

COMMONWEALTH OF PENNSYLVANIA



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February 21, 2017

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: Rulemaking to Amend the Provisions of 52 Pa.
Code, Chapter 59 Regulations Regarding
Standards for Changing a Customer's Natural
Gas Supplier
Docket No. L-2016-2577413

Dear Secretary Chiavetta:

Attached for electronic filing are the Comments of the Office of Consumer Advocate in the above-referenced proceeding.

If you have any questions, please feel free to contact me.

Respectfully submitted,

A handwritten signature in black ink that reads "Lauren M. Burge".

Lauren M. Burge
Assistant Consumer Advocate
PA Attorney I.D. # 311570

Attachment

cc: Daniel Mumford, Office of Competitive Market Oversight
Matthew Hrivnak, Bureau of Consumer Services
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking to Amend the Provisions of :
52 Pa. Code, Chapter 59 Regulations : Docket No. L-2016-2577413
Regarding Standards for Changing a :
Customer's Natural Gas Supplier :

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: February 21, 2017

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I. INTRODUCTION

On January 7, 2017, the Advance Notice of Proposed Rulemaking Order of the Pennsylvania Public Utility Commission (Commission) was published in the *Pennsylvania Bulletin*. 47 Pa.B. 19, Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 59 Regulations Regarding Standards for Changing a Customer's Natural Gas Supplier, Docket No. L-2016-2577413 (Order entered December 22, 2016) (Proposed Rulemaking Order). The Proposed Rulemaking Order seeks to amend existing regulations at 52 Pa. Code Chapter 59 to direct Natural Gas Distribution Companies (NGDCs) to accelerate switching timeframes in a manner that would permit Pennsylvania retail natural gas customers to switch natural gas suppliers (NGSs) within three business days. These changes are also intended to make the natural gas switching regulations consistent with analogous regulations related to switching electric generation suppliers.

The Office of Consumer Advocate (OCA) appreciates the opportunity to respond to the Commission's advance notice of proposed rulemaking. In general, the OCA supports accelerated switching and the Commission's efforts to make the electric and natural gas switching regulations as easy as possible for consumers to understand. As discussed in greater detail below, the OCA generally supports the proposed changes provided that important consumer protections remain in place, that the changes are carried out efficiently and at minimal cost to consumers, and that accelerated switching is operationally feasible in the identified time period for the natural gas companies.

II. COMMENTS

A. Proposed Changes to Section 59.91 – Definitions.

The Proposed Rulemaking Order seeks to amend Section 59.91 to add definitions for “current NGS,” “selected NGS,” and “supplier of last resort.” The proposed definitions of “current NGS” and “selected NGS” would be analogous to definitions in the electric switching regulations for electric generation suppliers (EGSs) in Section 57.171. Similarly, the proposed definition of “supplier of last resort” will be the same as the definition found in the NGS licensing regulations at Section 62.101.

The OCA supports the proposal to add these definitions in order to make the NGS switching regulations consistent with existing regulations such as the EGS switching terminology. This will make NGS switching more accessible and easier to understand for consumers, particularly those who are already shopping for their electric supplier.

B. Proposed Changes to Section 59.92 – Customer contacts with the NGDC.

The proposed changes to Section 59.92 regarding customer contacts with the NGDC would make this regulation consistent with the electric switching regulations in Section 57.172. The proposed amendment to Section 59.92(a) uses the same language as Section 57.172 requiring an NGDC to notify a consumer that the selected NGS must be contacted in order to switch NGSs, unless a Commission-approved program requires the NGDC to make a change in NGS service. The OCA supports this change as being consistent with the electric switching regulations and thus simpler and easier for consumers to understand.

The OCA also supports the addition of Section 59.92(b), which would allow any customer who wishes to return to the supplier of last resort service to do so by contacting their NGDC. The natural gas distribution companies that provide last resort service are subject to

Commission regulation for all service rendered, including customer service. The OCA submits that every consumer should have the right to return to supplier of last resort service by contacting their NGDC and making the request.

With electric switching, one of the significant problems reported to the OCA by customers, particularly those on variable rates during the Polar Vortex of January and February 2014, was the inability to contact the EGS's call center. Some customers reported wait times of up to three hours. When trying to contact the EGS, other customers were sent to voicemail and never heard back from the EGS. No customer should be required to wait excessive periods of time for a supplier to answer their call to exercise their right to return to the supplier of last resort. As the Proposed Rulemaking Order notes, the proposed changes to Section 59.92 would help prevent this problem and "provides an important safety mechanism for consumers in such situations." Proposed Rulemaking Order at 25.

