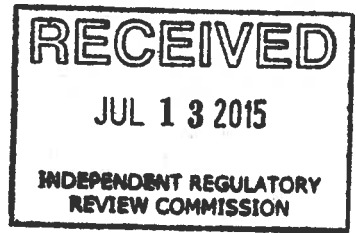


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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Customer Information Disclosure :
Requirements for Natural Gas Suppliers : **Docket No. L-2015-2465942**
Providing Natural Gas Supply To :
Residential and Small Business :
Customers :

**COMMENTS
ON BEHALF OF THE
RETAIL ENERGY SUPPLY ASSOCIATION**

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I. INTRODUCTION AND SUMMARY OF POSITION

The Retail Energy Supply Association (“RESA”)¹ submits these comments to the proposed rulemaking order published in the *Pennsylvania Bulletin* on June 6, 2015 (“Proposed Disclosure Rules”) to amend the Commission’s customer information disclosure regulations for residential and small business customers relating to disclosure statements and notice requirements in connection with the expiration of contracts or changes in contract terms. Prior to adoption of the proposed rulemaking order on March 26, 2015, the Commission solicited comments from interested parties on these topics.

RESA is generally supportive of proposed changes to the customer information disclosure regulations that are intended to increase transparency and improve the content of information that is provided to consumers. In some instances, however, RESA believes that the Commission has proposed to impose excessive disclosure requirements on natural gas suppliers (“NGSs”) that may have the effect of minimizing the variety of product offerings and reducing the number of NGSs who are actively participating in the retail natural gas market. RESA submits that it is important for the Commission to defer to the market, when possible, to determine what level of information is needed by consumers. RESA’s specific positions on the proposed regulations, which are more fully described below, include:

- The Commission should use this rulemaking as an opportunity to establish a set of fair and balanced rules that adequately protect consumers while not stifling natural gas competition;

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association 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.

- NGSs should not be required to include a starting price in the disclosure statement for a variable price contract
- NGSs should be permitted to decide whether ceiling prices are part of their contracts, with the Commission's rules focusing on disclosure of any ceiling prices or clear disclosure of the absence of them
- While giving advance notice of variable price changes would be unwieldy, it is reasonable to require NGSs to inform customers when they will receive notice of price changes
- Providing 24 months of historical pricing data would be burdensome, meaningless and confusing to customers
- NGSs should not be required to include a specific prescribed variable pricing methodology in the disclosure statement as such a requirement effectively mandates offering an index-based product as opposed to a managed month-to-month product; setting forth general conditions of variability should be sufficient and would be consistent with the electric rules
- Amendments to the Commission's sample contract summary should be served on all licensed NGSs and published in the *Pennsylvania Bulletin*
- NGSs should not be required to include NGDC information on contract summaries
- Providing information on contract renewals and changes in contract terms in the one page contract summary is unnecessary and contradicts the purpose of the summary
- Specific calendar service start dates should not be required in contract summaries
- A record of an NGS' consultation with staff on the adequacy of their contract summary should be made available
- The time periods for initial and options notices should be shortened to 45-60 and 30 days prior to the expiration date of a contract or the effective date of a proposed change in terms
- NGSs should be permitted to convert a customer's fixed term contract to a month-to-month contract, provided there are no cancellation fees, without providing advance notice of monthly price changes
- It should be permissible for NGSs to send options notices electronically, rather than by first class mail, if the customer agrees to receive electronic communications

- I&E should be required to review disclosure statements and issue private letters that no action of an enforcement nature will be taken based on the facts presented if I&E deems the proposed disclosure terms and conditions to be compliant with current regulations
- The contract termination requirement when a customer moves should be rescinded in anticipation of “seamless moves”
- NGDC references should be removed on NGS documents pursuant to §§62.75(9), 62.75(11) and 62.75(13)
- The Commission’s direction for customers to call the Commission, as specified in §62.75(c)(12), should be deleted in view of the availability of the natural gas shopping website, PaGasSwitch.com
- Assignment of customer contracts is a subject that should be addressed in the disclosure terms and conditions, but need not be addressed in the one page contract summary

II. RESA COMMENTS

A. Uniformity of Rules

By the proposed rulemaking order, the Commission notes that consistency in the disclosure rules between the electric and natural gas industries is important since unnecessary differences may confuse customers and burden NGSs’ operations. The Commission emphasized, however, that modifications should be made to the electric rules to reflect “lessons learned,” and that the electric rules can later be aligned, as necessary, with its final determination in this rulemaking.

