



VIA EFILE

May 21, 2018

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, Second Floor
400 North Street
Harrisburg, PA 17120

Re: Rulemaking Regarding Electricity Generation Customer Choice, 52 Pa. Code Chapter 54, Docket No. L-2017-2628991

Dear Secretary Chiavetta,

Enclosed for filing, please find the *Joint Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and The Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN et al.)* (collectively, the Low Income Advocates).

Please do not hesitate to contact me with any questions.

Respectfully,

A handwritten signature in blue ink, appearing to read "Elizabeth Marx".

Elizabeth Marx

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Enclosures

CC:

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**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

Rulemaking Regarding Electricity : Docket No. L-2017-2628991
Generation Customer Choice :
52 Pa. Code Chapter 54 :

JOINT COMMENTS OF

THE COALITION FOR AFFORDABLE UTILITY SERVICE
AND ENERGY EFFICIENCY IN PENNSYLVANIA (CAUSE-PA)

AND

TENANT UNION REPRESENTATIVE NETWORK AND ACTION ALLIANCE OF SENIOR
CITIZENS OF GREATER PHILADELPHIA (TURN *ET AL.*)

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TABLE OF CONTENTS

I. INTRODUCTION.....	2
II. BACKGROUND	3
III. COMMENTS.....	5
A. Section 54.3: No Termination/Cancellation Fees After Options Notice.....	5
B. Section 54.5: Enhanced Disclosure Requirements.....	8
i. Section 54.5(c)(1): Require Suppliers to Disclose Actual Price Per Kilowatt-Hour	8
ii. Section 54.5(c)(2): Require Suppliers to Identify and Explain Introductory Pricing	12
iii. Section 54.5(c)(3): Strengthen the Variable Pricing Disclosure Requirements	14
iv. Section 54.5(c)(4): Require Suppliers to Include Fees and other surcharges in the Price Per Kilowatt-Hour.....	16
v. Section 54.5(c)(9), (12)-(13): Restore Required Disclosure of EDC and Universal Service Information, and Disclose Complaint Rights	17
vi. Section 54.5(c)(11): Require Suppliers to Disclose Fees and Penalties in Actual Dollars	20
vii. Section 54.5(g): Require Suppliers to Explain the Notifications Consumers Will Receive When Contract Terms are Changed	21
viii. Section 54.5(k): Require Suppliers to Disclose What Information It Intends to Seek from an EDC	21
C. Section 54.7: Improved Standards for Marketing and Sales Activities.....	22
D. Section 54.10: Improved Contract Summary.....	23
IV. SUMMARY OF RECOMMENDATIONS.....	25

I. INTRODUCTION

The Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA), together with the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN et al.) (collectively referred to herein as the Low Income Advocates) submit these comments in response to the December 7, 2017 Notice of Proposed Rulemaking Order of the Pennsylvania Public Utility Commission (Commission), which was published for comment in the Pennsylvania Bulletin on March 24, 2018 (“Rulemaking Order”). 48 Pa.B 1696. The Rulemaking Order proposed changes to Chapter 54 of the Commission’s regulations governing Electricity Generation Customer Choice, and specifically the provisions related to required customer information and disclosures.

CAUSE-PA is a statewide unincorporated association of low-income individuals which advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunication services. CAUSE-PA membership is open to moderate- and low-income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low-income families maintain affordable access to utility services and achieve economic independence and family well-being.

TURN is a not-for-profit organization whose mission is to advance and defend the rights and interests of tenants and homeless people. TURN provides a wide range of tenant programs and advocacy, including organizing a tenant network whose members support each other in improving the quality of their housing. TURN membership is composed of moderate and low income tenants. Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) is a not-for-profit corporation and membership organization whose mission is to advocate on behalf of senior citizens on a wide range of consumer matters vital to seniors, including utility service.

As part of advancing the respective interests of tenants and seniors, TURN and Action Alliance advocate on behalf of low and moderate income residential customers of public utilities in Philadelphia in proceedings before the PUC.

The Low Income Advocates appreciate the opportunity to comment on the proposed changes to the Commission's customer information requirements for competitive electric generation suppliers. The existing customer information regulations have proven insufficient to protect vulnerable consumers from confusing and misleading pricing practices. While we offer several recommended improvements to the Commission's proposals, we are largely supportive of the proposed amendments. We urge the Commission to implement these necessary reforms so as to better inform consumers about the competitive market and bring critical transparency to the marketplace.

II. BACKGROUND

The Rulemaking Order seeks comments from interested stakeholders on proposed amendments to Chapter 54 of the Commission's Electricity Generation Customer Choice, Customer Information regulations. 52 Pa. Code §§ 54.3, 54.5, 54.7, & 54.10. The proposed amendments would strengthen standards and pricing practices for retail electricity services; enhance disclosure requirements for residential and small business customers; strengthen requirements for marketing and sales activities; and improve the notices sent to consumers at the end of their contract period.

As the electric generation market continues to evolve, the Commission's regulations must also evolve to appropriately respond to developments which are harmful to consumers and to the

marketplace as a whole. The proposed changes are a necessary evolution of the Commission's current regulations, and will bring much needed improvements to market transparency.

