

COMMONWEALTH OF PENNSYLVANIA



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March 24, 2014

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17101

RE: Rulemaking to Amend the Provisions of 52
Pa. Code, Section 54.5 Regulations
Regarding Disclosure Statement for
Residential and Small Business Customers
and to Add Section 54.10 Regulations
Regarding the Provision of Notices of
Contract Renewal or Changes in Terms
Docket No. L-2014-2409385

Dear Secretary Chiavetta:

Enclosed for filing please find the Office of Consumer Advocate's Comments in the above-referenced proceeding.

If you have any questions, please feel free to contact me at the number listed above.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Aron J. Beatty'.

Aron J. Beatty
Assistant Consumer Advocate
PA Attorney I.D. # 86625

Enclosure

cc: Office of Competitive Market Oversight
RA-OCMO@pa.gov

180923

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking to Amend the Provisions of :
52 Pa. Code, Section 54.5 and to Add Section : Docket No. L-2014-2409385
54.10 Regarding Contract Renewal Provisions :

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: March 24, 2014

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I. INTRODUCTION

On March 19, 2014 the Pennsylvania Public Utility Commission (Commission) announced its intention to undertake a rulemaking to amend 52 Pa. Code Chapter 54 in order to revise disclosure statement requirements for residential and small business customers. The goal of the proposed revisions is to make disclosure statements more understandable and useful to consumers, particularly as they relate to variable-priced electric products. The Commission proposes several changes to 52 Pa. Code §54.5 and a new requirement that suppliers provide an Electric Generation Supply (EGS) Contract Summary in the format provided as a template by the Commission in its Secretarial Letter announcing the rulemaking. Additionally, the Commission proposed a new section that would codify notice requirements for renewal of existing service agreements or changes in terms. The Commission's intent of this addition is to make the notices more prominent and to provide EGS customers with important and timely information about their options upon the expiration or change in terms of their EGS service agreement.

The Commission has chosen to promulgate these rules using a "final-omitted" proceeding per the terms of 45 P.S. § 1204(3); 71 P.S. §§ 745.5a and 745.6. The Commission specifically requests that filed Comments address the proposed changes, the practicality of implementing the proposed changes within 30 days of their effective date and the costs of implementing the proposed regulations.

The Office of Consumer Advocate (OCA) appreciates the opportunity to respond to the Commission's proposed rulemaking and fully supports the Commission in its endeavors to provide customers with improved disclosure statements and timely information about their options upon the expiration or change in terms of their EGS service agreement. The OCA is concerned, however, with the use of "final-omitted" rulemaking procedures and the short time

frame for response. The short time frame for response will not allow for the development of all of the facts and circumstances that may impact the types of needed disclosures. As more information is gathered about the variable price plans and customer's experience, more fully formed disclosure requirements may be needed.¹ The OCA would also note that there are numerous on-going legislative efforts that may require changes in the proposals here.

Instead of using a "final-omitted" rulemaking procedure at this time, the OCA recommends that the Commission issue an order or guidelines setting forth the requirements included in this rulemaking, and others recommended by the parties, while these issues are further developed through the procedure established in the Commission's Order on Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products at Docket No. M-2014-2406134 and through the efforts of the General Assembly. This is the same type of procedure used by the Commission for the Interim Guidelines Regarding Standards for Changing a Customer's Electricity Generation Supplier at Docket No. M-2011-2270442 and Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers at Docket No. M-2010-2185981 (which was later followed by a rulemaking at Docket No. L-2010-22083321).

By using the Orders and Guidelines procedure (followed by future rulemaking), the Commission can ensure that revised EGS disclosures will be in place for the upcoming Summer, and the Commission and the parties will gain experience with the revised disclosure statements to see if they are effective. Additionally, as legislation is considered and enacted,

¹ The OCA has been preparing its Comments in response to the Commission's March 4, 2014 Order which are due on April 3, 2014. In those Comments, the OCA will be providing additional recommendations to establish a more comprehensive approach to addressing the problems identified by the variable price plans and the marketing practices related to these plans. Customer disclosure will be an important component of the OCA's recommendations, but other closely related recommendations, such as the proper third party verification and the potential need for caps on pricing changes, will need to be coordinated with disclosure requirements.

and more facts come to light the disclosure guidelines can be modified to incorporate any necessary changes resulting from the legislation and additional facts. A final rulemaking can then be conducted when all the issues, information, and necessary changes are identified. By establishing Guidelines now, the Commission can still ensure rapid implementation of revised disclosure statements in time for Summer without compromising the on-going full review of these events.

In these Comments, the OCA makes specific recommendations intended to strengthen both consumer protections and the marketplace. The OCA's specific recommendations should be included whether the proposed rulemaking procedure or the Guideline procedure is followed. The OCA shows its specific recommendations in each section and has also attached to these Comments a modified Annex A showing all of the OCA's recommendations. The OCA has retained the use of capital letters as in the Commission's Annex A for ease of reference and has underlined its proposed additions and used strike through to show the OCA's proposed deletions.

