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February 21, 2017

Rosemary Chiavetta, Esq., Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 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:

Enclosed for filing please find the comments of the Energy Association of Pennsylvania to the Commission's Advanced Notice of Proposed Rulemaking Order-Standards For Changing a Customer's Natural Gas Supplier at the above-referenced docket.

Sincerely,

Donna M.J. Clark

Donna M.J. Clark
Vice President & General Counsel

Enclosure

**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| Rulemaking to Amend the Provisions of<br>52 Pa. Code, Chapter 59 Regulations<br>Regarding Standards For Changing a<br>Customer's Natural Gas Supplier | :<br>:<br>:<br>: | L-2016-2577413 |

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**COMMENTS OF THE**
**ENERGY ASSOCIATION OF PENNSYLVANIA**
**TO ADVANCED NOTICE OF PROPOSED RULEMAKING ORDER – STANDARDS FOR CHANGING A CUSTOMER'S NATURAL GAS SUPPLIER**

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## I. INTRODUCTION

On December 22, 2016, Pennsylvania Public Utility Commission ("PUC" or "Commission") entered an *Advance Notice of Proposed Rulemaking Order 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 ("ANOPR"), outlining changes to current regulations that would accelerate the process for transferring a customer account from "a service of last resort (SOLR) provider to a competitive natural gas supplier (NGS or supplier), from one supplier to another supplier and from a supplier to SOLR service." ANOPR at p. 1. The Commission's intent is to accelerate the transfer process "while preserving safeguards to prevent unauthorized switching of a customer's account, also known as slamming." Id. The primary objective of the proposed changes is to align the switching rules in the natural gas utility industry with current regulations in the electric utility industry in order to create "a more consumer-driven marketplace", *id.* at p. 17.

The Energy Association of Pennsylvania ("EAP" or "Association") applauds the Commission's continued focus on preventing slamming but is concerned that the proposed changes to customer switching rules set forth in the ANOPR do not adequately account for the fundamental operational differences that exist between the two industries and the costs that will be incurred to move beyond the faster switching times achieved to date in the 2012 *Final Order on Interim Guidelines Regarding Standards for Changing a Customer's Electricity Generation Supplier*, Docket No. M-2011-2270442 (October 24, 2012).[1] These differences, including the capabilities of installed metering equipment, current back office and billing systems, and the gas nomination process prescribed by the wholesale market rules of the Federal Energy Regulatory Commission ("FERC") are not trivial and limit the extent to which switching regulations can currently be aligned across the electric and natural gas utility industries.

For a majority of Pennsylvania's natural gas distribution companies ("NGDCs")[2], the cost/benefit analysis does not support an additional shortening of the switching timeframe by allowing for off-cycle, including multiple off-cycle, switches per month. The cost to install advanced metering infrastructure ("AMI") similar to that mandated by statute in the electric utility industry and to modify back office and billing systems to efficiently accommodate off-cycle switching as well as multiple customer switches in a single billing period is not minimal, and must be quantified and balanced against perceived benefits to the customer shopping experience and the belief that more customer switching is determinative of a healthy competitive

[1] In this *Final Order*, the Commission shortened the confirmation period in both industries from 10 days to 5 days by waiving applicable regulations, i.e. 52 Pa. Code § 59.93(2) for NGDCs. The waiver was extended for the natural gas industry through October 2018 in an October 2015 Commission Order entered at Docket No. I-2013-2381742. See discussion in ANOPR at pp. 6 – 8.

[2] *See, PECO Energy Company's Comments Regarding Standards for Changing a Customer's Natural Gas Supplier* filed in response to the ANOPR. PECO's ability to accommodate faster switching timeframes is possible because it installed an advanced metering infrastructure system that permitted off-cycle switching for both its electric and natural gas customers as a result of statutory smart meter mandates in the electric utility industry.

retail gas market.[3] Wholesale gas pricing arrangements do not mirror those negotiated in the electric wholesale market. In practice, a significant portion of both gas utilities' and gas suppliers' portfolios can be, and often are, fixed contractually at the same price for an entire month. Unlike the experience of retail electric customers, the existing practices in the gas industry do not expose the retail gas customer to the price fluctuations that can occur as a result of daily trading in the wholesale market. Thus, the retail or low volume gas customer is not exposed to the level of financial risk that daily price fluctuations in the wholesale market have on the retail electric customer and that resulted in the implementation of a mandated three business day switch following the 2014 polar vortex.

