service. (FES at 13).

PECO believes that the current process for an EGS to determine switching deadlines and the manner in which that information is communicated to the customer is appropriate. The company does not believe that other means of determining switching deadlines and service starting dates or additional timelines are necessary. (PECO at 10).

**Question 3: If a customer opts out of the Eligible Customer List (ECL) and the EGS and/or customer does not readily have information on customer specific meter read dates, will this complicate the customer contracting process, and what new processes or EDC information systems can be provided *in real time* to enable effective contracting between EGSs and customers?**

FES would require EDCs to maintain a website in order for an EGS to obtain billing information with customer consent, on a real-time basis. This would allow an EGS to gather the information necessary to provide a customer with a good faith estimate of a start date to be included on a disclosure statement. Moreover, all EDCs must include meter read cycles on their bills in an easy-to-read customer-friendly manner. (FES at 3).

PECO believes that the existing process is sufficient. A customer must provide information to the EGS for the switch to take place. The customer has access to the meter read date and the account number as both are included on the customer’s bill. The customer can also contact PECO to request this information. Once an EGS has a customer’s account number, the EGS can obtain the meter read cycle through an EDI request for historical usage. (PECO at 10-11).

**Question 4: What is the experience of EGSs with regard to customers having ready access to their billing statements so that EGSs can provide the necessary meter read information to customers during the contracting process? Does the vast majority of customers keep a copy of their bills and/or have a copy available when contracting with an EGS?**

FES’s experience has shown that access to billing statements varies among customers and EDCs depending on the individual EDC’s online billing system. Nearly a third of all online enrollments offered by FES are not completed because the customer does not have billing information available; but those EDCs who offer online billing utilized by customers are more likely to have billing information available. (FES at 14).

OCA would add, as part of the educational materials, that customers are advised to have their most recent utility bill available when contacting suppliers. The utility bill should include meter read dates. (OCA at 12).

**Additional Comments:**

**Advanced/Smart Metering and Accelerating the Switching Process**

FirstEnergy agrees that the use of mid-cycle meter reads as an interim measure to shorten the switching process is impractical. The companies’ current meter and billing systems are not capable of using mid-cycle readings to process enrollments. Moreover, FirstEnergy does not fully agree that the implementation of smart meter technology will provide for the shortening of the switching time frame envisioned by smart meter advocates. FirstEnergy will “need to investigate the technical requirements and the affected business processes and changes needed to accommodate the handling within one billing cycle of a separation of usage into multiple generation suppliers, the effect on receivables and bill print activities, and how to analyze the entire cycle’s usage for non-generation billing components.” (FirstEnergy at 10). FirstEnergy asserts that costs of such changes cannot be determined because smart meter technology is but one piece of the puzzle for processing enrollments using mid-cycle or off cycle meter reads. (*Id*.)

PECO states that, while smart meters can facilitate mid-cycle switching, they cannot accomplish mid-cycle switching unless significant changes are made to the company’s billing system. PECO further notes that mid-cycle switching is not part of the company’s Commission-approved smart meter plan and asks that EDCs be given time to formally evaluate how they would implement mid-cycle switching after smart meter deployment. PECO concludes that, at this time, they believe that it could work on billing system changes in tandem with smart meter deployment so that the billing system would be capable of accommodating mid-cycle switching once smart meters are fully deployed (currently estimated as early as late 2014). (PECO at 9).

DLC agrees that it is possible to reduce the time to switch based upon smart meter technology; however, it would be necessary to integrate supplier switching into smart meter deployment to include the infrastructure needed to operate the smart metering system. DLC does not support an interim effort toward off-cycle switching prior to 2013 because of DLC’s planned smart meter deployment. DLC would rather expend the resources on designing an integration plan for switching as part of the smart meter deployment. DLC has concerns about the costs associated with maintaining two systems: one for those with smart meters and another for those without. DLC is willing to study the possibility and costs of “switch on connect” and implementation of “off-cycle” switching and believes these would have more of an affect upon reducing switching timeframes as opposed to elimination of the 10-day waiting period. (DLC at 3-4).

DLC does not believe that a new EDI transaction is necessary in order to effectuate changes to EDI procedures to accommodate proposed revisions to the switching process. Altering the confirmation period should be accomplished through existing transactions, such as an 814 drop transaction. (DLC at 5).

