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March 24, 2014

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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; COMMENTS OF NRG Retail Northeast

Dear Secretary Chiavetta:

Enclosed for filing with the Commission on behalf of NRG Retail Northeast is an electronic copy of its Comments in the above-referenced proceeding.

Sincerely,

A handwritten signature in blue ink that reads "Dan Clearfield".

Daniel Clearfield

DC/lww
Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

COMMENTS OF NRG RETAIL NORTHEAST

Date: March 24, 2014

Introduction

The NRG Retail Northeast Companies (“NRG”)¹ appreciate the opportunity to respond to the Commission’s Secretarial Letter issued on March 19, 2014 seeking comments on draft proposed revisions to its regulations at 52 Pa. Code, Chapter 54 governing Disclosure Statement requirements for residential and small business customers.² NRG strongly supports the Commission’s efforts to make Disclosure Statements more understandable and useful to consumers, especially as they relate to variable-priced products. Customer education about their shopping options must happen at every step of the shopping process and nowhere is it more important than when a customer is actually agreeing to specific contract terms and conditions for the products they are choosing. A consumer friendly Disclosure Statement that fully explains the product and is easy to understand is a critical element of that education process.

At the same time, and based on NRG’s experience working directly with retail energy customers for two decades, it is also important to understand consumer behavior and to provide information to consumers in ways that have proven effective and impactful. As explained in more detail below, NRG urges the Commission to refrain from implementing overly burdensome requirements that force suppliers to overwhelm consumers with what could be meaningless notices, as such an approach will, in NRG’s view, only serve to diminish the customer shopping experience and frustrate the smooth operation of the competitive retail market. NRG urges the Commission to modify the proposed rules to:

- Use existing communication tools more effectively by directing the EDCs to modify the utility bill to include EGS contract expiration dates directly on the utility bill in the two bill cycles preceding the contract expiration.
- Create an exemption to the proposed variable price change notice requirements for EGSs who voluntarily adopt caps on variable price statements in their Disclosure Statements.

Improving EGS Disclosure Statement and notice requirement rules in these ways will assist consumers in better understanding how variable price products work. But much more can and should be to help consumers reduce their energy usage and choose the energy products that meet their preference for

¹ The NRG Retail Northeast companies include NRG Residential Solutions, Green Mountain Energy Company and Energy Plus Holdings Company, three licensed electric generation suppliers serving customers throughout Pennsylvania.

² PA PUC Secretarial Letter, *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, March 19, 2014.

risk. The best way to address concerns about potential volatility with variable prices is to educate consumers about the benefits and costs of fixed price offers and then create incentives for EGSs to offer and consumers to select those products. Policies should allow consumers to choose to insure themselves against price volatility by signing up for fixed price offers. Improving customer disclosures is an important first step to achieving that goal.

The following comments are intended to strike the right balance of informing and educating consumers and encouraging EGSs to act responsibly so consumers have a positive shopping experience and enjoy the full benefits of the choices they make.

Proposed Revisions to § 54.5(c)(2) Variable Pricing Statement

NRG supports the proposed revisions to the Variable Pricing Statement disclosure requirements as outlined in § 54.5(c)(2)(ii)(A) and (B) and § 54.5(c)(2) (iii). Customers need to understand to what extent their price per kilowatt-hour may vary from one month to the next. Explaining the bounds of price variability is important in setting customer expectations so as to minimize surprises when customers open their bills.

In the case of a variable price product, a customer needs to understand how much the price might fluctuate, including when there is no limit to how much it might fluctuate. In addition, requiring that suppliers include the first month's price provides customers a starting point to which future comparisons can be made. The proposed rule provides EGSs with the flexibility to design their variable price product offers to meet their own needs and the needs of customers, without restricting the types of product offers that EGSs can offer.

