

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048  
800-684-6560 (in PA only)

IRWINA. POPOWSKY  
Consumer Advocate

FAX (717) 783-7152  
consumer@paoca.org

September 13, 2010

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

RE: Interim Guidelines Regarding Advance  
Notification by an Electric Generation  
Supplier of Impending Changes Affecting  
Customer Service; Amendment re: Supplier  
Contract Renewal/Change Notices  
Docket No. M-2010-2195286  
M-0001437

Dear Secretary Chiavetta:

Enclosed for filing are an original and five (5) of the Comments of the Office of  
Consumer Advocate, in the above-referenced proceeding.

Should you have any questions, please contact our office at the number above.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Tanya J. McCloskey".

Tanya J. McCloskey  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 50044

Enclosures

cc: Daniel Mumford, BSC (via electronic copy only)  
Patricia Krise Burket, LAW (via electronic copy only)  
ra-OCMO@state.pa.us

00133741.docx

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Interim Guidelines Regarding Advance	:		
Notification by an Electric Generation	:	Docket No.	M-2010-2195286
Supplier of Impending Changes Affecting	:		M-0001437
Customer Service; Amendment re: Supplier	:		
Contract Renewal/Change Notices	:		

---

COMMENTS OF THE  
OFFICE OF CONSUMER ADVOCATE

---

Tanya J. McCloskey  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 50044  
E-Mail: [TMcCloskey@paoca.org](mailto:TMcCloskey@paoca.org)

Counsel for:  
Irwin A. Popowsky  
Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152

Dated: September 13, 2010

## I. INTRODUCTION

On September 3, 2010, the Pennsylvania Public Utility Commission (Commission) issued a Tentative Order proposing amendments to the Commission's Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service. Through its Tentative Order, the Commission seeks to provide additional guidance to Electric Generation Suppliers (EGSS) on the renewal notices that are sent to customers to notify the customer of the impending expiration of, or changes in contracts. Tentative Order at 3-4. The Tentative Order addresses two issues regarding the renewal notice – the provision of information regarding the Price to Compare (PTC) on the second notice sent to customers, referred to as the “options notice” and the effect on an existing contract if a customer does not respond to the renewal notices. The Commission notes that it received recommendations regarding these issues from the Office of Competitive Market Oversight (OCMO) which had discussed the issues in the CHARGE Working Group.<sup>1</sup>

The OCA wishes to thank the staff of OCMO for their work on this issue and others presented to OCMO and the CHARGE Working Group. The discussions of these issues have been informative and greatly assisted in framing the issues and developing solutions. The OCA was able to participate in some of the discussions leading up to this Tentative Order. As discussed more fully below, the OCA supports the Commission's resolution of the two issues and the proposed amendments to the Interim Guidelines.

---

<sup>1</sup> CHARGE stands for the Committee Handling Activities for Retail Growth in Electricity. CHARGE is a working group composed of Commission staff from OCMO and interested stakeholders.

## II. COMMENTS

### A. Guideline II(b)(iii)—Provision of the Price To Compare In the Options Notice.

The Commission proposes an amendment to Guideline II(b)(iii) that sets forth the detailed information to be provided to customers in the options notice. Guideline II(b)(iii) requires the options notice to contain the EDC's "price to compare." An issue was raised in the CHARGE Working Group about whether the EGS will have the price to compare when it is required to send the options notice. Complicating the issue further is the fact that for most EDCs, the price to compare will change quarterly, thus potentially making it out of date before the customer makes a decision. Tentative Order at 5. The Commission considered three options for addressing these issues. The options can be summarized as follows:

Option 1: Require the inclusion of the current price to compare on the options notice with an indication that it may change quarterly

Option 2: Require that no price to compare be included in the options notice, but that customers be provided with information on how to obtain it online or by telephone

Option 3: Require inclusion on the options notice of an estimated price to compare with it clearly being labeled as an estimate, along with an indication that it may change and how and when to obtain the actual price to compare.

Tentative Order at 5-7. After reviewing the pros and cons of each option, the Commission determined to adopt Option 3. The Commission proposed an amendment to Guideline II(3)(b) to require the EGS to provide an estimated price to compare, inform the customer of the frequency of the changes to the price to compare, and to direct the customer to the EDC or the PUC's website at [www.papowerswitch.com](http://www.papowerswitch.com) to obtain updated information.

In the CHARGE Working Group, the OCA had expressed some reservations about Option 3 of providing to a customer an estimated price to compare or a current price to compare that will change before the customer makes a decision. The OCA was concerned that

information that may turn out to be incorrect, or an estimate that may be off target, could lead customers to the wrong decision about renewing their contract. Bad information can sometimes be worse than no information at all.