RESA generally agrees with this approach. In addition, RESA urges the Commission to use this rulemaking as an opportunity to establish a set of fair and balanced rules that adequately protect consumers while not stifling natural gas competition. Some of the Commission’s proposals that mirror rules that have recently been established for electric generation suppliers (“EGSs”), particularly with respect to variable pricing requirements, may unnecessarily limit the

product offerings that are available to consumers and reduce the number of NGSs actively participating in the retail market. Particularly since competition in the retail natural gas market has lagged behind competition in the retail electric market, and the Gas Retail Markets Investigation is designed to improve its overall functioning and effectiveness, it is imperative that the Commission avoid imposing excessive or overly restrictive rules on NGSs that result in fewer product offerings and fewer active NGSs. As the Commission has observed, measures of effective competition include the number of active suppliers and the variety of product offerings available to consumers. *See Investigation of Pennsylvania's Retail Natural Gas Supply Market*, Docket No. I-2013-2381742 (Order adopted September 12, 2013 at page 1, footnote 1), citing the Commission's Report to the General Assembly issued in October 2005.

B. Disclosure Statement

1. Starting Price

The Commission proposes to continue the requirement that is contained in the current regulations for NGSs to include a starting price in the disclosure statement for a variable price contract. 52 Pa. Code § 62.75(c)(2)(ii). For NGSs that base their variable prices on the actual costs they incur to purchase natural gas supply in the market, it can be difficult to include a starting price and requires the NGS to estimate future costs and assume the risk for at least one billing cycle. In turn, the NGS may need to charge the customer a higher starting price than it otherwise would have to ensure that this risk is covered. Also, because the starting price would be based on forecasts, it would not necessarily bear any resemblance to the prices charged by the NGS in subsequent months, which would more closely reflect current market conditions. Alternatively, this requirement may result in NGSs making a business decision not to offer a

variable price product or not to offer any products at all to residential or small business customers in Pennsylvania's retail market.

Rather than mandating that NGSs include a starting price in the disclosure statement, the Commission should require NGSs to either include a starting price or prominently disclose to the customer when the starting price will be provided, *i.e.* when the first bill is received or through the website. If the customer desires to know the starting price in advance of enrolling, he or she will not agree to switch to that NGS and will instead search out an NGS that is willing to disclose the starting price prior to the enrollment. In that way, the Commission would be allowing the market to dictate when pricing information is shared. Also, this approach would be consistent with the remainder of the NGS's contractual relationship with the customer when subsequent monthly prices are not known until the bill is received.

Alternatively, if the Commission insists on retaining the requirement for an NGS to include a starting price in the disclosure statement for the first full billing month, at a minimum RESA urges the Commission to permit this mandate to be fulfilled through the use of a formulaic contract price that enables the customer to calculate the bill using the contract, publicly available rates or price indices. This would give an NGS the opportunity to offer a variable price product and avoid the pitfalls associated with estimating a starting price. However, this mandate would still require NGSs to utilize what is essentially an inferior alternative that would effectively prevent an NGS from offering a true month-to-month product. Such month-to-month products are valuable components of the NGS product mix that give the NGSs the opportunity to bring their industry expertise to bear on gas procurement and other cost issues to produce an attractively priced competitive alternative for customers.

2. Ceiling Price

As to a ceiling price, the Commission proposes to continue the existing requirement for NGSs to disclose the ceiling price, if applicable. 52 Pa. Code § 62.74(c)(2)(ii). If there is no ceiling price, the Commission proposes adding a requirement for the NGS² to prominently disclose that there is no limit on how much the price may change from one billing cycle to the next. 52 Pa. Code § 62.74(c)(2)(iii).

