

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

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I. INTRODUCTION

In its Notice of Proposed Rulemaking Order (“NOPR”), the Commission proposes revisions to its existing regulations governing the information that electric generation suppliers (“EGSs”) are required to include in their contracts (referred to as “disclosure statements” in the regulations) with residential and small business customers. The Retail Energy Supply Association (“RESA”)¹ is an association of EGSs that include member companies licensed and operating in Pennsylvania as well as throughout the country. RESA member companies also provide service to all customer classes including the residential and small business customers affected by this proceeding. As such, the member companies of RESA have significant experience in complying with the Commission’s existing regulations as well as the regulations and requirements of other competitive markets with varying market structures. RESA appreciates this opportunity to provide its feedback on the proposals set forth in the NOPR and looks forward to a continuing dialogue with the Commission and interested stakeholders as the Commission moves toward making a final decision on the revisions.

RESA supports many of the proposed revisions because they either provide appreciated transparency and clarity or reasonably update the regulations consistent with the current state of the retail market in Pennsylvania. RESA does, however, offer the following feedback regarding other proposed revisions:

- The Commission should not revise the requirements regarding price presentation to restrict EGS pricing to the price per kilowatt-hour as this will have the effect of

¹ The comments 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 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.

dampening some of the current innovation that is already available in Pennsylvania while stifling future innovation that the market can offer.

- The Commission should make clear that EGSs can respond to specific customer requests to present a different price presentation regarding applicable taxes.
- The Commission should add language to clarify that newly proposed Section 54.5(c)(4) applies to prices based on actual customer usage (including any fees) and delete existing Section 54.7(b) in its entirety.
- The Commission should clarify that it is not requiring EGSs to set forth their confidential pricing methodologies for variable rate contracts and that it is not creating a new affirmative obligation for EGSs to provide advance notice of the price change beyond what EGS voluntarily agrees to do.
- The Commission should revise its proposal regarding early termination fees (“ETF”) to prohibit them starting 14 days (rather than 2 months) prior to the stated contract expiration date.
- The Commission should add language to be clear that by signing the contract the customer is providing consent to the electric distribution company (“EDC”) to release information to the EGS.
- The Commission should delete Section 54.38 regarding assessments because it does not accurately reflect the annual fee EGSs pay.
- The Commission should make clear that the new requirements are prospective and should be incorporated into EGS contracts starting 60 days after the date of final publication of the IRRC approved revisions.

II. SUPPORTED PROPOSALS

Many of the Commission’s proposed revisions to existing regulations provide appreciated transparency and clarity regarding the Commission’s expectations. For example, newly proposed Section 54.5(j) setting forth the Commission’s expectations regarding contract assignment codifies guidelines that were approved by the Commission in 1998.² By proposing this new section and including it in the regulations governing what EGSs are required to include

² NOPR at 21, referencing *Order on the Interim Guidelines Regarding Notification by Electric Generation Supplier of Operational Changes Affecting Customer Service and Contracts*, Docket No. M-00960890F0013, Final Order entered August 14, 1998.

in their disclosure statement, EGSs can more easily locate the Commission’s requirements and ensure that they are complying with Commission expectations.

Other proposed revisions appropriately update the existing regulations consistent with the way the market operates today. Examples of these proposed revisions include: (1) identifying the correct location for the glossary of terms that EGSs are required to use;³ (2) directing consumers to PaPowerSwitch.com for information about shopping;⁴ (3) replacing the verbiage “fixed term” with “fixed duration” to describe contracts that have a specified end date (in contrast to contracts that continue indefinitely until either the EGS or the customer take action to cancel);⁵ (4) requiring EGSs to specifically identify any introductory period and providing direction as to what must be included;⁶ and, (5) providing a choice of language regarding the disclosure to customers of when they will be notified of a future change in terms and/or expiration date of a fixed duration contract.⁷ Each of these changes provides updated useful information to consumers and also recognizes the different types of contracts that are available in the market today.

Still other proposed revisions recognize that Pennsylvania’s retail electricity market has been operating for a number of years now such that information that may have made sense for EGSs to include in disclosures to customers in earlier days is no longer needed. These proposed revisions include removing the requirement that EGS disclosure statements must include the name and telephone number of the default service provider and each EDC’s universal service

³ Proposed revisions to 52 Pa Code §§ 54.3(1)(ii) and 54.5(e).

