

COMMONWEALTH OF PENNSYLVANIA



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February 2, 2015

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17101

RE: Investigation of Pennsylvania's Retail
Natural Gas Supply Market
Docket No. I-2013-2381742

Dear Secretary Chiavetta:

Enclosed for filing please find the Office of Consumer Advocate's Comments regarding Natural Gas Supplier Disclosure Requirements and Natural Gas Supplier Access to Customer Account Numbers, in the above-referenced proceeding.

If you have any questions, please feel free to contact me at the number listed above.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Amy E. Hirkis".

Amy E. Hirkis
Assistant Consumer Advocate
PA Attorney I.D. # 310094

Enclosure

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation of Pennsylvania's Retail :
Natural Gas Supply Market : Docket No. I-2013-2381742

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

NATURAL GAS SUPPLIER DISCLOSURE REQUIREMENTS

NATURAL GAS SUPPLIER ACCESS TO CUSTOMER ACCOUNT NUMBERS

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Dated: February 2, 2015

I. INTRODUCTION

On December 18, 2014, the Pennsylvania Public Utility Commission (Commission) entered its Final Order in the Investigation of Pennsylvania's Retail Natural Gas Supply Market (Investigation). Investigation of Pennsylvania's Retail Natural Gas Supply Market, Docket No. I-2013-2381742 (Final Order entered December 18, 2014) (Final Order). The Commission initiated this Investigation to assess the current state of retail natural gas competition and to identify certain steps that the Commission should consider taking in order to help promote the development of competition in the retail markets for natural gas supply in the Commonwealth. The Office of Consumer Advocate (OCA) filed Comments in this Investigation on October 14, 2014 and December 12, 2013. In its Final Order, the Commission set forth its priorities and outlined its next steps, which includes establishing working groups and its intent to propose regulations on specific issues. The Final Order solicited comments on the issues that may be the subject of proposed regulations.

These Comments are submitted to address the two issues identified for comment within 30 days of the publication of the Commission's Final Order. The first issue concerns specific recommendations that should be applicable to disclosures by Natural Gas Suppliers (NGSs) with regard to their oral and written representations to residential and small commercial customers. The second issue relates to protections that should be applicable to the Commission's decision that NGSs can obtain access to a customer's account number from the Natural Gas Distribution Company (NGDC) under certain circumstances. The OCA Comments are organized to respond specifically to these two important areas regarding consumer protections.

II. COMMENTS

A. Disclosure Requirements

The OCA welcomes the Commission's determination that enhancement of NGS disclosures is a "high priority." Final Order at 38. Full and understandable disclosure of the terms and conditions of service is necessary to the proper operation of a retail market and for the protection of consumers. The Final Order states that the Commission will use these comments to frame the issues in a Notice of Proposed Rulemaking Order that will be issued in early 2015. Final Order at 39. Below in section II.A.1, the OCA provides comments to the topics identified by the Commission in the Final Order. The Final Order also invited parties to comment on any aspect of the supplier disclosure regulations at 52 Pa. Code Section 62.75 and on the newly revised electric disclosure regulations for application to the natural gas industry, as well as any other related issues. Final Order at 40.

The OCA offers the following comments and recommendations to be considered for inclusion in the Notice of Proposed Rulemaking Order. These comments reflect not only the existing provisions applicable to EGSs, but the OCA's experience in responding to consumer complaints with regard to their experiences with EGSs and with NGSs. In general, the OCA recommends that, at a minimum, the Commission impose the same disclosure requirements on NGSs that are applicable to EGSs. It would not be reasonable for residential consumers to experience different disclosures of the material terms of their agreements with NGSs as compared to EGSs. Furthermore, a number of suppliers offer both electric and natural gas service during the same marketing calls and door to door presentations to Pennsylvania residential consumers. Therefore, it would be reasonable from both the customer and the supplier perspective to, at a minimum, require the same disclosures and disclosure obligations for both services. In the OCA's view, a set of regulations that requires the most complete,

accurate and understandable disclosure that allows consumers to make a fully informed choice should be developed for both EGSs and NGSs.¹