Given the accelerated timeline for these Comments, these Comments address the OCA's recommendations for the specific proposals made by the Commission. The OCA's recommendations here are not an exhaustive list of all changes that OCA believes are necessary in light of these events. Information continues to come to light about these events that will need to inform all recommendations as well as inform the development of a comprehensive plan to address adequate consumer protections. By way of example, the OCA believes that more rigorous third party verification is needed, particularly in light of the reports of potential deceptive marketing about these products. The OCA submits that more specific, verifiable and auditable pricing methodologies must also be developed and disclosed. The OCA continues to

work on its Comments due April 3, 2014 that will provide a more comprehensive plan for addressing the issues identified by these events.

Through these Comments, the OCA proposes taking the first step to better inform consumers about variable rate plans as the Summer season approaches. The OCA remains concerned, however, about the significant number of customers who entered into variable rate plans for this winter without adequate disclosure and are still suffering from extraordinary and unaffordable bills.

II. COMMENTS

The Commission has asked that all Comments be provided in 5 days, and that the Comments address the proposed changes, the practicality of implementing the proposed changes within 30 days of their effective date, and the costs associated with these changes. The OCA provides its Comments on the specific proposals below. The OCA does not have sufficient information to provide Comments on the practicality of implementing these changes within 30 days of their effective date as these changes will need to be implemented by the EGSs. The OCA submits, however, that these changes must be implemented sufficiently in advance of the summer season so that consumers do not enter into variable price plans without adequate disclosure.

A. Proposed Section 54.5(c)(2)(ii)(A) and (B)

1. A Price Limit Should Be Required To Be Stated In The Disclosure Statement For All Variable Price Products.

The Commission proposes to add Section 54.5(c)(2)(ii)(A) which would require EGSs to “clearly explain” any limits on price variability, such as a specific price cap, a maximum percentage increase in price between billing cycles or minimum/maximum charges per kilowatthour for electricity if there is such a limit. The Commission also proposes to add Section 54.5(c)(2)(ii)(B) which would require EGSs to “clearly and conspicuously” state that there is no limit on price variability if there is not one.

The OCA submits that while the proposed changes contained in 54.5(c)(2)(ii)(A) and (B) may benefit consumers, they may fall short of providing the necessary level of protection for consumers, particularly since the proposal allows an EGS to state that there is no limit for the pricing. In the OCA’s view, simply allowing a statement of no limit to the price does not allow the customer to make an informed choice or to compare prices on an apples-to-apples basis. In

the OCA's view, a statement of no price limit may not conform with the Commission's current regulations which specifically reference the price limit. Allowing a statement of "no limit" appears to be taking a step in the wrong direction.

One of the hallmarks of the Customer Choice Act was that EGSs "provide adequate and accurate customer information to enable customers to make informed choices." 66 Pa.C.S. §2807(d)(2). Such information is also required to be provided "in an understandable format that enables consumers to compare prices and services on a uniform basis." 66 Pa.C.S. §2807(d)(2). If a customer is not informed of how high a price might go, the customer cannot accurately assess the risk involved in making this choice. Consumers cannot be expected to assess the risk of the highly complex PJM markets or their supplier's purchasing strategy in those markets.

The Commission should require that a limit be stated for the maximum price or change that can occur under the variable rate plan. The OCA recommends the following approach to achieve this goal:

- (2) The variable pricing statement, ~~if applicable~~, must include:
 - (i) Conditions of variability (state on what basis prices will vary)
 - (ii) Limits on price variability stated as a minimum/maximum charge per kilowatthour for electricity during the term of the contract or a maximum percentage increase in price between billing cycles.

These changes will ensure that consumers are provided more complete information upon which to make a choice. The changes do not appear in the OCA's proposed modification to Annex A as this represents a modification of only existing regulations and differs from the Commission's proposal.

2. Changes to Subsections (A) and (B) Are Needed If The Commission's Approach Is Followed.

If the Commission utilizes an approach of retaining subsections (A) and (B) and allowing a “no limit” statement, the OCA submits that modifications to these subsections should be put in place to clearly state the EGSs obligations. The Commission should first strike “if applicable” in subsection (2) to avoid any confusion or the creation of products that may circumvent the rule. As to subsection (A), the Commission should require the price limit to be stated as either the maximum percentage or the maximum charges per kilowatt-hour rather than just using these as examples. As to subsection (B), the Commission should specify the exact language to convey that there is no limit to the price that can be charged and make clear what this means.

To implement these recommendations, the OCA provides the following modification to the Commission’s proposal

(2) The variable pricing statement, ~~if applicable,~~ must include:

- (i) Conditions of variability (state on what basis prices will vary).
- (ii) Limits on price variability:

~~(A) IF THERE IS A LIMIT ON PRICE VARIABILITY, SUCH AS A STATE THE SPECIFIC PRICE CAP AS EITHER, A MAXIMUM PERCENTAGE INCREASE IN PRICE BETWEEN BILLING CYCLES OR MINIMUM/MAXIMUM CHARGES PER KILOWATT-HOUR FOR ELECTRICITY DURING THE TERM OF THE CONTRACT, THE EGS SHALL CLEARLY EXPLAIN THE APPLICABLE LIMITS.~~

