

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Interim Guidelines Regarding Advance	)	
Notification by an Electric Generation Supplier	)	Docket No. L-2008-2069114
Of Impending Changes Affecting Customer	)	
Service; Amendment regarding Supplier	)	Docket No. M-0001437
Contract Renewal/Change Notices	)	

**COMMENTS OF THE PENNSYLVANIA ENERGY MARKETERS COALITION:  
INCLUDING AGWAY ENERGY SERVICES, LLC, GATEWAY ENERGY  
SERVICES CORPORATION, ENERGY PLUS HOLDINGS LLC, INTERSTATE  
GAS SUPPLY, INC., PENNSYLVANIA GAS & ELECTRIC, AND VECTREN  
RETAIL, LLC**

**INTRODUCTION**

The Pennsylvania Public Utility Commission (“PUC,” or “Commission”), through its Tentative Order issued on September 2, 2010, seeks public comment on proposed revisions to the Commission’s interim guidelines for providing notice to customers in advance of a change in terms of service, or expiration of a contract with an electric generation supplier (“EGS”). These guidelines originated as a component to regulations found at 52 Pa. Code § 54.5 (g), and through their revision the Commission seeks input on how best to handle communication with consumers in certain areas to ensure their protection and benefit.

As independent energy suppliers, Agway Energy Services, LLC (“Agway”), Gateway Energy Services Corporation (“Gateway”), Energy Plus Holdings LLC (“Energy Plus”), Interstate Gas Supply, Inc. (“IGS”), Pennsylvania Gas & Electric (“PAG&E”) and Vectren Retail, LLC (“Vectren”), known separately and together for purposes of this filing as the Pennsylvania Energy Marketers Coalition (“PEMC”)<sup>1</sup> collectively appreciates the opportunity to comment on the Tentative Order issued by the Commission.

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<sup>1</sup> This group of energy marketers, which supply electricity, natural gas, and various other energy services to residential and commercial customers across a large number of utility markets throughout several states, works together collaboratively on non-competitive, regulatory issues to advance competitive markets and consumer choice.

In issuing the revised *Interim Guidelines*, the Commission's seeks to provide consumers with important information about their energy choices prior to the expiration of their current agreements for generation supply. These proposed revisions provide for the use of an estimated price to compare ("PTC") on renewal notices so that "customers have a readily available yardstick to use when considering alternatives"<sup>2</sup> for electric generation supply, as well as the how an EGS is to proceed with regard to a customer's renewal contract when the customer fails to respond to a notice of renewal/expiration.

Through a series of meetings and conference calls held as part of the ongoing collaborative meetings being overseen by the Office of Competitive Market Oversight ("OCMO") and related to The Committee Handling Activities for Retail Growth in Electricity ("CHARGE"), these issues have been the subject of considerable focus and discussion. PEMC has been extremely impressed by the professional atmosphere and decorum of these meetings, and applauds the Commission and the leadership team of OCMO for the way these and many other issues are presented and considered.

Our Comments with regard to the proposed revisions to the *Interim Guidelines* are limited to two provisions outlined in the document.

### **THE ESTIMATED UTILITY PTC SHOULD BE PROVIDED DIRECTLY BY THE UTILITY**

The Tentative Order outlines a proposed revision that would require an EGS to be responsible for providing an "estimated" Electric Distribution Company ("EDC") PTC if no specific comparative price has yet been established by the utility.<sup>3</sup> PEMC is concerned that in the event that no firm price has been set by the utility as a PTC, that an EGS should *not* be responsible for providing an estimated utility PTC to consumers any more than the EDC should provide pricing information about EGS offer to consumers. Rather, we believe it would be more prudent and practical to direct consumers to either/both the [www.papowerswitch.com](http://www.papowerswitch.com) website, as well as the

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<sup>2</sup> Tentative Order, Commission Comments, p. 16.

<sup>3</sup> Interim Guidelines, Appendix A, II, (b) (iii), beginning at line 5.

individual utility website for this information, consistent with Option 2 which received strong support from EGSs and representatives of the Office of Consumer Advocate (“OCA”).<sup>4</sup> PEMC believes it is important for utility price information – estimated or actual – to come directly from the EDC source and not subject prices to any potential interpretation by the EGSs, for exactly the same reason that EDCs should not be quoting or interpreting EGS price offers.

We believe that this is a critical issue and one that needs careful consideration by the Commission given its concern about consumer protection and transparent disclosure.

All other provisions of the PTC section of the *Interim Guidelines* seem practical as they exist and we would not suggest any additional changes to the existing Guidelines at this time.

**FIXED TERM CONTRACTS SHOULD BE ALLOWED TO RENEW AUTOMATICALLY IF THE ONLY ITEM THAT CHANGES IS THE PRICE**

The Commission also seeks input on how EGSs should handle situations when a customer does not respond to a contract renewal notice. The specific issue at hand in the proposed revisions to the *Interim Guidelines* is whether and under what circumstances a consumer contract may be *automatically* renewed without affirmative consent.

