



June 24, 2013

Via E-Filing

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Use of the Fixed Price Labels for Products with a
Pass-Through Clause**

Docket No. M-2013-2362961

Dear Secretary Chiavetta:

Enclosed please find the Comments of the Pennsylvania Utility Law Project (“PULP”) to the Tentative Order entered May 23, 2013 in the captioned proceeding.

Kindly notify the undersigned if you have any questions or concerns about this filing.

Respectfully submitted,

Harry S. Geller, Esquire
Patrick M. Cicero, Esquire

CC: OCMO (via e-mail ra-ocmo@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Use of Fixed Price Labels for Products
With a Pass-Through Clause

M-2013-2362961

COMMENTS OF THE PENNSYLVANIA UTILITY LAW PROJECT

Concerning the Tentative Order entered May 23, 2013



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I. Introduction

Before the Pennsylvania Public Utility Commission (Commission) is a recommendation from the Commission's Office of Competitive Market Oversight (OCMO) regarding a proposal to provide guidance to electric generation suppliers (EGS) as to the appropriate use of the "fixed price" label when presenting products with pass-through clauses to potential customers and to provide for an additional labeling option.

On May 23, 2013, the Commission issued a Tentative Order ("TO") at the captioned docket seeking comments from interested parties concerning certain EGSs' practices of marketing contracts as "fixed-rate" products to residential customers despite the fact that the disclosure statement included provisions that would allow the EGS to change the rate based on a government agency, Regional Transmission Organization (RTO), or other entity action that imposes costs on the supplier. Specifically, the Commission stated:

We are primarily concerned that these offers might be misleading, especially when the EGS prominently advertises a fixed price and buries the pass-through clause far down in the fine print in the disclosure statement, or even on a second page. These provisions, based on examples examined by OCMO, are not always presented along with the pricing information in the disclosure. While consumers are expected and encouraged to carefully review the disclosure statements, presenting a product as having a fixed price that in fact can vary for any number of reasons could be seen as misleading. Additionally, even if a consumer read the entire disclosure, most are not sophisticated enough to understand what is meant by terms such as "RTO, NERC, PJM," etc., and just what kind of pricing changes could result. If an EGS were to invoke such a clause and pass through costs to the customer via an increase in the rate, residential and small commercial customers are likely to be confused and dissatisfied with the EGS as well as the marketplace. As a result, these customers may be unwilling to shop for their electricity supply in the future. Additionally, customer dissatisfaction could lead to complaints to the Commission, legislators and possibly the media. The combination of these potential effects could have a very adverse effect on the competitive retail market.

TO at 5.

The Commission listed what it identified as possible solutions to resolving this issue. First, the Commission offered that it could ban the use of the term “fixed price” for any offers containing regulatory out-clauses or pass-through provisions and instead require that these offers be labeled as variable. Second, the Commission offered that it could revise the definition of the term “fixed price” to indicate that offers may contain a clause or provision allowing the EGS to pass-through certain additional costs that occur as a result of changes in regulatory requirements. Third, the Commission could create a new definition for this product called “Long-Term Energy Price” or “Price With Pass-Through Clause” which would be more accurate than labeling the product as fixed rates. Although not settling on any solution, the Commission put forth the following proposal:

We propose the following revisions to the definitions (proposed new language is in **BOLD UPPER CASE**, language to be deleted is ~~striked~~):

Fixed Price: ~~A fixed electricity rate~~ **AN ALL-INCLUSIVE rate PRICE THAT will remain the same, for a set period of time OF AT LEAST THREE BILLING CYCLES.**

Variable Price: ~~A~~ **AN ALL-INCLUSIVE** variable electricity rate **PRICE THAT** can change, by the hour, day, month, etc. according to the terms and conditions in the supplier’s disclosure statement.

We invite comments and suggestions on the proposed changes to these definitions. We also invite comments on whether additional revisions are needed and should a definition of “introductory price” be added to the Electric Competition Dictionary.

As to a new label or description for those products that include a pass-through mechanism, we want to propose a new label for the Electric Competition Dictionary that describes the product as simply having a “price” with some sort of pass-through clause:

PRICE WITH PASS-THROUGH CLAUSE: AN ALL-INCLUSIVE PRICE SUBJECT TO CHANGE BASED ON VARIOUS FACTORS AS SPECIFICALLY DESCRIBED IN A “PASS-THROUGH CLAUSE” IN THE SUPPLIER’S DISCLOSURE STATEMENT.