EAP, a trade association whose members are regulated utilities operating in the Commonwealth of Pennsylvania, submits the following comments and suggestions to the proposed regulatory changes on behalf of the majority of its NGDC members.[4] EAP directs the Commission to comments filed by its individual NGDC members and notes that those comments underscore not only the operational differences that exist between the electric and natural gas industries but the differences that exist between the various natural gas utilities based on their physical assets and the particular interstate pipeline systems that deliver gas to each Pennsylvania NGDC. Understanding and acknowledging the differences in physical assets and operations AND the systems that deliver energy to natural gas customers as distinguished from those that deliver energy to customers of electric utilities provides a reasonable basis for rules and regulations that do not mimic those established for the electric industry. EAP believes its

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[3] *See,* Monthly PAGasSwitch Update which details the total number and percentage of customers per NGDC receiving supply from a NGS per month and also states the % of load per customer class receiving supply from a NGS. PUC "Natural Gas Shopping Statistics," October 2016.
http://www.pagasswitch.com/sites/default/files/GasSwitch_shoppingnumbers_103116.pdf

[4] Columbia Gas of Pennsylvania, Inc.; National Fuel Gas Distribution Corp.; Peoples Natural Gas Company LLC; Peoples Equitable Division; Peoples TWP LLC; Philadelphia Gas Works; Pike County Light & Power Company; UGI Central Penn Gas; UGI Penn Natural Gas; UGI Utilities Inc.; and Valley Energy Inc. *See, supra.* fn. 2.

suggestions set forth below provide for some alignment between the industry switching rules while accounting for the differences between the industries and allowing for flexibility within the natural gas utility industry.

## II. THE COST AND BENEFITS OF IMPLEMENTING OFF-CYCLE SWITCHING IN THE NATRUAL GAS RETAIL MARKET MUST BE QUANTIFIED AND CONSIDERED PRIOR TO ESTABLISHING A MANDATE THAT MIRRORS OFF-CYCLE SWITCHING IN THE ELECTRIC RETAIL MARKET

As detailed below, EAP supports elimination of the confirmation waiting period as proposed in the ANOPR as a means to further reduce the switching timeframe but asks the Commission to refrain from mandating the three business day switch and off-cycle switching for the natural gas retail market.

The ANOPR details the background of the current regulations applicable to natural gas utilities and found at 52 Pa. Code §§ 59.91 – 59.99, noting that both the timeframes established in those rules to protect customers from slamming and the Pennsylvania statute that prescribes a "3-day rescission period" for consumer contracts increase the time it currently takes to effectuate a customer switch to a different gas supplier. The Commission's efforts to accelerate switching timeframes in both the electric and natural gas retail markets began in 2011 under the auspices of the Office of Competitive Market Oversight ("OCMO"). Initial steps included the development of interim guidelines that had applicability in both the electric and natural gas retail markets. *See, Final Order on Interim Guidelines Regarding Standards For Changing a Customer's Electricity Generation Supplier*, Docket No. M-2011-2270442 (October 24, 2012). The interim guidelines, *inter alia,* shortened the "confirmation waiting period" from ten days to five days and waived regulations found previously at 52 Pa. Code § 57.17 for electric utilities[5] and found

[5] *See*, 52 Pa. Code § 57.173(2) for the current rule applicable to electric utilities.

currently at 52 Pa. Code § 59.93(2) for natural gas utilities. Thus pursuant to the *Final Order* entered in 2012 retail customers in either industry would have 5 days (rather than 10) after receiving notice that their account was being transferred to a (different) supplier to contact the utility that they did not want to move forward with the switch.[6]

