

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048  
800-684-6560

FAX (717) 783-7152  
consumer@paoca.org

May 22, 2018

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

Re: Rulemaking Regarding Electricity  
Generation Customer Choice, 52 Pa. Code  
Chapter 54  
Docket No. L-2017-2628991

Dear Secretary Chiavetta:

Attached for electronic filing are the Comments of the Office of Consumer Advocate in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "H. Breitman", written over a horizontal line.

Harrison W Breitman  
Assistant Consumer Advocate  
PA Attorney I.D. # 320580  
E-Mail: [HBreitman@paoca.org](mailto:HBreitman@paoca.org)

Enclosures:

cc: Kriss Brown, Law Bureau (email only: [kribrown@pa.gov](mailto:kribrown@pa.gov))  
Daniel Mumford, Office of Competitive Market Oversight  
(email only: [dmumford@pa.gov](mailto:dmumford@pa.gov))  
Matthew Hrivnak, Bureau of Consumer Services (email only: [mhrivnak@pa.gov](mailto:mhrivnak@pa.gov))  
\*248751

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking Regarding Electricity : Docket No. L-2017-2628991  
Generation Customer Choice, 52 Pa. Code Chapter 54 :

---

**COMMENTS  
OF THE  
OFFICE OF CONSUMER ADVOCATE**

---

Harrison W Breitman  
Assistant Consumer Advocate  
PA Attorney I.D. # 320580  
E-Mail: [HBreitman@paoca.org](mailto:HBreitman@paoca.org)

Counsel for:  
Tanya J. McCloskey  
Acting Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152  
Dated: May 22, 2018

## TABLE OF CONTENTS

|   |    |
|---|----|
| I. INTRODUCTION .....   | 1  |
| II. COMMENTS ON SPECIFIC SECTIONS OF CHAPTER 54.....                                      | 3  |
| A. Section 54.3 – Standards and Pricing Practices for Retail Electricity Service.....     | 3  |
| B. Section 54.5 – Disclosure Statement for Residential and Small Business Customers ..... | 5  |
| 1. Section 54.5(c)(1).....  | 5  |
| 2. Section 54.5(c)(2).....  | 6  |
| 3. Section 54.5(c)(3).....  | 8  |
| 4. Section 54.5(c)(3)(i) .....  | 8  |
| 5. Section 54.5(c)(3)(iv).....  | 9  |
| 6. Section 54.5(c)(4).....  | 10 |
| 7. Section 54.5(c)(6).....  | 11 |
| 8. Section 54.5(c)(9).....  | 11 |
| 9. Section 54.5(c)(11).....   | 11 |
| 10. Section 54.5(c)(12) .....   | 12 |
| 12. Section 54.5(c)(14)(i) .....  | 13 |
| 13. Section 54.5(e).....  | 15 |
| 14. Section 54.5(g).....  | 15 |
| 15. Section 54.5(j) .....   | 16 |
| 16. Section 54.5(k).....  | 17 |

C. Section 54.7-Marketing/Sales Activities .....18

D. Section 54.10-Notice of Contract Expiration or Change in Terms for Residential and  
Small Business Customers.....19

E. Contract Summary .....19

III. CONCLUSION..... 22

## **I. INTRODUCTION**

On March 24, 2018, the Pennsylvania Public Utility Commission's (Commission) Notice of Proposed Rulemaking Order in the above-captioned docket was published in the *Pennsylvania Bulletin*. 48 Pa.B. 1696. Through this Rulemaking, the Commission is proposing amendments and modifications to its regulations regarding standards and pricing practices for retail electricity services, disclosure statements for residential and small business customers, marketing/sales activities, and the provision of notices of contract expiration or changes in terms for residential and small business customers found at 52 Pa. Code Chapter 54 (Chapter 54). The primary purpose of the Proposed Rulemaking is to enhance the rules at 52 Pa. Code §§ 54.1-54.10 regarding customer protection and to ensure that customers receive the necessary information to make informed decisions when shopping in the retail electricity market. Specifically, the rulemaking addresses disclosure statements made by EGSs to residential and small business customers. As noted in the Notice of Proposed Rulemaking, the Public Utility Code requires EGSs to provide adequate and accurate information to customers. See, Proposed Rulemaking Order at 2; 66 Pa. C.S. § 2807(d)(2).

The Commission's Order reviews the historical development of the current Electric Generation Supplier (EGS) regulations. As noted in the Order, the Commission adopted Interim Requirements in 1997, promulgated regulations in 1998, adopted interim guidelines in 2010, issued emergency rules in 2014 due to the Polar Vortex, and amended Chapter 54 multiple times to ensure that disclosure statements include key information. See, Proposed Rulemaking Order at 2-6. Additionally, the Commission's Order discusses the 2016 revisions to the Chapter 62 natural gas supplier (NGS) disclosure rules, which are now inconsistent with the EGS rules. Proposed Rulemaking Order at 9-10. The Order lists four items of inconsistency: 1) introductory

pricing is mentioned in the NGS rules but not mentioned in the EGS rules; 2) if prices change, the NGS rules require that the NGS disclose when and how a customer is informed of a price change, the EGS rules do not have a similar requirement; 3) the NGS rules address contract assignment while the EGS rules are silent; and 4) most references to the Natural Gas Distribution Company (NGDC) were removed from the NGS disclosure statement while the EGS disclosure rules require the inclusion of some references to the Electric Distribution Company (EDC). Proposed Rulemaking Order at 10. The OCA welcomes the opportunity to address the inconsistencies with the NGS rules and allowing further comment on the emergency rules and policies adopted in 2014.