PPL believes that the ability to switch supply service on dates other than the scheduled meter read date can provide significant benefits to customers and believes that such functionality is an appropriate part of its smart meter plan. As such, “the costs associated with the implementation of such functionality should be recoverable under the Company’s Smart Meter Rider.” (PPL at 27).

PPL prefers the use of the term “off-cycle switches” as opposed to the term “mid-cycle switches” because mid-cycle switches implies an inflexible midpoint switching date. However, PPL believes that off-cycle switches will create more complexities, far less benefits and would support the concept of mid-cycle switches. PPL supports any approach that retains the monthly billing cycle as it would maintain the current billing structure contained in Chapter 56; however it would require changes to the EDEWG protocol, such as the matter of sending two EDI 810 transactions during the same billing period. Therefore, the company does not propose the functionality of permitting frequent switches during the same month. To do so would require changes to the Commission’s regulations on billing standards. Moreover, the use of demand rates and fixed monthly charges in the generation or transmission portion of the bill (those portions of the bill that are split between two different suppliers) would be a problem because there would be two different demand charges or monthly charges in the same month. (PPL at 27-28).

PPL estimates that it could accomplish a shortening of the 10-day waiting period and the implementation of the off-cycle switching capability for less than $1 million. PPL believes that a schedule should be in place to allow for the establishment of EDI protocols by EDEWG during 2012 and to include this work in the company’s next update of its smart meter plan in 2013. (PPL at 28-29).

RESA believes that off-cycle switching is operationally possible and does not believe that smart meters are necessary to allow a switch on a date other than a regularly-scheduled meter read date. “Consumption data can be pro-rated for a particular billing period in order to effectuate an off-cycle switch…and that EDC and EGS billing, meter data management, RTO/ISO settlement and other back office systems would require modification to permit such a change.” (RESA at 4). RESA suggests that market participants be encouraged to develop the protocols needed to permit off-cycle switching and include this topic in the next phase of the RMI proceeding. (RESA at 4). FES also believes the Commission should consider whether current EDC billing systems may be able to be modified in order to permit off-cycle switches in order to avoid waiting until the deployment of smart meter technology. FES thinks the issues of smart meter deployment and off-cycle switches are separate issues. (FES at 11).

NEM believes it is important to recognize that now is the time to ensure that supplier switching is integrated into smart meter deployment plans. (NEM at 7). Verde believes that EDCs should be encouraged to invest in system designs to accommodate smart metering technology, which will improve consumer satisfaction. (Verde at 4). WGES suggests that the initiation of off-cycle switching based upon smart meter technology should be the subject of a future working group prior to the deployment of such technology. (WGES at 4).

The Industrials argue that when considering the feasibility of accelerated switching procedures, the Commission should weigh the benefits of these changes with the costs associated with them (*e.g*. changing EDI systems). (Industrials at 5).

AARP/PULP/CLS support mid-cycle switching where the EDC has installed smart metering and believes that there should not be any barrier to changing a customer’s EGS since the EDC will be able to obtain usage information on a daily basis and prorate the customer’s monthly bill. (AARP/PULP/CLS at 4-5). OCA supports consideration of accelerating switching in smart meter deployment plans and believes that an examination of these issues will help identify the necessary changes and associated costs. (OCA at 5).

 **Consumer Education**

Verde, PPL, OCA, WGES, AARP/PULP/CLS and FirstEnergy are in general agreement with the Commission’s proposals to update existing channels of communication with respect to consumer education and the switching and enrollment process. (Verde at 3; PPL at 27; OCA at 9; WGES at 3; AARP/PULP/CLS at 4; FirstEnergy at 9).

The OCA suggests that, as part of the educational message, consumers should be advised to have a recent electric bill on hand when they are shopping as it includes helpful information including the account number and meter read date. (OCA at 12).

**Applicability to the Natural Gas Industry**

The NGDCs generally believe that the change in regulations as it relates to the retail electric market should not apply to the natural gas industry. EAP believes that, because of the natural differences in maintaining reliability between the two industries (such as gas supply arrangements and assignments of pipeline capacity), it would be necessary for the Commission to hold “gas industry specific discussions” about the proposed changes to established natural gas related regulations. (EAP at 4-5). Columbia Gas disagrees with the application of the Interim Guidelines to the natural gas industry. Columbia states that their “current procedures for switching customers result in the customer beginning service with the new NGS more quickly than what would be provided by adhering to the proposed Interim Guidelines.” (Columbia at 3). Ultimately, Columbia urges, “it would not be advisable to apply new rules to the customer switching process in the natural gas industry.” (*Id*. at 4). In their comments, PGW concurs in the comments submitted by EAP on the rulemaking issue and states that, because of the differences between the electric and gas industries, changes should not be imposed on the gas industry until a change in the status quo is evaluated and a rulemaking process in undertaken. (PGW at 4).