The Low Income Advocates have actively participated in the Commission's past efforts to balance the interests of the competitive market with the need for consumer protection. Through counsel, we provided testimony and comments in the 2010 Rulemaking Regarding Marketing and Sales Practices for the Retail Residential Energy Market, and were active participants in the Retail Market Investigation.¹ We have also participated in Commission proceedings that addressed a variety of issues with the electric market. Most notably, we have appeared before the Commission on issues related to the impact of the competitive market on universal service programs, which provide energy assistance to those who cannot otherwise afford critical services.² In our work, and through regular engagement on these issues, we have seen first-hand that the market is not serving the needs of low and fixed income consumers. Indeed, there is a significant need for additional consumer protections to stem misleading and abusive marketing and sales practices which are harmful to both consumers and the market as a whole. The steps proposed by the Commission in its Rulemaking Order represent appropriate, manageable improvements to Pennsylvania's competitive electric market.

¹ See Proposed Rulemaking Re: Marketing and Practices for the Retail Residential Energy Market, Comments of the Pennsylvania Utility Law Project, Docket No. L-2010-2208332; see also Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service, Joint Comments of AARP, Pennsylvania Utility Law Project, the Pennsylvania Coalition Against Domestic Violence, and Community Legal Services, Inc., Docket No. I-2011-2237952.

² See e.g. Petition of PECO Energy Company for Approval of its Default Service Plan, PUC Docket No. P-2012-2283641; Petition of PPL Electric Utilities Corp. for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 through May 31, 2021, Docket No. P-2016-2526627 (Final Order entered Oct. 27, 2016); Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of their Default Service Programs, Docket Nos. P-2017-2637855 et al.

Ultimately, as discussed below, the Low Income Advocates submit that the majority of the Commission's proposed amendments will better protect consumers from harmful pricing practices, and will lead to an overall improved experience with the competitive electric generation market. We also provide recommendations to further enhance the Commission's proposals.

III. COMMENTS

The Low Income Advocates are largely supportive of the Commission's proposed revisions to Chapter 54. As discussed below, these changes will positively improve market transparency and better inform consumers about the terms and conditions of offers. We offer several recommendations to further improve upon the Commission's proposed revisions. Those recommendations are described in relevant sections below, and a summary – along with suggested language – is contained in Section IV.

A. Section 54.3: No Termination/Cancellation Fees After Options Notice

The Commission proposes to modify section 54.3 to ban EGSs from imposing early termination fees on customers after the supplier provides the required notice of rights and obligations prior to the expiration of the contract term, as required by section 54.10. Rulemaking Order at 11-13.

The Commission should adopt this ban on termination and/or early cancellation fees. Such a ban will reinforce the notion that customers are permitted to make a choice prior to expiration of their existing EGS contracts, and should not be penalized for doing so.

Currently, section 54.10 requires suppliers to provide customers with an options notice at the expiration of a fixed contract term or when the supplier proposes any changes to an existing contract term. 52 Pa. Code § 54.10. EGSs must send this notice out 45-60 days prior to the expiration of a fixed term contract or prior to any change in the existing contract terms. Id. The options notice informs the customers of their rights to, among other things, accept the proposed contract terms, reject the terms and choose a new product from the EGS, choose another EGS, or return to default service. Id. The notice specifies that, if a customer does not accept the new terms, they must inform the EGS of their choice prior to the expiration of their contract term.

Under the current regulatory structure, suppliers are able to charge early termination fees to customers who take action before the expiration of their contract, but after they receive the options notice from their supplier. In other words, suppliers may penalize a consumer for making an active choice in response to information provided in their options notice. We agree wholeheartedly with the Commission's assessment that this practice leads to widespread customer frustration and often negative financial implications for the customer, who in many cases cannot afford to pay inflated charges.³ Rulemaking Order at 12. We also agree that the practice damages the reputation of the market, causing many consumers return to and remain with their default service provider to avoid further financial consequences. Id.

The Commission recognized that an individual EGS may waive or refund fees under these circumstances, but noted its concern that the practice may persist. Id. The Low Income

³ Termination and cancellation fees generally range between \$100 and \$200, but are sometimes even higher. The financial consequences of a substantial early termination or cancellation fee are significant for individuals with low and fixed income, as well as those with moderate income. In fact, research shows that nearly half of all households across the country cannot afford to absorb an unexpected bill of this magnitude. See Fed. Reserve Bd., Report on the Economic Well-Being of US Households in 2015 (May 2016), <https://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf>.

Advocates agree. Without clear regulation prohibiting this practice, it is likely to continue. Indeed, waivers and refunds do not mitigate the impact of the practice on consumers or the competitive market as a whole. Fee waivers and refunds are not automatic. Customers are often required to make multiple calls to the supplier to get these fees waived or refunded, expending a significant amount of time and energy, often during working hours. For a low wage worker, lengthy calls during business hours are often prohibitive, either because they are not allowed to take time away from work to make these calls or they lack access to stable telecommunication services.⁴ In turn, those who pay the fee upfront may struggle to otherwise make ends meet while the supplier investigates and then issues a refund. Indeed, current early termination fees range as high as \$200, but could go even higher. For a low income family, even the temporary loss of \$200 can mean significant hardships for the household, forcing them to forgo food, medicine, medical care, and other life essentials, or to fall behind in meeting other critical monthly payment obligations.⁵

The amendment as proposed by the Commission is a necessary course correction to protect customers. The Low Income Advocates support the Commission's proposed change to section 54.3 and urge the Commission to move swiftly to adopt the proposed amendment.