Chapter 28, also known as the Electricity Generation Customer Choice and Competition Act (Act), was signed into law by Governor Ridge on December 3, 1996. According to the Declaration of Policy in Section 2802, one purpose of Chapter 28 is to permit retail customers to obtain direct access to a competitive generation market. 66 Pa. C.S. § 2802. Chapter 28 also ensures that information is properly disclosed to the customer in order to lead to informed choices. The Commission specifically cites to Section 2807(d)(2), which requires the Commission to:

establish regulations to require each electric distribution company, electricity supplier, marketer, aggregator and broker to provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity service offered by that provider. Information shall be provided to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.

See, Notice of Proposed Rulemaking at 2. 66 Pa. C.S. § 2807(d)(2).

While the Commission has properly responded to market developments and examination of EGS and NGS conduct in many investigations, it is appropriate to routinely evaluate the actual

experience with the regulations adopted to date and seek to improve and reform these policies where necessary.

The OCA respectfully submits that the comments below will help to ensure that the Chapter 54 regulations are consistent with Chapter 28 and will continue to provide essential protections to consumers throughout the Commonwealth.

In these Comments the OCA makes specific recommendations intended to strengthen both consumer protections and the electric generation marketplace. The OCA shows its specific recommendations in each section. The OCA has capitalized its proposed additions and used strike through to show the OCA's proposed deletions. Moreover, the OCA attaches proposed modifications to the contract summary as Appendix A.

## **II. COMMENTS ON SPECIFIC SECTIONS OF CHAPTER 54**

### **A. Section 54.3 – Standards and Pricing Practices for Retail Electricity Service**

Proposed Section 54.3(2) eliminates early termination fees (ETFs) after the supplier issues the initial contract expiration notice, effective for all contracts issued after the effective date of the new regulation. As noted by the Commission, consumers can face ETFs because they act on expiration notices sent by the supplier when they choose to select a new supplier or return to default service. Proposed Rulemaking Order at 11. Additionally, the Commission rightfully notes that the customer has no control over the timing of the switch as the timing of the switch is ultimately up to the supplier and the utility. Proposed Rulemaking Order at 11. Moreover, the Commission acknowledges that while many suppliers waive the ETF under certain circumstances, an ETF may still occur due to the language of the applicable Terms of Service. Proposed Rulemaking Order at 12. Indeed, under the current regulations there is no certainty as to whether an ETF will be waived if the customer chooses a new supplier due to a contract

expiration notice. Instead, the decision to waive the ETF is left to the sole discretion of the supplier. When a customer takes action as a result of a contract expiration notice and faces the imposition of an ETF as a result, the customer experiences additional charges that are typically perceived as unfair and may result in a lower level of customer interest in the retail energy market generally.

The OCA supports the Commission's revision. This revision provides a critical protection to customers who are acting in good faith based on the required notices. The OCA further notes that it is critical that contracts, disclosure statements, and options notices clearly reflect the Commission's revision. The Commission should require revisions to the contract terms, disclosure statement, and options notices to ensure that the is protection is communicated to customers at appropriate times.

The OCA also recommends that the Commission consider other protections regarding ETFs. The OCA submits that it is not just the imposition of an ETF nearing the end of the contract that is of concern. Some ETFs are prohibitively high and discourage a customer from entering a contract or leaving a contract that is harming the customer. The Commission should consider whether it wants to limit the ETF charged to customers. In both Illinois and Connecticut, a maximum ETF of \$50 is imposed on residential customers for fixed rate contracts. 220 Ill. Comp. Stat. Ann. 5/16-119 (LexisNexis, Lexis Advance through P.A. 100-585 of the 100th Legislative Session); Conn. Gen. Stat. § 16-245o(7)(A-B) (LexisNexis, Lexis Advance through the 2017 Regular and 2017 Special Sessions).

In the Proposed Rulemaking Order, the Commission states that “[a]nything that damages the reputation of the market harms all market participants.” Proposed Rulemaking Order at 12.

The OCA submits that an ETF exceeding \$50 discourages ratepayers from participating in the competitive market.

As such, the OCA supports the revisions to this section, and recommends that these revisions be carried through to all disclosure statements, contracts, and options notices. The OCA further recommends that the Commission consider a limitation of the ETF to \$50.

**B. Section 54.5 – Disclosure Statement for Residential and Small Business Customers**

**1. Section 54.5(c)(1)**

Section 54.5(c)(1) is being revised in order to establish consistency between the Chapter 54 electric rules and Chapter 62 gas rules, specifically Section 62.75(c)(1). The proposed revision requires generation charges to be disclosed according to the actual price per kilowatt-hour and that the charges must include an estimate of all applicable taxes except for State sales tax and county tax. The OCA fully agrees with the Commission’s proposal that generation charges should be disclosed in a price per kWh format. This will result in an apples to apples price comparison with the PTC and between supplier offers.