The OCA submits, however, that the Commission's approach to utilizing Option 3 is workable, particularly if the option notice contains adequate information for the customer regarding where, when and how to obtain the updated price to compare. The OCA would three additional recommendations if the Commission selects Option 3. First, the OCA recommends that the Commission include a reference to the OCA's Electric Shopping Guide on the OCA's website in Guideline II(b)(iii). While the OCA's website is to be provided on the options notice under Guideline II(b)(vii), a reference in the additional subsection, and the inclusion of the OCA website address for the Residential Shopping Guide along with the Pa Power Switch website would add clarity and assist customers in finding the most recent updated price to compare.<sup>2</sup> The OCA has been publishing its Electric Shopping Guide for many years and has always included each EDCs current price to compare on the first line of each EDC's shopping page.

Second, the Commission should monitor the quality of the estimated price to compare that is being provided to the EGSs for the options notice. If the Commission determines that there are large deviations between the estimates being provided and the final price to compare, it may need to make a further determination as to the estimation process or whether estimates should continue to be included. Third, the Commission should review the presentation of the price to compare, and information on how to obtain the updated price to compare, to ensure that it is prominently displayed and understandable.

---

<sup>2</sup> The OCA's website address is [www.oca.state.pa.us](http://www.oca.state.pa.us) and the direct link to the Residential Shopping Guide page is <http://www.oca.state.pa.us/Industry/Electric/elecomp/ElectricGuides.htm>

With adoption of the OCA's three recommendations, the OCA agrees with the Commission's determination to adopt Option 3 that requires the inclusion of an estimated price to compare on the renewal notice with an indication that the price to compare may change and how and when to obtain updated information about the actual price to compare.

B. Guideline II(d)—Customer Response To The Renewal Notice.

The second issue addressed by the Commission concerns the effectiveness of the contract when a customer does not respond to the renewal notice. As the Commission notes in its Tentative Order, the question presented was whether the supplier can impose new terms and conditions for service when there has been no affirmative response from the customer. Tentative Order at 10. The Commission considered three options that were discussed at the CHARGE working group and a fourth option that was raised after the discussions and meetings had concluded. The four options considered by the Commission when the customer does not respond to the renewal notice were:

Option 1: Adopting the rule for natural gas service where the fixed term agreement is converted to a month-to-month agreement with no cancellation fees.

Option 2: Allow the fixed term agreement to go into effect but provide the customer a 30 day "escape window" after the receipt of the first bill under the new contract to cancel the contract without penalty.

Option 3: Allow the new agreement to go into effect including cancellation fees.

Option 4: Require affirmative consent only if the EGS is proposing significant changes in terms.

Tentative Order at 12-13. After reviewing the pros and cons of each approach, the Commission adopted Option 1. The OCA supported Option 1 in the CHARGE Working Group and strongly supports the Commission's adoption of Option 1.

Option 1 mirrors the language and approach to the failure of a customer to respond to a renewal notice that is contained in the regulations governing this issue for the natural gas industry. 52 Pa. Code §62.75(g)(2). The Commission correctly captured the key reason for adopting Option 1 as follows:

[W]e believe that it will better protect customers and encourage competition. If customers are unwillingly trapped in a contract which contains penalties for leaving, customers may prefer to stay with their default service suppliers. Competition is strengthened anytime a customer has a choice. Additionally, being unwillingly locked into a contract means that customers will not have a choice of suppliers.

Tentative Order at 15.

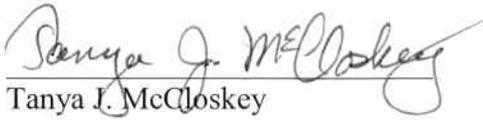
As the Commission recognizes in its Tentative Order, the language of 52 Pa. Code §62.75(g)(2) which the Commission proposes to mirror is the Commission's most formal declaration on this subject. Tentative Order at 11. The OCA would also note that following the model established for the natural gas industry through the regulations is particularly appropriate now for the electric industry as the price-to-compare will now change quarterly as does the price for natural gas service. Further, as noted by the Commission regarding Guideline II(b)(iii), the information provided in the renewal notice may only be an estimated price to compare. Locking customers into a fixed term contract with cancellation fees without their affirmative consent under these circumstances is unreasonable and likely to deter customer choice.

The OCA submits that the Commission's proposal to adopt Option 1 strikes the right balance. As the Commission indicates, Option 1 provides a middle ground between having a non-responsive customer returned to default service and having the customer locked into a contract without their consent. For all of these reasons, the OCA strongly supports the Commission's adoption of Option 1 which follows the model of the natural gas industry and allows the EGS to continue to serve the customer so long as there are no cancellation provisions.

III. CONCLUSION

The OCA thanks the OCMO Staff for their work on these matters and thanks the Commission for the opportunity to provide Comments. The OCA can support the Commission's resolution of these matters in accordance with the Comments provided herein.

Respectfully submitted,

  
Tanya J. McCloskey  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 50044  
E-Mail: TMcCloskey@paoca.org

Counsel for:  
Irwin A. Popowsky  
Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152

DATED: September 13, 2010  
133430