⁴ See generally In the Matter of Bridging the Digital Divide for Low-Income Consumer, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Joint Comments of Pennsylvania's Low Income Individuals, Service Providers, Organizations, and Consumer Rights Groups, FCC Docket Nos. 17-287, 11-42, 09-197 (filed Jan. 24, 2018) (discussing low income households' access to telecommunication services in Pennsylvania).

⁵ See NEADA, 2011 National Energy Assistance Survey (Nov. 2011), <http://www.neada.org/news/nov012011.html>; see also Fed. Reserve Bd., Report on the Economic Well-Being of US Households in 2015 (May 2016), <https://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf>

B. Section 54.5: Enhanced Disclosure Requirements

The Commission proposes a series of critical changes to the EGS disclosure requirements contained in section 54.5. The Low Income Advocates generally support the proposed changes as a step towards ensuring that consumers are provided with clear, straightforward information about offers for energy service. We address each proposal in turn below, and suggest a number of additional changes to clarify and strengthen the Commission's proposals.

i. Section 54.5(c)(1): Require Suppliers to Disclose Actual Price Per Kilowatt-Hour

The Commission proposes to amend section 54.5(c)(1) to require suppliers to disclose generation charges in "actual prices per kilowatt-hour." Rulemaking Order at 14. This requirement would align the electric rule with the rules for natural gas suppliers (52 Pa. Code § 62.75(c)(1)), and is intended to ensure that the prices presented to consumers allow for an accurate, unit price (per kWh) comparison for the commodity being purchased: electricity generation. Id.

The Low Income Advocates strongly support this revision, as it will provide a critically important tool for consumers to conduct an apples-to-apples comparison of cost and straightforward analysis of various offers. Disclosure of the kilowatt-hour price will make these complicated pricing structures more transparent and positively enhance the competitive market. In today's market, there is a lot of confusion for consumers surrounding the price of electricity offered by competitive suppliers. Consumers are increasingly voicing dissatisfaction with the competitive market, often because they were promised savings which did not materialize.⁶ When

⁶ A recent Public Input Hearing, held as part of the First Energy Companies' current Default Service Proceeding, is

savings do not materialize, consumers – particularly vulnerable consumers with fixed or low income – can and often do face severe consequences, including the loss of essential electric service to their home. These consequences can have a ripple effect on the surrounding community and for other ratepayers, who must shoulder the brunt of increased uncollectible expenses and inflated universal service costs.⁷ Price structures that do not allow consumers to readily compare the commodity price are not only bad for the individual consumer and other ratepayers, but can also harm the market as a whole. Indeed, when a consumer is harmed by a pricing structure that they do not understand, they are less likely to engage in the market in the future and are more likely to sway others to follow their example. Requiring a common, all-inclusive point of price comparison, based on the unit price for electricity, helps ensure that consumers have the information necessary to make an informed decision about their energy supplier, and provides consumers with the confidence necessary to engage in the competitive market.

Anticipating that some suppliers may argue that disclosure of the kilowatt-hour price will suppress innovative product offerings, the Commission invited parties to comment on “the need

instructive of the widespread negative shopping experiences. In that proceeding, about 350 consumers attended the hearing, 66 of whom testified under oath. All of the testifiers expressed outrage at a proposal to add a fee to default service to coerce customers to shop, and most shared personal stories about their negative experiences in the market. See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs, Docket Nos. P-2017-2637855 et al., Public Input Hearing Tr. pp. 63-306. Of course, several recent lawsuits against a number of competitive suppliers over marketing abuses are also instructive. See Alex Wolf, Law 360, Respond Power Pays \$5.2M to Settle Pa. Price Spike Suits (Aug. 11, 2016), <https://www.law360.com/articles/827574/respond-power-pays-5-2m-to-settle-pa-price-spike-suits>; Emily Field, Law 360, HIKO Energy Paying \$1.6M to End Pa. Price Spike Suit (May 4, 2015), <https://www.law360.com/articles/651172/hiko-energy-paying-1-6m-to-end-pa-price-spike-suit>; Emily Field, Law 360, Pa. Utility to Pay \$2.3M to End Price Spike Suit (March 25, 2015), <https://www.law360.com/articles/635486/pa-utility-to-pay-2-3m-to-end-price-spike-suit>.

⁷ For a deeper look at the impact of the loss of utility services on low income Pennsylvanians, and the communities in which they live and work, see Review of Universal Service and Energy Conservation Programs, Joint Comments of CAUSE-PA and TURN et al., Docket No. M-2017-2596907, at 9-19 (filed Aug. 8, 2017).

for this regulation to accommodate these possibilities; or at the least, not to obstruct or be an obstacle to future innovations.” Rulemaking Order at 14. The Low Income Advocates respectfully assert that requiring suppliers to translate an offer into a per-kilowatt-hour price, capable of being compared to other offers, would in no way stifle the ability of suppliers to innovate. In fact, it will likely allow suppliers to more clearly translate their innovation into savings that consumers understand. Suppliers who charge more per kWh because they are offering either an innovative price structure or including a non-commodity service with their offering will be able to explain how these other benefits will outweigh or mitigate the higher price that is now transparent and quantifiable for the consumer.