~~(B) IF THERE IS NO LIMIT ON PRICE VARIABILITY, THE EGS SHALL CLEARLY AND CONSPICUOUSLY STATE THE FOLLOWING: THAT “THERE IS NO LIMIT ON HOW MUCH THE PRICE MAY CHANGE FROM ONE BILLING CYCLE TO THE NEXT BILLING CYCLE OR ON HOW HIGH THE PRICE MAY GO.~~

In the OCA's view, these modifications will better ensure that information about these variable price plans is communicated to customers in a more understandable format.²

B. Proposed Section 54.5(c)(2)(iii)

The Commission proposes to add Section 54.5(c)(2)(iii) which would require EGSs to disclose the price to be charged per kilowatt-hour for the first billing cycle. The OCA submits that while this proposed change could have some benefit, it is insufficient in this marketplace where introductory rates are often used. If the price is not clearly and expressly disclosed as an introductory rate when it is one, customers will be misled. Also, even if the rate is based on the variable price mechanism used by the EGS for the month, it may be misleading to the customer if it is not disclosed that the next month's price will be different.

The OCA submits that this provision must be strengthened in several respects. For introductory prices, the EGS must be required to disclose that it is introductory, the length of the introductory period, and the price for the first non-introductory period. If the price is not introductory, it must still be stated that the price will change after the introductory period ends.

To implement these recommendations, the OCA proposes the following:

(III) THE PRICE TO BE CHARGED, PER KILOWATT-HOUR, FOR THE FIRST BILLING CYCLE OF GENERATION SERVICE IF IT IS THE PRICE ESTABLISHED THROUGH THE VARIABLE PRICING MECHANISM AND A STATEMENT THAT THE PRICE WILL CHANGE IN THE SECOND MONTH. IF THE PRICE IS INTRODUCTORY, A STATEMENT THAT THE PRICE IS AN INTRODUCTORY PRICE, THE LENGTH OF THE INTRODUCTORY PERIOD AND THE PRICE FOR THE FIRST MONTH AFTER THE INTRODUCTORY PERIOD.

In the OCA's view, these changes are necessary to more clearly communicate to customers the nature of the price offer.

² In showing these edits, the OCA retained the capital letter formatting used by the Commission for additions to the regulations so that it is easier to follow the OCA's proposed modifications to the newly proposed language.

C. Proposed Section 54.5(c)(10)

The Commission's proposed changes in 54.5(c)(10) would require EGSs to include an explanation of the limits of price variability. The OCA agrees with this addition. The OCA recommends, however, that the Commission specify the type size and that such type size should be no less than 12 point font. In addition, there is no guidance as to what constitutes an adequate "explanation" of the limits. A reference to what constitutes an adequate explanation may be necessary. The OCA proposes at least the following modification on the font size:

(10) An explanation of LIMITS ON PRICE VARIABILITY, penalties, fees or exceptions, printed in type size larger than the type size appearing in the terms of service BUT NO LESS THAN 12 POINT.

D. Proposed Section 54.5(c)(14)(i) - (iv)

The Commission proposes the addition of §54.5(c)(14) requiring specific information for contracts with variable pricing. Proposed Section 54.5(c)(14)(i) requires EGSs who offer variable price service to provide a telephone number and internet address where customers may obtain the previous 12 months average monthly billed prices for the customers "rate class" and service territory. It also requires that an EGS which has not provided service for a customer rate class in the service territory for 12 months provide the average monthly billed price to date.

The OCA submits that while the proposed changes contained in 54.5(c)(14)(i) may benefit consumers, further clarity is needed to ensure that the pricing information is not misleading or inadequate. Over this past winter, the OCA has received multiple bills from customers in the same rate class and in the same service territory that contained vastly different cents per kilowatt-hour charges for the same calendar month. It is unclear to the OCA how these prices are being set by the EGSs or how the averages contemplated by the Commission proposal

will be developed from these pricing strategies. The Commission must ensure that a common approved approach is being used to develop the average price so that proper comparisons can be made. More importantly, because the use of averages can mask the problem, and because the use of 12-month data may not be representative of the risk, EGSs should also be required to disclose the highest and lowest price per kilowatthour that has been charged for the customer's rate class and service territory to ensure that customers have more complete information. While some time frame may need to be placed on this proposal regarding the highest and lowest price, in the OCA's view it should be no less than 36 months to 60 months to properly reflect energy pricing changes over a reasonable period of time.³

The Commission also proposes the addition of 54.5(c)(14)(ii) and (iii) which would require EGSs to provide a plain language statement that historical pricing is not indicative of present or future pricing and to provide information regarding when the customer will be made aware of each price change. The OCA submits that it is important to convey this information to consumers. As to Section 54.5(c)(14)(iii) that requires notice of the price change, the OCA submits that it is important to provide this notice before the price is charged to the customer. Without information about what a customer is being charged, the customer cannot make informed decisions about their energy use or about whether a new price plan or supplier is needed. The OCA submits that such information should be conveyed to the customer at least at the beginning of each month.⁴

³ It may be necessary to develop a source of the highest and lowest prices charged for those EGSs that have not offered variable rates for the extended period. The Commission may need to establish an archive of such prices charged to customers or included on PAPwerSwitch for existing customers for this purpose and others. The OCA will discuss this issue in more detail in its Comments submitted April 3, 2014.