⁴ Proposed new section 52 Pa. Code § 54.5(c)(13) (currently numbered as 12).

⁵ This change is made in numerous places throughout the regulations.

⁶ Proposed new section 52 Pa. Code § 54.5(c)(2).

⁷ Proposed revisions to 52 Pa Code § 54.5(g) to include the addition of a new subsection (2).

program information.⁸ Requiring EGSs to include this information in disclosure statements today does not provide significant value to consumers and, on the contrary, creates confusion while needlessly using valuable real estate on the disclosure statement that the EGS could use to provide more relevant information.

RESA supports all of these proposals and appreciates the Commission's initiative here to continue to evolve its regulations as both Commission expectations and the retail market evolve.

III. SUGGESTED REVISIONS TO PROPOSALS

A. Price Presentation in Disclosure Statements

RESA is concerned that several of the Commission's proposed revisions mandating how EGSs are to present their pricing structure to customers will have the effect of limiting the creative pricing structures that can be developed in the competitive market. As the Commission specifically acknowledges,⁹ the increasing availability of advanced metering infrastructure ("AMI") and smart meters provides important interval level usage data necessary to enable EGSs to develop creative and new products and services. Already today in Pennsylvania, these products are beginning to emerge. Since these new products and services will not neatly fit within predefined boxes, RESA urges the Commission to avoid being too restrictive in these regulations such that this innovation is stymied. RESA's feedback on the Commission's proposed revisions (as discussed in the sections that follow) are intended to achieve the appropriate balance between consistent customer disclosure and product design flexibility.

⁸ Proposed deletion of 52 Pa. Code § 54.5(c)(9); proposed revisions to currently numbered 54.5(c)(11) (to be renumbered as 12); and, proposed deletion of 54 Pa. Code § 54.5(c)(13).

⁹ NOPR at 14.

1. Section 54.5(c)(1): Price per kilowatt-hour

The Commission proposes to add language creating the new requirement that EGSs present their prices on a “per kilowatt-hour” basis.¹⁰ According to the Commission, this proposal is intended to bring the electric rule in alignment with the natural gas rule and ensure that the prices presented to consumers enable an “apples-to-apples” comparison.¹¹ While RESA recognizes the desire to require all EGSs to provide the same, consistent information to consumers to enable them to evaluate various offers, a restriction to the per kilowatt-hour will stifle innovation to the detriment of customers. Restricting all pricing to a “per kilowatt-hour” presentation inhibits the ability of EGSs to offer other creative pricing structures tailored to the specific needs and desires of the consumer. As the retail electricity market in Pennsylvania continues to evolve, technological advances (to include the widespread deployment of smart meters and access to interval level data) are driving EGSs to continually innovate their products and services to both satisfy customer demand and to effectively compete with one another. This includes developing new pricing structures. Consumers receive the greatest benefit of these inherent drivers when EGSs are not overly restricted in how they are required to explain their pricing structures. To be clear, EGSs do strive to explain how their products and services are priced in a consumer-friendly manner because they want consumers to understand the value of the offer and to select the EGS.

A restriction on pricing presentation such as proposed in these regulations would have the effect of dampening some of the current innovation that is already beginning here in Pennsylvania. Flat billed products, for example, charge the customer the same amount on a

¹⁰ NOPR at 14.

¹¹ NOPR at 14.

monthly basis without regard for the amount of kilowatt-hours used. Thus, presenting a price per kilowatt-hour for this type of product is not relevant for the customer. Similarly, some time-of-use products are not priced on a per kilowatt-hour basis but, rather are based on the time of day of usage and they may not specifically calculate pricing based on usage on certain days (i.e. “free weekends”). The expansion of on-site generation also impacts pricing presentation because pricing can be based on the credit that is applied for on-site generation. Though factored into the customer’s price, an EGS product may offer a customer more than just a per kilowatt-hour usage rate. Creating a new limitation on how pricing may be presented to customers will stifle future innovation and deprive consumers of the products and services that they desire which may not neatly fit within a predefined box for pricing presentation. For these reasons, RESA suggests the following language modification to the Commission’s proposal:

Section 54.5(c)(1): Generation charges shall be disclosed according to the actual prices per kilowatt-hour, as applicable.