While suppliers may create offers which bundle the rate for electricity in various ways to serve specific consumer interests, or which offer bonus deals, reward structures, or additional products or services, the commodity sold remains the same. The core purpose of the Choice Act, and the electric market it created, is to provide customers with access to competitive pricing for *electric generation*, giving consumers greater control over the cost paid for electricity in Pennsylvania.⁸ As such, the core concern for the Commission in regulating EGS activities should be to promote consumer awareness and confidence in selecting an offer for the purchase of electricity based on consideration of cost, measured in price per kilowatt-hour.⁹ Requiring suppliers to disclose the unit price being charged for electricity will provide the customer with clear terms to compare to other offers. Additional bells and whistles added to an electricity product can be used to entice consumers to spend a little or a lot more for the commodity they are purchasing. Ultimately, however, the market is for electricity, so the ability to compare the unit

⁸ See 66.Pa. C.S. § 2802 (4), (5), (12).

⁹ See *id.*

price for electricity is critical to a consumer’s informed participation in the marketplace. If consumers are not informed when they engage in the marketplace, competition will not thrive.

Unit pricing – which has been around since at least the early 1970s – appears in a multitude of other commodity markets, and has not stifled competition or innovation in those markets.¹⁰ The grocery store label for orange juice, for example, includes both the total price and the unit price per ounce, allowing consumers to easily compare products and make a value judgment about the quantity and brand of juice they wish to consume. This unit price disclosure does not stifle the ability of orange juice sellers to innovate the product – changing the source of the oranges, the ingredients in the juice, or the design of the container – to drive a consumer to choose their juice, notwithstanding unit price. The electric generation market is no different: suppliers are offering the same commodity: electricity. To make their deal stand out, they can change the “ingredients” (how the energy is produced or procured), add on extras, or alter how a rate is designed. But ultimately the unit price of energy – per kilowatt-hour – is the critical benchmark allowing consumers to make a value judgment about an offer they wish to accept. As explained in the Fair Packaging and Labeling Act, which led to the creation of unit pricing labels:

*Informed consumers are essential to the fair and efficient functioning of a free market economy. Packages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparison. Therefore, it is hereby declared to be the policy of Congress to assist consumers and manufacturers in reaching these goals in the marketing of consumer goods.*¹¹

¹⁰ See generally US Dep’t of Commerce, Nat’l Inst. of Standards & Tech., Unit Pricing Guide: A Best Practice Approach to Unit Pricing, NIST Special Pub. 1181 (2015), <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1181.pdf>.

¹¹ See 15 U.S. Code § 1451 (emphasis added).

Importantly, non-energy products and services offered by some suppliers to justify higher commodity pricing are not related to the generation of electricity. The express purpose of the Choice Act was to provide access to a “competitive market for the *generation of electricity*,”¹² with the goal of controlling the cost of electricity.¹³ Charges for non-commodity products and services unrelated to the provision of electricity may be bundled with electricity sales but they should not be used to obscure pricing or mislead consumers. Any concern that disclosure of the supplier’s offer in terms of kilowatt-hour pricing would impact the ability of suppliers to sell products and services unrelated to the generation of electricity should yield to the legitimate transparency objectives of the Commission’s proposed change. The Low Income Advocates support the proposed amendments to § 54.5(c)(1).

ii. Section 54.5(c)(2): Require Suppliers to Identify and Explain Introductory Pricing

The Commission proposes to require suppliers to disclose whether an offer is an “introductory price”, and to identify the length of the introductory price and the price that will apply after the introductory offer expires.

The Low Income Advocates support this change, and agree with the Commission that “it is essential that a potential customer fully understand that the product is introductory in nature – and that the customer know both the introductory price and the price they will be charged after the introductory period ends.” Rulemaking Order at 14-15.

Notwithstanding our support for the proposed revision, to further clarify the applicability of this disclosure, the Low Income Advocates recommend that the Commission modify its

¹² 66 Pa. C.S. § 2802(12).

¹³ 66 Pa. C.S. § 2802(5).

current definition of the term “introductory price.” The glossary included on

PaPowerSwitch.com defines an “introductory price” as:

For new customers, an all-inclusive per kWh price that will remain the same for a limited period of time between one and three billing cycles followed by a different fixed or variable per kWh price that will be in effect for the remaining billing cycles of the contract term, consistent with the terms and conditions in the supplier’s “disclosure statement”.¹⁴

This definition lacks clarity, and would allow suppliers to evade the requirement. For example, the definition does not appear to apply to consumers who may have been a customer of the supplier in the past, and was enticed to return based on a new “introductory” rate. Likewise, the time-span enumerated in the definition (between one and three billing cycles) does not properly account for introductory pricing which may be for only a partial billing month, or may extend beyond three months.

The Low Income Advocates submit that all products that are offered at one price for a period of time, and later switch to a different price, before the expiration of the contract term, should be included in the definition of “introductory price” and subject to the disclosure requirements proposed by the Commission.

The Low Income Advocates make specific recommendations for language changes in Section IV, below.

¹⁴ <http://www.papowerswitch.com/glossary#i>

iii. Section 54.5(c)(3): Strengthen the Variable Pricing Disclosure Requirements

The Commission proposes to make three changes to the disclosure requirements for variable priced products. First, the Commission proposes to limit the section to apply only “If the price is variable... .” Rulemaking Order at 15. If the price is variable, the variable pricing statement is then required to include “the EGS’s specific prescribed variable pricing methodology” and “[a] description of when and how the customer will receive notification of price changes.” Id.