⁴ Using the beginning of each month is a step forward but it does not address the differences in billing cycles. The OCA continues to consider whether other methods could be used that more closely reflect a customer's billing cycle.

The Commission further proposes the addition of 54.5(c)(14)(iv) which would require an EGS to notify customers of a rate increase of more than 50% over the prior billing cycle as soon as the EGS becomes aware such an increase will occur via direct mail, except for those customers who have chosen electronic communication. The OCA submits that Section 54.5(c)(14)(iv) must require a minimum notification period before such a significant price increase takes effect. Customers need to know this information before they use the electricity or continue on the plan. The proposed regulation is unclear in this regard.

The OCA proposes the following changes to Proposed Section 54.5(c)(14)(i) – (iv) to address the issues identified:

(14) FOR CONTRACTS WITH VARIABLE PRICING, THE EGS SHALL PROVIDE:

(I) A TELEPHONE NUMBER AND INTERNET ADDRESS AT WHICH A CUSTOMER MAY OBTAIN THE PREVIOUS 12 MONTHS' AVERAGE MONTHLY BILLED PRICES FOR THAT CUSTOMER'S RATE CLASS AND EDC SERVICE TERRITORY, AND THE HIGHEST AND LOWEST PRICE BILLED FOR THAT CUSTOMER'S RATE CLASS AND EDC SERVICE TERRITORY FOR THE PREVIOUS 60 MONTHS. IF AN EGS HAS NOT BEEN PROVIDING GENERATION SERVICE IN A CUSTOMER RATE CLASS AND EDC SERVICE TERRITORY FOR 12 MONTHS, THE EGS SHALL PROVIDE THE AVERAGE MONTHLY BILLED PRICES FOR THE MONTHS AVAILABLE TO DATE. IF THE EGS HAS NOT BEEN PROVIDING SERVICE IN A CUSTOMER RATE CLASS AND SERVICE TERRITORY FOR 60 MONTHS, THE EGS SHALL PROVIDE THE CUSTOMER THE HIGHEST AND LOWEST PRICES AS SET FORTH BY THE COMMISSION FOR SUCH PURPOSE.

(II) IN PLAIN LANGUAGE, A STATEMENT THAT HISTORICAL PRICING IS NOT INDICATIVE OF PRESENT OR FUTURE PRICING.

(III) INFORMATION REGARDING WHEN THE CUSTOMER WILL BE MADE AWARE OF EACH PRICE CHANGE BEFORE SUCH PRICE CHANGE GOES INTO EFFECT.

(IV) NOTICE TO CUSTOMERS OF A RATE INCREASE OF MORE THAN 50% OVER THE PRIOR BILLING CYCLE PRIOR TO AS SOON AS THE EGS BECOMES AWARE THAT SUCH AN INCREASE TAKING EFFECT. WILL OCCUR. FOR CUSTOMERS WHO HAVE ELECTED TO RECEIVE ELECTRONIC COMMUNICATIONS FROM THE EGS, THE NOTICE OF THE RATE INCREASE WILL BE TRANSMITTED IN THE MANNER CHOSEN BY THE CUSTOMER. FOR ALL OTHER CUSTOMERS, NOTICE WILL BE PROVIDED BY DIRECT MAIL.

The OCA submits that these changes are necessary to better ensure that customers have information that will help them to make a better informed choice about this product.

E. Proposed Section 54.5(g) and 54.5 (g)(1)

The Commission's proposed changes to 54.5(g) would eliminate 54.5(g)(1) and require EGSs to modify the mandatory disclaimer language. The new disclaimer language states that customers will receive a mailing separate from their bill when the EGS is either changing the terms of service or the customer is approaching the end of their fixed rate term and that this mailing will explain the customer's options going forward. The OCA notes that the current requirement that the EGS provide three notifications to customers of a change in terms and conditions is eliminated by this proposal and Proposed Section 54.10. The Commission's Proposed Section 54.10 provides for two notifications in place of the three currently included in the regulations. The OCA submits that now is not the time to reduce the notices to consumers. There is no basis to conclude that less notice will achieve the goal of proper disclosure. The three notices should be restored and clarified in accordance with the OCA's recommendations regarding Proposed Section 54.10 discussed below. Proposed Section 54.5(g), however, should be modified as follows:

(g) Disclosure statements must include the following customer notification:
"IF YOU HAVE A FIXED TERM CONTRACT APPROACHING THE EXPIRATION DATE, OR WHENEVER WE PROPOSE TO CHANGE

THE TERMS OF SERVICE IN ANY TYPE OF CONTRACT, YOU WILL RECEIVE THREE WRITTEN NOTIFICATIONS IN SEPARATE MAILINGS THAT PRECEDE EITHER THE EXPIRATION DATE OR THE EFFECTIVE DATE OF THE PROPOSED CHANGES. THESE NOTIFICATIONS WILL EXPLAIN YOUR OPTIONS GOING FORWARD.”