With respect to the natural gas industry, the *Final Order* further provided that "the operational differences between the two industries warranted a separate proceeding" involving broader issues in the natural gas retail market prior to any further acceleration of switching timeframes. In 2013, the Commission initiated an investigation of the retail gas supply market, resulting in a Final Order on December 18, 2014 at Docket No. I-2013-2381742 ("*Gas RMI Final Order*") that, among other items, tasked OCMO with a further review of the natural gas switching timeframes. Subsequently, beginning in the summer of 2015, OCMO formed the Accelerated Switching Working Group and solicited informal comments to a staff discussion document that set forth nine specific questions directed to possible modification of existing regulations that would result in aligning new gas switching rules with those promulgated for electric distribution companies. EAP and all of its NGDC members actively participated in the working group, submitting written comments to the staff in this informal process and raising issues of concern with OCMO as appropriate. These efforts were in addition to a two day seminar hosted by EAP in January of 2015 at which each NGDC provided a briefing for

[6] A further acceleration of switching timeframes for the electric retail customer was prescribed by the Commission in 2014 following the polar vortex and the promulgation of a Final-Omitted Rulemaking at Docket L-2014-2409383 that further revised Chapter 57 rules to shorten the time to change a customer's electric generation supplier. The revised regulations required "EDCs to accelerate switching time frames through off-cycle meter readings that will allow consumers to switch suppliers in as little as three business days once the EDC has been notified." ANOPR at pp. 9 – 10. The new rules directed electric distribution companies ("EDCs") to implement the three business day switch capability within six months of the April 2014 effective date although, in practice, all EDCs sought and were granted waivers delaying and/or modifying elements of the revised switching regulations. It was not until July of 2016 that the three business day switch was available at the major EDCs "for all but a limited handful of customers." *Id.* at p. 11.

Commission staff, detailing the specifics of operations in the context of each companies' unique pipeline assets and the attributes of supply sources and storage capability.[7]

The implementation of off-cycle switching to facilitate a customer switch to a different supplier at any point (or at multiple points) in the monthly billing cycle is identified in the ANOPR as fundamental to a further acceleration of the switching process beyond that achieved through a reduction of the confirmation period. *See*, ANOPR at pp. 13 -14. Both the NGDCs and a number of the natural gas suppliers ("NGSs") that participated in the working group process expressed similar reservations concerning, among other things, whether a three business day switch was feasible in light of how gas purchasing is accomplished in the wholesale market. These concerns remain and EAP reiterates the points outlined in its informal response to the OCMO discussion document on accelerated supplier switching.

First, the AMI that enables accelerated switching in the electric retail market is not in use by Pennsylvania NGDCs with the exception of PECO. *See, infra* at fn. 2. Utilities without AMI would be highly dependent on some form of estimated meter read in order to facilitate an off-cycle switch and estimating meter reads one or more times a month would result in numerous billing adjustments, increased costs and ultimately dissatisfied and confused customers. An estimate for replacing metering infrastructure across the Commonwealth simply to accommodate the proposed changes would be hundreds of millions of dollars and EAP does not believe that the Commission seeks to impose such costs by way of revised switching regulations. But even the work-around suggested in the ANOPR, i.e., some form of off-cycle meter reads followed by

[7] The seminar was conducted at the request of OCMO and provided operational information (capacity and storage assets, supply and system balancing attributes, etc.) for each NGDC to provide staff with background and educational information important to a discussion of possible changes to facilitate improvements in the natural gas retail market. Similar seminars/meetings were conducted with natural gas suppliers licensed to operate in the Commonwealth.

various billing adjustments, would result in industry software costs in the millions of dollars. This estimate of software costs does not account for the expense that would be incurred in operating a system that allows for multiple off-cycle switches per customer per billing cycle. Moreover, this estimate does not cover the cost of any procedures and/or systems necessary to create and operate the "clearinghouse" concept outlined in the ANOPR as a way to resolve the issues concerning alignment of capacity and gas nomination that arise as a customer switches from one gas supplier to another AND from or to the supplier of last resort. *See,* ANOPR at pp. 27 – 28.

