

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Rulemaking to Amend and Add Regulations to Title 52)
Of the Pennsylvania Code, Sections 62.72, 62.75, and)
62.81 Regarding Customer Information Disclosure) Docket No. L-2015-2465942
Requirements for Natural Gas Suppliers Providing)
Natural Gas Supply to Residential and Small Business)
Customers)**

**Comments of the
National Energy Marketers Association**

The National Energy Marketers Association (NEM)¹ hereby submits comments on the Commission’s Proposed Rulemaking Order in the above-referenced proceeding that was adopted at the March 26, 2015, Public Meeting and published in the Pennsylvania Bulletin on June 6, 2015. In this proposed rulemaking the Commission is proposing modifications to existing customer information disclosure regulations at Sections 62.72 and 62.75 of Title 52 of the Pennsylvania Code as well as the addition of new regulations at Section 62.81. This proposed rulemaking stems from the Commission’s Retail Gas Market Investigation. This revision to the natural gas customer disclosure rules also follows a similar rulemaking that was concluded by the Commission on electric customer disclosure rules last year. NEM has commented extensively in both of these previous proceedings. NEM appreciates the Commission’s efforts in the instant proceeding as well as the gas RMI and electric disclosure rule proceedings to construct appropriate consumer protection rules that do not unnecessarily interfere with the functioning of the competitive retail marketplace.

¹ The National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM’s membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.

NEM offers the following recommendations on the proposed rules:

A. Presentation of Variable Pricing Information on the Disclosure Statement

1. Initial Starting Price

As was adopted for the electric industry, the Commission proposes that NGSs be required to disclose an initial starting price in the variable pricing statement, if applicable. The proposed regulations at Section 62.75(c)(2)(iv) provide that the “variable pricing statement (if applicable) shall include: The price to be charged, per billing unit, for the first billing month of service.” NEM is concerned that the requirement to include the initial starting price may not be possible to comply with for certain products that are being offered in the competitive retail natural gas marketplace. For instance, for products that utilize NYMEX-plus pricing, the initial price will likely not be known at the time the disclosure statement is provided because the NYMEX doesn’t settle until bid week at the last few days of the month. Similarly, if a competitive variable priced product is keyed off of the utility price, which changes on a quarterly basis, the NGS will not know or be able to calculate the initial starting price for a contract term beginning after the next quarterly utility price change. Sometimes the new quarterly utility price is not made public until the start of the new quarter. The disclosure requirements should not effectively foreclose NGSs from being able to offer these types of products. The Commission asked, “whether a formulaic contract price that enables a customer to calculate its bill using the contract, publicly available rates or price indices should be considered in compliance with the provision of adequate disclosure of price for the first billing cycle.” (Proposed Order at 12). NEM submits that the disclosure of a formulaic contract price, such as in the situations described above, should be sufficient to comply with a requirement to set forth an initial starting price in a variable pricing disclosure statement.

The Commission proposes to require the disclosure of an initial starting price that must be in effect for at least the first full billing *month*, not billing *cycle*. This is at variance with the electric rules which require the presentation of the initial price to be charged for the first billing *cycle* of generation service. The Commission reasoned that the first billing month is a more appropriate time period because of the impact of accelerated switching on the number of days the disclosure would be effective if keyed to the billing cycle. NEM submits that changing to a billing month construct instead of a billing cycle construct for the natural gas industry may present operational problems for suppliers and utilities and unnecessarily negatively impact the pricing structure of competitive products. In general, changing to a billing month construct will necessitate a change in billing system logic for suppliers and utilities. This costly and time-consuming change has not been justified. In particular, where the utility is rendering a consolidated bill on the supplier's behalf, supplier compliance would be difficult and would effectively require NGSs to offer a two-month introductory fixed rate, at an attendant increased risk and increased cost. It would also be difficult to calculate for the purpose of pro-rated bills. NEM submits that the experience with the electric rules and accelerated switching may be inapposite here. NEM fully supports the implementation of accelerated switching for natural gas customers. However, the Commission has not initiated the regulatory process of making such a change and the manner in which it will be implemented by the utilities, including the switching timeline, remains to be seen. It may not be prudent to make this change to require the initial starting price be in effect for the first billing month for natural gas rules in advance of the accelerated switching process and timeline having been fully vetted by stakeholders.