This modification will reinstate the three notices as will be discussed in more detail below.

F. Proposed Section 54.5 (I) and the Electric Generation Supplier Contract Summary

Proposed Section 54.5(I) requires a separate EGS Contract Summary be provided with the disclosure statement. A Contract Summary similar to that proposed by the Commission as provided as Attachment A to the Secretarial Letter could prove beneficial as it can quickly present key terms of the plan to the customer. The formatting and presentment of this summary will be very important to its usefulness and additional clarity may be needed. For example, it is not clear how an introductory price will be disclosed and whether prices following the introductory period will be included on the Contract Summary. In addition, the Commission’s proposal does not make it clear where this document would appear or what type size would be required. Without seeing more details of the appearance of the document and whether or not information may be too constrained to be useful, the OCA cannot comment further. A stakeholder process to more fully develop the details of such a summary might be helpful in this process.

G. 54.10 Notice Of Contract Renewal Or Change In Terms

The Commission proposes the creation of 52 Pa. Code § 54.10 which would govern the types and timing of notification customers receive at the end of their fixed price term or when the terms of service change. The OCA submits that while the proposed changes contained in 54.10 are an important start, they fall short of providing the necessary level of

protection to consumers. Of particular concern to the OCA with regard to Proposed Section 54.10, it provides for only 2 notices to customers and appears to allow customers to be placed on variable rate plans without their affirmative consent. The OCA recommends that three notices be provided to customers, the initial notice, an options notice, and a final reminder notice. In addition, the OCA submits that the Commission should not allow a customer to be placed on a variable rate plan without express, affirmative consent.

1. A Final Reminder Notice Should Be Required As A Supplement To The Notices Proposed By the Commission.

As a first measure, the Commission should reinstate the three notice requirement. The OCA recommends that the two notices proposed by the Commission – the initial notice and the options notice – be supplemented with a final reminder notice. The use of the final reminder notice will also necessitate some readjustment of the time frames for the initial notice and the options notice. The initial notice will need to be moved to between 60 and 90 days of contract expiration with the options notice between 30 and 45 days. The OCA has shown the revised time frames in the OCA’s proposed modifications to Annex A.

The final reminder notice will better ensure that customers know that the time for action is here and that the current contract plan will end imminently. The OCA is recommending that this notice arrive at the customer’s home around twenty days before the end of the contract term.⁵ The final reminder notice should include the expiration date for the fixed price term and the date for taking action. The OCA proposes the addition of a new subsection (3) for a final reminder notice to read as follows:

⁵ The OCA will discuss accelerated switching in its Comments due on March 25, 2014 in response to the proposed rulemaking on accelerated switching at Docket No. L-2014-2409383 and its Comments due on April 3, 2014 in Docket No. M-2014-2406134. The time frame of the final reminder notice should be coordinated with the outcome of these proceedings.

(3) A FINAL REMINDER NOTICE SHALL BE SENT TO THE CUSTOMER AT LEAST 20 DAYS PRIOR TO THE EXPIRATION DATE OF THE FIXED TERM CONTRACT INFORMING THE CUSTOMER OF THE DATE OF EXPIRATION AND THE ACTIONS REQUIRED.

The remaining sections would need to be renumbered but for purposes of these Comments, the OCA will refer to them as presented in the Commission's Secretarial Letter.

2. Customers Should Not Be Placed On Variable Rate Plans At The End Of A Fixed Term Without Affirmative Consent.

The OCA is particularly concerned that several provisions of Proposed Section 54.10 would continue to allow EGSs to place fixed rate customers on variable rate service instead of either continuing on a fixed rate product or returning the customer to default service. The possibility of this change to a variable rate product seems to flow through several related provisions, including 54.10(A)(2)(ii)(A) and (B) and 54.10(A)(3)(i)(A) and (B). As a result, customers that never affirmatively selected a variable rate product could find themselves exposed to price variability under these provisions. The OCA does not support any proposal that allows consumers to be placed on a variable rate plan without affirmative consent. The OCA recognizes that if a customer does not respond affirmatively to the notices provided, a pricing proposal must apply to the service rendered on a going forward basis. But that service should in no instance be a variable rate plan.

The OCA submits that there may be several options established to address a fixed price for a consumer that does not affirmatively respond to the notices about the end of a fixed price term. As an initial matter, the phrase "month to month" should be removed from the regulations as this phrase has already been misinterpreted to mean a variable pricing plan. In the OCA's view, if a customer does not respond to the notices, the customer should be charged the fixed price stated in the options notice until such time as the customer cancels the contract

(without termination fee or cancellation fee) or until the EGS provides the customer with 30 days advance notice of a new fixed price.⁶ As noted, no cancellation fees or early termination fees should be permitted.

Several changes are needed to Section 54.10 to implement these recommendations. The OCA proposes the following modifications:

(A)(2) (II) INFORMATION REGARDING NEW PRICING OR RENEWAL PRICING INCLUDING THE PRICE TO BE CHARGED, PER KILOWATT-HOUR, FOR THE FIRST BILLING CYCLE OF GENERATION SERVICE.