If an NGS opts to place a limit on the amount by which the variable price may change, RESA has no objections to a requirement for inclusion of this ceiling price in the disclosure statement. RESA stresses, however, that in adopting final regulations, it is imperative that the Commission continue to forego imposing any requirement for a ceiling price. As the Commission has properly observed in the proposed rulemaking order, the Public Utility Code does not authorize the Commission to regulate or cap prices that are charged by NGSs. *See, e.g., Nadav v. Respond Power LLC*, Docket No. C-2014-2429159 (Opinion and Order entered December 19, 2014). By requiring disclosure of a ceiling price, if applicable, and requiring prominent disclosure of the absence of a ceiling price, the Commission would ensure that consumers have a sufficient basis upon which to make an informed decision about the contract.

3. Notice of Price Changes

By the proposed rulemaking order, the Commission would require NGSs to describe in the disclosure statement when the customer will receive notification of changes in variable prices. 52 Pa. Code § 62.74(c)(2)(v). In advancing this proposal, the Commission expressly rejected a request for a requirement that NGSs provide advance notice of variable price changes. RESA commends the Commission for recognizing that advance notice of variable price changes

² RESA notes that Section 62.75(c)(2)(iii) of the proposed regulations contains a typographical error in that it states that the NGDC, rather than the NGS, shall provide a statement about there being no limit on how much the price may change.

would be overly burdensome for NGSs, especially since prices may change monthly and may not be known ahead of time, particularly so when the NGS bases the prices on actual costs incurred to acquire natural gas supply in the market. RESA urges the Commission to continue this approach in adopting final regulations.

As to informing the consumer when he or she will receive notification of changes in variable prices, RESA supports this requirement. Particularly if consumers will not know about price changes until after the fact, *i.e.* when they receive their bills, it is important to inform them of that fact prior to enrolling. While some customers may forego a product that involves variable price changes without advance notice, having this information prominently disclosed ahead of time should minimize future complaints and consumer frustration about price increases for which no advance notice was provided.

4. Historical Pricing Data

The Commission proposes to require NGSs selling variable-priced products to provide potential customers with a 24-month price history of the product and to accompany this information with a disclaimer that historical pricing is not indicative of present or future pricing. 52 Pa. Code § 62.74(c)(2)(vi) and (vii). RESA strongly opposes this proposal, largely based on the disclaimer language itself, which accurately suggests that the data is essentially meaningless.

The Commission suggests that this historical price data has some value in educating customers about the seasonal variability and magnitude of volatility in monthly energy prices. To the contrary, RESA believes that sharing this data has much more potential to confuse and frustrate customers rather than educate them. Providing historical data while simultaneously indicating that it is meaningless is likely to confuse customers. Providing historical data that bears no resemblance to a customer's actual experience is likely to frustrate customers.

For instance, a customer who enrolls with an NGS after a particularly stable two-year period will expect that trend to continue, regardless of the language in the disclaimer. If the market then becomes more volatile and the customer experiences significant price swings, the customer will point to the historical data as a basis for his or her belief that the NGS has acted inappropriately in imposing price increases. In addition, the NGS has already either provided a ceiling price or indicated that there is no limit to which prices may increase from one month to the next; therefore, consumers are aware of potential price spikes. As for further educating consumers about seasonal variability and magnitude of volatility in monthly prices, the Commission and other entities such as the Office of Consumer Advocate are free to disseminate information about historical prices as part of their consumer education efforts.

Although it would be preferable to eliminate this requirement in its entirety, RESA offers alternatives in the event the Commission decides to include it as part of the final regulations. For instance, the Commission should make any requirement to share historical information applicable only in the event that customer requests such data. Additionally, the Commission should scale back the requirement to be less cumbersome so that NGSs only need to disclose general historical trends, such as a range of percentages by which prices have changed over the prior two years.

Moreover, if the Commission maintains the historical data requirement in the final regulations, it should expressly exempt NGSs from providing this information if the product is based on a pre-defined pricing formula or publicly available market indices. In that situation, the NGS is giving the consumer the tools necessary to calculate prices independently and understand the basis for price changes. As the consumer is only interested in the prices being currently charged by the NGS, historical pricing information is irrelevant and of no value.

Regarding the Commission's request for comments on how new NGSs entering the market or existing NGSs offering new products would fulfill the historical data requirement, RESA submits that this challenge is another reason to eliminate the proposal for NGSs to provide historical data to customers. Realistically, NGSs who are new to the market or new to variable pricing would not have this historical data and would be unable to provide it, placing them on uneven footing with NGSs who are required to provide it. Not only would this potentially put the latter NGSs at a competitive disadvantage, it would also likely confuse customers who are comparing offers among NGSs in both categories. Rather than determining a way for new NGSs to comply with this requirement, the Commission should simply delete it from the final regulations.

