



Todd S. Stewart
Office: 717 236-1300 x242
Direct: 717 703-0806
tsstewart@hmslegal.com

ATTORNEYS AT LAW

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

February 21, 2017

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

RE: Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 59 Regulations Regarding Standards For Changing a Customer's Natural Gas Supplier; Docket No. L-2016-2577413; **COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION TO ADVANCE NOTICE OF PROPOSED RULEMAKING ORDER**

Dear Secretary Chiavetta:

Enclosed is the Comments of the Retail Energy Supply Association to the above-captioned Rulemaking of the Pennsylvania Public Utility Commission.

If you have any questions concerning the enclosed Comments, please do not hesitate to contact the undersigned.

Very truly yours,

Todd S. Stewart
Counsel for
The Retail Energy Supply Association

TSS/jld
Enclosure

cc: Daniel Mumford, OCMO (via email – dmumford@pa.gov)
Matthew Hrivnak, BCS (via email – mhrivnak@pa.gov)
Kriss Brown, Law Bureau (via email - kribrown@pa.gov)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking to Amend the Provisions of 52 :
Pa. Code, Chapter 59 Regulations Regarding : Docket No. L-2016-2577413
Standards For Changing a Customer’s Natural :
Gas Supplier :

**COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION
TO ADVANCE NOTICE OF PROPOSED RULEMAKING ORDER**

At its Public Meeting of December 22, 2016, the Pennsylvania Public Utility Commission (“Commission”) issued an Advance Notice of Proposed Rulemaking (“ANOPR”) seeking comments on several proposed amendments to its regulations at 52 Pa. Code Chapter 59, regarding changes to a customer’s natural gas supplier. The ultimate purpose of the proposed amendments is to provide an improved customer experience; one that better aligns with the typical customer’s expectations. In an era where one can open a bank account with a smart phone app in less than 30 minutes, or change an electricity provider in six days, customers do not expect that it may take as much as 45 days to switch natural gas suppliers. To accomplish this end, the Commission has proposed to eliminate the five (5) day waiting period, and to accelerate switching to a three (3) business day requirement. The interplay of the rescission period and the waiting period, which run independently, can create ambiguity and more importantly, can increase switch times. The Commission also has proposed other changes geared to further ensuring that a customer’s wishes with regard to their choice of a natural gas supplier are honored. The Commission seeks comment from interested parties. The ANOPR was published in the Pennsylvania Bulletin on January 7,

2017 (47 Pa. B. 19), and comments are due 45 days later, or February 21, 2017. The Retail Energy Supply Association (“RESA”)¹ hereby offers its comments to the proposed rulemaking.

A. PROPOSED AMENDMENTS

1. Definitions, § 59.91.

The Commission is proposing to add 3 definitions to the switching regulations. These include the definition for “Current NGS”, “Selected NGS”, and “Supplier of Last Resort”. These changes make the regulations more understandable by differentiating between a current and selected supplier, to whom different requirements attach, and by making it clear that “supplier of last resort” (“SOLR”) service is not necessarily provided by the NGDC. RESA supports these modifications as being necessary and rational, given the approach to switching the Commission has proposed.

2. Customer Contacts with the NGDC, § 59.92.

The ANOPR includes two modifications to the requirements that apply when a customer contacts the NGDC directly to change suppliers. The NGDC’s role currently is limited to informing the customer that it must contact its selected supplier to change suppliers, including SOLR service. The first change, to subsection (a), would recognize that in Commission approved programs, such as standard offer programs, the NGDC can be specifically authorized to switch customers to an NGS without requiring the customer to first contact the selected NGS. RESA believes this change is helpful for such programs and supports its inclusion. The second proposed change, the addition of a subsection (b) is problematic. As the proposed change recognizes, a

¹ The viewpoints expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

customer's relationship with its current supplier is governed by that customer's contract, which may include an early termination fee ("ETF") or other conditions regarding early termination of the contract. RESA believes that creating a means for customers to switch to SOLR service without first contacting their NGS, is doing a disservice to the customer because the NGDC will not know of the contract conditions that could apply. The proposed change would only warn the customer of the possibility of an ETF.