PECO hopes it will be possible to maintain the same switching rules for both electric and gas service because doing so would reduce systems, training, IT and customer service burdens in implementing any changes and lessen customer confusion for those customers who receive both electric and gas from suppliers. PECO “supports taking a closer look at the impacts of accelerated switching on gas suppliers and customers.” (PECO at 8).

WGES submits that the 10-day waiting period should also be eliminated for NGDCs and NGSs. NGDCs should be required to establish switching deadlines by which time NGSs must submit account transfer notices to the NGDC so that customers can begin service with the next meter read. (WGES at 3). NEM believes that, from a practical perspective, it makes sense to implement rule changes on a coordinated basis across industries especially for suppliers that provide both electric and gas service. Because the proposed Guidelines accelerate the switching process without reliance upon metering, NEM believes that the “technological metering differences that may exist between electric and natural gas utilities should not be an issue.” (NEM at 8). However, NEM recognizes that different operational standards are in place for the gas industry and accordingly, the Commission may want to allow “stakeholders the opportunity to collaboratively discuss and consider the application of the proposed Interim Guidelines to the natural gas utilities” on an expedited basis. (*Id*.).

**Other Issues**

Several of the commenters were concerned with the timeframes set forth in the *Tentative Order*. FirstEnergy is concerned that the 90-days for compliance as set forth in the *Tentative Order* may not be sufficient time to implement modifications if EDI changes are needed. FirstEnergy estimates that 150-days after the entry of the Final Order may be needed to ensure that the programming changes to be made can be completed.[[9]](#footnote-9) The costs associated with the system changes due to the implementation of the Guidelines are unknown but should be fully recoverable. FirstEnergy believes there is a potential for the companies to incur significant costs as it may be necessary to change systems many times in order to comply with future changes to these Interim Guidelines. (FirstEnergy at 12).

PECO notes that the implementation of the proposed Guidelines would exceed the 90-day timeframe contained in the *Tentative Order*. PECO estimates that “it will require 10 to 12-months from the date of the Final Order to design, test, and implement the Interim Guidelines…[excluding] any other major changes…required as a result of the Commission’s retail market investigation…in advance of the accelerated switching changes.” (PECO at 2). PECO argues that, because the Guidelines will require 2 separate systems for enrolling a customer and dropping a customer (that currently require the same system because they are both subject to the same rules), additional costs will be incurred and time will be needed to develop and test both systems. PECO recommends that the Commission adopt rules that coordinate the enrollment and dropping of customers so that both sets of customers follow the same rules.[[10]](#footnote-10) (PECO at 2-4).

**IV. RESOLUTION:**

Upon careful review and consideration of the comments, we agree with those participants who have argued that a complete elimination of the 10-day confirmation period at 52 Pa. Code § 57.173 is too ambitious for this type of proceeding. In addition, we are mindful of the ongoing RMI and the examination of the potential for mid-cycle reads in that proceeding. While we do not necessarily agree that the proposed elimination of a regulatory requirement violates the Commonwealth Documents Law and raises concerns about binding norms and the regulatory process, we do agree that it is appropriate to substantially narrow the focus of this proceeding. As we have said, this narrowed focus is primarily based upon a realistic assessment of what can be accomplished in the near term while leaving the broader scope set forth in the *Tentative Order* for a rulemaking process and the future examination of mid-cycle switches in the RMI proceeding.

Several parties indicated that they believe that shortening the 10-day period is appropriate. PECO, PPL, DLC, OCA and AARP/PULP/CLS have all suggested that we examine a shortened time period, between 4-10 days.[[11]](#footnote-11) (PECO at 1-2; PPL at 10-11; OCA at 4, 7-8; AARP/PULP/CLS at 4). We agree with these parties and will not eliminate the confirmation period; instead, we will shorten it from 10 to 5 days. We believe that a 5-day period provides sufficient notice for customers and time to act to prevent an unauthorized switch. This will also provide some shortening of supplier switching timeframes. We expect that eliminating 5 days from the confirmation period will allow EDCs to reduce the “16-day” rule to an “11-day” rule – meaning that some customers may be able to see a switch in suppliers in as little as 11 days.[[12]](#footnote-12)

We also find that simply providing for an interim guideline that adjusts the length of the confirmation period from 10 days to 5 sufficiently narrows the focus of this proceeding to maintain all due regard for the Commonwealth Documents Law. More substantial actions, including codification of this change as appropriate, will be reserved for a rulemaking process. Consistent with this finding, we will narrow the application of these guidelines still further by placing a 3-year expiration date on these guidelines and the related waivers.  We expect to have revised regulations in place by this expiration date.