5. Pricing Methodology

The Commission proposes to retain the requirement in the existing regulations for the inclusion of a specific prescribed variable pricing methodology in the disclosure statement. 52 Pa. Code § 62.74(c)(2)(i). While RESA agrees with the requirement for NGSs to set forth the general conditions of variability, the Commission should not require NGSs to base their prices on a specific methodology. To do so, the Commission would be venturing into the regulation of NGS prices, which is beyond its statutory authority. Moreover, the disclosure of an explicit formula or price index would unduly restrict an NGS's flexibility to competitively price its product, would effectively require NGSs to offer index-based products rather than month-to-month products and could unfairly signal its price-setting method to competitors.

This is another situation where the consumers or the market should decide on the level of detail that an NGS must provide. If consumers demand to have their prices tied to a specific

methodology that is disclosed in the contract, NGSs who wish to remain viable in Pennsylvania's retail market for natural gas supply will respond and provide that information.

Notably, the regulations applicable to the electric industry do not contain this requirement. Rather, those regulations only require EGSs to set forth the general conditions of variability or to state on what basis the prices will vary. 52 Pa. Code § 54.5(c)(2)(i). RESA urges the Commission to make delete the language requiring a "specific prescribed variable pricing methodology" from the final regulations, making them consistent with the corresponding rules for the electric industry.

C. Contract Summary

The Commission has proposed adopting the same practice with the natural gas industry that it adopted with the electric industry regarding guidance on contract summary specifics. It proposes that a contract summary will be required in the regulations at § 62.75(i), but the specific requirements of the contract summary will not be embedded in the regulations. *See Proposed Disclosure Rules, Attachment A.* The Commission believes this approach will permit it the flexibility to more easily and readily revise the contract summary in the future to reflect the evolving energy markets without initiating a formal rulemaking. Proposed Disclosure Rules at 16.

RESA supports this basic framework for an approach to contract summaries, but comments as follows on specific elements of the contract summary requirements.

1. One Page Summary

In RESA's view, a one page summary of the main terms of the NGS's contract with the customer, written in plain and clear language using a readable font, is an appropriate complement to the more detailed disclosure document. RESA notes that the sample contract summary issued

with final regulations (Attachment A) should be updated to conform to the substance of the rules as finally promulgated. For example, if the Commission does not require that an initial monthly price be stated for variable rate products, the sample contract summary should reflect that substantive position.

Any periodic Commission revisions to the sample contract summary should be served on each licensed NGS by the Commission, as well as published in the *Pennsylvania Bulletin* when issued, so that proper notice to affected NGSs is provided. Because the Commission does not intend to open a new rulemaking for such updates, any changes to the sample contract summary should be consistent with the regulations.

2. NGDC Information

The Proposed Disclosure Rules do not require inclusion of NGDC information in the one page summary. RESA concurs in this position and agrees that including such information could convey the notion that there is a business relationship between the NGS and the NGDC. The Commission should maintain its position to not require NGDC information on the contract summary.

3. Renewal/Change of Terms

In contrast to its position on electric generation supplier contract summaries, the Commission agreed with RESA that “including this information [renewal/change of term information] in the contract summary may confuse customers.” Proposed Disclosure Rules at 16. RESA maintains its position that including information on renewals of contracts and changes in contract terms is unnecessary in the one page summary. Adding this information creates a risk of providing an overload of information to the customer when the goal of the contract summary is to convey the contract essentials in an understandable format. Accordingly,

the proposed sample contract summary should be amended to remove the reference to renewal terms.

4. Start Date

RESA supports including a general description of when NGS service is expected to commence in the contract summary. However, the NGS should not be required to project any specific calendar start day due to variables that could impact the precise day service commences. An error on such a projection early in the relationship with the customer could have a disproportionate negative impact in the mind of the customer. This approach is consistent with generally accepted commercial practices that provide a range of possible start dates for initiation of a service.