2. Section 54.5(c)(1): Pricing to include an estimate of all applicable taxes

RESA recognizes that the intent of this new language is to align the regulations with Commission precedent in the “Fixed Means Fixed” Order¹² so that EGSs include an estimate of gross receipts tax (“GRT”) in the pricing offered to potential customers. RESA supports the inclusion of this language in the Commission’s regulations here (for residential customers) to better broadcast the Commission’s expectations so that all EGSs are held accountable to the same standard.

However, small business customers may need or want pricing to be shown in a different manner (for example, in a Request for Proposal, RFP, process). Therefore, RESA suggests

¹² *Guidelines for Use of Fixed Price Labels for Products with a Pass-Through Clause*, Docket No. M-2013-2362961, final Order entered November 14, 2013.

adding the following language to this Section to give EGSs the flexibility to satisfy the specific requirements of a potential customer:

Section 54.5(c)(1) Generation charges must include an estimate of all applicable taxes except for State sales tax and county tax-, unless the customer specifically requests a different price presentation.

3. Sections 54.5(c)(4) and 54.7(b): Usage Tables

Currently Section 54.7(b) requires EGSs to show in a table the price per kWh for an average customer using 500, 1,000 or 2,000 kWh of electricity. EGSs are required to show this table in “marketing materials that offer terms of service for acceptance by consumers.” The regulations in Section 54.3 which specifically details information that is to be included in the contract’s terms of service do not identify the usage table as a required term. In the NOPR, the Commission proposes to: (1) require a usage table in the contract’s terms of service if unit price changes based on usage or the product includes fees;¹³ and, (2) require the same table to be included in the contract summary and “marketing materials that offer terms of service for acceptance by consumers.”¹⁴ RESA understands that the purpose of this proposal is to present consumers with a “complete” per kWh price (usage and fees) to show the customer what he or she may be billed for products where the price is determined based on his or her actual usage (plus fees) in a billing cycle using the three specified usage bands.

a. Section 54.5(c)(4) should be revised

RESA supports moving this requirement (to the extent it is applicable) into Section 54.5(c) because this is where the Commission sets forth all of the required information/language EGSs are expected to include in their customer contracts. Based on RESA’s understanding of

¹³ Newly proposed Section 54.5(c)(40).

¹⁴ Proposed revisions to 52 Pa. Code Section 54.7(b).

the purpose of this proposal, RESA suggests the addition of the term “actual” in the text as stated below:

Section 54.5(c)(4): If the unit price changes based on actual customer usage or if the product include fees in addition to the unit price, the price per kWh shall factor in all costs associated with the rate charged to the customer including any fees and show the average price per kWh for usages of 500, 1,000 and 2,000 kWh of electricity in a table format.

The addition of the term “actual” to describe usage will provide clarity that the requirement does not apply to customized products which may be quoted based on historical usage data. Reorganizing the sentence to reference fees in the context of the requirement to display “all costs,” provides additional clarity that the table is expected to factor in the usage costs plus included fees. For the reasons discussed previously, RESA is concerned that overly restrictive requirements regarding how prices are to be presented to consumers may have the effect of dampening innovation in the marketplace.

The language as drafted (with RESA’s addition) limiting the requirement to display the usage table for products where the unit price (plus any fees) changes based on actual customer usage is important to ensure that the regulation does not constrain the ability of EGSs to continue to develop new products and services with appropriate pricing structures that are not based on usage. For example, flat billed and time-of-use products are not usage based offerings so presenting a table with different usage bands would not be useful for the customer. As the market continues to evolve, there will likely be other types of products and services where price is not based on actual usage. Requiring the usage table for these types of products does not provide useful information for the consumer and could be misleading or lead to customer confusion. It is also important to remember that as EGSs strive to innovate pricing structures and products, they also endeavor to determine the most consumer-friendly way to present their product and pricing information to consumers. As they are directly impacted by their ability to

acquire and retain customers, EGSs are incented to ensure that the information they provide to potential new customers accurately explains their products and services. Since they operate in a competitive market, if EGSs do not succeed in this regard then they will either not acquire the customer or quickly lose the customer. Therefore, overly restrictive regulations that constrain the creativity of EGSs in presenting their pricing and products should be avoided.

b. Section 54.7(b) should be deleted

RESA recommends that the Commission delete Section 54.7(b) in its entirety.

Maintaining the usage table requirement in a section that is not specifically focused on the information to be included in the customer contract is confusing for EGSs who ensure that they are compliant with Section 54.5(c) but do not realize that additional requirements are located in a different section of the regulations.