The Interim Guideline we adopt today will waive 52 Pa. Code § 57.173(2) to the extent necessary to require a 5-day waiting period instead of a 10-day period:

*Upon receipt of the notification required by 52 Pa. Code § 57.173(1), the EDC shall send the customer a confirmation letter noting the proposed change of EGS. This letter should include notice of a 5-day waiting period in which the order may be canceled before the change of the EGS takes place. The notice shall include the date service with the new EGS will begin unless the customer contacts the EDC to cancel the change. The 5-day waiting period shall begin on the day the letter is mailed. The letter shall be mailed by the end of the next business day following the receipt of the notification of the customer’s selection of an EGS.*

We noted in the *Tentative Order* that, if the confirmation period was eliminated, the Commission believed that it was important to include other provisions in the guidelines addressing switching and consumer protection. *See* *Tentative Order* at 13. Because we are substantially revising our approach to a much narrower focus, much of what had been proposed in the *Tentative Order* has become moot. In this context, we note the comments filed by EGSs that our proposals requiring suppliers to identify and communicate definitive switching dates to customers are not feasible at the present time. We also observe that parts of the proposed guidelines merely referred to existing regulations. While we are substantially narrowing the focus of our action here, this in no way intended to invalidate the regulations that have been referenced in these proposed guidelines.

Although we have eliminated much of the proposed guidelines set forth in the *Tentative Order*, we repeat our concerns that some EGSs may not be moving customer switches through the EDC enrollment process as quickly as possible. We acknowledge that batching of customer requests may be an acceptable approach in certain instances for efficiency. However, it is unacceptable to hold customer enrollments that could have been processed more quickly on the basis of efficiency or, worse, target dates based solely on agent compensation considerations. We continue to urge EGSs to move enrollments through the process as quickly as possible.

On the issue of application of the proposed guidelines to the gas industry, we agree that the operational differences between the two industries warrant a separate proceeding involving the broader issues that will be focused solely on that industry. However, since we have substantially narrowed the focus of this proceeding to shortening the 10-day confirmation period, we see no reason why this narrow, focused change cannot also be applied to the gas industry. Additionally, as PECO points out, we see value in keeping the rules for electric and gas as similar as possible. This makes sense for suppliers and utilities that sell both electric and gas – and for customers who shop for both electric and gas. Having a 10-day confirmation period for gas and a 5-day period for electric would simply invite confusion and frustration. Accordingly, we will waive 52 Pa. Code § 59.93(2) to the extent necessary to provide for a 5-day waiting period instead of a 10-day period:

*Upon receipt of the notification required by 52 Pa. Code § 59.93(1), the NGDC shall send the NGDC ratepayer of record a confirmation letter noting the proposed change of NGS. This letter should include notice of a 5-day waiting period in which the order may be canceled before the change of the NGS takes place. The notice shall include the date service with the new NGS will begin unless the customer contacts the NGDC to cancel the change. The 5-day waiting period shall begin on the day the letter is mailed. The letter shall be mailed by the end of the next business day following the receipt of the notification of the customer’s selection of a NGS.*

Concerning our proposals on consumer education, upon review of the comments, we believe our proposals to do more to educate consumers about the switching process are sound. Specifically, we direct the Commission’s Office of Communications to include information on the switching process (including estimated time frames) on the Commission’s PaPowerSwitch.com website. This should include information about the confirmation letter, its purpose, and what to look for on the letter (supplier, date service will start, how to respond in cases where the switch was not authorized, etc.). The role of the meter read cycle in switching should also be explained, and guidance should be provided on the questions that consumers should ask suppliers about switching time frames. We agree with OCA that consumers should be advised to have a utility bill available when shopping as the bill contains important information including account numbers and meter read dates.

We also direct the Commission’s Office of Communications to review its educational materials to ensure that they accurately reflect new procedures that are implemented for switching – specifically the shortening of the confirmation period to 5 days. We recommend that utilities and suppliers review and update their education materials to make sure the information they provide to consumers reflects this shortening of the confirmation window. This should entail a review of marketing materials, including sales scripts, to ensure that they are consistent with this new timeframe. We once again urge suppliers to provide realistic information to customers at the time of enrollment about account transfer dates.