The Commission questions how new products and pricing structures may work with this structure. New pricing structures will have to fit within this regulation to fully inform the customer. If there are enrollment fees or monthly fees, these will need to be incorporated and treated in accordance with 54.5(c)(4). If a flat bill only option is proposed, it also will need to be treated as a price that changes with usage and show price/kWh at 500, 1000, 2000 even though the flat bill is the same for each usage level.

The OCA further notes that the word “product” is an undefined term that may require clarification from the Commission. If the EGS “product” is a pricing structure such as a TOU rate, flat bill, or fee that is part of receiving the electric generation service, then the “product”

should be converted to a cents per kilowatt hour basis and disclosed to the customer since the “product” is part of the generation service.

If the “product” is a tangible product or a service such as a home security system, an HVAC maintenance contract, or a smart thermostat, then these charges should be unbundled from the generation service and disclosed separately. These charges must be disclosed to the customer as to their cost impact on the monthly bill but since they are not a requirement of the generation service, they may not need to be disclosed on a price per kWh basis. These are similar to non-basic services that are unbundled, disclosed, and billed separately.

## **2. Section 54.5(c)(2)**

Proposed Section 54.5(c)(2) is being revised in order to become consistent with the natural gas rule at 52 Pa. Code § 62.75(c)(2)(ii). The proposed revision requires new disclosures for introductory prices, including a statement that the price is an introductory price, disclosure of the duration of the introductory period, and a disclosure of the price that will be charged after the introductory period.

One of the hallmarks of the Customer Choice Act is that EGSs “provide adequate and accurate customer information to enable customers to make informed choices.” 66 Pa.C.S. §2807(d)(2). As noted by the Commission, to make fully informed decisions in the energy market place, it is essential that the customer fully understand the price they will be charged once the introductory period ends. Proposed Rulemaking Order at 14-15. If the price is not clearly and expressly disclosed as an introductory rate when it is one, consumers will be misled. As mentioned in the Notice of Proposed Rulemaking, there are inconsistencies that resulted from extensive changes in 2016 to the NGS disclosure rules. Proposed Rulemaking Order at 9.

The OCA appreciates the importance identified by the Commission concerning this issue and submits that the proposed revision could be strengthened in several respects. Based on the OCA's experience, many consumers make supplier decisions based on oral marketing and may not fully review the written disclosures which are not even available for review by the customer in a telemarketing sales call. Most customers are not given the time to carefully read written materials while an agent is giving his or her sales pitch and many customers do not even have the disclosure materials at the door or at the point of sale. Instead, customers often wait until a later time, after the agent has left, to read these materials when they are finally provided. While customers have the legal option to review the multiple page contract terms and are given a three-day right of rescission without penalty, it is the OCA's experience that customers rely on the oral presentation made by the supplier and the supplier's agent. As a result, the OCA recommends that suppliers be required to make an oral statement concerning introductory rates and the nature of the rate that will be charged after the introductory period, as well as include this information in the Third Party Verification (TPV) script.

The OCA further agrees that, due to the nature of variable rate contracts, the EGS should be required to, orally and in writing, state a specific price for the next billing period after the introductory period. This price will form the baseline for future changes to variable prices under these types of agreements. Providing customers with a specific price following the introductory period furthers the Commission's goal of full disclosure and will support the need for customer understanding of the nature of the transaction at the point of sale.

Additionally, the OCA agrees with the Commission that the length of the introductory period should be disclosed to provide the customer with full information and to make the electric

rules consistent with the natural gas rules. The proposed revision brings the EGS rules into alignment with 52 Pa. Code § 62.75(c)(2)(ii).

To strengthen this provision, the OCA proposes the following modification:

(2) If the price is introductory, the pricing statement, THE ORAL STATEMENT MADE BY THE SALES AGENT, AND THE THIRD PARTY VERIFICATION SCRIPT, must include a statement that the price is an introductory price, the duration of the introductory period and the price for the first billing cycle after the introductory period.

**3. Section 54.5(c)(3)**

Section 54.3(c)(3) is being revised to clarify that a variable pricing statement is necessary only if the product is a variable-priced product. The OCA agrees with this revision.

**4. Section 54.5(c)(3)(i)**

Section 54.5(c)(3)(i) is being revised to reflect the NGS requirements in 52 Pa. Code § 62.75(c)(2)(i) to add a requirement that an EGS with a variable rate contract must include the EGS's specific prescribed variable pricing methodology. The OCA agrees that this proposed revision reflects the NGS rules. The OCA, however, submits that the proposed revision could be improved by requiring the EGS to give an example of how its prices will be calculated using its disclosed pricing methodology, to provide a price disclosure for a recent month.