RESA submits that customers should be empowered to make informed choices about switching, not be allowed to switch and to face any consequences blindly. Other states, notably Maryland, have recognized the advantages of customers making informed choices, and requires that the NGDC direct the customer to contact the NGS first. The NGDC is only permitted to initiate a switch after 3 days after confirming with the customer that they did contact their current supplier and ask to be switched. This process recognizes the importance of the customer first contacting its NGS. While RESA recognizes that some may complain that such a methodology is unnecessarily cumbersome, the alternative – not requiring some form of contact with the current NGS — could prove to be more problematic in the end for a variety of reasons. RESA has concerns that the proposed change will provide the NGDC with a "legitimate" means of marketing SOLR service and seeking to convince customers, who may have legitimate concerns, to simply abandon their supplier without seeking to address the concerns. RESA is not suggesting that there was not a log jam created during the polar vortex when large numbers of electric customers sought to return to default service, and the NGSs were simply overwhelmed. However, with the new faster switching timeframes presented here, those concerns should be largely addressed, and a one-time event should not be the sole basis for depriving customers of the information they need to make good choices. Accordingly, while RESA appreciates the desire to streamline the process to the

maximum extent possible, it cautions that the requirement that a customer first contact its NGS before switching to SOLR service is a necessary customer protection that should not be lightly cast away.

3. Customer Contact with NGSs, § 59.93.

The changes to subsection (1) are intended to align the rules for the natural gas industry with those in the electric industry and to streamline the switching process by making it more predictable. Under the current rules, customers are able to use the 5-day “waiting period” as a means of extending the rescission period. This happens because the rescission period commences with the customer’s receipt of the disclosure statement (52 Pa. Code § 111.11) and the 5-day waiting period that commences when the NGDC mails the confirmation letter to the customer, which can be several days after the customer has received the disclosure statement, depending on the sales channel and delivery methodology used by the NGS. These two periods overlap and have potentially differing start dates, lending ambiguity and opportunities for customers to cancel contracts beyond the three-day rescission period. Under the proposed rules, there is a single 3-day rescission period after which the supplier may notify the NGDC to initiate the switch. This change creates a more predictable process that continues to provide consumer protection via the 3-day rescission period, the confirmation letter and the enhanced anti-slammings regulations. The Commission also has proposed language that allows the supplier and customer to negotiate a switch date, which should be particularly useful for larger customers where the customer may currently be under a contract with the potential for ETFs, or where it may be necessary for an NGS to secure additional supply or capacity, or where there may be other transitional issues. In these circumstances, it is important to be able to set the exact date the switch will be made. However, as proposed, this delayed switch would require the NGS to hold the enrollment and then transmit

it to the NGDC, subject to the 3-day switch period. As a more effective means of addressing this potential risk, RESA would recommend a process that would allow NGSs to specify in the EDI transaction the specific effective date for the customer switch. This effective date would be negotiated and set forth in the contract between the NGS and the customer, and would be communicated to the NGDC. This functionality would enable NGSs to specify a future-dated effective date for a switch or a specific effective date that corresponds to the contract end date with the customer's existing NGS so as to avoid any risk of exposing the customer to potential ETFs that could be triggered as a result of an early switch.

Subsection (2) requires the NGDC to verify the accuracy of the information provided by the NGS, to ensure the correct customer is being switched. It also re-enforces that customers will receive a switch confirmation letter from the NGDC notifying them that their supplier has been changed. Otherwise the changes to this subsection are merely cosmetic and RESA supports them.

4. Time frame requirement, § 59.94.

The primary modification proposed for this section is to require that customer requests to switch suppliers (including switches to SOLR service) be completed within 3 business days of the receipt of the electronic enrollment transaction by the NGDC. When coupled with the 3-day rescission period, the proposed change will require that switches are completed in as few as 6 days, which is a major improvement over the current process which can take considerably longer. There are several salutary reasons for mandating this modification, but none stands out so much as the need to provide customers with a better experience when shopping. Time and again customers call a supplier at the time they are most likely to think about switching – in late fall/early winter when they get their first gas bill with cold weather usage – and they are told it could be February or even March until they are switched. Those customers often say “why bother” and decline to

switch, and they are likely to blame the supplier for what they see as a major failing. Such a scenario should not happen, particularly when there are ways to address the underlying issue.