The CHARGE working group considered this issue in recent months and identified a number of options to address this matter. In particular, one option is to pattern analogous regulations which exist for the gas industry and state:

“A fixed term agreement may be converted to a month-to-month agreement, either at the same terms and conditions or at revised terms and conditions, as long as the agreement converts from a fixed term to a month-to-month agreement and contains no cancellation penalties, in the event that the customer does not respond to the notice. A fixed term agreement may be converted to another fixed term agreement as long as the new agreement includes a customer initiated cancellation provision that allows the customer to cancel at any time for any reason and contains no cancellation penalties, in the event that the customer does not respond to the notice.”<sup>5</sup>

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<sup>4</sup> Tentative Order, Commission Comments, p. 6.

<sup>5</sup> 52 Pa. Code § 62.75(g)(2)

This approach was identified by the Commission as best among all options – which spanned a number of options from returning non-responsive customers to default service to simply locking customers into another contract.

While PEMC agrees that this option would provide the most consistency with existing renewal practices in the PA natural gas choice market, we believe that if a renewal notice for electricity (or natural gas) simply includes a new price for a subsequent term specified in the original agreement (i.e., one year fixed), and no other terms or conditions are being modified, that this renewal notice should be sufficient. In instances where *any other item* in the contract is being modified (i.e., length of term, application of termination fees, etc.), affirmative consent should be required. **Affirmative consent should *not* be required when the only change introduced is the price and all other terms and conditions remain constant.**

In instances where a fixed price/fixed term agreement is entered into by a customer, all of the terms are spelled out which are binding to each party; i.e., length of initial term, renewal terms (if any, including the fact that the price is fixed and subject to change upon renewal), contract termination process, etc. Following the affirmative consent of this initial contract, subsequent affirmative consent should not be required when:

- a) the renewal term does not exceed the original term of agreement,
- b) there is no introduction of fees or assessments which were not included in the original agreement, and
- c) the EGS complies with the articulated renewal process.

Basically, if nothing changes except the price, no additional affirmative confirmation should be required.

However, in any event, if the renewal price per unit for a subsequent term of agreement greater than one-month is greater than the then existing price per unit, the EGS should be required to provide two (2) notices to the customer – the first of which alerts the customer that the contract is expiring (the Initial Notice provided between fifty-two and ninety days prior to

the expiration date of the fixed term agreement or the effective date of the proposed change in terms), and that renewal price information will be provided in a Options Notice, the second notice to customers which:

- (i) provides the renewal price,
- (ii) provides contact information should the customer elect NOT to renew the agreement, and
- (iii) states that if the customer does not contact the EGS, the agreement will be automatically renewed.

The *Interim Guidelines* would incorporate the practice that the Options Notice containing renewal price information should be provided to each affected customer at least forty-five days prior to the expiration date of the fixed term agreement or the effective date of the proposed change in terms, in accordance with the existing regulations for natural gas.

Ideally, PEMC would prefer to see the Options Notice provided to customers closer to thirty days prior to the expiration date to allow for the calculation of a better marketplace price, and given the fact that some supplier offers have traditionally expired within thirty days. We recognize the importance of being consistent with the existing regulations for natural gas; however, we would suggest that this shorter window for the Options Notice be considered by the Commission in the future.

The following examples are provided to clarify the approach recommended by PEMC with regard to affirmative consent:

1. Contract renewal going from an initial fixed rate with no termination fee to a subsequent fixed rate with no termination fee = **renewal notice only.**
2. Contract renewal going from an initial fixed rate with a specified termination fee to a subsequent fixed rate with the same identical or lesser amount of specified termination fee = **renewal notice only.**
3. Contract renewal going from a variable rate with no termination fee to a fixed rate with a termination fee = **affirmative consent required.**
4. Contract renewal going from a variable or fixed rate with any material change in terms in conditions other than price = **affirmative consent required.**

Renewal notification requirements are relevant to fixed duration contracts. Obviously, where a month-to-month relationship exists between customer and supplier, no renewal notifications should be required.

PEMC's goal is to ensure the maximum amount of consumer protection and energy supplier flexibility, recognizing that individuals enter into commercially reasonable contracts and should be able to understand and fulfill the obligations of those contracts with the proper disclosures. To that end, we believe the contract renewal methodology outlined above achieves this combined goal.

### **CONCLUSION**

PEMC greatly appreciates the continued focus on the development of the retail electricity marketplace by the Commission, and we pledge to the Commission our ongoing support to help make that vision a reality.

We urge the Commission to consider these Comments as they finalize these Interim Guidelines in a continued effort to help create and maintain a level playing field between the EGSs and utilities with regard to price disclosure, and commit to doing all that is reasonably prudent and commercially feasible in the execution and renewal of contracts with our customers.

September 13, 2010

Respectfully submitted on behalf of the Pennsylvania Energy Marketers Coalition,



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