As set forth in the OCA's Comments regarding the electric disclosure regulations², the OCA believes that the disclosure regulations must be revised to require that consumers are provided with full information regarding the product being marketed. Full, complete and accurate disclosure statements serve as an important consumer protection, as consumers rely on these disclosures to understand the product that they are selecting. It is important for consumers to trust that a supplier's disclosure statement contains any and all information that they should know before choosing such product. Without this trust, consumers will not have the confidence to engage in the retail market for either natural gas or electric generation supply. The OCA submits that the disclosure standards recently adopted in the electric industry have not gone far enough to adequately inform consumers of critical information about the products, particularly when choosing variable rate products. In these Comments, the OCA will repeat recommendations made in its Comments submitted to the Commission's Order in Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products at Docket No. M-2014-24061134 that have not yet been considered or adopted that the OCA believes are relevant to the natural gas industry and should be adopted in the natural gas industry as well as the electric industry. The OCA submits that at a minimum, the disclosure

¹ The Natural Gas Choice and Competition Act requires that the Commission establish requirements, by order or regulation, that NGDCs and NGSs provide "accurate customer information to enable retail gas consumers to make informed choices regarding the purchase of all natural gas services offered by that provider." 66 Pa.C.S. § 2206(c). Such information is required to be provided to retail gas consumers "in an understandable format that enables retail gas customers to compare prices and services on a uniform basis". *Id.*

² The OCA submitted Comments in the Commission's rulemaking proceeding regarding disclosure requirements at Docket No. L-2014-2409385 (Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 and to Add Section 54.10 Regarding Contract Renewal Provisions). The OCA also submitted Comments to the Commission's Order in Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products at Docket No. M-2014-24061134 (March 4, 2014).

requirements in the natural gas industry should be revised to include any heightened disclosure requirements in the electric industry, but urges the Commission to use this opportunity to enhance the natural gas disclosure requirements to include additional consumer protections.

1. Responses to Commission Identified Topics.

- a. Enhanced disclosure concerning variable prices; explanation and disclosure of any limits or caps; explicit statement if no limit to price increases.

The disclosure regulations in the electric industry, which became effective July 14, 2014, require the EGSs to identify a “ceiling price” only if the EGS has promised such a ceiling price in the terms and conditions of its agreement. See 52 Pa. Code § 62.75(c)(2)(ii). As set forth in the OCA’s Comments regarding electric disclosure regulations, the OCA recommends, and continues to recommend, that all disclosure statements for variable price products should include a statement that identifies a ceiling price.

If, however, the Commission allows there to be no price limit, the OCA submits that a specific statement that there is no price limit should be required, as is now required in the electric industry. The OCA submits that this information should be clearly disclosed to residential consumers in plain understandable language and the disclosure should explain what this means to the consumer. Most consumers do not understand the unpredictability or pricing methodologies of the wholesale market. When an NGS markets a variable price product to residential consumers, the lack of knowledge and understanding of that market has an unfair impact on the “bargain” that is being presented. The OCA continues to question whether consumers are ever able to make a knowing agreement with such limited information. The OCA submits that additional consumer education and disclosures can aid a customer in better evaluating the product being offered by a NGS. In this case, NGSs should be required to identify

a ceiling price for variable price products in a conspicuous manner in their disclosure statements. But, if the NGS does not adopt any ceiling price (if this is permitted), the NGS should affirmatively state, “There is no limit on how high the price can be increased under this agreement.” These additional disclosures will better ensure that residential consumers can make a more informed decision.

In addition, the OCA recommends that 52 Pa. Code Section 62.75(c)(10) should be revised to require that NGSs provide an explanation of the limits on price variability, printed in type size larger than the type size appearing in the terms of service but no less than 12 points. The OCA also recommends that the Commission should emphasize in any new regulations that it would be a violation of its regulations for any NGS or its agent to make statements about the terms of service that conflict with the required disclosures and terms as written.