Current customers should also be informed as to the methodology used by the EGS to calculate its variable price. Suppliers should be required to provide their full terms and conditions for all of their products on their websites, and once new disclosures are in place, the new disclosures should be sent to all existing customers. This would enhance transparency and provide the customer with an explanation of how prices will be determined during the billing period.

It is important that customers clearly understand the possible fluctuations in the price.

Consistent with these Comments, the OCA submits the proposed modification:

[(2) The] (3) If the price is variable, the variable pricing statement must include:

(i) Conditions of variability (state on what basis prices will vary) including the EGS's specific prescribed variable pricing methodology AND AN EXAMPLE OF HOW THE EGS'S PRICES WILL BE CALCULATED USING ITS DISCLOSED PRICING METHODOLOGY AND RELYING ON THE MOST RECENT MONTH'S DATA.

(ii) Limits on price variability:

(A) If there is a limit on price variability, such as a specific price cap, a maximum percentage increase in price between billing cycles or minimum/maximum charges per kilowatt-hour for electricity during the term of the contract, the EGS shall clearly explain the applicable limits AND THAT THE PRICE CAN CHANGE EACH BILLING PERIOD.

(B) If there is not a limit on price variability, the EGS shall clearly and conspicuously state that there is not a limit on how much the price may change from one billing cycle to the next AND THAT THE PRICE CAN CHANGE EACH BILLING PERIOD.

#### **5. Section 54.5(c)(3)(iv)**

The proposed revision to Section 54.5(c)(3)(iv) would require a description of when and how the customer will receive notice of price changes. While the OCA supports this revision, the OCA respectfully submits that it does not go far enough. In the example provided in the Order, notice of the price being charged does not occur until the time of billing, long after the customer has used the electricity. The OCA submits that Section 54.5(c)(3)(iv) should provide that this notice will be provided before the new price is charged to the consumer. Without information about what price is being charged, the consumer cannot make informed decisions about their energy use or about whether a new price plan or supplier is needed. Consumers need

to know this information before they use the electricity or continue on the plan. The OCA submits the following changes to Section 54.5(c)(3)(iv) for the Commission's consideration:

(iv) A STATEMENT ~~description~~ of when the customer will receive notification of price changes. SUCH NOTIFICATION SHALL BE AT LEAST 10 DAYS BEFORE SUCH PRICE CHANGE GOES INTO EFFECT.

**6. Section 54.5(c)(4)**

The proposed addition to Section 54.5(c)(4) moves the requirements of 52 Pa. Code § 54.7 into the disclosure rules contained in Section 54.5. The rule provides transparency in regard to the price per kWh in the event the unit price changes based on fees or customer usage. All costs associated with the charged rate are included in a table in order to show the average price per kWh for three different usage levels. The OCA agrees with the Commission that this requirement provides an "apples-to-apples" comparison to customers, especially when one-time or monthly fees are involved. See Proposed Rulemaking Order at 16. Providing the customer with all of the costs associated with the rate charged in a table format based on usage levels provides more transparency to the customer and allows the customer to make informed choices. As discussed in Section II.B.1 regarding the flat bill option, if permitted, the flat bill will have to be treated under 54.5(c)(4) as a price that changes with usage. The price/kWh at 500, 1000, 2000 must be provided with the disclosure so that the consumer can make a proper comparison. As discussed in Section II.B.1 above, for products that are separately charged and not required to receive generation service, the price of these separately charged non-generation products should be disclosed both on a total charge basis and as a monthly impact to the bill. If a product is bundled with generation service and is required to receive generation service, however, the price of the product should be disclosed on a price per kWh basis.

**7. Section 54.5(c)(6)**

The proposed revision to Section 54.5(c)(6) replaces the words “length” and “term” with “duration.” The OCA supports this revision as it adds clarity to the regulation.

**8. Section 54.5(c)(9)**

The proposed revision to Section 54.5(c)(9) removes the EDC’s name and telephone number from the EGS disclosure statement. The OCA agrees with the Commission that prominent display of EDC information on EGS documents could create the false impression that the EGS is “affiliated with” or “partnered with” the EDC. The OCA has received customer complaints regarding alleged EGS claims of partnership with the EDC. Removing the requirement that the EGS list the EDC’s name and telephone number in a prominent position is a step-forward in reducing customer confusion. The OCA would note, however, that customers will still require information about their EDC and the availability of default service. Retaining limited information about the EDC in a less prominent and less confusing manner may still be necessary.

**9. Section 54.5(c)(11)**

The Commission proposes to add language to Section 54.5(c)(11) that would require the disclosure of penalties and fees in actual dollars or the specific method for determining the amount of the identified penalty or fee. See, Proposed Rulemaking Order at 11.