Proposed Revisions to § 54.5(c)(14)(I) and (II) – Historical Pricing

The Commission has proposed that EGS Disclosure Statements include:

- I. A requirement that suppliers provide a telephone number and website address where customers may obtain the previous 12 months' average monthly billed prices for that customer's rate class and utility service territory, and
- II. A statement that historical prices are not indicative of current or future prices.

As the Commission is clearly aware, historical prices are not indicative of current or future prices. NRG is concerned that requiring EGSs to provide customers with this kind of backward look on pricing creates an unrealistic and potentially false impression about what they can expect about future prices. Notably, such a disclosure in December 2013 would have in no way prepared customers for the price changes that many customers experienced in January and February 2014. As explained above, setting the proper expectations for customers (and then meeting those expectations) is essential to ensuring a positive shopping experience for consumers. The Commission's proposed changes to § 54.5(c)(2) requiring suppliers to more explicitly disclose the potential variability of their pricing is a much more useful and meaningful piece of information upon which a customer can make a decision about the product offer they choose. NRG urges the Commission to rely on that new provision rather than require suppliers to provide consumers with backward-looking information that has little value and could in fact be more confusing to consumers and make their shopping decision more difficult.

To the extent the Commission retains the requirement that EGSs include historical pricing information in their Disclosure Statements, NRG respectfully requests that the Commission recognize that it is requiring EGSs to reveal confidential commercial information, and to grant some leeway in how EGSs explain the historical price information they provide to customers. NRG has no specific recommendations on changes to the propose rule language. However, as to the interpretation and application of the new rule, NRG urges the Commission not to be overly prescriptive in how EGSs are to provide this historical price information and allow suppliers to include disclaimers about the data that is posted and other marketing messages about their offers.³

Proposed Revisions to § 54.5(c)(14)(III) and (IV) – Price Change Notices

The Commission has proposed § 54.5(c)(14)(III) and (IV), which require Disclosure Statements to include:

- III. Information regarding when the customer will be made aware of each price change, and
- IV. Notice to customers of a rate increase of more than 50% over the prior billing cycle as soon as the EGS becomes aware that such an increase will occur. . .

³ For example, EGSs should be free to explain that historical average prices may not be representative of a customer's actual prices, and the customer should refer to his/her current contract for information about how his/her specific prices may vary. Similarly, EGSs should be permitted to include links on their websites where average monthly historical pricing is posted for their fixed price offers.

To be clear, NRG agrees with and supports the Commission's efforts to provide consumers with additional information in EGS Disclosure Statements and Notices on Contract Renewal Change in Terms. However, NRG is particularly concerned with the provisions of § 54.5(c)(14)(III) in that, in an effort to better inform consumers, the proposed rules may be overly burdensome to both EGSs and to customers, may be ineffective, and may impede, rather than foster, retail competition – an outcome that is contrary to the Commission's stated goal of creating a more robust, sustainable competitive retail market.

It is important to understand that suppliers need to adjust their variable prices from time to time to account for changes in underlying competitive conditions, as well as wholesale market and other costs. These changes generally do not represent a significant impact to customers' total bills.

The proposed new rule at § 54.5(c)(14)(III), which requires the EGSs Disclosure Statement to indicate when customers be made aware of each price change should be modified to acknowledge that:

- some price changes benefit consumers,
- due to the competitive pressures of the retail market, variable price changes are generally infrequent and/or modest in amount; the extreme pricing pursued by one or two suppliers this winter (which is the impetus for these revised rules) is an aberration and likely to be an unsuccessful business model,
- such a requirement will increase prices to customers as suppliers include the additional costs associated with monthly notices into their pricing,
- many, if not most, suppliers act responsibly in managing their response to such extreme weather events by absorbing the brunt of unexpected cost increases and then recovering those costs over time through modest price increases to their customers, and
- adopting regulations aimed at solving a once in 20 year weather event and/or the acts of one or two irresponsible suppliers will only impede the development of a properly functioning competitive retail market to the detriment of consumers.