In regard to NGSs providing an explanation to consumers of the limits on price variability, the OCA objects to any disclosure of a pricing methodology that merely references the “wholesale market” or other vague and unidentified pricing methodology. Rather, the NGS should be required to explicitly provide information that the consumer can publicly review to assess the price charged each month. The OCA recommends that the Commission make this an explicit requirement that is needed to comply with the current regulations at 52 Pa. Code Section 62.75(c)(2)(i) that requires that variable price agreements explain the “Conditions of variability (state on what basis prices will vary) including the NGS’s specific prescribed variable pricing methodology.” 52 Pa. Code Section 62.75(c)(2)(i).

- b. The price charged for the first billing period (a “starting price” if the price is variable).

Residential consumers need information about the relationship between the price for the initial month and the following months under plans that have an introductory rate. It is not

uncommon for sales agents to emphasize the initial month's price in selling the product and provide no specific price for months following the introductory period. Therefore, the OCA submits that the Commission should adopt more detailed regulations with regard to this issue.

If the "starting" price is introductory, the OCA recommends that the disclosure statement should state that the price is the introductory price, the length of the introductory period, and the price for the first month after the introductory period. If a price has not been set for the first month after the introductory period, the disclosure statement should explicitly explain how the price will be established at the conclusion of the introductory period. The disclosure statement should also explicitly state that the price to be charged after the introductory price has expired may be higher than the introductory rate, and when the new price will be provided to the consumer. In the OCA's view, these changes are necessary to more clearly communicate to consumers the nature of the price offer.

- c. The provision of historical pricing information for variable products. If so- how much history and how should it be made available to consumers?

The OCA supports a requirement that NGSs provide a historical presentation of prices that it has charged Pennsylvania consumers in the consumer's rate class and service territory. NGSs should affirmatively state that a 12-month history of prices charged to similar consumers in Pennsylvania for the applicable NGDC is available via its website or by calling a toll free telephone number. The agent selling the NGS's product should have this information available to provide to any prospective consumer upon request whether the sale is being marketed via telemarketing or in-person. Furthermore, in order for this historical pricing information to be most useful to consumers, this information should also include the highest and lowest price charged for the consumer's rate class and service territory over the last 60-month time frame.

The OCA also agrees that any such presentation should include a statement that this presentation of historical prices is not a guarantee of future prices

- d. The use of a contract summary that includes, in a simple, easy-to-read format the key contract provisions. If so, what format is needed and what provisions should be included – keeping in mind that a summary, to be effective, has to be brief, in plain language, and prominent?

In a Secretarial Letter issued March 19, 2014, in Docket No. L-2014-2409385, the Commission required that EGSs prepare and present a Contract Summary to consumers with the following information as set forth in Attachment A of that Secretarial Letter. The OCA suggests that the Commission adopt a similar disclosure obligation for NGSs. The comments below show in redline format certain changes that the OCA recommends for NGSs:

<p>Natural Gas Electric Generation Supplier Information</p>	<p><i>Name, telephone number, website, etc.</i></p> <p><i>Plain language statement that ENGS is responsible for for natural gas supply generation charges and that the NGS charges will replace the PTC identified on the customer's bill or the NGS charges of the customer's prior Supplier.</i></p>
<p>Price Structure</p>	<p><i>Fixed or variable. If variable, based on what? If variable, how often is the rate expected to vary? If variable, give any applicable ranges/ceilings. If no ranges/ceilings, a plain language statement that there is no limit to the price that can be charged under this agreement. indicating this fact. If variable, describe when the customer will receive notification</i></p>

	<p><i>of price changes in relation to time of month, final monthly meter read, billing cycle or when the price takes effect.</i></p> <p><u><i>A statement of the highest and lowest price charged by the NGS to this customer class served by this NGDC over the past 60 months.</i></u></p> <p><u><i>A statement that the customer can see the NGS's previous 12 months variable prices charged to Pennsylvania customers at its website or via a toll free telephone number and that previous prices are not a guarantee of future prices.</i></u></p>
<p><u>Generation/Natural Gas Supply Price</u></p>	<p><u><i>Cents per therm, ccf or Mcf \$/kWh or ¢/kWh. If variable rate, the first billing cycle's rate. Any introductory rate must be so identified and state the rate that will be in effect following any introductory or promotional rate with length of term. If the price has not been set for the first month after the introductory period, a statement on how the rate will be established, whether or not it is a variable rate, when the rate will be provided to the consumer and state that the rate may be higher than the introductory rate.</i></u></p>
<p><u>Statement Regarding Savings</u></p>	<p><u><i>Any statement about savings must be reflected in the terms of service. Where no savings are promised, the NGS shall state Plain language that the supply price may not always provide savings to the customer compared to the PTC.</i></u></p>