The OCA submits that the revision should be strengthened in order to ensure that the customer is fully informed. First, the supplier should be required to give an example of how the penalty or fee structure would be implemented. Second, suppliers and their agents should be prepared to accurately describe these fees, how they are calculated, and provide the same example in their sales presentations. Requiring suppliers to orally inform their customers of all

aspects of the plan, including fees and penalties, increases transparency and provides for informed decision-making. Last, the OCA recommends that the Commission specify the type size and that such type size should be no less than 12-point font. The OCA's proposed modifications are as follows:

[(10)] (11) An explanation of limits on price variability, penalties, fees or exceptions, printed in type size larger than the type size appearing in the terms of service BUT NO LESS THAN 12 POINT AND AN ORAL EXPLANATION OF THE EXISTENCE OF A PENALTY OR FEE IN THE CONTRACT'S TERMS AND CONDITIONS. Penalties and fees shall be disclosed in actual dollars or a specific method for determining the actual dollars shall be disclosed WITH AN EXAMPLE OF THE CALCULATION. This explanation shall include a statement advising the customer that the customer will not be subject to any penalty or fee if the customer terminates the contract at any time between the date the initial notice required in § 54.10 (relating to notice of contract expiration or change in terms for residential and small business customers) is issued and the expiration of the fixed duration contract.

**10. Section 54.5(c)(12)**

The Commission proposes to remove the EDC's name on the EGS disclosure statement, as it is an unnecessary reference to the utility. However, customers still need to have information on their EDC and default service. A limited, less prominent, and less confusing disclosure of this information should be included

**11. Section 54.5(c)(13)**

The Commission proposes two changes to Section 54.5(c)(13). First, the Commission proposes to remove the name and telephone number for universal service program information in the EGS disclosure statement. The Commission notes that including universal service program information in the EGS disclosure may lead the consumer to believing that the EGS operates the programs while they are, in fact, operated by the EDCs. Given the essential nature of low-income programs for consumers, however, the disclosure statement should inform and educate the customer as to the existence of the low-income programs. The OCA submits that the EGS's

disclosure statement should include the following language: “Pennsylvania utilities offer universal service programs that help low-income customers. Call the number on your utility bill or the Pennsylvania Public Utility Commission for more information.” The addition of this language would ensure that the customer is informed of the low-income programs without leading the customer to believe that the low-income programs are operated by the EGS.

The second change is to include a statement as to where the information on shopping can be located by directing the consumer to PaPowerSwitch, the Commission, or the OCA. The OCA appreciates the Commission’s efforts. For clarity, the OCA recommends that the full name of our office be provided as well as the OCA’s 800 number so that consumers have full information in regard to shopping. The OCA’s proposed modification is as follows:

[(12)] (13) A statement [that directs a customer to the Commission if the customer is not satisfied after discussing the terms of service with the EGS] providing that information about shopping for an electric supplier is available at [www.PaPowerSwitch.com](http://www.PaPowerSwitch.com) or other successor media platform as determined by the Commission, by calling the Commission at (800) 692-7380 and OR BY CONTACTING THE OFFICE OF CONSUMER ADVOCATE at (800)-684-6560 OR AT [www.oa.state.pa.us](http://www.oa.state.pa.us).

**12. Section 54.5(c)(14)(i)**

Under the proposed revision to Section 54.5(c)(14)(i), if representative price information or price history is not available for an EGS product, the EGS will be required to inform the customer that a 24 month price history or representative price is not available. While it is correct, as noted by the Commission, that a price history may not be available for all products, the potential for the misuse of this exemption for such a disclosure is significant. It is possible, for example, for an EGS to make a minor change in the variable rate pricing disclosure or pricing methodology and avoid any obligation to disclose historical variable prices. The OCA, therefore, recommends that the EGS not be allowed to avoid disclosure of historical price information unless the supplier documents that the variable price being offered is significantly

different from prior offers or cannot be reasonably replicated. Additionally, EGSs often create a new license for an affiliate and there may be marginal differences between a “new” product and a product that has previously been offered by the EGS or an affiliate of the EGS. This could create large loopholes where EGSs could avoid providing important price history information.

The OCA proposes that the exemption be limited to (a) a newly licensed supplier that is not otherwise an affiliate of an existing supplier for a period of 12 months, at which time the supplier shall provide the historical pricing information that is available; and (b) introduction of an EGS product that is materially different from other products offered by the EGS and any of its affiliates and for which there is no reasonable manner to present representative historical pricing information.

The Commission must also ensure that a common approved approach is being used to develop the average price so that proper comparisons can be made. More importantly, because the use of averages can mask the problem, and because the use of 24 month data may not be representative of the risk, EGSs should be required to disclose the highest and lowest price that has been charged for the customer’s rate class and service territory to ensure that customers have more complete information. In the OCA’s view, the time frame to be placed on this proposal regarding the highest and lowest price should be no less than 36 months to 60 months to properly reflect pricing changes over a reasonable period of time.

The OCA proposes the following changes to proposed Section 54.5(c)(14)(i) to address the issues identified:

A telephone number and Internet address at which a customer may obtain the previous 24 months’ average monthly billed prices for that customer’s rate class and EDC service territory, AND THE HIGHEST AND LOWEST PRICE BILLED FOR THAT CUSTOMER’S RATE CLASS AND EDC SERVICE TERRITORY FOR THE PREVIOUS 60 MONTHS. If an EGS has not been providing service in a rate class and EDC service territory for 24 months OR IS

NEWLY LICENSED AND NOT AFFILIATED WITH AN EXISTING LICENSED EGS, the EGS shall provide the average monthly billed prices for the months available to date. If price history or representative price information is not available for the product AND THE PRODUCT IS MATERIALLY DIFFERENT FROM OTHER PRODUCTS OFFERED BY THE EGS OR ANY OF ITS AFFILIATES, the EGS shall inform the customer of this fact. IF THE EGS HAS NOT BEEN PROVIDING SERVICE IN A CUSTOMER RATE CLASS AND SERVICE TERRITORY FOR 60 MONTHS, THE EGS SHALL PROVIDE THE CUSTOMER THE HIGHEST AND LOWEST PRICES AS SET FORTH BY THE COMMISSION FOR SUCH PURPOSE.