Second, off-cycle switching in the natural gas retail market is inefficient and contrary to the business practices in place in the gas wholesale market which operates on a "first of the month" basis. The current gas delivery timeline permits NGDCs to calculate and provide notification of capacity release quantities in advance of "bid week" (the last week of the month) to NGSs. This process benefits NGSs and NGDCs as both rely upon this advance notice of capacity release to optimize their supply portfolios. Any artificial shortening of this timeframe will disrupt the ability of the NGDCs to provide advance notice of capacity to NGSs ahead of "bid week" and likely result in an increased reliance on imbalance cash-out rules to the financial detriment of NGSs and their customers. Off-cycle switching or multiple off-cycle switching would also interfere with the ability of both NGDCs and NGSs to coordinate their internal processes with those required by interstate pipelines subject to FERC regulations and could lead to FERC penalties. Off-cycle switching as proposed in the ANOPR does not account for the manner in which the wholesale gas market and federal regulations benefit the natural gas retail market. In wholesale gas pricing arrangements, significant portions of both utility and supplier portfolios are fixed contractually at the same price for an entire month. Thus, fluctuations due to daily gas trading do not have the same impact on retail gas pricing as daily wholesale electricity price changes have on retail electric pricing. The beneficiary is the consumer. EAP believes that the cost of mandating off-cycle switching and allowing for multiple customer switches per billing cycle will outweigh any possible benefit to the consumer.[8]

EAP does support the proposed regulatory changes that codify the shortening of the time frame for on-cycle switching by eliminating the confirmation period as well as a number of the other proposed revisions, i.e., allowing consumers to contact the SOLR directly to request a change to SOLR service. *See discussion infra.* at Section IV. EAP, however, continues to ask the Commission to refrain from instituting off-cycle switching or providing for multiple switches in a billing period in the gas retail market. EAP does not believe that consumer shopping would increase or benefit in the form of lower prices for the customer through the introduction of off-cycle switching and disagrees that a desire for consistency with switching timeframes in the electric industry justifies the expense and disruption that would be caused by the move to off-cycle switching.

## III. THE LAW PROVIDES NGDCS THE RIGHT TO RECOVER PRUDENT AND REASONABLE COSTS TO IMPLEMENT CUSTOMER CHOICE ON A FULL AND CURRENT BASIS FROM EITHER CUSTOMERS OR OTHER ENTITIES

In June of 2016, the Pennsylvania General Assembly enacted and Governor Wolf signed Act 47 which, *inter alia,* added a new section to the Public Utility Code, 66 Pa. C. S. A. § 2205

[8] A similar proceeding in New York to consider the benefits of accelerated switching in the natural gas retail market is instructive. The New York Public Service Commission initiated a collaborative among utilities, suppliers including the Retail Energy Supply Association and the New York State Energy Marketers Association, consumer representatives and Public Service Commission staff. The collaborative concluded that the existing gas nomination processes which, as in Pennsylvania, are dependent on FERC assignment requirements did not support either further reductions in the on-cycle gas switching timeframes or the adoption of off-cycle switching. See, *Report of the Collaborative Regarding Accelerated Switching of Commodity Provider*, Case 98-M-1343, Case 98-M-0667, and Case 12-M-0476 dated July 24, 2015.

(c) (7) that states: "Natural gas distribution companies shall have the right to recover on a full and current basis all prudent and reasonable costs incurred to implement customer choice from retail natural gas customers or other entities as determined by the commission. Recovery from retail natural gas customers shall be made pursuant to a reconcilable automatic adjustment clause under section 1307 (relating to sliding scale of rates; adjustments)."