The Low Income Advocates support requiring additional information in the variable pricing statement, as it will promote pricing transparency and will better inform consumers about the terms and conditions of a variable price offer. Variable prices can be subject to extreme volatility, and – unless they are subject to a price ceiling¹⁵ – can be particularly dangerous for vulnerable low and fixed-income consumers who are unable to absorb an unexpected price hike for basic electric service. In light of this inherent rate volatility, it is even more critical that consumers are equipped with tools to both understand and respond to price spikes and avoid excessive charges for electricity. Notwithstanding our support for the Commission’s proposed amendments, the Low Income Advocates propose a revision which will better enable consumers to avoid excessive rates.

¹⁵ See Coalition for Affordable Util. Servs. & Energy Efficiency in Pa, et al. v. Pa. PUC, 120 A.3d 1087, 1104 (Pa. Commw. Ct. 2015) ([W]e conclude that the PUC has the authority under Section 2804(9) of the Choice Act, in the interest of ensuring that universal service plans are adequately funded and cost effective, to impose, or in this case approve, CAP rules that would limit the terms of any offer from an EGS that a customer can accept and remain eligible for CAP benefits.”) See also Retail Energy Supply Assoc. v. Pa. Pub. Util. Comm’n, Docket No. 230 C.D. 2017, at 23 (Pa. Commw. Ct., Slip Op., May 2, 2018) (en banc).

Specifically, the Commission should *require* suppliers to provide *advance notice* of a price change, rather than simply requiring disclosure of “when and how” the customer will receive notice of a price change. The Commission’s proposed notice is helpful to better inform consumers when selecting a supplier, but is insufficient to provide the customer the ability to respond to new or proposed price signals after selecting a supplier. Without advance notice of a price change, vulnerable consumers are unable to shield themselves from otherwise avoidable price spikes, which can place the consumer’s access to stable electricity at risk and can add to uncollectible expenses that will impact other residential ratepayers. Indeed, if a consumer does not know of a price change until after they are billed for service, they cannot be an active participant in the market for low cost electric generation on reasonable terms and conditions as intended by the Choice Act.¹⁶ Rather, in the absence of advance notice of a price change, suppliers are able to charge unwitting consumers unnecessarily high rates well into the next billing cycle – or longer – depending on how long it takes the consumer to notice that the supplier is charging higher rates. To stem abusive pricing, and ensure that consumers have adequate tools at their disposal to be active and informed market participants, it is imperative that the Commission require advance disclosure of price changes.

The Low Income Advocates urge the Commission to further revise section 54.5(c)(3), as recommended above, to better inform consumers about variable rate contract terms and provisions and to more appropriately shield against the significant negative impacts of volatile pricing. The Low Income Advocates make specific recommendations for language changes in Section IV, below.

¹⁶ 66 Pa. C.S. § 2802(5), (9).

iv. Section 54.5(c)(4): Require Suppliers to Include Fees and Other Surcharges in the Price Per Kilowatt-Hour

The Commission proposed to require suppliers to quantify fees in terms of kilowatt-hours for average usage rates (500 kWh, 1,000 kWh, and 2,000 kWh) to allow consumers to directly compare the unit commodity price of electricity and the likely impact of that rate on the ultimate price they will pay. The Low Income Advocates strongly support this proposed change, as it will allow for an honest and transparent comparison of EGS offers – both against other supplier offers and against the price for default service.

Inconsistent fee structures imposed by suppliers have confounded many consumers attempting to participate in the marketplace. For example, one offer which is currently available on papowerswitch.com in the PPL service territory offers a three-month fixed contract at \$.0295/kWh, with a \$145.00 enrollment fee.¹⁷ On its face, the offer appears to be significantly lower than the price to compare. But spread over the three-month contract period, the enrollment fee tacks on an additional \$48.33/month. Based on the various energy usage levels, a customer selecting this offer would, thus, pay the following unit price per kilowatt-hour:

Average Usage	Base kWh	Enrollment Fee Rate	Total Estimated Rate
500 kWh	\$0.0295	\$0.0966/kWh	\$0.1261/kWh
1,000 kWh	\$0.0295	\$0.04833/kWh	\$0.07783/kWh
2,000 kWh	\$0.0295	\$0.024165/kWh	\$0.053665/kWh
		Current Applicable PTC : \$0.074630	

¹⁷ See Pa. PUC, papowerswitch.com, Offer of Public Power LLC in PPL Service Territory, <http://www.papowerswitch.com/shop-for-electricity/shop-for-your-home> (last accessed May 9, 2018).

As the chart reveals, this fee structure is only less than the applicable price to compare if the household uses, on average, over 1,000 kilowatt-hours per month – which is a fairly high usage level for a residential consumer. It is not until the fee structure is broken down into various usage levels that advantages become clear for high users, and detriments become clear for low users. The Low Income Advocates believe that clear and transparent disclosure of the price per kilowatt-hour, based on various consumption levels, is critical to allow consumers to accurately compare offers and make value judgments about available fee structures to serve their energy needs.

As explained in section III.B(i) above, arguments that a unit price requirement to facilitate accurate and transparent price comparisons will stifle innovation or prevent the sale of non-commodity products and services should be rejected. Pursuant to the Choice Act, the market was specifically created for the purchase of electric generation, and electricity is measured and consumed in kilowatt-hours. As such, a unit price comparison is critical to allow for a true evaluation and comparison of value between offers in the marketplace.

v. Section 54.5(c)(9), (12)-(13): Restore Required Disclosure of EDC and Universal Service Information, and Disclose Complaint Rights

The Commission proposes to eliminate the requirement that EGSs disclose information about the customer's EDC (including the name and telephone number of the EDC providing default service), as well as the requirement that EGSs disclose information about critical universal service programs which help low income households to afford energy services. Rulemaking Order at 16-17, 18. The Commission reasons that disclosure of EDC and universal service information is no longer necessary and that it invites confusion by creating the false impression that the EGS is endorsed by or affiliated with the EDC, or that the EGS is responsible for the administration of universal service programs. Instead, the Commission proposes to amend

section 54.5(c)(13) to require that suppliers inform consumers that shopping information is available at papowerswitch.com, by calling the Commission, or on the OCA's website.