The OCA submits that these changes are necessary to better ensure that customers have information that will help them to make a better informed choice about this product.

**13. Section 54.5(e)**

Section 54.5(e) is being revised in order to refer to the glossary of terms on the PA Power Switch website. Moreover, the word “bill” is being replaced with the word “disclosure.” The OCA supports these revisions.

**14. Section 54.5(g)**

Section 54.5(g) is being revised in order to create two options for disclosure language concerning notice and contract expiration. The first option is for fixed duration contracts and the second option is for “non-fixed” duration contracts. While “non-fixed” duration contracts are not defined, the Commission provides the example of a month-to-month contract. Proposed Rulemaking Order at 20. Both options require the EGS to send two separate notices concerning contract expiration or changes to terms and conditions.

In order to properly implement these proposals, the OCA recommends that the Commission further define “non-fixed” to provide additional clarity.

The OCA also recommends that the proposed Section 54.5(g) notification language include the time frame that consumers will receive the notices.

Furthermore, the OCA notes that the phrase “whenever we propose to change the terms of service in any type of contract” in the proposed notifications could be misleading to consumers, as it suggests that an EGS has the ability to unilaterally change the terms of a contract.

As such, the OCA recommends the following change to proposed Section 54.5(g):

(g)(1) Disclosure statements shall include the following customer notification: “If you have a fixed duration contract approaching the expiration date, ~~or whenever we propose to change the terms of service~~ FOR THIS CONTRACT ~~in any type of contract~~, you will receive two separate written notifications, THE FIRST APPROXIMATELY 60 TO 45 DAYS IN ADVANCE AND THE SECOND 30 DAYS IN ADVANCE OF ~~that precede~~ either the expiration date or the effective date of the proposed changes. These notifications will explain your options going forward.”

(2) Disclosure statements for ANY CONTRACT OTHER THAN FIXED ~~non-fixed~~ duration contracts must include the following customer notification: “Whenever we propose to change the terms of service FOR THIS CONTRACT ~~in any type of contract~~, you will receive two separate written notifications, THE FIRST APPROXIMATELY 60 TO 45 DAYS IN ADVANCE AND THE SECOND 30 DAYS IN ADVANCE OF ~~that precede~~ either the expiration date or the effective date of the proposed changes. These notifications will explain your options going forward.”

#### **15. Section 54.5(j)**

Section 54.5(j) adds the requirement that, if the customer’s contract is assignable, the supplier must disclose that the contract is assignable at the time the parties enter into the contract and provide notice to the customer, the EDC, and the Commission. This revision reflects the natural gas rule at 52 Pa. Code § 62.75(j). The OCA submits that the EGS should be required to disclose this information at the time the consumer enters into the agreement and also be required to provide the consumer with written notice if the contract is assigned to another supplier. The notice informing consumers that their contract has been assigned should contain the name and contact information of the new supplier, and state when the assignment will occur. The OCA

also submits that customers should be permitted to return to default service or select another supplier without penalty in an assignment circumstance.

**16. Section 54.5(k)**

Section 54.5(k) is a new paragraph requiring disclosure in the event that the EGS intends to obtain customer account information from the EDC. The Commission states that many EGSs already include a provision in their disclosure statements to this effect. Making this disclosure a uniform requirement increases transparency in regard to customer privacy and is necessary as a matter of Pennsylvania regulations and law. As such, the OCA supports this addition but submits that modifications are necessary to fully address consent issues.

In regard to smart meter technology, the Public Utility Code requires explicit consent to release information to third parties as follows:

(3) Electric distribution companies shall, with customer consent, make available direct meter access and electronic access to customer meter data to third parties, including electric generation suppliers and providers of conservation and load management services

66 Pa. Code § 2807(f)(3). The OCA submits that heightened specificity and explicit consent is required to obtain sensitive customer account information from the EDC such as smart meter data. For example, if the EGS intends to obtain hourly smart meter data from the EDC, the EGS must disclose to the customer that this specific hourly meter data will be obtained from the customer's EDC and receive the customer's explicit consent. It is only after this specific disclosure and explicit consent that such information could be released. EGSs should be required to retain this explicit authorization in the event that questions arise.<sup>1</sup>

---

<sup>1</sup> Where an enrollment is completed through a telephonic third party verification without a signature from the customer on the enrollment form or a consent to release information, the OCA submits that the TPV will need to ask an explicit question as to the release of such private customer information. The OCA is concerned, however, that even such oral consent does not meet all requirements of the law for release of such sensitive customer information.