~~—(A) IF THAT CUSTOMER DOES NOT RESPOND TO THE NOTICES AND IS CONVERTED TO A MONTH TO MONTH CONTRACT ANY SUBSEQUENT CHANGES IN PRICING SHALL BE PROVIDED TO THE CUSTOMER AT LEAST 30 DAYS PRIOR TO THAT NEW PRICE BEING CHARGED.~~

~~—(B) IF THE CUSTOMER FAILS TO RESPOND TO THE NOTICES AND IS ENTERED INTO A NEW FIXED PRICE CONTRACT, THE FIXED, PER KILOWATT HOUR PRICE TO BE CHARGED AND TERM LENGTH OF THE CONTRACT SHALL BE PROVIDED.~~

* * *

(A)(3) WHEN A CUSTOMER DOES NOT RESPOND TO THE NOTICES, THE FOLLOWING SHALL APPLY:

(I) A FIXED TERM CONTRACT SHALL BE CONVERTED TO ONE OF THE FOLLOWING:

~~—(A) A MONTH TO MONTH CONTRACT, EITHER AT THE SAME TERMS AND CONDITIONS OR AT REVISED TERMS AND CONDITIONS, AS LONG AS THE CONTRACT CONTAINS NO CANCELLATION FEES.~~

~~—(B) ANOTHER A FIXED PRICE AS STATED IN THE OPTIONS NOTICE TERM CONTRACT, AS LONG AS THE NEW CONTRACT~~

⁶ Other pricing mechanisms could be used. For example, the fixed price stated by the EGS on PAPowerSwitch on the date the contract term ends could be used. The OCA submits, though, that it may be easier to use the price stated in the options notice since this is what is provided to the customer and the EGS has made this offer to the customer.

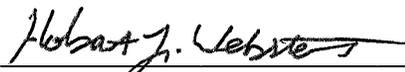
INCLUDES A CUSTOMER-INITIATED CANCELLATION PROVISION THAT ALLOWS THE CUSTOMER TO CANCEL AT ANY TIME, FOR ANY REASON, AND CONTAINS NO CANCELLATION FEES.

The OCA submits that these modifications are essential to ensure that customers are not placed on a variable price plan at the conclusion of a fixed price term.

III. CONCLUSION

The OCA welcomes the Commission's efforts to improve disclosure about variable price products. The Commission's proposals are a first step in this process and the OCA has made various recommendations to further strengthen disclosure. The OCA anticipates that additional disclosure and a more comprehensive plan will be needed to adequately protect consumers. The OCA looks forward to continuing to work with the Commission and the stakeholders to develop a retail choice market where consumers are fully informed, educated and fairly treated so that they can make informed and sound choices in the best interests of themselves, their families and their businesses.

Respectfully Submitted,



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DATED: March 24, 2014

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OCA PROPOSED MODIFICATIONS

**ANNEX A
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 54: ELECTRICITY GENERATION CUSTOMER CHOICE
Subchapter A. CUSTOMER INFORMATION**

§ 54.5. Disclosure statement for residential and small business customers.

* * * * *

(c) The contract's terms of service shall be disclosed, including the following terms and conditions, if applicable:

(1) Generation charges shall be disclosed according to the actual prices.

(2) The variable pricing statement, ~~if applicable,~~ must include:

(i) Conditions of variability (state on what basis prices will vary).

(ii) Limits on price variability:

~~(A) IF THERE IS A LIMIT ON PRICE VARIABILITY, SUCH AS A STATE
THE SPECIFIC PRICE CAP AS EITHER, A MAXIMUM PERCENTAGE INCREASE
IN PRICE BETWEEN BILLING CYCLES OR MINIMUM/MAXIMUM CHARGES
PER KILOWATT-HOUR FOR ELECTRICITY DURING THE TERM OF THE
CONTRACT, THE EGS SHALL CLEARLY EXPLAIN THE APPLICABLE LIMITS.~~

~~(B) IF THERE IS NO LIMIT ON PRICE VARIABILITY, THE EGS SHALL
CLEARLY AND CONSPICUOUSLY STATE THE FOLLOWING: THAT "THERE IS
NO LIMIT ON HOW MUCH THE PRICE MAY CHANGE FROM ONE BILLING
CYCLE TO THE NEXT BILLING CYCLE OR ON HOW HIGH THE PRICE MAY
GO.~~

~~(III) THE PRICE TO BE CHARGED, PER KILOWATT-HOUR, FOR THE FIRST
BILLING CYCLE OF GENERATION SERVICE IF IT IS THE PRICE ESTABLISHED
THROUGH THE VARIABLE PRICING MECHANISM AND A STATEMENT THAT
THE PRICE WILL CHANGE IN THE SECOND MONTH. IF THE PRICE IS
INTRODUCTORY, A STATEMENT THAT THE PRICE IS AN INTRODUCTORY
PRICE, THE LENGTH OF THE INTRODUCTORY PERIOD AND THE PRICE FOR
THE FIRST MONTH AFTER THE INTRODUCTORY PERIOD.~~

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(10) An explanation of LIMITS ON PRICE VARIABILITY, penalties, fees or exceptions, printed in type size larger than the type size appearing in the terms of service BUT NO LESS THAN 12 POINT.

