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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

June 21, 2018

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Keystone Building, 400 North Street
2nd Floor, North Wing
Harrisburg, PA 17120

Re: Regulation #57-319 (L-2017-2628991) (IRRC #3201)
Pennsylvania Public Utility Commission
Electricity Generation Customer Choice

RECEIVED
2018 JUN 25 AM 11:15
PA PUC
SECRETARY'S BUREAU

Dear Secretary Chiavetta:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Very truly yours,

David Sumner
Executive Director
kac
Enclosure

cc: Honorable Robert M. Tomlinson, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Robert W. Godshall, Majority Chairman, House Consumer Affairs Committee
Honorable Thomas R. Caltagirone, Minority Chairman, House Consumer Affairs Committee
Amy Elliott, Esq., Office of Attorney General

RECEIVED
Comments of the Independent Regulatory Review Commission
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Pennsylvania Public Utility Commission Regulation #57-319 (IRRC #3201)

Electricity Generation Customer Choice

June 21, 2018

We submit for your consideration the following comments on the proposed rulemaking published in the March 24, 2018 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (PUC) to respond to all comments received from us or any other source.

1. Early Termination Fee (ETF) – Economic impact; Reasonableness.

The PUC proposes to eliminate ETFs after the initial notice to the customer by amending Sections 54.3(2), 54.5(c)(11) and 54.10(1)(vi). The initial notice is required to be sent to the consumer 45 to 60 days before the expiration of the contract under existing Paragraph 54.10(1). The PUC explains in the Preamble that consumers have objected to ETFs assessed upon them. These consumers switched suppliers when they received the expiration notice and did not understand that their current contract was still in effect for another 45 to 60 days. This inadvertent early termination of contracts exposed the customers to ETFs. ETFs in this circumstance can understandably frustrate and discourage customers from participating in the competitive market. The PUC also acknowledges that ETFs are often waived by suppliers. We commend the PUC for proposing amendments to address ETFs in this circumstance and for encouraging affected parties to offer their perspectives relating to any possible unintended consequences.

In addition to eliminating ETFs after the initial notice, we have two suggestions. First, we note that under existing 52 Pa. Code § 57.173(1), the customer can specify a future date for the switch to a new supplier. However, in practice, customers and their new suppliers do not appear to be specifying a future date for the switch. Instead, the switch request is immediately processed, creating problems for both the customer and current supplier. Should prospective suppliers be required to better inform customers of the option to specify a future date to align a switch with the end of the customer's current contract?

Second, while we recognize the importance of timely customer notice, commentators suggested that notices closer to the expiration date may more reasonably limit the economic impact on suppliers while still protecting the consumer. The PUC should consider whether, consistent with its statutory authority, the regulation can better balance the interests of both the suppliers and consumers by amending the customer notice process.

2. Regulatory Analysis Form (RAF) responses – Economic impact; Compliance with the Regulatory Review Act.

Economic impact

The RAF is required by the RRA at 71 P.S. § 745.5(a). It includes requirements for the agency to provide estimates of direct and indirect costs, and identification of the financial impact on individuals, small businesses and the private sector. Economic and fiscal impacts of the regulation must be considered in our determination of whether a regulation is in the public interest. 71 P.S. § 745.5(a)(4), and (10) and § 745.5b(b)(1). The responses submitted with the proposed regulation to RAF Questions (19), (23) and (23a) are not sufficient to determine whether the regulation is in the public interest relating to the criterion of economic impact. These RAF questions do not ask whether costs and savings are due or undue, but rather ask for specific cost estimates. Even if costs or savings are estimated to be zero, the responses should reflect that rather than state the required cost data is “Not Applicable.” In addition, commentators have stated there are impacts on pricing relating to elimination of ETFs toward the end of the contract period. Therefore, we ask the PUC to review its responses to these RAF questions and provide the best estimates of costs in the RAF submitted with the final regulation so that we have the information required by the RRA to determine whether the final regulation is in the public interest.

Delivery date of the final regulation

The response to RAF (29) states the expected date of delivery of the final regulation is January, 2020. Given the current and ongoing problems the PUC describes in the Preamble, we encourage the PUC to work toward filing the final regulation sooner, if possible.

3. Miscellaneous Clarity.

- § 54.3(1)(ii) requires terminology used in customer communications to use “the terms in accordance with the glossary posted at www.PaPowerswitch.com or other successor media platform as determined by the Commission.” The regulation should specify how the reader can determine whether the PUC has opted to use another “successor media platform as determined by the Commission.” For example, would this determination be conveyed by a PUC order? This same clarity concern applies to §§ 54.5(c)(13) and (e).
- Should the term “product” used in § 54.5(c)(4) and (14)(i) be defined?
- Are the requirements in §§ 54.5(c)(3)(ii)(A) and (c)(11) relating to price variability duplicative? If so, they should be combined into one requirement.