Deposit Requirements	<i>Any deposit requirements necessary for a customer and any terms associated with that deposit, in plain language.</i>
Incentives	<i>A statement whether incentives or bonuses are included and the criteria for obtaining any incentive or bonus. Any bonuses, discounts, cashback, etc. offers and any associated terms, in plain language.</i>
Contract Start Date	<i>Plain language regarding start of <u>NEGS</u> service (meter reads/billing cycles/etc.)</i>
Contract Term/Length	<i>In months, billing cycles, etc.</i>
Cancellation/Early Termination Fees	<i>Yes or no. If yes, describe the amount of the fee and how to avoid that fee, if possible.</i>
Renewal Terms	<i>Treatment of customer at end of contract. Timing of notices. No cancellation/early termination fees. In plain language.</i>
Natural Gas Electric Distribution Company Information	<i>Name, telephone number, website, etc. Plain language statement that <u>the customer's natural gas utility</u> EDC is responsible for distribution charges, as well as any emergencies/outages/etc.</i>

Further, the OCA would endorse the development of a uniform disclosure statement for variable rate plans.

- e. What changes, if any, are needed to contract expiration notices and the rules that should apply if a consumer fails to respond to the notices? Please refer specifically to 52 Pa. Code § 62.75(g)(1) and (2). Are additional rules needed for those consumers that are rolled onto variable-priced products upon expiration of their

original contract similar to what is now in place for the electric industry, such as prior notice of price changes?

It is the OCA's position with respect to policies applicable to renewal notices, that the regulations should be revised to specifically prohibit NGSs from converting a consumer with a fixed rate plan to a variable rate plan without the consumer affirmatively consenting to switch to the variable rate service. Allowing this type of material change to terms without affirmative consumer consent is unreasonable and exposes consumers to significant risk. Variable rate plans include the assumption of significant risk by the consumer that can only be accepted through full disclosure and knowing acceptance. The practice of placing consumers on variable rate plans without their affirmative consent is not supported by the current retail market design or, in the OCA's view, the Commission's regulations. The OCA submits that 52 Pa. Code Section 62.75(g)(2) permits placing a consumer with a fixed-term agreement who does not respond to a renewal notice on another fixed term agreement that can be cancelled by the consumer without any cancellation fee on a month-to-month basis, but does not permit switching a consumer with a fixed price to a variable price agreement. If the NGS does not wish to serve the consumer with a fixed price, the NGS should return the consumer to default service.

The OCA submits that these notification requirements and procedures regarding renewal and changes in terms and conditions of service for consumers who fail to affirmatively respond to such notices are now adopted in 52 Pa. Code Section 54.10 for the electric industry. The OCA, however, endorses adopting for the gas industry the more clearly defined requirements set forth in Section 54.10 that provides that consumers who do not respond to a renewal notice and are placed on month-to-month agreements be provided 30-day advance notice of any price changes. If any changes are made to the disclosure requirements for the gas industry, the OCA

submits that the current protections provided by 52 Pa. Code Section 62.75(g) remain and be clarified as in Section 54.10 for the electric industry.

2. Additional OCA Recommendations.

In addition to the issues raised by the Commission with respect to improving NGS disclosures, the OCA offers the following additional recommendations for inclusion in the impending Notice of Proposed Rulemaking.

- a. Revised disclosure statements should be sent to all existing NGS customers on variable rate plans.

While the revised disclosure statements will be of significant assistance to new consumers after reforms are adopted, the Commission should consider requiring NGSs to issue new Disclosure Statements and Contract Summaries to their current consumers to set forth the terms of their current agreement and pricing plans. This will enhance the education of consumers about their current plans and pricing terms and allow a more informed decision when the consumers considers the terms of their current plan as compared to others offered by NGSs in the retail market.

