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April 3, 2014

VIA ELECTRONIC FILING

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

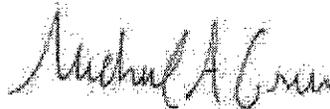
**Re: Review of Rules, Policies and Consumer Education Measures Regarding Variable
Rate Retail Electric Products
Docket No. M-2014-2406134**

Dear Secretary Chiavetta:

Enclosed for 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

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A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Review of Rules, Policies and Consumer
Education Measures Regarding Variable
Rate Retail Electric Products**

M-2014-2406134

**COMMENTS OF
WASHINGTON GAS ENERGY SERVICES, INC.**

Washington Gas Energy Services, Inc. (WGES) hereby submits comments pursuant to the Commission Order that became effective March 4, 2014 in the above referenced matter (Order). In that Order the Commission determined, based upon the number and character of consumer complaints raising substantive issues concerning variable rate retail electric products, that it would "open a proceeding to examine the rules, policies and consumer education materials relating to variable priced retail electric products and request that interested stakeholders respond to the information requests." In the Order the Commission listed a number of questions that it asked interested stakeholders to address. WGES provides these comments in response to the Commission's requests for information.

I. OVERVIEW COMMENTS

WGES suggests that among the Commission's recently opened dockets, this docket is most appropriate in both its scope and its process for considering modifications to rules and policies relating to variable priced products. In comments recently filed in Docket No. L-2014-2409383 and Docket No. L-2014-2409385, WGES noted the Commission's sense of urgency created by recent pricing conditions in wholesale electricity markets associated with the extreme winter weather, but urged,

and continues to urge in this filing, the Commission to conduct a careful and diligent review of any changes to competitive market regulations to assure that all implications are properly analyzed and understood. The current competitive market rules in Pennsylvania are the product of a tremendous amount of effort, careful analysis and thought. Changes to those rules should be the product of equal deliberation. The weather conditions that drove extreme price spikes in PJM power markets in January and February should not be expected to repeat themselves barring similar weather extremes next winter, so time is not of the essence in quickly crafting new rules.

WGES also suggests that the Commission pursue an appropriate evaluation of supply and pricing in wholesale natural gas markets and in the PJM power market to address the concerns of customers and all market participants about the events of recent months. To a substantial extent EGSs are merely the messengers of extreme pricing in wholesale markets that impact customers with variable price contracts. While adjustments to retail market rules may have benefits, such adjustments will not address the root causes of price volatility in wholesale markets.

WGES also urges the Commission to include in its investigation a review of opportunities to improve regulations that support an EGS's ability to offer fixed-price contracts to customers. For example, Interim Guideline II(d) adopted by Order issued September 23, 2010 in Dockets M2010-2195286 and M-0001437 discourages the broader offering of fixed-price contracts to residential customers by prohibiting early termination fee provisions of evergreen contracts to carry forward without additional written consent.¹ Early cancellation fees are commercially reasonable contract terms

¹ *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service; Amendment re: Supplier Contract Renewal/Change Notices,*

that recognize the mutual commitment that customers and suppliers share in fixed-price contracts for commodities with volatile prices. The Commission should note that this prohibition is not in place in other jurisdictions in which WGES provides services. In addition, rules that bar EGSs from placing early cancellation fees on utility bills that final bill a supplier's customer should be revised.

With respect to the detailed questions presented in this Docket, as well as the questions posed in the two related dockets referenced above, WGES suggests that the Commission should proceed very cautiously and not promulgate overly prescriptive rules. For instance, as WGES indicated in its Comments in Docket L2014-2409385:

“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).”

WGES also suggests that the Commission should take care not to foster contract terms and utility processes that encourage overly-frequent switching by customers. The Commission should seek to create an environment where customers interested in price stability are directed to fixed price contracts rather than mandating constant price monitoring and encouraging frequent switching.

Docket Nos. M-2010-2195286 and M-0001437 (Order entered September 23, 2010) sets forth rules that state if a customer does not respond to a renewal notice for an expiring fixed term contract, the contract may be converted to a month-to-month contract, either on the same terms and conditions or on revised terms and conditions, as long as the contract is converted to a month-to-month contract and contains no cancellation fees. Alternatively, if the customer does not respond to the notice, the fixed term contract may be converted to another fixed term contract as long as the new contract contains a provision that allows the customer to cancel at any time for any reason with no cancellation penalty.

The Commission should also not take any action that would void existing valid contracts between customers and EGSs. In the regulated arena, the Commission is bound to regulate prospectively and not engage in retroactive ratemaking. In competitive energy markets customer contracts with EGSs should be honored unless they run afoul of the Commission's consumer protection rules or are otherwise found to be contrary to public policy.

II. WGES' COMMENTS ON THE COMMISSION'S QUESTIONS

For Variable-Priced Contracts Without Explicit Formulaic Pricing Parameters

- **Should EGSs be required to provide advance notice of price changes to customers?**

WGES does not believe that a blanket advance notice requirement for price changes in variable-price contracts is practical or advisable. Any advance notice of price changes provided by EGSs should depend on the type of pricing and particular contract terms.

