

STEVENS & LEE
LAWYERS & CONSULTANTS

17 North Second Street
16th Floor
Harrisburg, PA 17101
(717) 234-1090 Fax (717) 234-1099
www.stevenslee.com

Direct Dial: (717) 255-7365
Email: mag@stevenslee.com
Direct Fax: (610) 988-0852

March 24, 2014

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

**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 Regarding the Provision of Notices of Contract Renewals or
Changes in Terms
Docket No. L-2014-2409385**

Dear Secretary Chiavetta:

Enclosed for filing are the Comments of Washington Gas Energy Services, Inc. in the
above-captioned matter.

If you have any questions, please do not hesitate to contact me. Thank you.

Best Regards,

STEVENS & LEE



Michael A. Gruin

Encl.

Philadelphia • Reading • Valley Forge • Lehigh Valley • Harrisburg • Lancaster • Scranton
• Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

A PROFESSIONAL CORPORATION

**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 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
Washington Gas Energy Services Inc.**

As invited by the Secretarial Letter of March 19, 2014 in the captioned docket, Washington Gas Energy Services, Inc. (“WGES”) hereby submits comments on the proposed revisions to 52 Pa. Code Section 54.5 “Disclosure statement for residential and small business customers” that the Commission will promulgate in a rulemaking the implementation of which will be required within 30 days of publication in the *Pennsylvania Bulletin*, absent good cause shown.

The Commission in the letter indicates that the goal of the proposed rule changes is to make disclosure statements “more understandable and useful to consumers, especially in the context of variable-priced products.” New Section 54.5(c)(10) would require all EGSs to provide consumers with whom they contract a one-page Contract Summary in a template provided by the Commission. New Section 54.10 codifies, with modifications, existing contract renewal terms with new notice requirements that are intended to make notices to consumers more prominent and to provide consumers with more timely information on with regard to their options when their supply contracts expire or terms are revised.

The Commission explains that the proposed revised rules are due to the impact this winter of wholesale electricity market price increases on consumers and a concern that similar events could again occur. Accordingly, the Commission has determined that the public interest requires the “extraordinary measures” to be taken with the expedited adoption of the revised rules. The Commission asks for comments on the proposed rule changes, the practicality of implementing the changes within 30 days of their effective date and the costs of doing so.

WGES urges the Commission to conduct a careful and diligent review of the proposed disclosure statement rule changes to assure that all implications are properly analyzed and understood. Existing disclosure statement rules in 52 Pa. Code § 54.5 and subsequent Interim Guidelines issued by the Commission were adopted after much time and effort, and further changes should be deliberately considered. By its Order entered on March 4, 2014 “Review of Rules, Policies, and Consumer Education Measures Regarding Variable Rate Retail Electric Products” the Commission has instituted a parallel proceeding in Docket M-2014-2406134 to consider variable pricing issues including disclosures and notices and has listed questions on those issues to which it seeks comments which are due on April 3, 2014. WGES sees that proceeding as the appropriate proceeding to consider the disclosure statement changes proposed in this Secretarial Letter. WGES is submitting comments in that proceeding that will provide a more comprehensive treatment of its views on disclosure and notice rule changes in the broader context of other rule changes.

With respect to the particular changes proposed for 52 Pa. Code § 54.5 including new § 54.10 in this Secretarial Letter, WGES offers the following comments and observations.

Existing § 54.5 (c) (2) (ii) provides that if a contract between an EGS and a consumer includes a “variable pricing statement,” the contract must disclose the conditions of variability and the limits on price variability. New clause § 54.5 (c) (2) (ii) (A) would add that “if there is a limit on price variability, such as a specific price cap, 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.” The new clause adds nothing beyond what is already required by § 54.5 (c) (2) (ii) and is thus unnecessary.

New clause § 54.5 (c) (2) (ii) (B) requires that if there is no limit on price variability in a contract, the EGS must clearly and conspicuously state that fact in the contract. WGES support this revision as a reasonable addition to the current regulations.

New clause § 54.5 (c) (2) (ii) (III) requires that the price for the first billing cycle of generation service must be stated in the contract. This provision should not be adopted as it would limit the types of variable price products that EGSs could develop and offer. While WGES, and likely many other EGSs, do provide customers with the rate for the first billing month when the customer initially contracts for service, it is not clear that such a requirement is consistent with all variable pricing models. For example, a variable price product with a pass through of real-time energy prices would not be consistent with the proposed requirement.

The modification to § 54.5 (c) (10) to add “limits on price variability” to the stated explanation requirement would be redundant with § 54.5 (c) (2) (ii) (B) if the latter provision is added to the regulations. As noted, WGES supports the latter provision, namely that EGSs should disclose in the contract if there are no limits on price variability. To require, in addition, that a full explanation of limits on price variability be included in large type font could dilute the conspicuousness of the items the proposed provision seeks to highlight.