- b. Advanced notification of price changes should be considered.

As stated above, the OCA believes that the disclosure regulations must be revised to require suppliers to provide consumers with complete information regarding their products. The OCA remains concerned that consumers on variable price plans do not know the price they will be charged before they use the energy. Such a pricing approach does not allow the consumer to respond to price signals or conserve to save on his or her energy costs. In the OCA's view, the price to be charged should be known before the consumer uses the energy. This should be so even if the product is a variable price product. The OCA recommended in its comments regarding revisions to the disclosures in the electric industry that suppliers should be required to

notify consumers with variable price products of any price change before the new prices take effect. The OCA urges the Commission to adopt this recommendation. Unless consumers are provided with advance notice of the new price to be charged, consumers will continue to receive unanticipated high bills, as was the case for many consumers in the beginning of 2014 that had variable price products for their electric supply.³

Consumers should receive notice of the price change with enough time to switch plans or suppliers before the new rate is charged, otherwise the consumer will not have any opportunity to take action to avoid high bills, either through usage reduction or by changing their supplier. In the natural gas industry, it takes between 15 and 45 days to switch suppliers. Thus, the OCA recommends that NGSs be required to provide notice of a price change at least 45 days in advance the change taking effect. The rate change notice should include the date when the new rate will take effect, be communicated in the consumer's chosen medium, and include the telephone number or internet address where a consumer can get information about their plan or make a change to their plan. There are a variety of means to achieve this important objective, including offering consumers the option of receiving this information via robo calls, text message, and emails.

B. Account Number Access Mechanisms.

In the Final Order the Commission determined that NGSs should have available to them some sort of account number access mechanism, as the EGSs do in the electric industry, that would allow them to look up a customer's account number where the account number is not available from the customer. Final Order at 44-45. The Commission stated that this issue is a

³ The OCA would note that despite the Commission's efforts in the electric industry to accelerate the switching time frame to three business days, consumers can still receive unanticipated high bills that they can do nothing about since they receive no advanced notification of the price before using the electricity and incurring the charges.

priority item, and that the Office of Market Oversight (OCMO) is to provide the Commission with recommendations on this issue in the first quarter of 2015. Final Order at 44, 47. The Commission sought comments on several implementation issues and invited parties to raise any other related issues in the comments, which OCMO will review and consider in its recommendations to the Commission. The OCA appreciates the opportunity to comment on this issue and provides the following responses to the Commission's specific questions presented in the Final Order, as well as recommendations that the OCA offers for consideration to be included in OCMO's recommendations to the Commission.

1. Comments to Commission Directed Questions.

- a. The technological platform to be used. EDCs were directed to develop web-based portals. Is the same appropriate for the natural gas industry or are there alternatives we should consider?

The OCA submits that the technology selected should be the one that best ensures customer privacy. In the electric industry, EDCs were directed to develop secure internet portals that suppliers could access to obtain account numbers.⁴ The portals are intended to facilitate supplier marketing in public places (e.g., malls, community events, fairs, etc.) where consumers are unlikely to have their utility bill or their account number. EDCs were directed to develop portals with a variety of security features. The portals are password-protected, secure websites that require a supplier to submit the customer's full name, service street address and five-digit postal code. The mechanisms also document the supplier's attestation that the supplier is enrolling the customer in a public location and has obtained photo identification and a signed letter of authorization from the customer. The mechanism also tracks the usage of the system and identifies who accessed what data and when. This information has to be retained for three

⁴ See Final Order on EDC Customer Account Number Access Mechanism for EGSs, Docket No. M-2013-2355751, (July 17, 2013).

years and maintained in a fashion that can be easily provided to the Commission upon its request. The OCA does not see any reason to deviate from these requirements for NGDCs or NGSs.

- b. What security mechanisms should be utilized to protect consumer privacy? This includes the possible use of password-protections, and minimum customer information requirements for using the mechanism (customer's full name, service street address and five-digit postal code, etc.) The use of customer photo identification and a letter of authorization should also be addressed.