For these reasons, NRG urges the Commission not to require that EGSs inundate customers with notices that, under normal circumstances (i.e., most of the time) will not be meaningful or helpful to consumers. In fact, should the proposed rule be implemented and EGSs begin sending what could be monthly

notices to their customers, customers will very quickly realize (after receiving just a few of these notices) that they can ignore them.

NRG recommends that (14)(III) be modified to apply only if (14)(IV) is triggered. Such a requirement will encourage EGSs to include provisions in their Disclosure Statements that limit the month-to-month variability of their prices (so as to avoid additional notice requirements). NRG supports the provisions of (14)(IV) as a reasonable way to ensure that customers are alerted to substantial price changes prior to them going into effect.

Alternatively, if the Commission determines that it wants to provide even stronger encouragement to EGSs to voluntarily limit the variability of their variable price products, NRG recommends that the Commission modify § 54.5(c)(14)(III) to :

- Eliminate the notice requirement for price changes that benefit a customer (i.e., price decreases), and
- Create an exception to the notice rule for EGSs who's Disclosure Statements include reasonable caps on variable prices, e.g., a 30% month over month cap. Such an exception should apply to both variable price Disclosure Statements and fixed price that renew to variable price Disclosure Statements. If a customer affirmatively consents to either a variable price offer or a fixed price offer that includes variable price renewal terms, and that includes a reasonable (30%) monthly cap on any variable price increase, the EGS should be exempted from the requirement to notify that customer of any price changes that fall within the cap to which the customer affirmatively agreed. For any price changes greater than the stated capped amount, the EGS should be required send the customer a notice – i.e., comply with § 54.5(c)(14)(III).

Proposed Addition of § 54.10. NOTICE OF CONTRACT RENEWAL OR CHANGE IN TERMS

NRG fully supports the Commission's proposal to include what were previously *Interim Guidelines* regarding the provision of contract renewal notices and notices for a change in the terms of a Disclosure Statement in the codified rules.⁴ Incorporating these requirements as rules ensures that all EGSs are aware of and obligated to comply with these important consumer protection rules. That said, NRG urges the Commission to make two modifications to this section.

⁴ *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service*, order entered March 8, 2001 at Docket No. M-0001437 (*Interim Guidelines*).

First, NRG recommends that the Commission include an additional rule directing the EDCs to make space on the consolidated utility bill for a contract expiration notice, and to also require that EGSs, in the two billing cycles preceding a contract expiration, send to the EDC through the established Electronic Data Interchange (EDI) system, the date of the customer's impending contract expiration. The EDC should be directed to include the expiration date on customer bills for the two months prior to contract the expiration as follows:

"Your contract with <EGS Name> will expire on <Date>. Please contact <EGS Name> at <EGS Phone #> for more information."

This notice should be printed in a space that is separate from the space currently provided to EGSs for marketing purposes and should not be counted against the space set aside for EGS marketing messages.

Customers need to be informed of, and pay attention to, contract expiration dates. The anecdotal evidence from the extreme weather events in January suggests that customers are not paying enough attention to the renewal notices they receive from their EGSs. NRG recommends that the Commission adopt rules aimed at increasing the visibility of these important reminders. The monthly bill from the EDC would be an effective place to add messaging about contract expiration dates.

Second, and for all the reasons articulated above in regard to the price change notices proposed in § 54.5(c)(14)(III) and (IV), NRG strongly urges the Commission to modify the proposed provisions of § 54.10 (A)(2) (II) (A), which stipulates that if a customer does not respond to a Notice of Contract Renewal or Change In Terms and is converted to a month-to-month contract, that "any subsequent changes in pricing shall be provided to the customer at least 30 days prior to that new price being charged."

