



800 North Third Street, Suite 205, Harrisburg, Pennsylvania 17102
Telephone (717) 901-0600 • Fax (717) 901-0611 • www.energypa.org

March 25, 2014

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

**Re: Proposed Rulemaking: Standards For Changing A Customer's Electricity
Generation Supplier, Docket L-2014-2409383**

Dear Secretary Chiavetta:

Enclosed for filing please find the comments of the Energy Association of Pennsylvania to the Commission's Proposed Rulemaking at the above-referenced docket.

Sincerely,

A handwritten signature in blue ink that reads "Terrance J. Fitzpatrick".

Terrance J. Fitzpatrick
President & CEO

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Rulemaking: Standards For Changing
A Customer's Electricity Generation Supplier

L-2014-2409383

**Comments of the
Energy Association of Pennsylvania**

I. Introduction

On March 18, 2014, the Commission issued a Secretarial Letter and proposed regulations¹ in the above-captioned proceeding. The Secretarial Letter was addressed to jurisdictional electric distribution companies (EDCs), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and the Energy Association of Pennsylvania (EAP). The Secretarial Letter noted recent wholesale electricity market price increases and the impact on Pennsylvania consumers, and expressed concern that similar events in the wholesale market could occur again in the immediate future. To address this situation, the proposed regulations would mandate that EDCs accelerate the process for switching customers to a different supplier so that switches were made in three (3) days or less. The Secretarial Letter stated that EDCs would have six months to comply with this requirement, absent good cause shown, and that cost recovery would be addressed in the EDC's next base rate case.

¹ This is not a "proposed rulemaking" as that term is normally used since the Commission intends to issue "final-omitted regulations" as explained below.

Procedurally, the Secretarial Letter stated the Commission's determination that the public interest required extraordinary measures to be taken, and that the Commission would issue "final-omitted regulations" – regulations that omit the steps of issuing a notice of proposed rulemaking and reviewing public comments prior to issuing final rules. See, 45 P.S. Sec. 1204 (3), 71 P.S. Sec. 745.3 (definition of "final-omitted regulation"). However, despite omitting these formal steps in the rulemaking process, the Secretarial Letter stated that due to the nature of the changes made by the regulations, the Commission would allow the entities most affected to provide comments on the regulations within seven (7) days of the date of the Letter.

II. Background

The Commission has been considering adoption of policies regarding accelerated switching for some time. In the Electric Retail Market Investigation (RMI), the Commission entered an Order in October 2012 that contained guidelines shortening the ten day confirmation process designed to protect against "slamming" to a five day process.² The Commission also directed its staff to initiate a rulemaking to review and revise the switching process, including consideration of using advanced metering and "possible interim switching procedures" to facilitate off cycle switching.³

In its Final Order in the RMI,⁴ entered in February 2013, the Commission announced its intention to initiate the rulemaking on accelerated switching by the end of

² *Interim Guidelines Regarding Standards for Changing a Customer's Electricity Generation Supplier*, Docket No. M-2011-2270442 (Order entered October 24, 2012).

³ Off cycle switching is switching that is not driven by an EDC's billing cycle and scheduled meter read dates, so that a customer's bill could include charges from more than one supplier.

⁴ *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, I-2011-2237952 (Order entered Feb. 15, 2013).

2013. The Commission stated that this rulemaking would allow the Commission to make:

...fully informed decisions on the complex issues involved. The use of a formal rulemaking should also help clarify any cost-recovery issues. Because the resulting costs will flow as a result of a final Commission order and regulatory requirements, cost recovery for these changes should be handled the same as any costs a utility incurs as a result of a Commission mandate.⁵

On March 4, 2014, after the problem of EGS variable rate products came to light due to price spikes in the PJM wholesale markets in January 2014, the Commission entered an Order initiating a review of rules and policies regarding variable rate products.⁶ In that Order, the Commission identified accelerated switching as one possible response to the problem of customers facing unexpectedly high bills resulting from variable rates, and it focused specifically on accelerating the switching process by use of advanced metering and automated meter reading. The Commission asked two questions in this regard:

For daily recorded and automatic meter reading capable electric utilities

- Under current plans, when will mid-cycle EGS switches be implemented?
- How much can these plans be accelerated, and at what additional cost?

Comments on this Order are due on April 3, 2014.

III. Comments

- A. The Commission should revise the regulations attached to the Secretarial Letter to be consistent with its previous policy pronouncements and consider an EDC's stage of deployment of advanced metering, provide a reasonable period for

⁵ Final Order, pp. 72-73. Presumably, this last sentence meant that such costs could be recovered by EDCs on a full and current basis, since that type of recovery has been allowed for other costs resulting from Commission mandates, such as costs for consumer education. *See, Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Order entered March 2, 2012), p. 11.

⁶ *Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products*, Docket No. M-2014-2406134 (Order entered March 4, 2014).

implementation of billing system changes, and provide full and current recovery of implementation costs.

It is clear from a review of the accelerated switching regulations that accompanied the Secretarial Letter that they depart abruptly from the course previously set out by the Commission in its Orders in the RMI, and also from the direction it appeared to be contemplating in its Order entered earlier this month initiating a review of policies concerning variable rate products. For the reasons that follow, EAP respectfully submits that the Commission should revise the regulations to be consistent with its prior course set forth in the RMI.