We acknowledge the concerns expressed by FirstEnergy and PECO with the implementation timeframes provided for in the *Tentative Order*. However, as we have discussed, the guidelines we are issuing are much narrower than what we had originally proposed. Basically, the major system-change that is needed is to turn the current 10-day confirmation period into a 5-day confirmation period, with a concurrent change to the text of the confirmation letter that is mailed to the customers. Consumer education literature will also have to be changed to reflect the new 5-day period. Regardless, we believe that the implementation of these narrower changes should pose fewer concerns with the timeframe and we will keep the 90-day implementation timeframe.

As we have discussed at length, we have substantially reduced the proposals set forth in the *Tentative Order*. However, we still believe our switching regulations should be reviewed in the context of today’s marketplace. These regulations were written in the late 1990s, when experience with consumer shopping in the competitive retail market was limited. Given the experience all parties have since acquired and the advent of new technologies like advance metering, we believe it is appropriate to examine our switching regulations. Therefore, we will direct staff to initiate proposed rulemaking proceedings, within one year after entry of this order, using information gleaned from implementation of these Interim Guidelines, to review and propose changes to our electric switching regulations at 52 Pa. Code §§ 57.171 – 179 and gas switching regulations at 52 Pa. Code §§ 59.91 – 99.

**THEREFORE,**

 **IT IS ORDERED:**

 1. That the Interim Guidelines for Changing a Customer’s Electricity Generation Supplier and Natural Gas Supplier as set forth in this Final Order and in Appendices A and B are issued.

 2. That Sections 57.173 and 57.174 of the Commission’s regulations at Title 52 of the Pennsylvania Code, 52 Pa. Code § 57.173- § 57.174, are waived to the extent set forth in this Final Order and Appendix A.

 3. That Sections 59.93 and 59.94 of the Commission’s regulations at Title 52 of the Pennsylvania Code, 52 Pa. Code § 59.93- § 59.94, are waived to the extent set forth in this Final Order and Appendix B.

4. That the Commission’s Office of Communications review its consumer education materials and revise as needed to reflect these Interim Guidelines, and include information on the switching process on www.PaPowerSwitch.com.

5. That staff shall initiate proposed rulemaking proceedings, within one year after entry of this order, using information gleaned from implementation of these Interim Guidelines, to review and propose changes to our electric switching regulations at 52 Pa. Code §§ 57.171 – 179 and gas switching regulations at 52 Pa. Code §§ 59.91 – 99.

6. That this Final Order and Appendices A and B shall be served on all Electric Distribution Companies, all Natural Gas Distribution Companies, all licensed Electric Generation Suppliers, all licensed Natural Gas Suppliers, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Energy Association of Pennsylvania and all parties filing comments in this proceeding.

7. That the Office of Competitive Market Oversight shall electronically send a copy of this Final Order and Appendices A and B to all persons on the contact list for the Committee Handling Activities for Retail Growth in Electricity (CHARGE), to all persons on the contact list for the *Investigation of Pennsylvania’s Retail Electricity Market*, order entered April 29, 2011 at Docket No. I-2011-2237952, and to all persons on the contact list for Stakeholders Exploring Avenues to Remove Competitive Hurdles (SEARCH).

8. 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 and on the web page for the *Investigation of Pennsylvania's Retail Electricity Market.*

9. These guidelines and accompanying waivers shall expire three years after the entry date of this Order.

10. That this order shall take effect within 90-days of the entry date of this Order.

 **BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: October 24, 2012

ORDER ENTERED: October 25, 2012

**APPENDIX A**

#### A. Customer contacts with EGSs.

When a contact occurs between a customer or a person authorized to act on the customer’s behalf and an EGS to request a change of the EGS, upon receiving direct oral confirmation or written authorization from the customer to change the EGS, the contacted EGS shall:

   (1)  Notify the EDC of the customer’s EGS selection by the end of the next business day following the customer contact.

   (2)  Upon receipt of this notification, the EDC shall send the customer a confirmation letter noting the proposed change of EGS. This letter should include notice of a 5-day waiting period in which the order may be canceled before the change of the EGS takes place. The notice shall include the date service with the new EGS will begin unless the customer contacts the EDC to cancel the change. The 5-day waiting period shall begin on the day the letter is mailed. The letter shall be mailed by the end of the next business day following the receipt of the notification of the customer’s selection of an EGS.