Also potentially confusing regarding Section 54.7(b) is the requirement that this usage table be included in “marketing materials.” There is no definition of “marketing materials” included in the regulations. The existing limiting language of “marketing materials that offer terms of service for acceptance by consumers” is confusing. Arguably, this could mean every single piece of marketing materials produced by an EGS must include this usage table (to the extent it is a product where the kWh price is determine based on customer’s actual usage). Requiring this additional information on so many marketing pieces is not only costly but also reduces the amount of space available on these marketing pieces to present more useful information to the consumer.

Finally, it is unnecessary for the newly proposed language for Section 54.7(b) to specifically include the requirement that the usage table be included in the contract summary 52 Pa Code Section 54.5(i) requires EGSs to include with a customer’s terms of service a contract

summary “in a format provided by the Commission.”¹⁵ The Commission has flexibility outside of the regulations to prescribe the contents of the contract summary and, therefore, does not need to include specific language specifically directing that the usage table must be included in the contract summary. Retaining the flexibility to revise the contract summary in the future without the need to undertake a rulemaking proceeding may be particularly beneficial regarding the usage table as RESA questions whether the inclusion of this usage table within the contract summary table will create more confusion for customers. To the extent the Commission elects to move forward with this new requirement for the contract summary, not making it a regulatory requirement permits the Commission flexibility to reassess in the future whether the usage table is actually offering useful information as part of the contract summary.

B. Section 54.5(c)(3): Price Variability

The Commission proposes to add: (1) a requirement in Section 54.5(c)(3)(i) that the EGS include its “specific prescribed variable pricing methodology;” and, (2) a newly proposed Section 54.5(c)(3)(iv) requiring “a description of when and how the customer will receive notification of price changes.” According to the Commission, the purpose of these two proposals is to align the electric regulations with the natural gas regulations “to provide greater transparency” and “let customers know when and how they will be informed of their variable-price changes.”¹⁶

As noted in the previous discussion of Section 54.5(c)(1), pricing is complicated and each EGS factors different components into determining the final price that it offers customers. Describing these complex calculations in a meaningful way for customers would be extremely

¹⁵ 52 Pa. Code § 54.5(i).

¹⁶ NOPR at 15.

difficult. Moreover, EGSs view their specific pricing methodologies as confidential trade secrets that they do not publicly share. In a market that is still predominately based on price comparisons (as exists in Pennsylvania today), there is a heightened need for EGSs to be able to keep their individual pricing calculations confidential from their competitors. While RESA recognizes the Commission's desire to provide the customer with useful information about how a specific EGS variable product will be priced (and changed), RESA does not interpret the Commission's proposal as requiring EGSs to provide their confidential, complex pricing calculations to customers. If this assumption is true and the Commission confirms this in its final order, then the language as proposed appears to provide EGSs the appropriate flexibility to determine how to balance their need to keep confidential their pricing methodology with the Commission's goal of providing customers information about the basis upon which their variable price is subject to change.

Regarding the Commission's newly proposed Section 54.5(c)(3)(iv) requiring EGSs to provide a description of when and how the customer will receive notification of price changes, RESA does not interpret this proposal to create a new affirmative obligation on EGSs to provide customers advance notice of price changes for variable contracts. Rather, RESA understands this proposal to affirmatively obligate the EGS offering a variable price and voluntarily agreeing to provide notification of price changes to disclose to the customer how such notification will be provided – for example, an EGS could state that the change will be reflected on the next monthly bill the customer receives. Assuming RESA's understanding of this proposal is correct, RESA does not oppose it.

However, RESA would not support the creation of either: (1) a new obligation to disclose specific pricing calculations; or, (2) a new affirmative obligation on EGSs to notify customers of

when and how they will receive notification of price changes. As part of agreeing to a variable price contract, customers understand that the price may change. Other provisions of the Commission’s regulations ensure that this is fully disclosed to the customer. The Commission regulations also specifically require that the EGS provide historical pricing information for the EGS’s variable priced product to give the customer some idea of how the pricing of similar variable contracts has fluctuated in the past.¹⁷ The operation of all these existing regulatory requirements along with the newly proposed revisions as understood by RESA, provide customers with sufficient information about variable priced products to enable them to make an informed decision. As such, creating new regulatory requirements is unnecessary and RESA specifically requests that the Commission confirm in the Final Rulemaking Order that RESA’s understanding of these newly proposed provisions is accurate.