Rulemaking Order at 18. In light of this proposed addition, the Commission otherwise proposes to eliminate the requirement that disclosure statements "direct[] a customer to the Commission if the customer is not satisfied after discussing the terms of service with the EGS." Rulemaking Order at 18.

While the Low Income Advocates understand that the Commission's proposal was made with the well-intentioned goal of eliminating consumer confusion, we oppose the removal of information about the EDC and available universal service programming from the disclosure statement. In addition, further modifications are necessary to ensure that consumers are appropriately informed of the continued role of the EDC, the Commission, and the OCA, as well as the consumer's right to file a complaint with the Commission.

First, we oppose the elimination of information about the EDC. Modifications to the way this information is presented to better explain the role of the EDC in light of the competitive market are prudent. The relationship between the EDC and the EGS is something often misunderstood by consumers, but is critical to ensuring that consumers are fully informed about what they are purchasing from a supplier and understand the remaining roles, duties, and responsibilities of the EDC. Pursuant to Chapter 14 and Chapter 28 of the Public Utility Code, EDCs remain solely responsible for the billing, collections, and termination of residential accounts, and are also solely responsible for the safe and stable delivery of utility services.¹⁸

¹⁸ See En Banc Hearing on Implementation of Supplier Consolidated Billing, Joint Comments of CAUSE-PA and TURN et al., Docket No. M-2018-2645254, at 6-16 (filed May 4, 2018) (explaining the legal responsibilities of EDCs pursuant to Chapters 14 and 28 of the Public Utility Code).

Consumers must be fully informed of this ongoing relationship with their EDC so they know where to call if they have questions or concerns about their service, or face billing, collections, or termination issues. Simply stating the contact information for an EDC, as the regulation reads now, is insufficient to inform consumers about this relationship. However, elimination of the contact information is similarly insufficient, and will only serve to further obscure the connection between the EDC and the EGS. Thus, we recommend requiring suppliers to include a statement in the disclosure that the EDC will remain the point of contact for quality of service, billing, collections, and termination questions, along with the contact information for the EDC. This will ensure that consumers are more appropriately informed about the critical functions of the EDC as it relates to the consumer service.

Second, information about universal service programming is critically important, and should not be removed from the disclosure statement. The Low Income Advocates regularly assist consumers who, desperate for utility assistance, sign up for EGS-supplied generation service thinking that they can avoid termination or receive substantial savings for doing so. Often, the rates end up being higher than the utility's rates over the long term, which compounds their affordability issues and increases the likelihood of service termination.¹⁹ The disclosure statement is a critical point of contact with consumers struggling to pay the cost of basic electric service, and can help redirect payment troubled clients to available assistance programs to avoid

¹⁹ In First Energy's service territory, shopping data showed that *over a 52-month period, confirmed low income shopping customers across the four First Energy Companies paid \$35.8 million more in net costs* (including all those that shopped and saved and all those that shopped and paid more) than they would have paid if they remained on default service. See Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co., and West Penn Power Co. for Approval of their Default Service Programs, CAUSE-PA St. 1, Docket Nos. P-2017-2637855, P-201702637857, P-2017-2637858, P-2017-2637866, at 26 n.41 (filed Feb. 22, 2018). This amounts to *\$8.2 million annually*. Id.

compounding the issue for the households, for the community at large, and for other residential ratepayers who ultimately pay the cost when service is unaffordable.

Finally, while we are supportive of including information about papowerswitch.com, the Commission, and the Office of Consumer Advocate, we oppose elimination of the requirement that consumers be directed to the Commission “if the customer is not satisfied after discussing the terms of service with the EGS.” See Rulemaking Order at 18. We do not believe the Commission’s proposal will appropriately apprise consumers of their dispute rights – or the reason why they may want to reach out to the Commission or the OCA for assistance. Notice that a dissatisfied consumer may reach out to the Commission for assistance with resolving a dispute is critical to ensuring the fair operation of the retail electricity market pursuant to the Choice Act and the Commission’s regulations and orders. The Low Income Advocates therefore strongly recommend that the Commission revise its proposals for section 54.5(c)(13) to require that suppliers disclose that consumers who are dissatisfied with the terms of service with an EGS may contact the Commission to initiate an informal complaint, along with the informal complaint number ((800) 692-7380).