B. Natural Gas Supplier Contract Summary Format

The Commission proposes that a Natural Gas Supplier Contract Summary format set forth in Appendix A to the Proposed Order be required. As proposed, the Natural Gas Supplier Contract Summary is condensed in form from the electric supplier contract summary. The Natural Gas Supplier Contract Summary format would not include (differing from electric contract summary) reference to utility contact information and information on renewal/change in terms notices. The Commission believes the inclusion of such information leads to consumer confusion. NEM agrees. The Natural Gas Supplier Contract Summary format would include: NGS information; natural gas price structure; natural gas supply price; statement regarding savings; deposit requirements; incentives; contract start date; contract term/length; cancellation/ETFs; and renewal terms.

NEM has supported the adoption of a one-page contract summary in Pennsylvania and other jurisdictions as a best practice. Utilizing a one-page contract summary provides for standard disclosures to be made in a highly visible place on the contract, that is easy for the consumer to see and understand, but the unique competitive elements of supplier pricing and terms of service are not standardized or restricted. We support the Commission's proposed Natural Gas Supplier Contract Summary here, subject to the following clarification and the related clarifications included in these comments regarding presentation of the initial starting price.

The Commission requested comment on, "the usefulness of specifying a 'contract start date,' as this may often be a situation-specific matter negotiated and agreed upon by the supplier and the customer." The proposed Contract Summary format set forth in Attachment A to the Proposed Order directs that the contract start date should be expressed as, "Plain language regarding start

of NGS service.” From the foregoing it appears that the Commission is proposing that a contract start date be expressed as a generalized statement and not with reference to a specific date. NEM submits that this approach would facilitate supplier compliance. Indeed, the actual contract start date is dependent upon and determined by utility switching processes outside of supplier control. The supplier itself cannot say with certainty when the utility will effectuate the customer switch. As such, the supplier may be able to offer an approximation of the contract start date, but cannot and should not be required to include a specific date in the contract.

C. Notice of Contract Expiration or Changes in Terms for Residential and Small Business Customers

1. Timing of Provision of Initial Notice and Options Notice

The Commission is proposing a change in the timing for NGSs to provide initial notice and options notice. These notices are to be provided to customers prior to the expiration of a fixed duration contract or prior to a change in contract terms. The timing for sending these notices as set forth in the current regulations is 90 days prior for the initial notice and 60 days prior for the options notice. In new Section 62.81, it is proposed that the timing for provision of the initial notice be changed to 45 to 60 days prior to the expiration of fixed duration contract or the effective date of the proposed change in contract terms, and the timing for provision of the options notice be at least 30 days prior to expiration of a fixed duration contract or the effective date of the proposed change in terms. This would be consistent with the rules adopted by the Commission for the electric industry. NEM supports the proposal to change the timing of the initial and options notices to be unified with the electric rules. Standardization of the timing of these notices helps dual-commodity suppliers to streamline their compliance processes. It should

also reduce the need for duplicative, and perhaps confusing, notices to dual-commodity customers that NGSs serve.