EAP asserts that any prudent and reasonable costs incurred to implement the proposed revisions to the Chapter 59 regulations are recoverable from either retail natural gas customers or other entities as determined by the Commission and that to the extent NGDCs seek to recover these costs from customers the law provides that it shall be achieved through an automatic adjustment clause. EAP believes that the statute prescribes the mechanism if the costs are recovered from customers and that directing gas utilities to recover such costs through a base-rate proceeding may not be imposed by the Commission under the new statutory language that became effective as of August 23, 2016.

## IV. COMMENTS/SUGGESTIONS TO PROPOSED REVISIONS/ADDITIONS TO EXISTING REGULATIONS FOUND AT 52 PA. CODE §§ 59.91 – 59.99; ADDING A § 59.100

EAP offers the following comments and suggestions with respect to the specific language changes proposed in the ANOPR. Additionally, EAP respectfully requests that, if despite industry and supplier concerns, the Commission determines to move forward with off-cycle switching, even for example by instituting a single off-cycle switch per month, the revised regulations take into account and mitigate (1) the differences in the natural gas and electric retail/wholesale markets and (2) the differences between the physical distribution pipeline systems, the interstate pipelines and operations of the individual NGDCs within the

Commonwealth. EAP asks that any final revisions allow for flexibility both in operation and implementation of any off-cycle switching requirements and believes that a technical conference may prove helpful in this regard to facilitate stakeholder agreement on language prior to the issuance of a possible notice of proposed rulemaking.

Turning to the specific language changes outlined in the ANOPR, EAP provides the following:

- EAP agrees with the revisions proposed to section 59.91 (definitions);
- EAP agrees with the revisions proposed to section 59.92, including the addition of subsection (b);
- EAP agrees to those revisions to section 59.93 that clarify that a customer cannot waive the right to rescind a contract with a gas supplier within 3 business days of having received notification from the NGS. EAP also agrees with the elimination of any waiting period following the mailing of the confirmation letter by the NGDC;
- EAP does not support revisions to section 59.94 that would institute off-cycle switching and/or multiple off-cycle switches per customer per month within 3 business days of receipt by the NGDC of the electronic enrollment transaction[9]; *see discussion infra.* at section II and III;
- EAP agrees with the proposed elimination of 59.95, noting that the revision will not change provisions in Chapter 56 providing for third party notifications by the utility under certain circumstances or the practice of allowing a customer to designate an

[9] EAP appreciates the acknowledgement in the ANOPR that a variety of electronic protocols are used by NGDCs and does not believe that it is necessary to address issues relating to those differences in how NGDCs communicate customer information to (and from) NGSs at this point in the proceeding.

authorized person to oversee or make changes to a utility account, i.e. in the case of a legal guardianship or power of attorney;

- EAP agrees with the revisions proposed to section 59.97;
- EAP agrees with the revisions proposed to section 59.98;
- EAP agrees with the revisions proposed to section 59.99; and
- EAP believes that the determination of a time-frame to implement final revisions to Chapter 59 should provide some flexibility to NGDCs depending on the specifics of the final rule, i.e. the extent to which off-cycle switching and/or multiple off-cycle switches are required, and the need for software and operational changes. EAP agrees that a minimum of one year from the effective date of the finalized regulations to implement is an appropriate starting point, noting that with waivers a majority of EDCs had approximately two years from the effective date to implement the three business day switch.

## V. CONCLUSION

For the reasons stated above, EAP supports a number of the revisions proposed by the Commission in the instant Advance Notice of Proposed Rulemaking Order, including elimination of the confirmation waiting period as a way to codify reduced switching timeframes in the natural gas retail market currently allowed by the Commission under interim guidelines. EAP, however, asks the Commission to refrain from mandating off-cycle switching and multiple off-cycle switching in the natural gas retail market. EAP contends that the differences between how the natural gas and electric wholesale and retail markets operate provide a rational basis for differences in switching regulations between the industries and that the likely costs for customers would exceed any benefit inherent in mandating a three business day switch in the natural gas retail market.

Respectfully submitted,

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