5. Informal Review

The issue of staff review of draft NGS contract summaries requires balancing the goal of encouraging NGSs to consult Commission staff in order to benefit from their perspectives, with the need to respect staff workload and the reality that their informal views are not binding on the Commission. Put another way, the process is more worthwhile to NGSs if a positive staff review carries some weight in any hindsight review of their contract summaries and staff will be more willing and available to share their views if the process is informal and their analysis is not later subjected to detailed legal scrutiny.

A balanced resolution of this issue is to provide for informal staff review of proposed one page contract summaries at the NGS's option. Should the NGS seek staff informal review, the NGS would receive a form letter acknowledging the consultation, a copy of which would be included in the NGS's Commission record folder. In any subsequent challenge of the adequacy

of the contract summary, the fact that the NGS made the effort to seek and obtain staff consultation before acting would be documented.

D. Notices of Contract Expiration or Change in Terms

The Commission proposes to add a new section to the regulations setting forth the various requirements applicable to NGSs when customers' contracts are nearing their expiration dates or when the NGSs propose changes in contract terms. These proposals address the timing and content of these notices, as well as the manner in which they should be sent to consumers. RESA's comments regarding each proposed requirement are set forth below.

1. Time Periods

The proposed regulations would require an NGS to provide an initial notice to each customer 45 to 60 days prior to the expiration date of the contract or the effective date of the proposed change in terms. The initial notice would inform the customer of the expiration date of the contract or generally describe the proposed change in terms of service, and indicate that a follow-up notice ("options notice") will be sent with more details and an explanation of the customer's options. 52 Pa. Code § 62.81(a)(1). The Commission further proposes to require an NGS to provide the options notice at least 30 days prior to the expiration date of the contract or the effective date of the proposed change in terms. 52 Pa. Code § 62.81(a)(2). Currently, the Commission's regulations require NGSs to send notices to customers at about 90 days and 60 days prior to the expiration of a contract or the effective date of proposed change in terms. 62 Pa. Code § 62.75(g)(1).

RESA supports these revised time periods for the initial and options notices because they align with the rules applicable to the electric industry. By implementing the same rules, the Commission would avoid a situation where customers who are receiving both electric and

natural gas services from a combined NGS/EGS become frustrated and confused by multiple notices at different times. Moreover, the uniformity avoids subjecting NGSs serving in a combined role to an overly burdensome administrative process, which discourages the offering of combined products and otherwise interferes with the development of a competitive retail energy market. Also, shortening the notice time periods is consistent with the Commission's goals of ensuring that consumers are aware of upcoming changes and that they respond timely and appropriately to contract renewal notices. As the Commission has appropriately recognized, notices that are received a few months prior to an impending change are likely to be overlooked by consumers who do not have any sense of urgency to react to the information.

In making this proposal, the Commission expressed concerns about shortening the notice periods in the natural gas industry when it is not known whether accelerated switching will be implemented in the near future. Absent the implementation of accelerated switching, which allows a customer to switch to another NGS within a matter of days rather than weeks, a customer receiving an options notice 30 days prior the impending change may have to stay with the NGS for a month after the change occurs.

RESA believes that the need for the timing of the notices to mirror the electric industry and to be close enough in time to the impending change to capture the consumer's attention outweigh any concerns about the customer possibly not being able to switch prior to the changes being implemented. In many situations, since changes currently occur within 11-40 days, a customer would have sufficient time to switch to another NGS upon receipt of the options notice 30 days prior to the change. At most, the customer would have to remain with the NGS for one additional month after the change. If the Commission remains concerned about this possibility, and accelerated switching is not implemented prior to adoption of final regulations

addressing these notices, the Commission should consider other alternatives short of retaining the lengthy notice periods. For instance, the Commission could require NGSs to add content to the initial notice explaining that if the customer waits for the options notice to be issued, he or she may not be able to switch to another NGS prior to the change taking place.