Providing a better customer experience by providing what the customer wants in a timely and effective manner is a best practice in any industry. Gas customers are also electricity customers and creating consistent rules across industries, where practical, also improves the customer experience by lowering frustration levels and presenting customers with a logically similar approach. This could not be more true for those suppliers that provide both electricity and natural gas; similar rules make the sales process less complex. Allowing faster switching further empowers customers, by giving them the ability to vote with their feet and switch suppliers if they are not satisfied with the product or service, thus holding suppliers more accountable. In short, RESA does not believe that there is any reasonable disagreement with the premise that faster switching is better for customers.

Accordingly, RESA believes that we should take every practical step to shorten the switch period to the greatest extent possible. RESA is aware that there may be technical hurdles to get to the three-day standard the Commission has proposed, and that those hurdles may be different from the electric industry; but RESA believes that these are hurdles not walls and they should be surmountable given the necessary time and the cooperation of all stakeholders.

The Commission's proposed changes lay the groundwork for this approach, allowing flexibility for NGDCs to design the program and the acquisition of off-cycle usage data. Likewise, the ANOPR makes clear that the Commission intends to allow ample time for NGDCs to formulate an approach that best suits individual NGDC systems. These accommodations also should ease the concerns regarding capacity assignment, which the suppliers feel is readily addressable. Under most NGDC programs, only choice customers are assigned capacity, and suppliers currently are

required to obtain capacity for larger customers. Looking at today's switching statistics, with relatively few customers switching per month, it does not appear to be a big "ask" to require NGSs to obtain capacity for new choice customers in the short term before the monthly assignment, to the extent NGDC's are unable to assign additional capacity off-cycle. True-up on the additional capacity can be done during the annual reconciliation with the NGDC. Similarly, many NGDCs already estimate customer bills on a somewhat regular basis, so providing an off-cycle estimate so that customer can change suppliers, does not appear at first glance to be a major complication. RESA submits we should look at the goal of this exercise - achieving better service to our common customers – and be motivated solve these questions in the customers' best interest.

5. Persons authorized to act on behalf of a customer, § 59.95.

RESA supports the Commissions intention to remove section 59.95. It is not appropriate to require the NGDC to be the gate keeper of persons who are authorized to switch an account.

6. Customer dispute procedures, § 59.97.

The proposed changes to this section are directed toward restoring a customer to the *status quo ante* in the unfortunate event that their NGS is changed without their consent. RESA rejects the use of customer acquisition strategies that provide a substantial risk of customers being switched unknowingly or against their will and supports reasonable measures to address the problem. The specific significant change proposed here, is to allow the customer to contact their original NGS and seek to return to taking service from that NGS. RESA supports this approach.

7. Implementation, § 59.100.

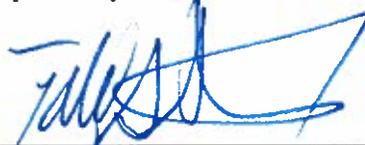
The Commission has proposed that the requirements of the amendments be implemented within one year of final publication. RESA supports the notion of a fixed period for compliance and implementation but suggests that the Commission be prepared to be flexible, to a point, in

allowing for the implementation of the new requirements. For example, a utility may be in the middle of changing computer systems, and adding the programming needed for a new process may not be possible or cost effective. Another may be preparing to install advanced metering infrastructure, and it may make sense to delay implementation to allow that process to proceed. We cannot know what these reasons may be, but we urge the Commission to give reasoned attention to reasonable requests to complete implementation later than otherwise provided.

B. CONCLUSION

RESA appreciates this opportunity to provide comments to the Commission and looks forward to continuing the dialogue with interested stakeholders. The Commission has proposed the critical next steps to ensure that the competitive energy markets are as aligned as much as reasonably possible where customer facing procedures are concerned, and to ensure that customers experience a consistent and satisfactory switch experience, not one that seems unrealistically elongated or complex. RESA supports these measures and the Commission's efforts to provide customers with sufficient information to participate in the process.

Respectfully submitted,



Todd S. Stewart (Attorney ID. 75556)
Hawke McKeon & Sniscak LLP
Harrisburg Energy Center
100 North Tenth Street
Harrisburg, PA 17101
(717) 236-1300
(717) 236-4841 (F ax)
tsstewart@hmslegal.com

*Counsel for
Retail Energy Supply Association*

DATED: February 21, 2017