The Low Income Advocates make suggestions for language changes in Section IV below.

vi. Section 54.5(c)(11): Require Suppliers to Disclose Fees and Penalties in Actual Dollars

The Commission proposes to clarify § 54.5(c)(11) by requiring suppliers to disclose possible penalties and fees by providing a breakdown of the actual dollars or by explaining the specific method the supplier will use to determine the actual dollars. Rulemaking Order at 17. The Low Income Advocates strongly support this disclosure. As we previously mentioned, consumers are growing increasingly frustrated at the additional fees and penalties levied against

them. Providing increased transparency about possible fees and penalties is therefore critical, and will help consumers to gain confidence that they will not face surprise fees and penalties which the consumer may be unable to afford to pay.

vii. Section 54.5(g): Require Suppliers to Explain the Notifications Consumers Will Receive When Contract Terms are Changed

The Commission proposes changes to section 54.5(g) to update to required language used to explain the notifications that consumers will receive in advance of any change in the contract terms. Rulemaking Order at 20. These proposed changes are intended to create two options for disclosure language, depending on whether the contract is for a fixed duration or a non-fixed (variable) duration. Id. The Low Income Advocates support this change, as it provides more clarity for consumers based on their individual circumstances.

viii. Section 54.5(k): Require Suppliers to Disclose What Information They Intend to Seek from EDCs

The Commission proposes to add a provision, section 54.5(k), that would require a series of privacy disclosures. In sum, the supplier would be required to inform customers of the following: (1) the type of information the supplier may seek to obtain from the consumer's EDC, (2) the purpose for obtaining this information, (3) that by entering into a contract, they are providing their consent for the supplier to obtain this information, and (4) that the supplier is required to maintain the confidentiality of a customer's personal information including their name, address, telephone number, electric usage and historic payment information as required by applicable Commission regulations and federal and State laws.

The Low Income Advocates support this change, as it will better shield consumers from unwanted, unauthorized, or otherwise inappropriate disclosure of sensitive personal data. To ensure that the provision has the desired effect, we suggest two additional modifications. First,

we suggest that this notice be in a larger font size, and perhaps either bolded, underlined or capitalized to draw the consumer's attention. In turn, we recommend that the supplier be required to disclose the information it may seek from an EDC *with specificity*. As drafted, the Commission's proposal does not require that the information sought by a supplier be disclosed in a level of detail which would allow the consumer to fully understand the information that may be disclosed. For example, a supplier could comply with the requirement, as drafted, by noting that it may obtain information related to the consumers account. However, this would be a very broad disclosure, and could include information which the consumer does not wish to share, such as the existence of a Protection From Abuse Order, prior payment arrangements, or prior participation in an assistance program. This sort of information is not relevant to the supplier, but could be swept up into the general disclosure language. To better protect consumers from potentially harmful disclosure of deeply personal and revealing information, it is critical that this section be further strengthened to require suppliers to list *with specificity* the information it may seek from an EDC. The Low Income Advocates make suggested language changes in Section IV, below.

C. Section 54.7: Improved Standards for Marketing and Sales Activities

In addition to the aforementioned changes to the disclosure statement, the Commission is also proposing to require companion changes to the manner in which suppliers market offers to consumers. Specifically, the Commission is proposing to impose the following requirements:

- Advertised prices must reflect actual prices.
- Marketing materials (including contract summaries) must include a unit price, which shall factor in all costs and fees associated with the rate and must show the average price per kWh for usages of 500, 1000, and 2,000 kWh of electricity.
- Advertising materials must be made available upon request in the event of a formal or informal complaint or investigation.

The Low Income Advocates support these revisions, as they will better align required marketing and sales activities with the requirements for the disclosure statement. Without these proposed changes, suppliers could undermine the intent of the Commission in strengthening the disclosure requirements - offering opaque and confusing terms up front, and disclosing the comparable terms only after the consumer accepts the offer. The proposed changes to section 54.7, in tandem with the changes described above to the disclosure statement, allow for direct comparison between EGS and EDC prices. As explained elsewhere in these Comments, facilitating direct and transparent comparison of offers, based on comparable unit pricing, is critical to protecting consumers, as well as the health of the market as a whole.

D. Section 54.10: Improved Contract Summary

The Commission proposes several changes to its contract summary that is required with each EGS contract. Specifically, the Commission's proposed revisions will require explicit information about introductory offers, unit pricing, incentives (if applicable), notices a consumer will receive at the end of a contract period, and the consumer's right of rescission. Rulemaking Order at 25-26. The Low Income Advocates largely support these changes, as they will align the contract summary with the other proposed changes throughout the Chapter, and will better inform customers of important rights. As explained elsewhere, it is critical that consumers are equipped with the tools to conduct straightforward rate comparisons. The changes to the contract summary will help ensure that consumers have those tools at their disposal.

Notwithstanding this support, the Low Income Advocates oppose the Commission's proposal to eliminate EDC contact information from the contract summary as well as information indicating that the EDC is responsible for outages, emergencies, and other critical service-related issues. As described above, in section III.B(v), it is critical that consumers are

well-informed about their continuing relationship with their utility, even if they elect to shop for electric generation from a competitive supplier. For the reasons more fully described above, we recommend that the Commission restore and further clarify the EDC's enduring role in the competitive marketplace to ensure that consumers know they must still contact their utility to address most service-related concerns, as well as for questions related to billing, collection, and termination of their utility service. Failure to disclose and explain this information will only increase customer confusion and heighten frustration experienced by consumers who must make multiple calls to resolve a pressing service-related issue and/or access relief to which they are entitled.

IV. SUMMARY OF RECOMMENDATIONS

The Low Income Advocates made a number of recommendations throughout our comments above. Below, we briefly summarize those recommendations, and provide suggested revisions to the text of the proposed amended language to fulfill those recommendations.

- **Recommendation 1: Glossary of Terms**

Clarify the definition of “introductory price” to include all products that are offered at one price for a period of time, and later switch to a different price before the expiration of the contract term.