2. Advance Notice of Price Change for Customers Rolled onto Variable Priced Product After Failing to Respond to Expiration Notices

The Commission additionally proposes requiring that customers rolled onto a variable priced product because of a failure to respond to expiration notices be provided with advance notice of price changes. Specifically, proposed Section 62.81(b)(2) provides that, “If a customer fails to respond to the options notice and is converted to a month-to-month contract, the NGS shall provide a disclosure statement under § 62.75 . . . [and] Notice of a subsequent change in price shall be provided to the customer at least 30 days prior to the new price being charged.” The Commission recognized that this would effectively create two classes of variable priced customers – those that affirmatively enroll in these products and do not get advance notice of price changes and those that are rolled onto these products because of a failure to respond to expiration notices and do receive advance notice of price changes. The Commission reasons that this, “is a deliberate distinction, based on the assumption that a customer who has affirmatively selected a variable product has reviewed the NGS disclosure, as well as the contract terms and conditions, and who understands and submits to any effects of a variable-price product. This is contrasted with a customer who may not have desired a variable product and ended up with one only due to failure to act on expiration notices.” NEM urges the Commission to reconsider this justification for imposing this burdensome notice requirement.

Subsequent notice requirements must be tailored to the actual variable nature of the product. Otherwise, suppliers will not be able to offer variable rate products. As the Commission is well aware, consumers are not well-served by a market that is overly reliant solely on fixed rate

products, or variable rate products. As market conditions change, different products offer different value to consumers. Overly burdensome on-going notice requirements that are not appropriately tailored to the nature of the product, variable or fixed or otherwise, will not serve consumers well because it will distort and diminish the competitive offerings that are available to them. The requirement for advance notice of price changes for variable priced products is particularly problematic because the supplier cannot forecast the market changes that would be required to provide advance notice. Rather the supplier waits until the market changes occur and the supplier incurs the cost to serve the consumers, and then uses those inputs to determine any price change to the consumer. Requiring suppliers to give advance notice of a price change for a variable price product would, in effect, cause the creation of something akin to a new two month, fixed product. This is because if the supplier is required to provide advance notice of a price change, the supplier must price in advance, which in turn requires more hedging. This increases the costs and risks of providing the product. In addition, after the supplier were to give the customer advance notice of the price, the customer would be free to leave the next day without an early termination fee, thereby compounding the supplier's risk. NEM also questions the relative value to the consumer of receiving a monthly advance notice of price change, inasmuch as after awhile the consumer will likely feel bombarded with mail thereby diluting the effectiveness of the notice.

3. Alternative Methods of Providing the Options Notice

Finally, the Commission indicated it would consider allowing NGSs to provide consumers with the second options notice using an alternative method besides first class mail. NEM recommends that if the customer has provided the NGS with an alternative means of contact besides its street address, such as an email address or cell phone number for text notifications,

the supplier should be permitted to honor the customer's expressed preference and use these alternative formats for providing the options notice. Indeed, in this electronic age, consumers may be more apt to review and respond to notices received in this format. Electronic communications are just as effective as hardcopy notifications.

D. Miscellaneous Modifications to the Disclosure Statement

1. Removing Reference to Utility Contact Information in NGS Disclosure Statements

The Commission proposes to delete the current requirements at Section 62.75(c)(9), (c)(11) and (c)(13) that NGS disclosure statements include references to utility contact information. The Commission opines that the requirement may do more to confuse consumers than to assist them. NEM agrees. Indeed, it places the NGS in the unseemly position of promoting the utility even though the utility is not a party to the underlying transaction. As such, it would seem lead to consumer misunderstanding about the nature of the relationship of the NGS and utility.

2. Directing Consumers to the PAGasSwitch Website

The Commission also proposes that customers be directed to the PAGasSwitch website instead of the current rule reference at Section 62.75(c)(12) directing customers to the Commission if they are dissatisfied with terms of service in the disclosure statement. NEM agrees that it is entirely appropriate to direct consumers to the PAGasSwitch website as a resource of first resort for consumer questions. Consumers should be encouraged to use the website as a shopping tool. Moreover, if the source of the consumer's dissatisfaction cannot be resolved in this manner, the consumer can still contact the Commission.

E. Conclusion

NEM appreciates this opportunity to provide the Commission with its comments on the proposed modifications and additions to the natural gas customer information disclosure regulations.

Sincerely,

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