**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held July 9, 2014

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

James H. Cawley

Pamela A. Witmer

Gladys M. Brown

Request for Clarification Docket No. L-2014-2409385

on Notice Requirements for

Combined Electricity and Natural

Gas Disclosure Statements; 52 Pa. Code

Sections 54.5, 54.10 and 62.75.

**TENTATIVE ORDER**

**BY THE COMMISSION:**

Before the Commission is a recommendation from the Commission’s Office of Competitive Market Oversight (OCMO) to address a request for clarification of the applicability of the Commission’s electric disclosure and contract renewal notice regulations at 52 Pa. Code §§ 54.5 and 54.10 and the analogous gas industry regulations at 52 Pa. Code § 62.75. The request for clarification concerns the appropriate contract expiration notice timeframes that should be applied to those customers who obtain competitive electric generation and gas supply service from the same supplier. Through this Tentative Order, we seek public comment regarding OCMO’s proposed resolution.

**Background**

On April 3, 2014, the Commission finalized regulations to provide electric shopping customers with greater and more uniform detail in electric generation supplier (EGS) disclosure statements and more timely information on “contract renewal” and “change in terms” notices.[[1]](#footnote-1) The changes are designed to provide additional information and greater protections for residential and small business customers choosing a competitive supplier for their electric generation. The new regulations include:

* More contractual information on conditions of price variability, including whether there are limits on variability;
* A clear statement of the price per kilowatt hour for the first billing cycle of electric generation service;
* Customer access to historical pricing information for variable-price products;
* Separate mailings for either fixed-term contracts that are expiring, or any changes to terms of service;
* A separate EGS contract summary along with the full disclosure statement to ensure EGSs highlight key terms and conditions in a uniform, consistent manner;
* New requirements for contract “Initial Notices” and customer “Options Notice” prior to the expiration of a fixed-term contract or change in terms;
* A renewed emphasis on highlighting changes in pricing or any terms and conditions - including a fixed rate becoming a month-to-month rate that includes a 30-day notice of any price change; and
* Prominent marking on front of the “Options Notice” envelope clearly stating that it contains important information regarding the expiration or changes in terms of a customer’s electric supply contract.

On May 22, 2014, the Independent Regulatory Review Commission approved the new regulations, which were subsequently published in the Pennsylvania Bulletin on June 14, 2014. The new regulations go into effect July 14, 2014. As we approach implementation of the new regulations, suppliers have requested informal guidance on various implementation issues. OCMO informally addressed many of the issues that have been raised via a July 1, 2014 conference call in which all EGSs, along with the Committee Handling Activities for Retail Growth in Electricity (CHARGE), were invited to participate. However, OCMO believes that one of the questions recently presented to the Commission requires more than OCMO’s informal guidance. Therefore, the Commission is proposing, for public comment, OCMO’s tentative resolution to the issue outlined herein.

On June 16, 2014, Independence Energy Group LLC d/b/a Energy Rewards (Energy Rewards) filed a letter with the Commission’s Secretary to request clarification of the contract renewal/expiration notice requirements applicable to electric and natural gas suppliers. The letter, essentially a Petition for Clarification and Relief, was also sent via email to the Commission’s Office of Competitive Market Oversight. In the letter/Petition, Energy Rewards inquired as to the necessity of serving any other entities.

Energy Rewards is licensed by the Commission to serve both retail electricity and retail natural gas customers in the Commonwealth (License Nos. A-2011-2262337 and A-2013-2396449). Energy Rewards sells electricity only products, natural gas only products, and most importantly in the context of this Tentative Order, combined electricity and natural gas products. In preparing contract documents for its combined electricity and natural gas product offers, Energy Rewards became aware of an inconsistency in the Commission's current notice provision requirements for these two commodities.

Energy Rewards notes that the notice provisions in the natural gas industry disclosure regulations at 52 Pa. Code § 62.75.(g)(1) require two notices to be sent — one at about 90 days and the second at about 60 days — prior to the expiration of a natural gas contract to explain the customer's contract renewal options. However, the Commission's new electric industry rules at 52 Pa. Code § 54.10(a)(1) require an initial notice to be sent 45-60 days prior to contract expiration and an options notice to be sent at least 30 days prior to contract expiration. Energy Rewards is concerned that, in complying with all of these notice timeline requirements, sending four notices to a customer receiving both retail electric and retail natural gas service from the same supplier will cause unnecessary confusion and result in a poor shopping experience for the customer. Accordingly, Energy Rewards proposes to instead send two notices to those customers taking combined electric/natural gas service in accordance with the electric contract expiration notice timeframes included in Sections 54.10 (a) (1) and (2) of the Commission’s regulations.

**Discussion**

Upon review of this inquiry and the applicable regulations, OCMO agrees with Energy Rewards that sending four renewal notices at varying timeframes to combined electric/natural gas customers would be possibly confusing for those customers receiving both electric and gas services from the same supplier. Since the electric and natural gas restructuring efforts were initiated in the 1990s, the Commission has attempted to keep electric and natural gas consumer protection rules as consistent as possible. We note that our finding here is limited to circumstances in which a customer contracts for both electric and gas services from one supplier at the same time under contracts with approximately the same expiration date.

Over time, it has become apparent that some consumers will be receiving both electric and natural gas competitive services from the same supplier under the same contract. Having similar rules for both services, when possible, helps minimize confusion for consumers and avoids unnecessary costs for suppliers. However, recent developments in the electric industry, especially the implementation of advanced metering, have made processes like accelerated switching possible. Similar advances have not occurred in the retail natural gas market. The different technological capabilities between the two industries at times will cause some significant differences between the natural gas and electric rules and procedures that apply to customer switching and disclosure.

