**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held February 20, 2014 |
| Commissioners Present:  Robert F. Powelson, Chairman  John F. Coleman, Jr., Vice Chairman  James H. Cawley  Pamela A. Witmer  Gladys M. Brown |  |
| Review of Rules, Policies and Consumer  Education Measures Regarding Variable  Rate Retail Electric Products | M-2014-2406134 |

**ORDER**

**BY THE COMMISSION:**

During the month of January 2014, wholesale prices for hourly energy supply in the day ahead and particularly the real time markets increased exponentially in response to a combination of sustained cold weather. New records were set for winter electricity use in Pennsylvania and throughout the service area of PJM Interconnection, LLC (PJM).[[1]](#footnote-1) During this period, PJM recorded 8 of the top 10 highest hourly usage periods ever observed. This high demand, in combination with particularly high forced outage rates for a number of generators, produced record high costs in the PJM-administered energy markets.[[2]](#footnote-2)

As a result of these high PJM energy market prices, many electric generation suppliers (EGSs) serving Pennsylvania customers with variable-priced retail supply contracts needed to increase their retail prices to customers in order to recover the higher wholesale electric energy costs they incurred in January 2014. In many cases, EGSs voluntarily absorbed losses during this period in order to maintain long term contractual relationships with their customers. However, not all EGSs acted to mitigate the financial hardship experienced by their customers. In particular, retail rates under some variable priced contracts appear to have passed the full impact of record wholesale costs on to Pennsylvania retail customers.

Due to the foregoing events as well as higher than usual energy use due to prolonged cold weather, some Pennsylvania retail electric customers received very high electric bills in amounts two to three times (and even higher) than what they would normally be billed during this time of year. This Commission has received a record number of inquiries and informal complaints related to high bills over the last several weeks. It appears that most of the affected customers are participating in the competitive retail market and receiving electric supply service from an EGS under a contract with a variable rate that is adjusted monthly. Some of these customers did not recall or realize that they had entered into a variable rate contract. Other affected customers received electric supply service under expired fixed rate contracts that converted to variable rates on a month-to-month basis at the end of the contract term since the customers did not select a new, fixed priced product or a new EGS. That type of variable rate contract usually continues month-to-month until the customer selects another supplier or chooses to return to default service provided by their electric distribution company (EDC).

The rates consumers pay in the retail electric market are governed by the terms of their contract with their supplier. The Commission’s regulations require EGSs to provide customers with a written disclosure statement explaining the terms and conditions of service, including the price charged.[[3]](#footnote-3) For customers on a variable rate, the disclosure statement must disclose conditions of variability (*i.e.*, it must state on what *basis* prices will vary) and any limits on price variability. It appears that some customer contracts had no ceiling on the variable rate that could be charged by the EGS. While a variable rate may offer substantial savings when wholesale market prices are low, customers may experience very high bills during periods of market volatility such as occurred with the recent cold weather. It is important for consumers on variable rates to carefully review the terms and conditions of their contracts to determine if they are at risk for large rate increases at any given time.

In general, it is unlikely that many market-priced, variable contracts have very explicit formulaic rates that establish how the retail rate is calculated from transparent wholesale price components. Thus, many current disclosure statements may not precisely describe how contract prices change as a function of the underlying wholesale costs or other price indices. The regulatory requirement to provide the “basis” for price changes under variable contracts may necessitate the need to provide more advance notice to customers of contract price changes and specifics as to how the new price has been calculated. At minimum, we should inquire into the feasibility of requiring prior disclosure of variable price changes to residential and small commercial customers.

Alternatively, there may be situations where the variable pricing mechanism is well defined in the disclosure statement, yet consumers may have difficulty comparing the various generation services offered due to the complexity or unfamiliarity of the formulaic rates or price indices. In these situations, it may be necessary to provide more useful and standardized information to customers so that they can better understand how variable price contract charges change.

In addition, the large fluctuations in wholesale and retail prices again magnified an often frustrating aspect of shopping for electricity– the length of time it takes to switch to an alternative electricity supplier. Cognizant of this issue, the Commission has recently reduced the switching deadlines by 5 days. There is also the promise of smart meters and the related mid-billing month meter read changes that could provide vastly improved supplier switching timelines. We should now learn how and when utilities with daily meter reads and automated meter reading can accelerate the process of moving to mid-cycle supplier switching so that customers can respond more rapidly to retail market price offers, and mitigate potential contract price increases associated with variable-priced contracts.