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(14) FOR CONTRACTS WITH VARIABLE PRICING, THE EGS SHALL PROVIDE:

(I) A TELEPHONE NUMBER AND INTERNET ADDRESS AT WHICH A CUSTOMER MAY OBTAIN THE PREVIOUS 12 MONTHS' AVERAGE MONTHLY BILLED PRICES FOR THAT CUSTOMER'S RATE CLASS AND EDC SERVICE TERRITORY, AND THE HIGHEST AND LOWEST PRICE BILLED FOR THAT CUSTOMER'S RATE CLASS AND EDC SERVICE TERRITORY FOR THE PREVIOUS 60 MONTHS. IF AN EGS HAS NOT BEEN PROVIDING GENERATION SERVICE IN A CUSTOMER RATE CLASS AND EDC SERVICE TERRITORY FOR 12 MONTHS, THE EGS SHALL PROVIDE THE AVERAGE MONTHLY BILLED PRICES FOR THE MONTHS AVAILABLE TO DATE. IF THE EGS HAS NOT BEEN PROVIDING SERVICE IN A CUSTOMER RATE CLASS AND SERVICE TERRITORY FOR 60 MONTHS, THE EGS SHALL PROVIDE THE CUSTOMER THE HIGHEST AND LOWEST PRICES AS SET FORTH BY THE COMMISSION FOR SUCH PURPOSE.

(II) IN PLAIN LANGUAGE, A STATEMENT THAT HISTORICAL PRICING IS NOT INDICATIVE OF PRESENT OR FUTURE PRICING.

(III) INFORMATION REGARDING WHEN THE CUSTOMER WILL BE MADE AWARE OF EACH PRICE CHANGE BEFORE SUCH PRICE CHANGE GOES INTO EFFECT.

(IV) NOTICE TO CUSTOMERS OF A RATE INCREASE OF MORE THAN 50% OVER THE PRIOR BILLING CYCLE BEFORE SUCH AN INCREASE TAKING EFFECT. ~~WILL OCCUR.~~ FOR CUSTOMERS WHO HAVE ELECTED TO RECEIVE ELECTRONIC COMMUNICATIONS FROM THE EGS, THE NOTICE OF THE RATE INCREASE WILL BE TRANSMITTED IN THE MANNER CHOSEN BY THE CUSTOMER. FOR ALL OTHER CUSTOMERS, NOTICE WILL BE PROVIDED BY DIRECT MAIL.

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(g) Disclosure statements must include the following customer notification: "IF YOU HAVE A FIXED TERM CONTRACT APPROACHING THE EXPIRATION DATE, OR WHENEVER WE PROPOSE TO CHANGE THE TERMS OF SERVICE IN ANY TYPE OF CONTRACT, YOU WILL RECEIVE THREE WRITTEN NOTIFICATIONS IN SEPARATE MAILINGS THAT PRECEDE EITHER THE EXPIRATION DATE OR THE EFFECTIVE DATE OF THE PROPOSED CHANGES. THESE NOTIFICATIONS WILL EXPLAIN YOUR OPTIONS GOING FORWARD."

~~(1) "If you have a fixed term agreement with us and it is approaching the expiration date or whenever we propose to change our terms of service in any type of agreement, you will receive written notification from us in each of our last three bills for supply charges or in corresponding separate mailings that precede either the expiration date or the effective date of the proposed changes. We will explain your options to you in these three advance notifications."~~

(h) If the default service provider changes, the new default service provider shall notify customers of that change, and provide customers with its name, address, telephone number and Internet address, if available.

(I) THE EGS SHALL PROVIDE, WITH THE DISCLOSURE STATEMENT, A SEPARATE EGS CONTRACT SUMMARY IN A FORMAT PROVIDED BY THE COMMISSION.

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§ 54.10. NOTICE OF CONTRACT RENEWAL OR CHANGE IN TERMS

(A) AN EGS SHALL PROVIDE THE FOLLOWING NOTICES TO CUSTOMERS UPON THE RENEWAL OF A FIXED TERM CONTRACT OR UPON A CHANGE IN CONTRACT TERMS:

(1) AN INITIAL NOTICE SHALL BE PROVIDED TO EACH AFFECTED CUSTOMER 60 45 TO 90 60 DAYS PRIOR TO THE EXPIRATION DATE OF THE FIXED TERM CONTRACT OR THE EFFECTIVE DATE OF THE PROPOSED CHANGE IN TERMS. THE INITIAL NOTICE SHALL INCLUDE THE FOLLOWING:

(I) A GENERAL DESCRIPTION OF THE PROPOSED CHANGE IN TERMS OF SERVICE.

(II) THE DATE A CHANGE SHALL BE EFFECTIVE OR WHEN THE FIXED TERM CONTRACT IS TO EXPIRE.

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(III) AN EXPLANATION OF WHY A CHANGE IS NECESSARY.

(IV) A STATEMENT INDICATING WHEN A FOLLOW-UP OPTIONS NOTICE SHALL BE ISSUED WITH DETAILS REGARDING THE PROPOSED CHANGE.