If the contract between the EGS and the customer, for example, is based on daily spot market prices and other cost components as they occur during a billing cycle, then advance notice of pricing would be impractical. While this type of pricing arrangement can lead to volatile month-to-month pricing, it has been and likely will remain a commercially reasonable pricing option that the Commission would not want to preclude. If, alternatively, the contract indicates that it will specify prices in advance, then notice should be consistent with such a commitment.

The type of advance notice by an EGS can also be dictated by switching rules. When an EGS presents a price to customers for a future period, there comes a point in time when the EGS needs to feel confident that customers have accepted that pricing

so the EGS can hedge its commitment. Current switching rules and time frames create expectations regarding when that point in time is reached. Altering switching protocols to allow customers to leave more or less continuously will likely cause an EGS to raise prices to cover the risk associated with its inability to hedge its positions.²

- **Should the advance notice requirement be waived for minor contract price changes, within a certain bounds? If so, what bounds are appropriate?**

For the reasons stated above, WGES does not believe that a blanket advance notice requirement for price changes is practical or advisable. Notice of contract prices should follow contract terms. Other mechanisms are available to the Commission to protect customers including but not limited to requiring EGSs to provide clear explanations of the choices they offer to customers. With clear information customers can decide what risks they are willing to bear.

- **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?**

See the answer to the prior question.

- **Do variable rate contracts without explicit pricing parameters provide consumers with the information needed to make informed decisions? If not, what is the remedy?**

WGES submits that the events of the past few months have served as a dramatic reminder of the potential volatility of energy markets and the effects that volatility can have. Declining prices for natural gas and electricity since Pennsylvania residential customer choice began expanding dramatically in 2009 may have created a false sense of security with respect to variable prices for even the most sophisticated energy buyers

² *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service; Amendment re: Supplier Contract Renewal/Change Notices*, Docket Nos. M-2010-2195286 and M-0001437 (Order entered September 23, 2010) already contain rules for providing multiple notices to customers prior to the expiration of fixed term agreements.

– and sellers.

WGES supports a discussion of enhanced customer disclosures relating to pricing methods and parameters. WGES does not support, however, restricting the types of pricing that can be offered, but rather encourages the Commission to help assure the maximum opportunity for customers to understand their contracts and be educated about their alternatives.

For Variable-Priced Contracts With Explicit Formulaic Pricing Parameters

- **Should EGSs be required to provide a historical pricing history for this formulaic rate structure?**

A regulation requiring EGSs to provide historical pricing is not necessary. Some companies such as WGES may choose to provide that information but we are careful to explain that this information is not predictive of future prices. A regulatory requirement to disclose historical prices in a particular way can give consumers the false impression that regulators deem that information important to understanding future prices, disclaimers notwithstanding. While EGSs should be at liberty to provide historical information and explain it and disclaim it appropriately, a Commission mandate could color the data with an importance and relevance that is misleading.

- **If so, how many months should be provided, and where should this information be provided so as to be available to all participating customers?**

As noted above, publishing historical pricing should not be required. The EGS should be responsible for providing any such information and for disclosing or explaining its relevance. The Commission may want to adopt language for EGSs that choose to provide historical data to make clear that this historical data is not a predictor of future prices.

- **Should EGSs describe specifically how future formulaic prices are determined?**

It seems inherent in the notion of a “formulaic price” that its operation could be explained with some specificity. The existing regulations governing the proper disclosure of pricing information should be adequate to address this issue.

For Daily Recorded and Automatic Meter Reading Capable Electric Utilities

- **Under current plans, when will mid-cycle EGS switches be implemented?**

WGES suggests that the timing for any such change must respect not only what will be required of utilities but of EGSs as well. In that regard, WGES suggests that at least 90 days are needed from the time new utility protocols can be tested to when EGSs would be ready to interface with them.

On the general issue of the attractiveness of mid-cycle switches, WGES submits that the capability of advanced metering infrastructure should be used. Generally, customers find it frustrating that their supply decisions sometimes are not made effective for well over a month while suspension periods and meter reading cycles transpire. Shortening the timeframe would increase customer satisfaction. That said, switching timeframes should allow for adequate and appropriate communications between customer, utility and EGSs as provided for in current regulations. It is not the time between customer contract signing and validation of their decision that should be shortened, but rather the wait for the next meter reading cycle that could be shortened. But as WGES points out in its comments in Docket L-2014-2409383, the potentially very large implications of off cycle switches for billing systems needs to be carefully evaluated.

- **How much can these plans be accelerated, and at what additional cost?**

Again, there should be deliberate, not overly-accelerated changes in enrollment, switching and drop processes. This investigation provides an opportunity for the Commission to make needed changes that will withstand future market tests.

For Electric Generation Suppliers Who Offer Variable Priced Products

- **Please provide copies of Customer Disclosure Statements for variable priced products provided through contracts in effect for service rendered for the period December 1, 2013 through February 20, 2014.**

WGES has provided copies of its Customer Disclosure Statements and contracts for variable priced products for the period December 1, 2013 through February 20, 2014 on February 28, 2014.

In summary, WGES urges the Commission to conduct a careful and diligent review of any proposed changes to rules, policies and consumer education materials relating to variable priced retail electric products. WGES suggests that a working group may facilitate the development of rules that meet customer concerns while addressing the legitimate industry need for flexibility to meet market demands.

Respectfully Submitted,

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