In setting policy for retail electric markets, the Commission is guided by the General Assembly’s directive that electric suppliers provide:

… adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services offered by that provider. Information shall be provided to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.

66 Pa. C.S. §2807(d)(2).

After receiving these high bill inquiries and informal complaints, the Commission immediately developed recommendations for action. A press release was issued January 31, 2014, advising consumers receiving electricity from an alternative supplier to carefully review the terms of their EGS contract. Additionally, the Commission also directed its staff to initiate the following measures to help ensure that consumers are fully informed about variable rate products:

* Posting of a “consumer alert” as a slider on the PUC website (www.puc.pa.gov) that customers with variable contracts, or those with expired fixed contracts who are now subject to a variable rate, may see their prices increase; that such customers should check their contracts, evaluate competitive offers at [www.PAPowerSwitch.com](http://www.PAPowerSwitch.com), contact their utility and/or supplier and sign up for budget billing and contact their utility to discuss a payment arrangement, or assistance program; and that they should conserve energy (this was done February 14);
* Posting of a “consumer alert” on the home page of www.PAPowerSwitch.com that is an abridged version of the above slider message (this was done February 18);
* Re-issuing of our January 31 press release noting the messages available on the PUC and PowerSwitch websites (this was done February 14);
* Development of a separate page on www.PAPowerSwitch.com devoted to information on fixed vs. variable products;
* Development of a fact sheet specifically on “fixed” vs. “variable” rates that will mirror the new page of www.PAPowerSwitch.com; and
* Addition of a fixed vs. variable Q&A to our existing “Shopping for Electricity” fact sheet and enhancement of the Q&A under “Frequently Asked Questions” on www.PAPowerSwitch.com to help ensure that consumers are better educated about variable rates.

This Commission is also examining whether changes may be needed to the EGS disclosure statements. Currently, the Commission’s Office of Competitive Market Oversight (OCMO) is considering revisions to the disclosure statements to make them more user-friendly to consumers. At this point, we are directing OCMO to consider whether, for variable rates, disclosure statements should include some form of pricing history and whether these statements should expressly state that uncapped variable rates may be increased without limitation.

The Commission will also continue its ongoing efforts to empower customers to more quickly change generation suppliers when they are charged unacceptably high rates. Presently, a variety of regulatory requirements, technical issues, and business practices can result in a switching process that lasts as long as forty days. Reducing the length of this process will serve to mitigate adverse financial impacts from variable rate volatility.

The Commission will continue to evaluate additional actions that should be taken to ensure that consumers are receiving timely, adequate and accurate information to make informed decisions when purchasing electric supply.[[4]](#footnote-4) This could include adoption and implementation of additional recommendations from OCMO, including revisions to existing rules/regulations, requests for public comment on certain issues, and additional enhancements to the Commission’s consumer education materials on shopping. We will also continue to ensure that our shopping website and consumer education materials are readable and understandable, and that EGS materials are coordinated with ours.

Based on the foregoing, we shall open a proceeding to examine the rules, policies and consumer education materials relating to variable priced retail electric products and request that interested stakeholders respond to the information requests listed below. OCMO is directed to oversee this proceeding. Accordingly, we direct OCMO to provide recommendations for our review based on the comments received and any other information obtained during this proceeding. We seek comments with regard to the following issues. Comments should be filed within thirty (30) days of the entry date of this Order.

For variable-priced contracts without explicit formulaic pricing parameters

* Should EGSs be required to provide advance notice of price changes to customers?
* Should the advance notice requirement be waived for minor contract price changes, within a certain bounds? If so, what bounds are appropriate?
* If advance notice is required, how far in advance of the meter read date should notice be provided and how can this notice be provided?
* Do variable rate contracts without explicit pricing parameters provide consumers with the information needed to make informed decisions? If not, what is the remedy?

For variable-priced contracts with explicit formulaic pricing parameters

* Should EGSs be required to provide a historical pricing history for this formulaic rate structure?
* If so, how many months should be provided, and where should this information be provided so as to be available to all participating customers?
* Should EGSs describe specifically how future formulaic prices are determined?