#### B. Time-frame requirement.

When a customer or authorized party has provided the EGS with oral confirmation or written authorization to change EGSs, consistent with electric data transfer and exchange standards, the EDC shall make the change at the beginning of the first feasible billing period following the 5-day waiting period, as prescribed in (A)(2) (relating to customer contacts with EGSs).

**APPENDIX B**

#### A. Customer contacts with NGSs.

When a contact occurs between a customer and an NGS to request a change of the NGS, upon receiving direct oral confirmation or written authorization from the customer to change the NGS, the customer’s new NGS shall:

   (1)  Notify the NGDC of the customer’s NGS selection by the end of the next business day following completion of the application process. The NGDC shall verify the accuracy of the information provided by the NGS by matching at least two data elements such as name and account number, or address and account number, with NGDC records.

   (2)  Upon receipt of this notification, the NGDC shall send the NGDC ratepayer of record a confirmation letter noting the proposed change of NGS. This letter should include notice of a 5-day waiting period in which the order may be canceled before the change of the NGS takes place. The notice shall include the date service with the new NGS will begin unless the customer contacts the NGDC to cancel the change. The 5-day waiting period shall begin on the day the letter is mailed. The letter shall be mailed by the end of the next business day following the receipt of the notification of the customer’s selection of a NGS.

#### B. Time-frame requirement.

When a customer has provided the NGS with oral confirmation or written authorization to change NGSs, the NGDC shall make the change at the beginning of the first feasible billing period following the 5-day waiting period, as prescribed in A(2) (relating to customer contacts with NGSs).

1. CHARGE members include EDCs, EGSs, industry trade organizations, consumers, the Office of Consumer Advocate (OCA), and the Office of Small Business Advocate (OSBA). [↑](#footnote-ref-1)
2. #  *Investigation of Pennsylvania’s Retail Electricity Market*, Docket No. I-2011-2237952 (Order entered April 29, 2011).

 [↑](#footnote-ref-2)
3. RMI participants include EDCs, EGSs, residential, small business and industrial consumer representatives and other interested parties. [↑](#footnote-ref-3)
4. Note that these advanced meters are generally not classified as “smart meter technology” as defined at 66 Pa. C.S. § 2807(g) (relating to duties of electric distribution companies). [↑](#footnote-ref-4)
5. In its comments, PPL further argues that the proposed guidelines run afoul of the Commonwealth Documents Law, 45 P.S. §§ 1102, *et. seq*., in that the proposed guidelines are neither a statement of policy nor a guideline because the proposed guidelines establish binding norms or obligations. *See,* 1 Pa. Code §1.4 (definition of “guideline”).
 [↑](#footnote-ref-5)
6. *See Pennsylvania Human Relations Commission v. Norristown Area School District*, 374 A.2d 671 (Pa. 1977) (agencies may only establish binding norms through rulemaking or adjudication.). [↑](#footnote-ref-6)
7. *See, PECO Energy Company Petition for Approval of POR Program,* Docket No. P-2009-2143607 (Order entered June 18, 2010) (providing required customer notification language.) [↑](#footnote-ref-7)
8. RESA would continue to require an EDC to provide a specific switch date in the customer’s enrollment letter sent by the EDC. This would necessitate a change to Guideline L(2) to require the EDC to provide the switching date to the customer in the account transfer letter. [↑](#footnote-ref-8)
9. The FirstEnergy companies assert that they cannot implement the system changes required under the Proposed Guidelines before June 1, 2012 due to the upcoming incorporation of the former Allegheny Energy, Inc. companies into one integrated SAP system. *See* FirstEnergy at 11. [↑](#footnote-ref-9)
10. Moreover, PECO estimates that any changes to EDI procedures would require an implementation period of 5-6 months that would include time to complete project planning, transaction design, internal testing, and supplier testing. This would require additional costs that the company believes it is entitled to full recovery. *See* PECO at 4, 15. [↑](#footnote-ref-10)
11. AARP/PULP/CLS’s support of a shortened time period is within the context of a rulemaking. (AARP/ PULP/CLS at 4).
 [↑](#footnote-ref-11)
12. We acknowledge the comments of OCA and AARP/ PULP/CLS that express concern regarding the potential for changes in the U.S. Postal Service delivery timelines. If those events occur, we will examine the impacts of those changes, if any, at that time. [↑](#footnote-ref-12)