C. Proposed Prohibition of Early Termination Fees After Initial Renewal Notice

The Commission proposes changes to the following regulations to effectuate a new requirement that would ban the imposition of early termination fees (“ETF”) once a supplier has provided to the customer the initial contract expiration notice that is required by 52 Pa. Code § 54.10:¹⁸

- Adding new Section 54.3(2)
- Adding new language to newly renumbered Section 54.5(c)(11)
- Adding new language to Section 54.10(1)(vi)

RESA recommends that the Commission revise this proposal to limit the ban on the imposition of ETFs starting 14 days prior to the stated contract expiration date.¹⁹ For the reasons

¹⁷ 52 Pa. Code § 54.5(c)(14).

¹⁸ NOPR at 11-13.

¹⁹ This is consistent with the Texas rules. Ch 25, Subchapter R Sec.25.475 (e)(1)(C)(ii) available at <https://protect-us.mimecast.com/s/Q48RC82o92SXRnwDh4lqrA?domain=puc.texas.gov>.

explained more fully below, RESA’s recommendation is a reasonable balance of: (1) the information EGSs are required to provide to customers and the fact that the Commission’s regulations require the notice to be sent two months in advance; with, (2) the financial exposure to EGSs resulting from contracts that are cancelled early.

EGSs generally secure load for the existing term of the contract which generally means that the EGS enters into a wholesale contract (in advance) for an amount of wholesale supply consistent with the duration of the contract. If a customer cancels a contract early, the EGS is likely bound by the wholesale supply contract but the EGS will not receive the customer payment for the cancelled months. ETFs can take on even greater importance in relation to small business customers (to whom these regulations also apply) because the small business customer may have specific requirements that are negotiated as part of the contract and – depending on the business – significant usage associated with the contract. As such, the risk of financial exposure for these contracts can be significant. For all these reasons, ETFs may have an important role in the ability of the EGS to offer a particular price to a customer. Requiring EGSs to absorb financial losses for contracts that are cancelled two months prior to expiration is overly proscriptive.

Moreover, the Commission’s regulations ensure that customers are well informed of the risk of the ETF both during contract formation and the renewal period. In the initial contract, EGSs are required to explain any fees in a type size larger than the type size appearing in the rest of the contract.²⁰ ETFs must also be disclosed on the contract summary.²¹ During the renewal period, EGSs must remind customers about the ETF agreed to in the initial contract and

²⁰ 52 Pa. Code § 54.5(c)(10).

²¹ NOPR at Attachment A, 10th row.

specifically state the amount of the fee and how to avoid it.²² Thus, customers are given reasonable information about the fact that their contract includes an ETF and can either decline to enter into the contract or take action at the appropriate time to avoid imposition of the ETF consistent with the contractual terms.

Finally it is worth noting that the timing of the required notice to which some consumers respond is driven by the Commission's regulations which require EGSs to send customers an "initial notice" 45-60 days prior to the expiration of a fixed duration contract.²³ Thus, customers taking action to cancel contracts within the 45-60 day window prior to contract expiration are doing so as a result of the notice timing requirements mandated by the Commission.

While RESA understands the concerns about consumers having an ETF assessed upon them because they acted in response to the initial notice, RESA does not support requiring an EGS to absorb two months of costs in this situation. Rather, a more reasonable way to balance the concerns of all involved would be to prohibit the imposition of ETFs starting 14 days prior to contract expiration. Since EGSs are already required to provide the date when the fixed duration contract is set to expire, consumers will know the appropriate timing in which they must act to cancel the contract to avoid imposition of an ETF. This approach also has the advantage of addressing issues related to when the actual switch by the EDC will occur and provides more transparency for consumers.

RESA's proposed revisions for each of the impacted Sections are:

Section 54.3(2) For residential and small commercial customers, contracts for retail electric service entered into after the effective date of this regulation **may only impose a fee** ~~not include any fees~~ to be paid by the retail electric customer for terminating a fixed duration contract **up to 14**

²² 52 Pa Code § 54.10(1)(vi).

²³ 52 Pa. Code 54.10(1).

