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April 3, 2014

**Via Electronic Filing**

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

Re: Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate  
Retail Electric Products – Docket no. M-2014-2406134

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Retail Energy Supply Associations' ("RESA")  
Comments to Order Entered March 4, 2014 with regard to the above-referenced matter. Copies  
to be served in accordance with the attached Certificate of Service.

Sincerely,

A handwritten signature in cursive script that reads "Deanne M. O'Dell/lw".

Deanne M. O'Dell

DMO/lww  
Enclosure

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Review of Rules, Policies and Consumer :  
Education Measures Regarding Variable : Docket No. M-2014-2406134  
Rate Retail Electric Products :

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**COMMENTS OF  
THE RETAIL ENERGY SUPPLY ASSOCIATION  
TO ORDER ENTERED MARCH 4, 2014**

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Date: April 3, 2014

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## I. INTRODUCTION

At its February 20, 2014 public meeting, the Commission announced its intention to open an investigation “to examine current rules, policies and consumer education measures regarding variable rate retail electric products.” Since that announcement, the Commission has taken the following interrelated steps:

- By Secretarial Letter dated February 21, 2014, the Commission requested copies of residential disclosure statements for variable-priced products in effect from December 1, 2013 to February 20, 2014;
- By Order entered March 4, 2014, the Commission formally opened this proceeding and invited comments regarding a specific list of questions;<sup>1</sup>
- By Secretarial Letter dated March 18, 2014, the Commission sought comments on proposed regulations to accelerate switching time frames through off-cycle meter reads in a fashion that will permit customers to switch suppliers within five (5) days or less;<sup>2</sup>
- By Secretarial Letter dated March 19, 2014, the Commission sought comment on proposed regulations intended to make customer disclosure statements more understandable and useful to customers, especially in the context of variable-priced products;<sup>3</sup> and,
- By Secretarial Letter dated March 24, 2014, Commission Staff requested that EGSs provide information about the total number of residential accounts served through fixed and variable rates from December 2013 through March 2014.<sup>4</sup>

The Retail Energy Supply Association (“RESA”),<sup>5</sup> a trade association of electric generation suppliers (“EGSs”), appreciates this opportunity to provide input and understands the

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<sup>1</sup> *Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate retail Electric Products*, Docket No. M-2014-2406134, Order entered March 4, 2014.

<sup>2</sup> *Proposed Rulemaking: Standards for Changing a Customer’s Electricity Generation Supplier*, Docket No. L-2014-2409383, Secretarial Letter issued March 18, 2014.

<sup>3</sup> *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service; Amendment re: Supplier Contract Renewal/Change Notices*, Docket No. M-2010-219286, Order entered September 23, 2010, Appendix A.

<sup>4</sup> *Re: Retail Choice Activity Report*, Docket No. L-00070184, Secretarial Letter dated March 24, 2014.

critical importance that substantive, practical, fair and workable consumer protection and marketing practices play in creating a robust and sustainable competitive market that provides value-added products and services to customers. To that end, RESA welcomes the opportunity to provide input in this proceeding. Below RESA provides suggestions regarding the specific advance notice, use of historical pricing and accelerated switching questions set forth in the Commission's order. In addition, RESA supports enforceable, universal applicability of all new disclosure, marketing, and product structure regulations and recommends that once the Commission has finalized its foundational guidance in this proceeding as well as the other related proceedings, that it conduct a training session with the goal of providing details about its expectations.

## **II. RESPONSES TO QUESTIONS REGARDING TYPES OF VARIABLE-PRICED CONTRACTS**

RESA supports the Commission's identification of two subcategories of variable-priced contracts and, based on the nature of the specific subcategory, to identify the appropriate requirements for customer disclosure. This is consistent with RESA's recommendations at docket number L-2014-2409385.<sup>6</sup> The Commission's identification of "Variable-Priced Contracts Without Explicit Formulaic Pricing Parameters" equates with RESA's "Non-Indexed

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<sup>5</sup> RESA's members include: AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

<sup>6</sup> *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, RESA Comments at 2-3, dated March 24, 2014.

Products.” Similarly, the Commission’s identification of “Variable-Priced Contracts With Explicit Formulaic Pricing Parameters” equates with RESA’s “Indexed Products.” As explained in RESA’s comments at docket number L-2014-2409385, these two subcategories have very different characteristics that warrant different required disclosures. Further input regarding these two subcategories in the context of the Commission’s questions in this docket are provided below.