NRG recommends that the Commission modify § 54.10 (A)(2) (II) (A) to :

- Eliminate the notice requirement for price changes that benefit a customer (i.e., price decreases), and
- Create an exception to the notice rule for EGSs who's Disclosure Statements include reasonable caps on variable prices, e.g., a 30% month over month cap. If a customer affirmatively consents to a fixed price offer that includes variable price renewal terms which include a reasonable (30%) month over month cap on any variable price increase, the EGS should be exempted from

the requirement to notify customers of any price changes that fall within the cap to which the customer affirmatively agreed. For any price changes greater than the stated capped amount, the EGS should be required send the customer a notice. Creating such an exception to this 30 day notice requirement will provide a very strong incentive to EGSs to voluntarily limit the variability of their variable price products.

Contract Summary

NRG supports the concept embodied in the contract summary template provided in the Secretarial Letter as Attachment A. However, NRG is concerned the template is too long, includes some information that may be confusing, and does not use plain English to describe the key elements. In addition, NRG encourages the Commission to consider combining the Contract Summary with the Commission's Disclosure Statement Template that is provided to all suppliers seeking an EGS license. NRG has attached a redline of Attachment A with some suggestions for modification for the Commission's consideration.

Miscellaneous

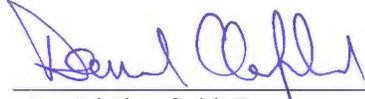
Throughout the proposed rule, the Commission makes reference to a FIXED TERM CONTRACT. NRG was unable to locate a definition of this term in the Commission's Dictionary of Terms or within the definitions embedded in § 54. In contrast, the Commission has adopted a definition for a Fixed Price in relation to different pricing terms that could be included in a Disclosure Statement. NRG recommends that the proposed rule either define a Fixed Term Contract, or that it be revised to use a defined term that is consistent with how price terms are communicated to customers.

Conclusion

NRG commends the Commission for its efforts to better inform consumers by clarifying the disclosure rules. A well-informed customer is *the* most powerful consumer protection authority. Variable price products can offer lower prices and provide savings opportunities for those customers who are equipped to manage the price volatility associated with these products. But variable price products are not for all consumers. Many customers prefer price stability and budget certainty. Improving the disclosure rules will help consumers decide which product best meets their needs and allow them to

switch products or suppliers if their needs should change.

Respectfully submitted,



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Date: March 24, 2014

On Behalf of :
NRG Retail Northeast

ATTACHMENT A

Electric Generation Supplier Contract Summary

<u>Your</u> Electric Generation Supplier <u>Information</u>	Name, telephone number, website, etc. Plain language statement that EGS is responsible for generation charges.
<u>Length of Your Price Structure Commitment</u>	Fixed or variable. Months/Billing Cycles or Month-to-Month. Renewal terms to describe treatment of customer at expiration of Fixed Price Term. Timing of notices. If variable, based on what? If variable, how often is the rate expected to vary? If variable, any applicable ranges/ceilings. If no ranges/ceilings, a plain language statement indicating as such. If variable, describe when the customer will receive notification of price changes in relation to time of month, final monthly meter read, billing cycle, or when the price takes effect.
Generation/Supply Price <u>for Your Electricity</u>	\$/kWh or ¢/kWh. <u>Fixed/Variable/Introductory.</u> If variable rate, any applicable limits on variability, if no limit, must state statement indicating as such the first billing cycle's rate. Any <u>If introductory, rate price and with length of commitment at expiration of introductory price term.</u>
<u>Statement Regarding Savings</u>	Plain language that the supply price may not always provide savings to the customer
<u>Deposit Requirements</u>	Any deposit requirements necessary for a customer and any terms associated with that deposit, in plain language.
<u>Incentives/Product Benefits</u>	Any bonuses, discounts, cashback, etc. offers and any associated terms, in plain language; Renewable Energy Content.
<u>Contract Start Date</u>	Plain language regarding start of EGS service (meter reads/billing cycles/etc.)
<u>Contract Term/Length</u>	In months, billing cycles, etc.
<u>Cancellation/Early Termination</u> <u>Applicable Fees</u>	Cancellation fee: Yes or no. If yes, describe the amount of the fee and how to avoid that fee, if possible. Other fees: yes/no.
<u>Renewal Terms</u>	Treatment of customer at end of contract. Timing of notices. No cancellation/early termination fees. In plain language.
<u>Your</u> Electric Distribution Company <u>Information</u>	Name, telephone number, website, etc. Plain language statement that EDC is responsible for distribution charges, as well as any emergencies/outages/etc. In plain language.