Prior to release of the regulations accompanying the Secretarial Letter, the Commission had recognized the complexity of accelerated switching and the importance of considering the status of EDCs' metering and billing system capabilities. The Commission had also been open to timely EDC recovery of the costs of implementing accelerated switching. In contrast, the regulations accompanying the Secretarial Letter mandate a switching deadline of three days and the Secretarial Letter states that EDCs will have six months to implement this new mandate, absent good cause shown. This mandate and implementation schedule is being imposed without consideration of an EDC's schedule (approved by the Commission) for deploying advanced meters, without a factual foundation to support whether and how it can be achieved, without considering the impact of this new mandate on EDC billing systems and on other changes being implemented to these systems, without knowing what it will cost, and without considering whether the implementation costs will outweigh the benefits to be achieved. The Secretarial Letter also states that cost recovery would be

addressed in the EDC's next rate case, which is tantamount to deciding that timely recovery of implementation costs would not be allowed.

EAP respectfully submits that this change of direction on accelerated switching is not justified as a means to address problems stemming from EGS variable rate products. To the extent that customers remain on these pricing plans and could face higher bills during summer peak usage periods, when there is some risk that wholesale electricity prices will increase, there is time to educate customers so that they can switch to a more appropriate product before the summer. Moreover, the pronouncement in the Secretarial Letter that timely cost recovery would not be allowed is especially problematic given that the steps necessary to comply with the stringent switching deadline and implementation period will likely entail greater implementation costs than previously considered.

Finally, in determining whether the circumstances justify the policies in the regulations, the Commission should consider that all retail choice states except Texas currently use on-cycle switching.⁷ Texas differs from Pennsylvania in that advanced metering is deployed throughout the areas of Texas that allow for retail choice. In addition, the regional transmission organization (RTO) serving Texas, the Electric Reliability Council of Texas (ERCOT), is located wholly within Texas, which facilitates greater alignment of wholesale and retail market policies. Finally, electricity suppliers provide bills to customers in Texas. This is not to suggest that accelerated switching should not be considered, but more time is necessary to explore whether these

⁷ This statement is based upon a review of commission websites and marketing materials in other retail choice states, including Ohio, New York, Maryland, Massachusetts, and Illinois, among others.

differences have an impact on whether or how to implement accelerated switching in Pennsylvania.

B. The circumstances surrounding EGS variable rate products do not constitute good cause for eliminating the statutory notice and comment procedures.

The Secretarial Letter states that the possibility of wholesale electricity price increases and the impact on consumers in the immediate future justifies “extraordinary measures” – eliminating steps in the process for promulgating legally-binding regulations to accelerate the switching process. EAP respectfully disagrees with this assertion.

First, accelerating the switching process is an indirect and “second best” approach to addressing the problem of unexpectedly high bills from EGSs for customers on variable price products. It is logical to assume that the price increases of this winter have alerted customers on this type of EGS pricing plan to the potential risks of variable rates, and the Commission has also taken a number of steps to inform customers about EGS variable price products. These customers have ample time between now and the summer to switch to different pricing plans, either with their current supplier, or with a new one. In addition, the Commission is considering regulations that would provide greater oversight and customer education regarding these pricing plans.

To the extent that customers remain on EGS variable rate pricing plans despite the information about their risks, accelerating the switching process is at best a partial solution. The events of this winter demonstrated that customers on these plans don’t know what price they will pay each month until after the fact. Accordingly, by the time customers seek to switch suppliers, they have already incurred a high bill. At that point,

switching the customer to a new supplier will only benefit the customer if unusually high wholesale market prices persist for another month. Furthermore, the high wholesale market prices that affect a variable rate product are also likely to affect to some degree any fixed price product the customer considers in the competitive retail market, and unlike the variable **rate** product, these impacts would be locked in for the length of the contract.

Second, in determining whether “good cause” exists for expediting final rules by eliminating the usual procedures, consideration should also be given to the increased danger of “getting it wrong” by eliminating procedural safeguards. The background and circumstances surrounding the accelerated switching regulations illustrate this point. The Commission has veered from its previous policy direction on accelerated switching without waiting for the additional information it requested in its Order initiating a review of variable price products, and has not provided an adequate explanation for why this abrupt action was necessary.

The “final-omitted regulation” approach has been used sparingly by administrative agencies in Pennsylvania, which shows a sensitivity to the benefit of providing the public with a meaningful opportunity to comment, and to requiring agencies to carefully consider these comments. In the present case, the public interest would be better served by adhering to the standard rulemaking process to consider the complex issues regarding accelerated switching.

IV. Conclusion

For the reasons set forth above, EAP respectfully requests that the Commission issue a proposed rulemaking rather than final-omitted regulations, and that the

proposed rules follow the course set out in the Final Order in the Electric Retail Market Investigation.

Respectfully submitted,



Terrance J. Fitzpatrick
President & CEO
tfitzpatrick@energypa.org



Donna M. J. Clark
Vice President & General Counsel
dclark@energypa.org

Energy Association of Pennsylvania
800 North Third Street, Suite 205
Harrisburg, PA 17102

Date: March 25, 2014