As examples, the “various factors” could include charges related to PUC, PJM, FERC, NERC requirements and tax changes. This definition would be coupled with Commission guidance making clear that the “pass-through clause” must accompany the pricing information in the disclosure statement – in the same section and/or paragraph. This is intended to prevent the potential customer from overlooking the “pass-through clause” or having the clause buried in a following page or in fine print. To assist consumers in understanding these clauses, suppliers should, in the “definitions” section of the disclosure, define any terms or acronyms used in the “pass-through clause.” Additionally, if the supplier at some point invokes the clause and passes along a price change, they must provide advanced notice to the affected customers.

TO at 11-12 (footnote omitted).

The Pennsylvania Utility Law Project (PULP) is the designated specialized project of the nonprofit Pennsylvania Legal Aid Network and provides statewide representation, advice, and support in energy and utility matters on behalf of low-income, residential utility customers.

PULP respectfully submits these Comments on behalf of the low-income consumers we represent.

II. Comments

PULP supports the Commission in its efforts to add clarity to the often confusing retail electric marketplace. As the Commission stated in the TO, Section 54.1(a) of the Commission’s customer information regulations explains that the purpose of the subchapter is “to require that electricity providers enable customers to make informed choices regarding the purchase of electricity services offered by providing adequate and accurate customer information.” 52 Pa. Code § 54.1(a). Specifically, it provides that “[i]nformation shall be provided to customers in an understandable format that enables customers to compare prices and services on a uniform basis.” Id.

In light of this guidance, PULP submits that the changes the Commission has proposed to the definitions of “fixed” and “variable” priced products are reasonable and add clarity to the process. Under the Commission’s proposal, in order to be marked as “fixed”, the price offered by an EGS would have to be an all-inclusive price that remains the same for a set period of time defined by the contract but not less than 3-months. A variable contract is an all-inclusive price that can vary “according to the terms and conditions in the supplier’s disclosure statement.” TO at 12. In PULP’s view, these definitional changes add clarity and certainty to confusing terms, will be easily understood by the public, and will be relatively easy to enforce by the Commission and other governmental agencies such as the Attorney General’s office.

The same cannot be said for the Commission’s proposal to add a third category of products called “Price With Pass-Through Clause” or “Long-Term Energy Price.” It is difficult to see how the addition of either of these terms would add clarity to the residential electric market. For example, the Commission’s proposed definitional addition of “Price With Pass-Through Clause” seems simply to be an iteration of a variable rate contract. Both definitions say that the price is all-inclusive. Both say that it is subject to change based on the terms and conditions in the supplier’s disclosure statement. The only difference is that the “Price With Pass-Through Clause” definition simply refers to a specific type of variable contract. This does not add clarity, but rather it simply begs the question as to why the Commission would specifically define this type of variable in a variable rate contract as opposed to all others. In PULP’s view, it is far more preferable to have “fixed prices” that can’t change at all during the term of the contract or “variable prices” that can change based on criteria that is conspicuously specified and plainly defined by the disclosure statement.

PULP understands that the Commission's desire with this new proposed label is to prevent customer confusion by not calling the price a "fixed rate" price which at the same time fostering an environment in which EGSs continue to make available long-term pricing options that will be attractive to customers. Both are laudable goals. The presumption is that without the ability to pass-through these unanticipated charges EGSs would be unwilling to offer long-term products because of the uncertainty involved. This may be the case. However, EGSs are in a much better position to hedge against these uncertainties than the average low-income residential customer. Moreover, because we are talking about residential load as opposed to large commercial load it seems implausible that an EGS will not have enough variety of contract types in its portfolio to hedge against any unanticipated pass through costs that cannot be recouped. If it is indeed the case that EGSs simply cannot hedge against this uncertainty, a better approach would be a provision in the fixed rate contract that would allow the EGS to cancel the long-term contract after a set period of time (12 months) in the event of one of these unanticipated pass-through charges. This would allow EGSs to continue to market long-term contracts as fixed, provide some level of certainty to the customer – at least 12 months at the offered price – and allow the EGS to avoid the long-term inability to recoup these charges.

The simpler and easier a product is to understand the better a customer will be able to adequately become informed about options and chose that which suits his or her needs. To that end, clarity would be added by defining the terms "fixed price" and "variable price" as set forth in the TO. However, the inclusion of the additional proposed terms invites more confusion rather than less.

III. Conclusion

PULP thanks the Commission for this opportunity to submit comments and respectfully requests that prior to final approval the Commission modify its approach consistent with the comments herein.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Harry S. Geller", is written above a horizontal line.

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