- Commission’s Current Definition:

Introductory Price: For new customers, an all-inclusive per kWh price that will remain the same for a limited period of time between one and three billing cycles followed by a different fixed or variable per kWh price that will be in effect for the remaining billing cycles of the contract term,

- Low Income Advocates’ Proposed Revision:

Introductory Price: ~~For new customers,~~ [A]n all-inclusive per kWh price that will remain the same for a limited period of time ~~between one and three billing cycles~~ followed by a different fixed or variable per kWh price that will be in effect for the remaining billing cycles of the contract term.

- **Recommendation 2: 52 Pa. Code § 54.5(c)(3)(iv)**

Require advance notice of a variable rate price change.

- Commission’s Proposed Revision:

A description of when and how the customer will receive notification of price changes.

- Low Income Advocates’ Proposed Revision:

A description of when and how the customer will receive notification of price changes. **At a minimum, an EGS must provide customers with notice of changes to a variable rate price at least three days in advance of a price change if the price change is based on usage, temperature, and other factors that are not immediately apparent to the EGS at the start of the contract. If the changes to the variable rate price are scheduled or predetermined, an EGS must provide the customer with notice of the proposed changes at least 30 days prior to the effective date of the change.**

- **Recommendation 3: Section 54.5(c)(9), (13)**

Require disclosure of information about the EDC, the availability of Universal Service programs, and the consumer's dispute rights.

- Commission's Proposed Deletion:

- [(9) The name and telephone number of the default service provider.]

- [(13) The name and telephone number for universal service program information.]

- Low Income Advocates' Proposed Addition:

- (9) The name and telephone number of the default service provider, **along with a statement informing the customer that entering into a contract with an EGS does not end their relationship with the EDC, and that the EDC will remain the primary contact for credit and collections, service termination, and service quality issues.**

- (13) The name and telephone number for universal service program information, **along with a statement that informs the customer that low income consumers may be eligible for utility assistance programs that are provided by the EDC.**

- **Recommendation 3: Section 54.5(c) (12)**

Require disclosure of information about the consumer's dispute rights.

- Commission's Proposed Revision:

- [(12)] (13) A statement ~~[that directs a customer to the Commission if the customer is not satisfied after discussing the terms of service with the EGS]~~ providing that information about shopping for an electric supplier is available at www.PaPowerSwitch.com or other successor media platform as determined by the Commission, by calling the Commission at (800) 692-7380 and at www.oca.state.pa.us.

- Low Income Advocates' Proposed Revision:

- (12) A statement that ~~directs~~ **informs** a customer **of their right to file an informal complaint with** the Commission if the customer is not satisfied after discussing the terms of service with the EGS.

- ...

- (14) A statement providing that information about shopping for an electric supplier is available at www.PaPowerSwitch.com or other successor media platform as determined by the Commission, by calling the Commission at (800) 692-7380 and at www.oca.state.pa.us.

- **Recommendation 4: Section 54.5(k)**

Require suppliers to emphasize privacy disclosures in the disclosure statement, and to list - with specificity – the information which the supplier may seek to obtain

- Commission’s Proposed Addition:

If the EGS intends on obtaining customer account information from the EDC, the EGS shall inform the customer what type of information may be obtained, the purpose for obtaining this information and inform the customer that they are consenting by entering into this contract. The EGS shall also inform the customer that the EGS will maintain the confidentiality of a customer’s personal information including their name, address, telephone number, electric usage and historic payment information as required by applicable Commission regulations and federal and State laws.

- Low Income Advocates’ Proposed Revision:

If the EGS intends on obtaining customer account information from the EDC, **the EGS shall request the customer’s consent to the EDC disclosure. The EGS must specifically state the nature of the information requested along with reason for the request.** ~~the EGS shall inform the customer what type of information may be obtained, the purpose for obtaining this information and inform the customer that they are consenting by entering into this contract.~~ The EGS shall also inform the customer that the EGS will maintain the confidentiality of a customer’s personal information including their name, address, telephone number, electric usage and historic payment information as required by applicable Commission regulations and federal and State laws.

- **Recommendation 5: Section 54.10**

Require disclosure of information about the EDC’s continued role in the provision of electric service in the contract summary.

- Commission’s Proposed Revision:

The Commission proposes to remove all references to the EDC from the EGS supplier contract support (see Rulemaking Order, Attachment A)

- Low Income Advocates’ Proposed Revision:

Retain references to the EDC in the EGS contract summary.

The Low Income Advocates strongly oppose the Commission proposal to remove all references to the EDC from the EGS contract summary. For reasons fully explained in section III.B(v), the Low Income Advocates believe that removing all references to the EDC would misrepresent the relationship between the customer and the EGS. It is critical the EGS contract summary accurately represented the relationship between the customer and the EGS and that the EGS informs the customer that their relationship is in addition to not instead of existing relationship with the EDC.

V. CONCLUSION

For the reasons more fully explained above, the Low Income Advocates strongly support the Commission's efforts to reform marketing and sales practices which have proven to be financially harmful to consumers and have not contributed to the advancement of the marketplace. We urge the Commission to adopt its proposed revisions to Chapter 54, as modified by the five recommendations outlined in section IV, above. These changes will bring enhanced transparency to the marketplace, and will better ensure that consumers' lack of understanding about the competitive electric market is not exploited for financial gain.

Respectfully Submitted,

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