C. Proposed Changes to Section 59.93 – Customer contacts with NGSs.

Section 59.93 applies when a customer contacts a NGS to make a supplier change. The Proposed Rulemaking Order seeks to make this section similar to the electric regulation in Section 57.173 by accommodating the three-day right of rescission and removing the 10-day waiting period. While the OCA supports accelerated switching, it is unable to comment at this time on whether three days is the appropriate amount of time and whether it is operationally feasible for NGDCs to accomplish switches within this timeframe. In any case, the OCA submits that customers should maintain their right of rescission and the right to receive a letter confirming the switch, both of which will help to minimize slamming.

D. Proposed Changes to Section 59.94 – Time frame requirement.

The Proposed Rulemaking Order suggests changing Section 59.94 to require that the NGS switching process should take no longer than three business days to complete. The OCA is unable to comment on whether this is operationally feasible for NGDCs, but if feasible, the OCA supports three-day switching. The Proposed Rulemaking Order acknowledges that this may require off-cycle switching and may necessitate special meter readings, estimated readings, or customer-submitted readings if the utility has not yet deployed advanced metering systems. The proposed Section 59.100, which is discussed below, provides NGDCs one year to determine how to fully implement these changes in an efficient and cost-effective manner.

The OCA recognizes that the natural gas industry faces different challenges from the electric industry in implementing accelerated switching, such as a lack of advanced metering infrastructure and other operational constraints. Accelerated natural gas switching may require NGDCs to address bill estimation procedures, whether there is a limit on how many switches can be accommodated per billing cycle, and other practical implementation issues. If operationally feasible, allowing for accelerated switching will likely increase customer satisfaction and make natural gas switching more consistent with the process for the electric industry.

E. Proposed Elimination of Section 59.95 – Persons authorized to act on behalf of a customer.

Currently, Section 59.95 allows customers to provide a list of people that are authorized to make account changes on the customer's behalf with proper documentation submitted to the NGDC. The Proposed Rulemaking Order suggests that this section should be eliminated in its entirety. The OCA submits, however, that that this section should not be eliminated at this time.

There are many reasons that a customer may need to designate others that are able to make changes to their account, such as health issues, incapacity, travel, etc. While the Proposed

Rulemaking Order may be correct in stating that NGDCs do not “police” the switching process, it still may be useful to maintain this sort of documentation in case of any future disputes related to switching. The OCA submits that rather than eliminating this section, a further discussion should be had regarding how this section could better reflect the current switching process and how to best effectuate this process for residential customers. As such, it is the OCA’s position that this provision should not be eliminated in its entirety at this time but may need to be modified after further discussion.

F. Proposed Changes to Section 59.97 – Customer dispute procedures.

Section 59.97 currently provides customers with important protections against the consequences of a switch implemented without the customer’s authorization, commonly referred to as slamming. The Commission and industry have taken steps to reduce the possibility of a customer’s account being switched without the customer’s authorization. Even so, an unauthorized switch may result from a processing error,¹ misconduct of a supplier representative, or other circumstances. The Section 59.97 framework for informal resolution of an unauthorized switch, including refund and the presumption that the customer should be returned to the original supplier, should continue. Of the proposed changes, the OCA submits that the change to Section 59.97, subsection (b) requires clarification. The OCA submits that the proposed change to Section 59.97, subsection (c) should not be adopted as proposed.

1. *Section 59.97(b)*

The Proposed Rulemaking Order seeks to clarify the scope of Section 59.97, subsection (b), which relates to reimbursing the customer for charges that accrued upon being slammed. Section 59.97 applies to natural gas supply charges. The OCA submits that this section should

¹ See, e.g., Pa. Pub. Util. Comm’ n. Bureau of Investigation and Enforcement v. Public Power, LLC, Docket No. M-2012-2257858 (Order entered Dec. 19, 2013).

be clarified to include refund and reimbursement for any charge that a customer would not have incurred if they had not been slammed. For example, items such as early cancellation fees or enrollment fees that the customer may have been charged as a result of a slam should be reimbursed as part of the refund of natural gas supply charges. From the earliest days of competition for energy supply, the Commission has recognized that the purpose of the refund provision in the event of an unauthorized transfer is “to provide relief to the adversely affected customer and make the customer whole. That is, the customer is being refunded the money paid or credited the amount owed for a service that was never requested.”² The OCA submits that clarification of Section 59.97, subsection (b) should assure that the customer whose account has been switched without authorization is no worse off as a result of the unauthorized switch.

