

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rulemaking to Amend the Provisions)	Docket No. L-2014-2409385
Of 52 Pa.Code, Section 54.5 Regulations)	
Regarding Disclosure Statement for)	
Residential and Small Business)	
Customers and to Add Section 54.10)	
Regulations Regarding the Provision)	
Of Notices of Contract Renewal or)	
Changes in Terms)	

**Comments of the
National Energy Marketers Association**

The National Energy Marketers Association (NEM)¹ hereby submits comments on the Commission’s proposed revisions to existing 52 Pa.Code Section 54.5 on disclosure statement requirements for residential and small business customers, including the use of a new EGS Contract Summary, as well as the addition of new Section 54.10 pertaining to contract renewal/change in terms notice requirements that would codify, with revisions, the Commission’s existing Interim Guidelines Regarding advance Notification by an EGS of Impending Contractual Changes Affecting Customer Service. NEM submits that the most effective consumer protection rules are premised on the fundamental requirement of accurate, affirmative statements from marketers that disclose the attributes of contracted-for products and services and likewise require accurate, affirmative

¹ The National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM’s membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.

statements of marketer identification. Consumers have the right to honest, accurate, and clear communications relating to energy marketing and sales activities.

As explained by the Commission, this proposed rulemaking is precipitated by the recent impact of wholesale electricity market price increases on Pennsylvania consumers. A number of factors contributed to the price spikes experienced by consumers this winter.² Extreme weather conditions, increased demand for natural gas, and infrastructure constraints combined to increase the wholesale price of electricity. Retail electric suppliers in turn had to pay these higher wholesale electricity prices, which price increases were reflected in the retail prices paid by consumers for variable rate products. Consumers that purchased fixed price products were insulated from the price spikes. The events of winter 2014 harmed consumers, and NEM members have proactively worked with their customers to mitigate the price impacts, through increased consumer communications, price reductions and rebates, and alternative price offerings. NEM shares the Commission's concern about the impact of winter 2014 on consumers.

The Commission has proposed to make revisions to disclosure requirements and renewal notice requirements, predicated on the concern that the events of this winter could repeat themselves. The Commission's goal is to make disclosure statements, "more understandable and useful to consumers, especially in the context of variable-priced products." With respect to renewal notices, the proposed regulatory revisions are intended to, "make the notices more prominent and to provide EGS customers with important and timely information about their options." There is no question that

² See NEM Media Brief, Winter 2014: Impact on the Energy Marketplace, available at: http://www.energymarketers.com/Documents/NEM_Winter_of_2014_MEDIA_BRIEF_Final.pdf

consumers deserve adequate disclosure of the terms of the energy products that contract for with EGSs.³ NEM is concerned though that certain of the proposed revisions would have the unintended consequence of significantly increasing the costs and risks associated with making certain competitive products available, particularly variable price products, to the long-term detriment of consumers. Indeed, the performance of the market should not be judged based on the anomalous experience of this winter alone. At times, a variable rate product will offer savings from the default rate. The variable rate product by its nature adjusts with the market conditions. At other times, a fixed rate product will be priced below market conditions, although the predominant value of such products is to offer long term price certainty. NEM is concerned that certain of the disclosure requirements would have the practical effect of severely limiting or potentially eliminating variable price products from being offered by EGSs. As a result, as market conditions change, consumers will be unable to avail themselves of products that could otherwise offer them savings and value.

In addition, NEM is concerned that the proposed disclosure requirements not be implemented in a manner that puts EGSs at competitive disadvantage. Just as consumers should understand the fixed or variable nature of a competitive product and the price at which it is offered, consumers should also understand how often the utility rate is subject to change. Perhaps even more important, consumers should understand that the utility has the ability to defer costs into later periods. This causes the default rate to be artificially understated and skewed from reflecting market conditions, falsely making

³ See NEM's National Marketing Standards of Conduct available at: <http://www.energymarketers.com/Documents/ACF74.pdf>

competitive market priced products appear to be inferior, although those utility costs will ultimately be recovered from consumers at a later date.

As a general matter, NEM also seeks clarification that the proposed disclosure statement and renewal notice requirement changes will not be retroactively applied to current EGS customers. EGSs should not have to change the existing terms and conditions in current contracts to conform with any new regulatory requirements adopted in the instant case, particularly not in the expedited timeframe contemplated for the proposed rule changes.

NEM offers the following comments on specific rule revisions as follows:

Section 54.5(c)(2)(ii) Limits on Price Variability

The current regulations provide that a variable pricing statement must include conditions of and limits on price variability. The Commission is proposing here to add two additional disclosures in proposed Sections 54.5(c)(2)(ii)(A) and 54.5(c)(2)(ii)(B) as to whether there are any limits on price variability, and if not, a conspicuous statement to that effect. NEM notes that in complying with the current requirement to include disclosure of conditions of and limits on price variability, that EGSs already make reference to PJM market pricing and other variables. We question whether this additional proposed disclosure will provide meaningful or understandable information to consumers, or in fact serve to confuse.

Moreover, NEM urges that any EGS variable pricing disclosure requirements should be accompanied by a commensurate disclosure on the part of the utility for its default service product. In order to create a fair comparison, economic disclosures of this nature

must be required across industry players. Otherwise, in only requiring these disclosures from EGSs, they will have been placed at a competitive disadvantage vis a vis the utility in making these explanations to customers. The utility should be required to explain the variable components of its price, that it can defer price increases, and then socialize those price increases across its customer base. Only then will it foster consumer understanding that the EGS price includes the price signal on a more timely basis, and that the utility default price is but one *piece* of the ultimate energy price to be paid because of the utility's unique ability to defer cost recovery to a later date.