For daily recorded and automatic meter reading capable electric utilities

* Under current plans, when will mid-cycle EGS switches be implemented?
* How much can these plans be accelerated, and at what additional cost?

For Electric Generation Suppliers who offer variable priced products[[5]](#footnote-5)

* Please provide copies of Customer Disclosure Statements for variable priced products provided through contracts in effect for service rendered for the period December 1, 2013 through February 20, 2014.

**Conclusion**

For the reasons set forth above, we will open a proceeding to examine this Commission’s rules, policies and consumer education measures relating to variable priced retail electric products and seek comments with regard to the specific issues set forth above; **THEREFORE,**

**IT IS ORDERED:**

(1) That a proceeding shall be opened at this Docket to examine current rules, policies and consumer education measures regarding variable rate retail electric products. The proceeding shall be overseen by the Commission’s Office of Competitive Market Oversight.

(2) That comments to the issues identified in this Order shall be filed within thirty (30) days of the date this Order entered.

(3) That an original copy of the comments shall be filed with the Commission’s Secretary at:

Pennsylvania Public Utility Commission

P.O. Box 3265, Harrisburg, PA 17105-3265.

Comments may also be filed electronically through the Commission e-filing system, in which case no paper copy needs to be filed with the Secretary provided that the comments are less than 250 pages.

(4) That a copy of this Order shall be served on all Electric Distribution Companies, all licensed Electric Generation Suppliers, the Office of Consumer Advocate, the Office Small Business Advocate, the Energy Association of Pennsylvania and the Retail Energy Suppliers Association.

(5) That a copy of this Order shall be posted to this Commission’s website on the page devoted to the Office of Competitive Market Oversight.

(6) That the Office of Competitive Market Oversight shall cause this Order to be electronically transmitted to all persons on the contact list for the Committee Handling Activities for Retail Growth in Electricity (CHARGE).

(7) That the contact people for issues related to this Order are Dan Mumford, [dmumford@pa.gov](mailto:dmumford@pa.gov), 717-783-1957 and H. Kirk House, Assistant Counsel, [hhouse@pa.gov](mailto:hhouse@pa.gov), 717-772-8495, for the Office of Competitive Market Oversight.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: February 20, 2014

ORDER ENTERED: March 4, 2014

1. PJM is the approved Regional Transmission Operator in the Mid-Atlantic region, overseeing the electric transmission system for 13 states and the District of Columbia, including Pennsylvania. [↑](#footnote-ref-1)
2. Average wholesale day-ahead LMP prices for Pennsylvania in January2014 were estimated at $148/MWh, vs. $44/MWh in December 2013. Estimated energy uplift charges, which are energy related charges billed to suppliers in addition to LMP costs, are estimated at $631 million in the month of January 2014, which is equivalent to a full year of uplift charges for the period 2010-2012. Average forced outage rates for electric generators were reported as 20%, or 38GW, on January 7, 2014. As a result of these anomalous PJM wholesale market charges to Pennsylvania suppliers and high forced outage rates by generators, the Commission will also be investigating the causes of these underlying wholesale cost spikes and pursue all appropriate FERC complaints, and PJM tariff and operating manual modifications necessary to improve the efficient functioning of wholesale PJM markets. The Commission will participate in all necessary PJM stakeholder processes and OPSI working groups to help implement modifications to energy and capacity market rules necessary to achieve these objectives. [↑](#footnote-ref-2)
3. *See* 52 Pa. Code § 54.5 relating to disclosure statements for residential and small business customers. [↑](#footnote-ref-3)
4. 52 Pa. Code § 54.43 relating to standards of conduct and disclosures for EGSs; *see also*, 52 Pa. Code § 111.12(d)(4) relating to the requirement that an EGS must provide accurate and timely information regarding the products offered. [↑](#footnote-ref-4)
5. We note that a Secretarial Letter has been issued on February 21, 2014, directing EGSs to respond to this request for copies of disclosure statements for the indicated period by forwarding copies to [ra-OCMO.pa.gov](file:///C:\Users\dmumford\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\HKZDSZD3\ra-OCMO.pa.gov) on or before March 3, 2014. [↑](#footnote-ref-5)