**A. For Variable-Priced Contracts Without Explicit Formulaic Pricing Parameters (“Non-Indexed Products”)**

1. **Should EGSs be required to provide advance notice of price changes to customers?**
2. **Should the advance notice requirement be waived for minor contract price changes, within certain bounds? If so, what bounds are appropriate?**
3. **If advance notice is required, how far in advance of the meter read date should notice be provided and how can this notice be provided?**
4. **Do variable rate contracts without explicit pricing parameters provide consumers with the information needed to make informed decisions? If not, what is the remedy?**

These four questions generally focus on providing customers with appropriate advance notice of future price changes for Non-Indexed Products. Future price changes for Non-Indexed Products are not as transparent to the customer because they are calculated based on the sole discretion of the EGS. These products may also contain limits on the variability of future price changes which should be taken into consideration when determining the appropriate customer disclosure that should be required.

Starting with question number four, customer disclosure statements making clear that future price changes are within the sole discretion of the EGS and may change without limit in subsequent months, should provide sufficient notice about the nature of the product.

As for the three remaining questions regarding advance notices of price changes, there are several issues that need to be balanced against the value of requiring the notices. First, there are significant costs in mailing notices to customers. Requirements that only permit paper mailings and require them to occur as frequently as monthly will be very costly and burdensome to EGSs. If the requirements are too costly, there is a real possibility that EGSs could choose not to offer the products triggering the requirements thus removing them from the market as a competitive option. In addition, customers who have become accustomed to electronic notices and have communicated that preference to the EGS at the time of contract formation may miss these notices sent via direct mail. It is important to permit a customer's preferences to dictate the manner in which this information is communicated to him or her to best ensure that the customer understands when and how to expect it and knows the importance of reviewing the notices once they are received.

For these reasons, RESA urges that the Commission permit EGSs flexibility regarding the manner of any notices that it may ultimately choose to require. With the customer's consent, such options should include: (1) email notices; (2) text messaging of information; (3) making the information available through a toll-free telephone number; (4) making the information available on a supplier's website; and/or (5) providing the information in the EGS's messaging space on the EDC consolidated bill.

Second, the timing of the notices is also important. Wholesale prices can change quickly and advance notice of the effective price before the delivery period is operationally difficult. Moreover, if a lengthy notice period is required before the supplier can change a price, then the supplier is being delayed the ability to timely recoup those increased costs. In such case, suppliers will need to factor this into their pricing and may choose to include increased risk

premiums into the pricing to account for these types of delays. The end result could be contract prices that are higher than may otherwise be necessary in an attempt to predict something that may or may not occur. While RESA recognizes that a longer notice period prior to the price change might enable the customer to switch to another supplier prior to the price change, the Commission has expressed its commitment to accelerating the current switching process. RESA supports that effort and has offered substantial suggestions at docket number L-2014-2409383 on how to achieve that goal. For these reasons, RESA urges the Commission not to establish a lengthy notice period prior to implementing price changes based on today's switching timeframe – which is subject to change in the future – based on the difficulties it presents suppliers and, ultimately, the prices offered to customers. RESA suggests that a fifteen (15) day notice period to customers prior to a price increase would be reasonable.

Finally, RESA supports guidelines regarding when the notice requirements would be triggered. As the Commission recognized in its proposed regulations at docket number L-2014-2409385, the conditions of variability may be limited by: (1) a maximum percentage increase; or, (2) minimum/maximum charges per kilowatt-hour during the term of the contract.<sup>7</sup> In the proposed regulations, the Commission would require advance notice of a rate increase of more than 50% over the prior billing cycle as soon as the EGS becomes aware that such increase will occur.<sup>8</sup> RESA supports this recommendation and also recommends that the Commission limit any required notice to price increases (as opposed to both increases and decreases). While

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<sup>7</sup> *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, Annex A (“Annex A”), Proposed 54.5(c)(11)(A).*

<sup>8</sup> Annex A, Proposed 52 Pa Code § 54.5(c)(14)(iv).

suppliers may choose to notify customers of price decreases, that decision should be left to the discretion of the supplier rather than creating another regulatory requirement.

**B. For Variable-Priced Contracts With Explicit Formulaic Pricing Parameters (“Indexed Products”)**

1. **Should EGSs be required to provide a historical pricing history for this formulaic rate structure?**
2. **If so, how many months should be provided, and where should this information be provided so as to be available to all participating customers?**
3. **Should EGSs describe specifically how future formulaic prices are determined?**

Future price changes for Indexed Products are more transparent to the customer because they are based on a pre-defined pricing formula or publicly available market indices. Therefore, focusing on ensuring that the customer has the appropriate information to understand the pricing of these Indexed Products is appropriate. Thus, in response to question number three, RESA supports information on the disclosure statement which provides the formula to the customer or the market indices used to determine the price. The customer’s understanding can also be enhanced through the messaging provided by the EGS in its marketing of the product.