OCMO believes that Energy Reward’s proposal to send only two renewal notices to combined electric/natural gas customers is reasonable when the customer’s expiration date for each service are within 30 days of each other and assuming the combined service is for the same customer and service location. However, the suggestion to use the timeframes found in the electric regulations (Section 54.10 (a) (1) and (2)) for this purpose will not provide adequate notice to the customers regarding their natural gas service. The electric rule specifies an initial notice at 45 – 60 days followed by the options notice at 30 days. As noted above, these compressed timeframes are now possible in the electric industry due to the 3-day supplier switching that is to be implemented by the end of 2014.[[2]](#footnote-2) Importantly, supplier switching in the gas industry is not accelerated and it can still take several weeks to effectuate a switch. This important distinction is the reason that the two renewal notices provided to combined electric/natural gas customers must comply with the extended timeframes found in the natural gas disclosure regulations.[[3]](#footnote-3) Providing these notices on the abbreviated timeframes in the new electric regulations (at least 45 and 30 days) may not provide the customer with enough time to shop and switch retail natural gas suppliers should they so wish.

While OCMO proposes the use of two notices that will be issued per the natural gas regulation timeframes, we emphasize that the other provisions of the relevant electric regulation, 52 Pa Code § 54.10, still apply. This means that when presenting notice information for the customer’s electric generation service, the contents of the notice and how the customer’s non-response is treated, must comply with Section 54.10. We acknowledge that this means that the customer will have certain rights regarding their electric service that technically do not apply to their natural gas service.[[4]](#footnote-4) To maintain consistency and minimize customer confusion, we recommend the following: if a supplier wants to make the terms of the customer’s electric and natural gas service more similar, the supplier is free to provide the customer with the same rights for the natural gas service that apply to the electric service (generally, it is acceptable to provide a customer with a greater level of protection than required by a regulation – it is not acceptable to provide a lesser level of protection than required).

We also note that this guidance is the same regardless of whether the customer receives both electric and gas distribution service form the same utility or two different utilities. In instances where natural gas and electric service is distributed by two different utilities, it is very unlikely that the customer’s electric and gas expiration dates will align. In the notices, suppliers are obligated to clearly communicate the differing expiration dates for each service.  The two notices, initial and options, must always be provided as the contract nears expiration, regardless if terms and conditions are changing.  The notices need to clearly make the needed distinctions between the prices and terms of the customer’s electric service and their natural gas service.

Additionally, while we are allowing a supplier to use two notices instead of four in these limited circumstances, we are not requiring the supplier to limit their mailings to two notices. Suppliers may continue to follow the separate regulations for electric and natural gas supply notice requirements.

As for the inconsistencies between the natural gas and electric regulations noted above, OCMO will be examining these issues in a more comprehensive manner as part of the Natural Gas Retail Markets Investigation that the Commission initiated in September 2013.[[5]](#footnote-5) This investigation will explore, among other things, what can be done to restore some level of consistency between natural gas and electric consumer protection regulations, especially disclosure and supplier switching requirements. OCMO expects to be communicating with stakeholders in the third quarter of 2014 as to the next steps of this investigation.

**Conclusion**

Through this Tentative Order, the Commission seeks comments on the proposed OCMO recommendation for contract renewal timeframes for those customers receiving both competitive retail electric generation and natural gas supply service from the same supplier. In instances where a customer is receiving both electric generation and natural gas supply service from the same competitive supplier and the terms for both services expire within 30 days of each other, it is acceptable to send two contract expiration notices that address both services. The timing of the two notices shall comply with the timeframes found in the natural gas disclosure regulations; 52 Pa. Code §62.75(g)(1) —one at 90 days and the second at 60 days. However, all other aspects of the electric regulations (52 Pa Code §§ 54.5 and 54.10) must be applied to the customer’s electric generation service.

**THEREFORE,**

**IT IS ORDERED:**

1. That this Tentative Order be issued for public comment.

2. That interested parties shall have 20 days from the date of entry of this Tentative Order to submit written comments with the Pennsylvania Public Utility Commission.

3. That this Tentative Order shall be served on all licensed Electric Generation Suppliers and 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 that filed comments at Docket No. L-2014-2409385.

4. That the Office of Competitive Market Oversight shall electronically serve a copy of this Tentative Order on all persons on the contact list for the Committee Handling Activities for Retail Growth in Electricity.

5. That a copy of this Tentative Order shall be posted on the Commission’s website at the Office of Competitive Market Oversight’s web page.

6. That the contact persons for this matter are Dan Mumford, Deputy Director, Office of Competitive Market Oversight, 717-783-1957 or dmumford@pa.gov or H. Kirk House, Director, Office of Competitive Market Oversight, 717-772-8495 or HHOUSE@pa.gov.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

ORDER ADOPTED: July 9, 2014

ORDER ENTERED: July 9, 2014

1. *See Final-Omitted Rulemaking Order Regarding the Provisions of Notices of Contract Expiration or Changes in Terms for Residential & Small Business Customers,* Docket No. L-2014-2409385 (entered April 3, 2014). [↑](#footnote-ref-1)
2. *See Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 57 Regulations Regarding Standards for Changing a Customer’s Electricity Generation Supplier*, Docket L-2014-2409383 (entered April 3, 2014).   
    [↑](#footnote-ref-2)
3. 52 Pa. Code §62.75.(g)(1) requires two notices to be sent—one at 90 days and the second at 60 days. [↑](#footnote-ref-3)
4. For example, electric consumers that fail to respond to their notices and are rolled-off onto a variable-price product are to receive 30-day notice of subsequent price changes. The analogous gas regulations do not have this same requirement. [↑](#footnote-ref-4)
5. *See Investigation of Pennsylvania’s Retail Natural Gas Supply Market*, Docket I-2013-2381742, (Order entered September 12, 2013). [↑](#footnote-ref-5)