~~days prior to the date the contract expires 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.~~

Section 54.5(c)(11)(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. Penalties and fees shall be disclosed in actual dollars or a specific method for determining the actual dollars shall be disclosed. This explanation shall include a statement advising the customer that the customer ~~may will not~~ be subject to any penalty or fee if the customer terminates the contract ~~up to 14 days prior to the date the contract expires. 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.~~

Section 54.10(1)(vi) A statement indicating whether the existing fixed [term]duration contract has a cancellation fee, and an explanation [of the fee amount and how to avoid the fee, if possible, including notice of the date when the customer can choose a different product from the customer's existing EGS, choose an alternative EGS or return to default service] that the customer ~~may be is not~~ subject to the cancellation fee if the customer terminates the contract ~~up to 14 days prior to the date the contract expires. at any time between the date of the initial notice and the expiration date of the fixed duration contract.~~

D. New Section 54.5(k): Notice Regarding Receipt of Customer Information

The Commission proposes to include new section 54.5(k) to inform customers that an EGS will be obtaining customer information from the EDC and that the EGS is required to maintain the confidentiality of the customer's personal information.²⁴ As noted by the Commission, EGSs need customer information maintained by the EDC in order to provide service and many EGSs already include similar language in their contracts to inform customers of this information sharing. Thus, RESA supports the Commission's proposal.

²⁴ NOPR at 21.

However, just as important as informing the customers about the information sharing that necessarily occurs between EDCs and EGSs, RESA recommends additional language be added to make it clear that the customer is consenting to the release of information by the EDC to the EGS by entering into the contract with the EGS. Adding this language will streamline the ability of the EGSs to request and receive information about their customers from the EDC without the need for additional paperwork. Examples of this information includes customer information for consumers who enroll with the EGS through the various standard offer customer referral programs and the ability for EGSs to access the EDC account number look-up tools in the situation where the customer is enrolling on-line (and has agreed to the disclosure statement) but does not have immediate access to his or her account number. Unfettering the ability of EGSs to gain access to important customer account information in both of these situations will enable EGSs to provide better and more timely service to their customers and avoid time consuming disputes between the EDCs and EGSs regarding whether the EGS has the appropriate customer consent.

For these reasons, RESA recommends the following revisions to the Commission's proposed new regulation:

Section 54.5(k) If the EGS intends on obtaining customer account information from the EDC, the EGS shall inform the customer what type of information may be obtained, the purpose for obtaining this information and inform the customer that ~~he or she is~~ ~~they are providing~~ ~~consenting to the EDC to release this information~~ 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.

IV. SECTION 54.38 REGARDING REGULATORY ASSESSMENTS SHOULD BE DELETED

The NOPR does not propose any revisions regarding Section 54.38 which requires EGSs to pay assessments pursuant to 66 Pa. C.S. §510 of the Public Utility Code even though this Section was invalidated by action of the Pennsylvania Supreme Court in 2005²⁵ and does not accurately describe the “annual fee” implemented by the Commission during its 2015-2016 Fiscal Year.²⁶ Since the Commission does not collect the assessments as described in Section 54.38, the continued inclusion of this section creates confusion because it does not accurately describe the annual fee collected by the Commission. Therefore, RESA recommends that Section 54.38 be deleted in its entirety.

V. IMPLEMENTATION TIMING FOR APPLICABILITY OF NEW REQUIREMENTS

Generally, the changes proposed by the Commission would require the EGSs to implement new business and operational protocols to ensure that their future customer disclosure statements and communications with customers conform with the content of the final regulations. More specifically, changes to the customer contract will require the EGSs to review existing contracts, identify revisions that are needed and then undertake programmatic system changes to insure that the changes are incorporated into the EGS’s systems. RESA understands that the Commission’s Final Rulemaking Order will need to be approved by the Independent

²⁵ *Delmarva Power & Light Co. v. Pennsylvania Public Utility Comm'n*, 870 A.2d 901, 912 (Pa. 2005).

²⁶ In 2014, Electricity Generation Customer Choice and Competition Act was amended to add new section 66 Pa. C.S. 2208(g) authorizing the Commission to “establish, by order or rule, on a reasonable cost basis, fees to be charged for annual activities related to” suppliers. 66 Pa. C.S. § 2808(g). Subsequently, the Commission approved a methodology by which it began collecting an “annual fee” from suppliers. *Implementation of Act 155 of 2014*, Docket No. M-2014-2448825, Final Implementation Order entered April 24, 2015.

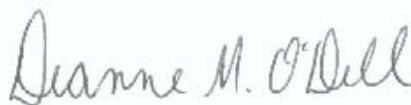
Regulatory Review Commission (“IRRC”) and then (assuming it is approved) would be published in the Pennsylvania Bulletin to be effective 30 days after. Given that EGSs likely will already have other information technology changes underway or scheduled, RESA suggests that the Commission provide an additional 60 days after the date of publication of the final IRRC approved rules for EGSs to implement the final regulations.