As for questions number one and two, RESA understands the Commission’s view that historical pricing information may provide some general guidance for these customers but cautions that the real value of this information should be balanced with the costs of providing it to determine what type of disclosure is appropriate. The Commission correctly recognized in docket number L-2014-2409385 that historical pricing is not indicative of present or future pricing.<sup>9</sup> Therefore, providing this information could create a false sense of comfort to a customer that the future price will not deviate any more significantly. Moreover, depending on

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<sup>9</sup> Annex A, proposed 52 Pa Code § 54.5(c)(14)(ii).

how the EGS is required to calculate and present this data, significant operational costs could be involved. For example, a straight 12-month look back for a similarly situated customer based on meter read date would require an EGS to daily recalculate this data. This is because customers have different meter read dates throughout the month and the EGS may offer a significant number of variable rates calculated differently all of which would need to be recalculated regularly to provide a true similarly situated customer 12-month historical pricing. There are also costs to be considered regarding the method by which a supplier would be required to provide this information to customers.

For these reasons, RESA recommends that any requirement regarding historical pricing information: (1) be limited to Indexed Products; (2) allow EGSs flexibility in calculating this information (i.e. an average historical look of several similar variable products based on the most recent 12-months); and, (3) permit EGSs to provide the information outside the disclosure statements (i.e. a toll-free number or on the website).

### **III. COMMENTS REGARDING ACCELERATED SWITCHING**

In its Order, the Commission asks three questions for daily recorded and automatic meter reading capable EDCs regarding: (1) when mid-cycle EGS switches can be implemented; (2) how much can these plans be accelerated; and, (3) what additional cost would be involved. RESA supports the Commission's efforts to accelerate the switching timeframe and supports off-cycle switches. As explained in its comments at docket number L-2014-2409383, RESA does not believe that full smart meter deployment is necessary to allow switches to take effect on a date other than a regularly scheduled meter read date because consumption data can be pro-rated for a particular billing period in order to effectuate an off-cycle switch. EDCs can pro-rate metered usage for a particular service period between two suppliers based on the number of days the customer is served by each EGS. Similarly EDCs can apply pro rata rationing to load profile

usage for PJM settlement purposes. While RESA acknowledges that EDC and EGS billing, meter data management, RTO/ISO settlement and other back office systems would require modification to permit such a change,<sup>10</sup> permitting EDCs the ability to pro-rate usage is a viable way to address the issue of permitting off-cycle switches to shorten the overall switching timeframe. While permitting off-cycle switches would be a significant step forward to accelerate the switching process, if the EDCs seek any attempt to impose on suppliers the costs of implementing such off-cycle switching could offset the benefits to customers which the Commission is seeking to achieve.

#### **IV. CLEAR GUIDANCE REGARDING THE COMMISSION'S EXPECTATIONS IS IN THE PUBLIC INTEREST**

RESA supports the Commission's on-going efforts to ensure that customers are informed about the nature of their supplier contracts through the disclosure statements and other supplier required notices regarding contract expiration or a change in contract terms. RESA also supports comprehensively ensuring that this type of clarity exists in all customer-facing presentations. This is critically important because marketing a product in a way that is inconsistent with the required disclosures in the disclosure statement will only lead to customer confusion and misunderstanding. The public interest is served when customers have confidence that they accurately understand the terms and conditions of the product they are purchasing. This confidence is built when all suppliers have a clear understanding of the Commission's expectations and ensure that all customer communications are aligned with these expectations. While RESA is not suggesting that the Commission take overly prescriptive actions that will

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<sup>10</sup> For example, EGSs retail contracts and hedging practices currently assume that switches can only take place on a meter read date. EGS hedging practices and retail contracts may need to be modified to address off-cycle switches and an appropriate transition period would be warranted to allow for the evolution in these practices.

stifle competitive innovation or the ability of EGSs to differentiate their products from those of competitors because consumers benefit from a vast array of competitive products, by ensuring that all new disclosure, marketing, and product structure regulations are enforceable and universally applicable, the Commission will be creating a strong environment for healthy competition to occur.

For these reasons, RESA recommends that once the Commission has finalized its foundational guidance in this proceeding as well as the other related proceedings, that it conduct a training session similar to the one that was conducted on June 20, 2013 after the sales and marketing regulations became effective. In this training, the Commission can provide details about its expectations so that all market players are clear. RESA would also recommend that the direction provided by the Commission as a result of this process be made broadly available to all suppliers so that those who do not participate are still adequately informed about the Commission's expectations. Consumers will benefit when all stakeholders have a clear understanding of the expectations of the Commission.

## V. CONCLUSION

RESA appreciates this opportunity to provide its viewpoint regarding this important proceeding.

Respectfully submitted,



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