Additionally, the OCA submits that certain types of account information should not be provided to the EGS. For example, payment history should not be provided since the EGS is not responsible for billing and collection. The EGS has no role in collection and has no need for payment history information. As such, payment history should not be included in 54.5(k).

The OCA proposes the following modifications:

(k) If the EGS intends on obtaining customer account information from the EDC, the EGS shall inform the customer OF THE SPECIFIC TYPE ~~what~~ type of information THAT may be obtained, INCLUDING WHETHER USAGE DATA the purpose for obtaining this information and inform the customer that they are consenting by entering into this contract. The EGS shall also inform the customer that the EGS will maintain the confidentiality of a customer's personal information including their name, address, telephone number, electric usage and historic payment information as required by applicable Commission regulations and federal and State laws. PAYMENT HISTORY SHALL NOT BE PROVIDED TO THE EGS.

The OCA also submits that the contract summary should include this information as it is critical to protecting sensitive customer information. In Appendix A, the OCA has revised the contract summary to include a row on the release of customer account information.

### **C. Section 54.7-Marketing/Sales Activities**

In proposed Section 54.7, the Commission revises pricing disclosures in marketing and sales materials in order to require usage tables only if the unit price changes based on customer usage or includes a fee in addition to the unit price. The OCA supports this revision.

As noted in the Commission's order, electric utility rate structures have been simplified over time and most block rate structures have been eliminated. Proposed Rulemaking Order at 22. Requiring usage tables only in the event that a supplier offers a product where the unit price changes depending on the customer's usage or if the supplier charges a monthly fee is reasonable. Disclosing average price per kWh based on usage in a table format provides the customer with an apples-to-apples comparison between offers in an easily understandable

format. As discussed in Section II.B.1, proper disclosure of flat billing, if permitted to be offered, is imperative to fully inform the customer. For flat billing, price disclosure at price/kWh usage levels of 500, 1000, and 2000 should be disclosed so that the customer is fully informed.

**D. Section 54.10-Notice of Contract Expiration or Change in Terms for Residential and Small Business Customers**

The proposed revision to Section 54.10 includes a minor modification to the language of the statute by replacing the word “duration” with the word “time” and amends Section 54.10(1)(vi) to require a disclosure statement which would explain that ETFs are prohibited in the event that the customer terminates the contract between the date of the initial notice and the expiration date of the fixed duration contract. As noted in the discussion of Section 54.3, the Commission is proposing to bar the imposition of ETFs once a supplier has provided the contract expiration notices required by Section 54.10. See Proposed Rulemaking Order at 23-24. As mentioned in Section II.A, the termination of a contract by a customer may be inadvertent due to the timing of the customer switching to another supplier. Imposing an ETF on a customer for switching after receiving the notice of contract expiration discourages customers from shopping in the competitive marketplace.

**E. Contract Summary**

The OCA appreciates the opportunity to comment on the contract summary in this rulemaking. Currently, there are three documents that provide information to consumers about the supplier agreement: a contract summary; a disclosure statement; and the terms and conditions. The OCA submits that the contract summary and the disclosure statement be combined or designed for a single one-page document. It does not appear useful for customers

to be given two different “summary” documents concerning their formal terms of service document.

The OCA submits that there is significant confusion around the disclosure statement, the contract terms and conditions, the contract summary, and the enrollment form. From the OCA’s contacts with customers, most customers interacting with an EGS via door-to-door, telemarketing, and even kiosk locations are “enrolled” with the EGS before ever seeing the disclosure statement, contract, or contract summary. Sometimes, the disclosure statement consists of the actual contractual terms. Some disclosure statements were sent with the EGS’ welcome letter long after the enrollment was processed while others were on the back of an enrollment form, and still others were e-mailed to a customer after the third party verification. The OCA remains concerned that we have gone to great lengths to develop a disclosure statement and contract summary that the customer never sees until it is too late. The OCA submits that it is necessary to address these timing issues with the disclosure statement, contract summary, and contract terms and conditions.

The OCA agrees with the Commission that the generation/supply price, the generation price at various usage levels, any applicable incentives, end of contract notification, and the right of rescission are appropriate items to include in the contract summary. Requiring the disclosure of introductory prices and the price upon expiration of the introductory period is an important revision that will lead to enhanced customer understanding of the agreement. Additionally, the proposed new row which would require generation price at various usage levels if the unit price varies by usage level and/or if there are fees in addition to the unit price helps the residential customer make an informed decision about how the pricing terms will impact their usage level. However, these important contract terms should be disclosed to the customer orally as well.

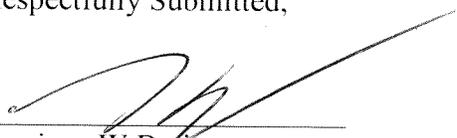
Since the contract summary is a concise explanation of a binding agreement between the customer and the EGS, orally stating all of the material items that are required to appear in the contract summary is logically necessary to ensure that the customer is fully informed of the key items in the agreement before the sale is complete. All too often, the OCA has heard from consumers that supplier agents make oral representations that are different from or that are not otherwise included in the terms of service. This practice must be halted by requiring suppliers and their agents to make oral disclosures that reflect the contract summary.