The OCA recommends that the Supplier have all the necessary personal identifying information to enroll the customer with the only exception being the customer's account number. In order to ensure, to the extent reasonably possible, that a consumer is who he or she says they are, and in order to avoid issues related to slamming, the OCA submits that NGSs must, at a minimum, provide the consumer's full name, address, and five digit postal code to match the information in the NGDC database. The NGS should also be required to verify that it has a consumer-signed letter of authorization (LOA). The OCA views such verification as a necessary requirement to ensure that consumers are not being slammed. Additionally, requiring the NGS to verify that it has a signed LOA would address the issue of NGDCs being held accountable for slamming or unauthorized NGS enrollment as the burden of proof of enrollment would rest with the NGS.

The OCA strongly recommends that the Commission take this opportunity to make it clear that any NGS who utilizes this system to obtain customer account numbers is fully accountable for any security breach, improper release of data, or any misuse of data by any of its staff, agents or contractors – no matter how far down the line. The Commission should make clear it has zero tolerance for such violations and that such violations of privacy will result in the revocation of the NGS' license.

Finally, the OCA firmly supports the Commission's statement that only a customer's account number can be accessed in such a database and that no other personal identifying information in the possession of the NGDC should be included in or released through this mechanism. Final Order at 45.

- c. Should the mechanisms only be available at public locations, not consumer homes or businesses? And if so, how should this be documented?

The OCA submits that this process should be limited to instances of selling at public venues such as malls, festivals, markets and the like. In these venues, it is usually the consumers initiating the sales contact at the time and place of the consumer's choosing and in a public setting. Because of the voluntary nature of these interactions, consumers may not feel the same pressure or intrusion that may be experienced with door-to-door or telephone marketing. Therefore, the OCA submits that the Commission should specifically limit this account number look-up procedure to marketing in public venues. The OCA submits that the location of the transaction can be documented on the LOA.

Furthermore, other marketing methods used by Suppliers, such as outbound telemarketing and door to door marketing, or customer-initiated contacts via the Supplier's website or by calling the Supplier's toll free number are typically accomplished with the customer located at his or her residence. In such situations, the customer can locate their utility bill and provide their account number to the Supplier. Allowing Suppliers and their agents to gain access to the NGDC database and obtain a customer account number to submit an enrollment order would only exacerbate the concerns about the use and misuse of this information as described above.

- d. What capabilities should be required of the mechanism to track the usage of the system and identification of users? What should the

record retention requirement for this information be – three years as in the electric industry?

The OCA submits that any access to the database should track the time, place, and identity of the individual that accesses the database and the Supplier on whose behalf this access is being sought. A three-year retention policy for this information appears appropriate.

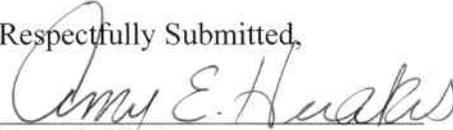
2. Additional OCA Recommendations.

In addition to the issues identified in the Final Order with respect to this initiative, the OCA would like to emphasize that the costs of any software or IT systems modifications incurred by the NGDC to implement this directive appropriately rest with the NGSs doing business in each NGDC's territory. It is not clear that most or all NGSs would even seek to make use of this customer account access. The need for this sort of transaction arises from the NGS's specific in-person marketing strategies and the implementation of this procedure will save NGSs from having to take further steps to locate the consumer's account number. It would be unfair to impose these costs on all ratepayers. Therefore, these costs of doing business are appropriately borne by the NGSs themselves who seek to make use of this option when conducting marketing campaigns in public areas.

III. CONCLUSION

The OCA appreciates the opportunity to provide Comments on the Final Order. The OCA respectfully requests that the Commission consider the OCA's comments and recommendations in any steps that the Commission takes to establish regulations and policies on these important topics. The OCA looks forward to continuing to work with the Commission and the stakeholders to develop a retail choice market where consumers are fully informed, educated and fairly treated so that they can make informed choices in the best interest of themselves and their families.

Respectfully Submitted,



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