Relatedly, as part of the Commission’s Final Rulemaking Order specifying the approved revisions, RESA respectfully requests that the Commission clarify that the new requirements are prospective and should be incorporated into EGS contracts starting 60 days after the date of final publication of the IRRC approved revisions. Thus, pre-existing contracts prior to that start date in compliance with the current regulations will not be abrogated due to the passage of the new revised regulations. This clarity will ensure that then-existing customer contracts in compliance with then-existing regulations are not disrupted and all EGSs will be operating in the same manner to incorporate the new requirements in their future contracts.

VI. CONCLUSION

RESA appreciates this opportunity to provide its viewpoint regarding this important proceeding and looks forward to continuing to assist the Commission with this very important process.

Respectfully submitted,



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VII. APPENDIX A – RESA’S SUGGESTED REVISIONS TO COMMISSION PROPOSED LANGUAGE

As reflected in the *highlighted* text below

Section 54.5(c)(1): Generation charges shall be disclosed according to the actual prices per kilowatt-hour, as applicable. Generation charges must include an estimate of all applicable taxes except for State sales tax and county tax-, unless the customer specifically requests a different price presentation.

Section 54.5(c)(4): If the unit price changes based on actual customer usage or if the product include fees in addition to the unit price, the price per kWh shall factor in all costs associated with the rate charged to the customer including any fees and show the average price per kWh for usages of 500, 1,000 and 2,000 kWh of electricity in a table format.

Section 54.7(b) If the unit price changes based on customer usage or includes fees in addition to unit prices, [Marketing] marketing materials, including contract summaries, that offer terms of service for acceptance by consumers shall include prices, as follows:
— (1) [If using a fixed price, the EGS shall show in a table the price per kWh for an average customer using 500, 1,000 or 2,000 kWh of electricity.
— (2) If using a variable price mechanism, the] The EGS shall factor in all costs associated with the rate charged to the customer, and show the average price per kWh for usages of 500, 1,000 and 2,000 kWh of electricity in a table format.
(2) The EGS shall note the effective date of the prices shown in the table [provided under paragraph (1) or (2)].

Section 54.3(2): For residential and small commercial customers, contracts for retail electric service entered into after the effective date of this regulation may only impose a fee not include any fees to be paid by the retail electric customer for terminating a fixed duration contract up to 14 days prior to the date the contract expires 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.

Section 54.5(c)(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. Penalties and fees shall be disclosed in actual dollars or a specific method for determining the actual dollars shall be disclosed. This explanation shall include a statement advising the customer that the customer may will not be subject to any penalty or fee if the customer terminates the contract up to 14 days prior to the date the contract expires. 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.

Section 54.10(1)(vi): A statement indicating whether the existing fixed [term]duration contract has a cancellation fee, and an explanation [of the fee amount and how to avoid

the fee, if possible, including notice of the date when the customer can choose a different product from the customer's existing EGS, choose an alternative EGS or return to default service] that the customer may be is not subject to the cancellation fee if the customer terminates the contract up to 14 days prior to the date the contract expires. at any time between the date of the initial notice and the expiration date of the fixed duration contract.

Section 54.5(k): If the EGS intends on obtaining customer account information from the EDC, the EGS shall inform the customer what type of information may be obtained, the purpose for obtaining this information and inform the customer that he or she is they are providing consenting to the EDC to release this information 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.

Section 54.38. Regulatory assessments.

~~(a) A licensee shall be required to pay assessments to be used to defray regulatory costs. See section 510 of the code (relating to assessment for regulatory expenses upon public utilities). Assessments will be based upon the administrative costs incurred by the Commission related to generation suppliers. These costs include:~~

- ~~—(1) Maintaining records related to licensees and administering other provisions of the code related to maintenance of adequate reserve margins.~~
- ~~—(2) Compliance with Chapter 56 (relating to standards and billing practices for residential utility service).~~
- ~~—(3) Fulfilling consumer information and education obligations.~~

~~(b) Yearly assessments shall be paid by the licensee within 30 days of receipt of notice of the amount lawfully charged against it as a condition of maintaining a license to supply electricity or electric generation. See section 510(c) of the code.~~