(V) A STATEMENT EXPLAINING THAT THE OPTIONS NOTICE SHALL DISCUSS THE CUSTOMER'S OPTIONS TO THE PROPOSED CHANGE IN TERMS OF SERVICE OR EXPIRING FIXED TERM CONTRACT.

(VI) A STATEMENT INDICATING WHETHER THE EXISTING FIXED TERM CONTRACT HAS A CANCELLATION FEE, AND AN EXPLANATION OF THE FEE AMOUNT AND HOW TO AVOID THE FEE, IF POSSIBLE, INCLUDING NOTICE OF THE DATE WHEN THE CUSTOMER CAN CHOOSE AN ALTERNATIVE EGS AND AVOID THE FEE.

(2) AN OPTIONS NOTICE SHALL BE PROVIDED TO EACH AFFECTED CUSTOMER AT LEAST 30 TO 45 DAYS PRIOR TO THE EXPIRATION DATE OF THE FIXED TERM CONTRACT OR THE EFFECTIVE DATE OF THE PROPOSED CHANGE IN TERMS. THE OPTIONS NOTICE SHALL INCLUDE THE FOLLOWING:

(I) A STATEMENT ADVISING THE CUSTOMER OF THE SPECIFIC CHANGES BEING PROPOSED BY THE EGS AND INFORMING THE CUSTOMER OF THE CUSTOMER'S OPTIONS, INCLUDING THE CUSTOMER'S ABILITY TO ACCEPT THE PROPOSED CHANGES, TO SELECT ANOTHER EGS WITHIN A CERTAIN TIME PERIOD, OR TO RETURN TO DEFAULT SERVICE.

(II) INFORMATION REGARDING NEW PRICING OR RENEWAL PRICING INCLUDING THE PRICE TO BE CHARGED, PER KILOWATT-HOUR, FOR THE FIRST BILLING CYCLE OF GENERATION SERVICE. :

~~— (A) IF THAT CUSTOMER DOES NOT RESPOND TO THE NOTICES AND IS CONVERTED TO A MONTH TO MONTH CONTRACT ANY SUBSEQUENT CHANGES IN PRICING SHALL BE PROVIDED TO THE CUSTOMER AT LEAST 30 DAYS PRIOR TO THAT NEW PRICE BEING CHARGED.~~

~~— (B) IF THE CUSTOMER FAILS TO RESPOND TO THE NOTICES AND IS ENTERED INTO A NEW FIXED PRICE CONTRACT, THE FIXED, PER KILOWATT HOUR PRICE TO BE CHARGED AND TERM LENGTH OF THE CONTRACT SHALL BE PROVIDED.~~

(III) INSTRUCTIONS ON HOW A CUSTOMER MAY EXERCISE THE CUSTOMER OPTIONS.

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(IV) THE TELEPHONE NUMBERS AND INTERNET ADDRESSES, AS APPLICABLE, FOR THE OFFICE OF CONSUMER ADVOCATE, THE COMMISSION AND PAPOWERSWITCH.COM.

(V) THE FRONT OF THE ENVELOPE USED TO PROVIDE THE OPTIONS NOTICE WILL INCLUDE LANGUAGE STATING THAT IT CONTAINS IMPORTANT INFORMATION REGARDING THE EXPIRATION OR CHANGES IN TERMS OF THE CUSTOMER'S ELECTRIC SUPPLY CONTRACT.

(3) A FINAL REMINDER NOTICE SHALL BE SENT TO THE CUSTOMER AT LEAST 20 DAYS PRIOR TO THE EXPIRATION DATE OF THE FIXED TERM CONTRACT INFORMING THE CUSTOMER OF THE DATE OF EXPIRATION AND THE ACTIONS REQUIRED.

(4) ~~(3)~~ WHEN A CUSTOMER DOES NOT RESPOND TO THE NOTICES, THE FOLLOWING SHALL APPLY:

(I) A FIXED TERM CONTRACT SHALL BE CONVERTED TO ~~ONE OF THE~~ FOLLOWING:

~~— (A) A MONTH TO MONTH CONTRACT, EITHER AT THE SAME TERMS AND CONDITIONS OR AT REVISED TERMS AND CONDITIONS, AS LONG AS THE CONTRACT CONTAINS NO CANCELLATION FEES.~~

~~— (B) ANOTHER A FIXED PRICE AS STATED IN THE OPTIONS NOTICETERM CONTRACT, AS LONG AS THE NEW CONTRACT INCLUDES A CUSTOMER-INITIATED CANCELLATION PROVISION THAT ALLOWS THE CUSTOMER TO CANCEL AT ANY TIME, FOR ANY REASON, AND CONTAINS NO CANCELLATION FEES.~~

(II) THESE REQUIREMENTS SHALL REMAIN IN PLACE UNTIL THE CUSTOMER AFFIRMATIVELY ENTERS INTO A NEW CONTRACT WITH ONE OF THE FOLLOWING:

(A) THE CUSTOMER'S EXISTING EGS.

(B) ANOTHER EGS.

(C) THE DEFAULT SERVICE PROVIDER.