2. Content of Notice

As to the content of the initial and options notices for residential and small business customers, RESA is generally supportive of the proposed regulations with one major exception. Specifically, RESA opposes the proposed 30-day advance notice of a price change to a customer who was on a fixed term contract and was then converted to a month-to-month contract as a result of not responding to an options notice. 52 Pa. Code § 62.81(a)(2)(ii)(a)(I). Under a month-to-month contract, prices are potentially changing every month. Even if NGSs were able to accomplish the formidable task of accurately forecasting prices far enough in advance to satisfy the 30-day notice requirement, the cost of doing a mailing would be extremely high.³ It would also likely be confusing to the customer who would be inundated with information on such a frequent basis. Additionally, due to the difficulty with forecasting the prices, the NGSs would likely need to charge higher rates, making them less competitive, and resulting in customers paying more.

A requirement for advance notice of monthly price changes essentially obliterates the opportunity of converting a customer to a month-to-month contract when they fail to respond to the options notice. Concerns about customer awareness of the potential for monthly price changes can be addressed by changing the content of the options notice. Specifically, the Commission could require NGSs to inform customers that a failure to respond may result in

³ RESA recognizes that electronic notice would be permitted for price changes if the customer agrees to receive electronic communications, but it is unknown how many notices would still need to be mailed.

conversion of a fixed term contract to a month-to-month contract with no advance notice of price changes. NGSs that do not plan to use this option would simply leave this information out of the options notice.

3. Term or Length of Contract

The Commission proposes to change references to “fixed term contracts” to “fixed duration contracts” due to the possibility of confusion resulting from the use of the word “term,” which also refers to a condition of the contract. 52 Pa. Code § 62.81. RESA is unaware of any confusion resulting from the phrase “fixed term contracts” and believes that it accurately describes a contract that is fixed for a specific period and is understood by consumers, due to its common use in other industries, such as by banks or credit card companies. While RESA does not necessarily object to the phrase “fixed duration contracts,” it believes that the change may raise more questions since it is not commonly used in other industries.

The Commission also solicited comments on whether “fixed length contracts” may be preferable. From the standpoint of plain language, this phrase may be more easily understood by the average consumer than “fixed duration contracts.” Also, the disclosure statement regulations refer to the “length of the agreement,” which the Commission proposes carrying over to the Contract Summary, as shown in Attachment A to the proposed rulemaking order. *See* 52 Pa. Code. § 62.75(4). As a result, if the Commission believes that the existing phrase, “fixed term contracts,” needs to be changed, RESA suggests changing it to “fixed length contracts.”

4. Automatic Re-Enrollment

Under the proposed regulations, if a customer fails to respond to the initial notice and the options notice, the NGS would be permitted to convert a fixed term contract to: a) a month-to-month contract, either at the same or at revised terms and conditions, as long as the contract does

not contain cancellation fees; or b) another fixed term contract, as long as the customer may cancel at any time without cancellation fees. 52 Pa. Code § 62.81(b)(1). The converted contract would remain in place until the customer selects another product from the NGS, enrolls with a different NGS or returns to the supplier of last resort. 52 Pa. Code § 62.81(b)(2).

Importantly, under these scenarios, the customer remains in the competitive market receiving gas supply from an NGS without taking any affirmative steps. Therefore, an NGS who invested time and resources into marketing and was successful in enrolling the customer is permitted to retain the customer. If the NGS were required to return the customer back to the natural gas distribution company (“NGDC”) simply due to customer inertia, the success of its prior efforts would be diminished.

RESA believes the Commission’s proposals are reasonable and afford the NGS sufficient flexibility to address the situation of a customer failing to respond to the notices, which also sufficiently inform the customers of the results of not responding. While the absence of cancellation fees in connection with a fixed term contract can present challenges to NGSs, having the option of avoiding a longer-term commitment by serving the customer on a month-to-month contract alleviates those issues. Notably, following up the discussion above about the Commission’s proposal to require 30 day advance notice of price changes in these situations, a month-to-month contract option loses all of its appeal if this requirement is imposed. In that case, the NGS is left with alternatives that are far from ideal and may find that the only real option is to return the customer to the NGDC. Since that approach is contrary to the Commission’s goals of promoting development of the retail natural gas market, RESA urges the Commission to permit conversion of a fixed term contract to a month-to-month contract without requiring advance notice of price changes. The customer’s option to leave the contract at any

time without a cancellation fee provides sufficient protections, which will be further enhanced if accelerated switching is implemented, allowing the customer to switch to another NGS within days.