§ 54.5 (c) (14) adds a number of new requirements for contracts with variable pricing. First, § 54.5 (c) (14) (I) requires a telephone number (which is not necessarily a problem) and an internet address at which a customer may obtain the previous 12 months' average monthly billed prices for that customer's rate class. If the EGS has not been providing generation service to the customer class for the prior 12 months, the average monthly bill prices for the months available should be provided. The defect in this new provision is that it does not make clear what average an EGS must publish since the term "Rate Class" is not meaningful in competitive supply markets; nor is the term defined in § 54. If by "Rate Class" the Commission were to mean EDC rate class for distribution service purposes, then the "average" could include customers with both fixed and variable prices. In general, while WGES does carry historical information on its variable prices on its website and while customers calling its call center could be apprised of this information, WGES does not believe that the form, content and distribution of this information should be the subject of regulation.

§ 54.5 (c) (14) (II) would require a statement that historical pricing is not indicative of present or future pricing. This requirement goes to the heart of why historical pricing information should not be required by regulation – it simply is not indicative of future pricing. As such it may be interesting information for a customer to be given, but the EGS bears the responsibility for how to present historical pricing information to the customer. Prescriptive requirements, however, for such a disclosure will falsely lead customers to perceive that the information is somehow relevant. This is exactly the same concern that would attend historical reporting of default service rates by utilities.

§ 54.5 (c) (14) (III) provides that an EGS must provide information regarding when a customer with a variable pricing contract will be made aware of each pricing change. Such a requirement, if it could be implemented at all, would more properly be an element of disclosure in a contract document. It should not be ancillary information provided to a customer along with a communication about historical rates.

§ 54.5 (c) (14) (IV) 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 of when the increase will occur, either by electronic communication if a customer so chooses or by direct mail. WGES submits that this provision is a completely impractical and inappropriate new requirement to impose on EGSs. The 50% figure is arbitrary, and certainly the Commission would not want to be perceived as sanctioning that this level of month-to-month increase is inherently reasonable. As noted above, depending on the variable pricing product model, there may be no advance notice of higher billing rates. Additionally, the term “as soon as the EGS becomes aware ...” creates uncertainty for EGSs in their development of compliance procedures and in providing customers with reliable enforcement. In fact, there is no particular action that can flow from this notice.

WGES did elect to contact its variable price residential customers in Pennsylvania by direct mail and email during this past winter’s pricing events, and offered customers pricing options, but the timing and nature of such communications are better left to suppliers to determine. WGES’s efforts could have been complicated and reduced in their effectiveness by a prescriptive regulation (e.g. WGES “phased” the mailing of letters to assure that its call center could handle the increased number of inbound phone calls and to mesh with customer meter reading and billing cycles).

The Commission proposes to revise the wording of § 54.5 (g). WGES believes the revision is acceptable. The rewording recognizes that the “last three bills” language of the current provision is not consistent with utility consolidated billing. WGES informs its customers of contract changes by separate communication as a matter of practice. Proposed new § 54.5 (I) would require each EGS to provide a separate contract summary in a format designated by the Commission along with its disclosure statement. WGES submits that this requirement is unnecessary and would burden EGSs with additional costs to provide “plain language” information that is already part of the disclosure statement. Each line item in the required contract summary format refers to information already that must be in the contract. For example, “Electric Generation Supplier Information” is simply customer contact information required by § 54.5 (c) (11); “Price Structure” repeats the price variability description specified by § 54.5 (c) (2); and “Generation/Supply Price” is simply the required by § 54.5 (a).

Proposed new § 54.10 incorporates a mark-up of existing § 54.5 (g), to codify provisions that exist under various versions of Interim Guidelines from prior Commission Orders, and new language developed by the Commission to address its current concerns. In the five days allotted to us to comment, WGES has not been able to fully comprehend the interplay of these various requirements and changes to requirements. WGES, again, urges the Commission to adopt a more thorough review of these issues, and not to rush to implement these changes. Significant EGS compliance processes and documents are built upon the regulations and guidelines that exist, and changes must be carefully considered. Moreover, as written, § 54.10 significantly lacks clarity and contains inconsistencies. WGES needs more time to assess the associated cost and required timeframe to implement the additional requirement of including an Electric Generation Supplier Contract Summary along with the Disclosure Statement to its current

enrollment and renewal process. For example, there are numerous platforms and materials that would need to be updated including website pages, renewal correspondences, and field sales materials. WGES is uncertain at this time if it could make necessary updates within 30 days of a Commission Order.

In sum, WGES urges the Commission to conduct a careful and diligent review of the proposed disclosure statement rule changes as part of the parallel proceeding it has instituted in Docket M-2014-2406134 in which it has sought comments on a broader range of variable pricing issues which include disclosures and notices. That proceeding should provide the Commission with a more appropriate record to consider the disclosure statement changes proposed in this Secretarial Letter.

Respectfully Submitted,

Harry A. Warren, Jr.
President
Washington Gas Energy Services, Inc.
13865 Sunrise Valley Drive
Suite 200
Herndon, VA 20171-4661
703-793-7500