2. *Section 59.97(c)*

The Commission also requests comment regarding Section 59.97, subsection (c) regarding steps a customer must take in order to be switched back to a previous supplier. The proposed change would require a customer to contact a previous supplier and request to re-enroll with that NGS. Likewise, a customer would contact the SOLR in order to enroll in SOLR service. The OCA is concerned by such a fundamental change. The OCA opposes the creation of a regulatory presumption that a customer whose account has been slammed cannot be returned to their original supplier on the same terms and conditions as before the slam.

Historically, part of the relief for a customer whose account has been slammed is to return the customer to same position as before the unauthorized account switch occurred. The proposed revision to Subsection (c) would make that relief unavailable. The OCA is concerned that the proposed revision could cause customer harm and confusion. For example, if a customer

² Ensuring Customer Consent to a Change of Electric Supplier (Antislamming), Final Revised Rulemaking Order, Docket No. L-970121, 28 Pa.B. 5770, 5775 (1998).

receives a confirmation letter but does not believe that he or she authorized the change in supplier, under Section 59.97 the customer could: a) open a dispute with the NGDC or the NGS listed in the confirmation letter; or b) an informal complaint with BCS. However, even if the unauthorized switch is quickly identified and acknowledged, under the proposed revised Section 59.97, subsection (c) the customer would have to make a new shopping decision, subject to new terms and conditions. The OCA opposes the proposed modification which would take away from the slammed customer the ability to be restored to the pre-slam status quo. The option to request re-enrollment with the original, pre-slam supplier may still deprive the customer of benefits under the earlier enrollment. Section 59.97(c) should not be modified so that the customer dispute process expressly precludes the slammed customer from obtaining the benefit of the original shopping decision.

If any clarification of Section 59.97(c) is appropriate, in resolving a customer claim of an unauthorized switch, the NGDC, NGS or BCS may remind the customer of their right to shop for supply and the steps and time frame to implement a customer authorized switch. As to the concern raised during the Working Group, that returning a slammed customer to the original supplier may be impossible due to intervening circumstances, the OCA submits that such exceptional circumstances can be resolved on a case by case basis.

G. Proposed Changes to Section 59.98 – Provider of last resort.

The proposed change to Section 59.98 makes a minor update to the terminology, changing “provider of last resort” to “supplier of last resort.” This change makes the terminology internally consistent throughout Chapter 59 and with the NGS licensing regulations at Section 62.101.

H. Proposed Changes to Section 59.99 – Record maintenance.

Section 59.99 currently requires NGDCs and NGSs to maintain records relating to unauthorized change of NGS disputes for three years. The proposed amendment to this section would add a requirement that records of unauthorized change of supplier of last resort disputes also be maintained for three years. This change is consistent with the electric switching regulations in Section 57.179 and also reflects the proposed change to Section 59.92 allowing customers to directly contact the supplier of last resort in order to return to SOLR service.

I. Proposed Section 59.100 – Timeframe for Implementation.

The proposed Section 59.100 requires that the Chapter 59 switching regulations must be implemented by each NGDC and NGS within one year of the final regulation being published in the *Pennsylvania Bulletin*. The OCA submits that one year appears to be a reasonable implementation timeline. In implementing electric switching procedures, EDCs were given six months to comply with the new rules. However, almost all of the EDCs obtained various waivers that resulted in the regulations being implemented approximately one year after their adoption. Based on this experience, setting a one year deadline for NGDCs and NGSs to comply appears reasonable. Any specific challenges that a particular NGDC or NGS may experience can be addressed on a case-by-case basis to determine whether a waiver to account for any delay may be obtained from the Commission.

J. Costs and Cost Recovery

The OCA submits that reasonable costs incurred by NGDCs in implementing these regulations are best recovered through a future base rate proceeding. As noted in the Proposed Rulemaking Order, base rate recovery will provide the Commission and interested parties, such as the OCA, time to review implementation costs and determine if those costs are reasonable

before they can be recovered from ratepayers. This approach is also consistent with the implementation of the electric switching process, in which EDCs were directed to seek recovery of reasonable costs in a future base rate filing. The OCA submits that base rate recovery is appropriate for the natural gas industry as well, and will allow for necessary oversight of any cost recovery by the Commission and other parties.

III. CONCLUSION

The OCA thanks the Commission for its efforts in improving the customer experience and maintaining consumer protections in Pennsylvania's retail natural gas market. The OCA respectfully requests that the Commission consider the OCA's comments as the Commission reaches its conclusions on this matter. The OCA looks forward to continuing to work with all stakeholders to accomplish these goals.

Respectfully Submitted,



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