5. Mode of Communication

Under the proposed regulations, the Commission would permit the initial notice to be sent electronically if the customer has agreed to receive electronic communications from the NGS. 52 Pa. Code § 62.81(a)(1). The proposed regulations would require the options notice to be sent by first class mail in a prominently-labeled envelope. 52 Pa. Code § 62.81(a)(2). On the latter proposal, the Commission specifically sought comments about whether alternatives to first class mail should be permitted since it is an increasingly outmoded form of communication. The Commission also sought comments on whether a second notice is necessary where an NGS is not proposing any changes upon contract expiration.

RESA urges the Commission to permit NGS options notices to be sent electronically, provided that the customer has agreed to accept electronic communications. In today's world, electronic notices are used for many legal purposes, such as changes in credit card terms, for the convenience of consumers who are inundated by snail mail and have become accustomed to receiving information and conducting their personal business matters electronically. Embedding a first class mail requirement in regulations, which will likely be outdated in the near future, would not be prudent. Arguably, first class mail is already less effective than electronic notices for many customers who use their smartphones and other devices for a variety of purposes, including banking and paying bills. Whether to receive the options notice electronically or by first class mail should be the choice of the consumer.

RESA also agrees that the options notice should be unnecessary in the situation where the NGS does not propose any changes in terms of service. To address that possibility, the content of the initial notice should be revised to note that an options notice will be sent only if there is a proposed change in the terms of service.

E. Binding Staff Reviews

The Commission rejected the NGS Parties' recommendation that suppliers be entitled to obtain staff review of disclosure statements to protect the supplier from complaints that the terms and conditions were not compliant with the regulations. Proposed Disclosure Rules at 22. In support of this position, the Commission noted that informal staff opinions were available under 52 Pa. Code §1.96.

Consistent with its recommendation regarding informal staff review of contract summaries, RESA recommends that staff be directed to issue correspondence confirming that the NGS sought informal review of compliance with the regulations and that a record of that effort be entered in the NGS's record folder. In the alternative, the Commission could require the Bureau of Investigation & Enforcement ("I&E") to review disclosure statements and issue private letters that no action of an enforcement nature will be taken based on the facts presented if I&E deems the proposed terms and conditions to be compliant with current regulations.

Prosecutions are at the discretion of I&E and an NGS should not be required to risk prosecution if it is willing to submit to regulatory review prior to utilizing a disclosure statement. Certainly if statutory amendments, new regulations or Commission decisions modify what is lawful, I&E would be free to pursue actions as appropriate.

F. Cancellation of Contract

RESA supports the Commission's proposal to amend § 62.75(c)(7) (requiring cancellation of a customer agreement when they move)] to facilitate "seamless moves". Proposed Disclosure Rules at 23. RESA understands that seamless moves have not been implemented yet for the gas industry, but agrees that the impediment to such a policy should be removed as part of this rulemaking.

G. Automatic Renewal

RESA agrees with and supports moving the provision allowing automatic renewals of contracts at the same terms and conditions where the agreement is month-to-month from § 62.75(c)(8) to new § 62.81. Proposed Disclosure Rules at 23.

H. Name of NGDC on NGS Materials

RESA also supports the Commission's removal of NGDC references on NGS documents pursuant to §§ 62.75(9), 62.75(11) and 62.75(13). On a monthly basis, customers who receive consolidated bills will see each entity identified and their respective charges set forth. This is a sufficient clarification of the NGS supply role and the NGDC delivery role, such that these provisions of the current regulations can be amended.

I. PaGasSwitch.com

RESA also supports deletion of the Commission's direction for customers to call the Commission, as specified in § 62.75(c)(12), in view of the availability of the natural gas shopping website, PaGasSwitch.com.

J. Assignable Contract


RESA believes that it is reasonable to require NGSs to note in the disclosure statement that the contract is assignable. Disclosing this information when enrolling the customer should minimize complaints in the future if a contract is assigned by an NGS.

III. CONCLUSION

RESA supports the great majority of the proposed changes to its regulations in the areas of contract summaries and disclosure of contract terms and conditions. These modifications of the regulations will improve the quality of the information provided to customers. In some instances, however, the proposals attempt to establish practices that are better determined by the market. The Commission should rely on its ally, the market, to accomplish some objectives as outlined in the foregoing comments.

Respectfully submitted,

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