Section 54.5(c)(14)(I) Historical Information on Variable Pricing

The Commission proposed to add a new provision by the terms of which a consumer on a variable priced contract would be able to obtain twelve months of historical average monthly billed prices for the consumer's rate class and utility service territory. As a general observation, providing a consumer with access to this historical information for the previous two years would not have provided any indication to consumers of what they have experienced in winter 2014. Prices over the past two years were relatively stable. As noted in the proposed language of 54.5(14)(II) itself, historical pricing is not indicative of present or future performance. That being the case, this historical pricing disclosure requirement will be of limited value.

NEM also notes that many suppliers include rebates and other incentives in their products to the consumer. In order for the historical presentation of pricing information to be accurate, these components of the product should be included to provide the consumer with full information about the overall value received.

Section 54.5(c)(14)(III) Information About Variable Price Changes

The language in proposed Section 54.5(14)(III) would require the EGS to provide, for variable priced contracts, “information regarding when the customer will be made aware of each price change.” The variable price contract by its terms discloses that the price is subject to change and should be in satisfaction of this requirement. Indeed, the purpose of the variable price product is to move with the market, and customers agree to that when they sign the contract. However, we are concerned that as worded the proposed language could imply a new monthly notice requirement that would be impractical to comply with by EGSs. Requiring EGSs to give advance notice of a price change for a variable price product, would in effect, cause the creation of something akin to a new two month product. This is because if the EGS is required to provide advance notice of a price change, the EGS must price in advance, which in turn requires more hedging. This increases the costs and risks of providing the product. In current practice, the EGS price to the customer is not a projection. It is the actual cost the EGS incurred to serve the customer over the past billing cycle. As such, it is impossible to inform the consumer of the price ahead of time. NEM requests clarification that this provision was not intended to create a new monthly notice requirement for variable priced products.

Section 54.5(g) Customer Notification

Section 54.5(g) pertains to the customer notification to be included in disclosure statements about the expiration of fixed term contracts or changes in terms of service. NEM suggests that the paragraph be modified to include a statement that, “the notification will be transmitted in the manner chosen by the customer.”

Section 54.5(i) EGS Contract Summary

Proposed Section 54.5(i) would require the EGS to include with the disclosure statement an additional one-page overview of contract terms, that would be denominated as an EGS Contract Summary. In order to maximize the effectiveness of the EGS Contract Summary in facilitating informed consumer understanding, and to minimize the potential competitive disadvantage to the EGS versus the EDC in providing this information, NEM recommends that the utilities disclose and post the same summary information about their default service rate offers. To promote real transparency in the marketplace it cannot be a one-sided burden imposed on competitive market participants alone. The utilities should likewise disclose their pricing structure, including their ability to defer price increases for future recovery, and the impact it has on evaluating competitive offers.

Section 54.10 Notice of Contract Renewal or Change in Terms – Initial Notice and Options Notice

The Commission is proposing to codify new Section 54.10 on the notice of contract renewal or change in terms of service. Many of the provisions in new Section 54.10 are drawn directly from the Commission's existing Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Contractual Changes Affecting Customer Service.⁴ Section 54.10(a)(1) and (a)(2) would however change the current timing for an EGS to provide its Initial Notice and Options Notice. The Initial Notice is currently provided to the customer 52-90 days before the contract expires or the effective date of the proposed change in terms. This is proposed to be changed to require

⁴ Docket No. M-2010-2195286, Order issued September 23, 2010.

the Initial Notice be given 45 to 60 days prior to contract expiration or the effective date of the proposed change in terms. The Options Notice is currently provided at least 45 days before contract expiration, but the proposal would change the timing of the Options Notice so it is provided at least 30 days prior to the expiration date.

With respect to these changes, it is particularly important that the Commission clarify the applicability to existing EGS customers and compliance. As noted at the beginning of these comments, NEM recommends that these regulatory changes should not be made retroactively applicable to existing customers. Otherwise, for example, it would be redundant and confusing for an EGS to fully comply with existing notice obligations and new notice obligations. If a customer is sent an Initial Notice at 65 days out, the EGS should not have to send an additional Initial Notice to be in compliance with the new rule. This is further complicated by the abbreviated time within which the Commission has stated that it expects EGSs to comply.

Section 54.10(A)(2)(II)(A) Prior Notice of Price Change in Month to Month Contract

New section 54.10(A)(2)(II)(A) would require the Options Notice to include a disclosure in the case of the conversion of a customer to a month-to-month contract, that, “any subsequent changes in pricing shall be provided to the customer at least 30 days prior to that new price being charged.” NEM submits that this new notice requirement is impractical to comply with and should not be adopted. The customer will receive notice when they roll off of the current contract of the price for the first billing cycle of the month-to-month contract. By taking service under a month-to-month contract, the

customer has accepted the variable nature of the product, and no further notice of price changes should be required. To do so would require the EGS to price these products in advance, increasing the costs and risks of making them available, and also effectively converting them from month-to-month products into something akin to a two month advance price product.

Conclusion

NEM appreciates the opportunity to offer its comments on the Commission's expedited consideration of the revision of disclosure requirements and renewal/change in terms of service notice requirements.

Sincerely,

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Dated: March 21, 2014.