Finally, the OCA submits that, if a customer consent to release data is included in the contract, it should also be disclosed in the contract summary. This information should be included in the contract summary if the customer is releasing sensitive customer information. As discussed in Section II.B.16, release of customer account information requires an explicit agreement between the customer and the company. To ensure that the customer's attention is properly drawn to this information, the OCA submits that an additional row be added to the contract summary if such consent is being sought as part of the contract. The contract summary should detail the specific type of account information that the EGS may receive from the EDC. For example, if the EGS is seeking something other than monthly historical billing data, such as hourly smart meter data, both the contract summary and the disclosure statement should specifically explain to the customer that hourly smart meter data will be requested from the EDC.

### III. CONCLUSION

The Office of Consumer Advocate appreciates the opportunity to provide comments on the proposed revisions to Chapter 54 of the Commission's regulations. The OCA respectfully submits that the above comments will ensure that the updated regulations provide customers with ample protections and the necessary information to make fully informed decisions when shopping in the competitive retail electricity market.

Respectfully Submitted,



Harrison W Breitman  
Assistant Consumer Advocate  
PA Attorney I.D. # 320580  
E-Mail: [HBreitman@paoca.org](mailto:HBreitman@paoca.org)

Counsel for:  
Tanya J. McCloskey  
Acting Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152

Dated: May 22, 2018  
\*249739

**APPENDIX A**  
**TITLE 52. PUBLIC UTILITIES**  
**PART I. PUBLIC UTILITY COMMISSION**  
**Subpart C. FIXED SERVICE UTILITIES**  
**CHAPTER 54: ELECTRICITY GENERATION CUSTOMER CHOICE**  
**Subchapter A. CUSTOMER INFORMATION**

**Electric Generation Supplier Contract Summary**

|  |   |                |                  |                  |
|--|---|----------------|------------------|------------------|
| Electric Generation Supplier Information   | <i>Name, telephone number, website, etc. Plain language statement that EGS is responsible for generation charges- AND THAT EGS CHARGES WILL REPLACE THE PTC IDENTIFIED ON THE CUSTOMER'S BILL OR THE EGS CHARGES OF THE CUSTOMER'S PRIOR SUPPLIER.</i>  |                |                  |                  |
| Price Structure  | <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 indicating this fact. If variable, describe when the customer will receive notification of price changes in relation to time of month, final monthly meter read, billing cycle or when the price takes effect. A STATEMENT THAT THE HIGHEST AND LOWEST PRICE CHARGED BY THE EGS TO THIS CUSTOMER CLASS SERVED BY THIS EDC OVER THE PAST 60 MONTHS.</i>   |                |                  |                  |
| Generation/Supply Price  | <i>\$/kWh or ¢/kWh. If variable rate, the first billing cycle's rate. [Any introductory rate with length of term.] <u>Full disclosure of any introductory price, including the introductory price and the price after the introductory period expires. Full disclosure of any fees in addition to the per kWh price.</u> 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 A STATEMENT THAT THE RATE MAY BE HIGHER THAN THE INTRODUCTORY RATE.</i> |                |                  |                  |
| <u>Generation Price at Various Usage Levels</u><br><i>(This row is required only if the price varies by usage and/or there are fees in addition to the per kWh</i> | <u>Usage:</u>   | <u>500 kWh</u> | <u>1,000 kWh</u> | <u>2,000 kWh</u> |
|  | <u>Price per kWh:</u>   |                |                  |                  |

|  |   |  |  |  |
|--|---|--|--|--|
| <i>price. See 52 Pa. Code § 54.5(C)(4) and 54.7.)</i>  |   |  |  |  |
| Statement Regarding Savings  | <i>Plain language that the supply price may not always provide savings to the customer COMPARED TO THE PTC.</i>   |  |  |  |
| Deposit Requirements   | <i>Any deposit requirements necessary for a customer and any terms associated with that deposit, in plain language.</i>   |  |  |  |
| Incentives<br><i>This row is required only if the supplier is offering any special incentives.</i> | <i>Any bonuses, discounts, cashback, etc. offers and any associated terms, in plain language. AND ANY CRITERIA FOR OBTAINING ANY INCENTIVE OR BONUS.</i>          |  |  |  |
| Contract Start Date  | <i>Plain language regarding start of EGS service (meter reads/billing cycles/etc.)</i>  |  |  |  |
| Contract [Term] Duration/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] <u>End of Contract</u>   | <i>Treatment of customer at end of contract. Timing of notices. [No cancellation/early termination fees. In plain language.]</i>                                  |  |  |  |
| [Electric Distribution Company Information]  | <i>[Name, telephone number, website, etc. Plain language statement that EDC is responsible for distribution charges, as well as any emergencies/outages/etc.]</i> |  |  |  |
| <u>Right of Rescission:</u>  | <i>An explanation of the customer's 3-day right of rescission per 52 Pa. Code § 54.5(d) and how to exercise this right.</i>                                       |  |  |  |