NRG supports the addition of a Contract Summary table to highlight key terms for customers as a quick and easy summary of the most important terms. To facilitate customer understanding, NRG recommends that some of the information provided in the summary table be re-ordered and clarified. In addition, NRG recommends that some of the information be deleted or retained in the full Disclosure Statement document that outlines the full terms and conditions of the product, as it is either less useful to the customer's decision making process, may be confusing, or may require additional lengthy explanation to fully explain the provisions to customers. NRG offers the following recommendations and explanations of the redline changes proposed above:

Contract Term should be combined with **Renewal Terms**, relabeled as **Length of Your Commitment**, and moved to the top of the summary table so that it is more prominent.

Generation Supply Price should be relabeled to **Your Electricity Price**. Instructions should be clarified to require an EGS to stipulate whether the price is Fixed, Variable, or Introductory in keeping with the Commission's recently revised definitions for these three pricing terms. In addition, variable price offers should include an indication of any limits to variability including if there are none. Similarly, introductory price offers should include an indication of the pricing at the expiration of the introductory price period.

Price Structure should be deleted. Some of the detail included in this section is more appropriately placed in the Your Electricity Price section (e.g., indication of limits on price variability), while other details that require more explanation should be included in the main body of the Disclosure Statement (basis for price calculation, expected frequency of price changes, frequency and manner of notifications for unlimited price variability).

Statement Regarding Savings should be eliminated. Requiring such a statement as part of the product summary perpetuates the focus on price as the only attribute of value and discounts the many value-added products and services, including fixed price offers, which offer enormous value to customers, but which may have a higher price than the PTC. That being said, NRG has no objection to the Commission requiring that suppliers make a clear statement elsewhere in their Disclosure statement about how the price may be higher or lower than the EDCs Price to Compare.

Deposit Requirements should be eliminated. NRG questions the relevance of this requirement as a key contract term for two key reasons. First, in a POR environment, where suppliers are prohibited from refusing service to customers based on credit, the likelihood that EGSs are charging deposits is extremely low. Second, there are currently no rules applicable to EGSs which govern an EGSs ability to collect deposits. If and when Supplier Consolidated Billing is implemented (which NRG strongly supports), then requiring Deposit Requirements information to be included as a key term for the contract summary makes sense. Until that time, this information seems fairly useless and will only serve to confuse customers.

Incentives should be re-labeled as **Product Benefits** where suppliers can be instructed to describe not only any bonuses and discounts that may be available from the offer, but they can also use the space to highlight other beneficial attributes of the offer, such as the renewable energy content of the offer.

Contract Start Date should be eliminated. An EGSs ability to provide a specific start date at the time the EGS is providing the Disclosure Statement to the customer is severely limited due to the fact that the EDC determines the date a switch request will be processed based on 1) a customer's next meter read cycle and 2) the timing of the submission of the switch request (which currently must happen 20 days

prior to the next meter read cycle in order to be processed on the next meter read cycle. Even with the adoption of the Commissions proposed expedited switching rules, the best a supplier will be able to do is provide a customer with a service start date that is on or about 7 days after the date of the customer's acceptance of the offer (i.e., 1 day to submit switch request + 3 days for rescission hold +3 days for EDC to effectuate the switch) and could be longer if a customer authorizes a switch for a later date. EGSs will not definitively know the exact date of the switch until they receive an enrollment confirm from the EDC, which happens after the EGS has provided the Disclosure Statement – and accompanying Summary Table – to the customer.

Cancellation/Early Termination Fee should be relabeled as **Applicable Fees** and include both an indication of a cancellation fee and an amount, as well as any other applicable fees that may be included.