



RETAIL MARKETS INVESTIGATION
August 10, 2011 Technical Conference
DISCUSSION DOCUMENT

ACCELERATION OF THE SWITCHING PROCESS

- Timing of EGS Enrollment Process
 - Shortening Confirmation Period
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NOTE: This informal discussion document was prepared by Commission staff to facilitate discussion at the August 10, 2011 Technical Conference. It is not intended to be an official statement of Commission policy, nor is it intended to be a comprehensive discussion of all of the issues involved or to represent the position(s) of any party.

Presently, a change in supplier can take from as few as 16 to as many as 45 days. This timeline is a result of a variety of Commission regulations, EDC billing procedures, and EGS enrollment procedures that were put into place to guard against the unauthorized transfer of customer accounts. This switching timeframe applies to all forms of switching: from default service to supplier, from supplier to supplier, and from supplier to default service.

REGULATIONS:

Before discussing changing supplier switching timeframes, an understanding of current regulations and how they affect the timeframes is necessary. The Commission's statutory authority for the switching regulations is found in Section 2807(d)(1) of the Public Utility Code (Code). This section requires the Commission to:

...establish regulations to ensure that an electric distribution company does not change a customer's electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier. 66 Pa C.S. § 2807(d)(1).

The Supplier Switching Regulations: 52 Pa. Code §§ 57.171 – 179; contain timeframes that are relevant to the switching process.

- 52 Pa. Code § 57.173 of the switching regulations requires the EGS to notify the EDC of the customer's selection "...by the end of the next business day following the customer contact." However, the Commission has waived this provision for instances where the customer's service is not to start until some distant, future date. See *Petition of PP&L Energy Plus Company*, Order entered June 29, 1999 at Docket No. P-00991673.

- 52 Pa. Code § 57.173(2) requires the EDC to mail a 10-day confirmation letter to the customer “...by the end of the next business day following the receipt of the notification of the customer’s selection of an EGS.” This regulation also states that “[t]he 10-day waiting period shall begin on the day the letter is mailed.”
- 52 Pa. Code § 57.174 requires the EDC to “...make the change at the beginning of the first feasible billing period following the 10-day waiting period...”

Customer Information Regulations: (52 Pa. Code §§ 54.1 – 54.9) also include some timeframes that affect the switching process for residential/small commercial customers:

- 52 Pa. Code § 54.5(d) requires that customers be provided “...a 3-day right of rescission period following receipt of the disclosure statement.”
- 52 Pa. Code § 54.5(d)(1) and (2) state that the 3-day rescission period is “3 business days” and “...begins when the customer receives the written disclosure.” (Note that many suppliers have made it a practice to wait until the customer’s 3-day right of rescission expires before contacting the EDC.)

REVISING REGULATORY REQUIREMENTS:

- **The 3-day right to rescission at 52 Pa. Code § 54.5(d) :** The 3-business day rescission period reflects existing Pennsylvania consumer contract law (Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201.1 – 201 – 9.2). There is also, in federal law, a 3-business day “cooling off period” for door-to-door transactions (See Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations; 16 CFR Part 429 (FTC)). Because of these legal requirements, OCMO believes a change to this specific regulation is not feasible.
- **The 10-day confirmation period at 52 Pa. Code § 57.173(2):** Much of the 16-day minimum switching period is dedicated to the 10-day period during which the utility holds the switch to give the customer an opportunity to respond to the confirmation letter. Customers are required to respond to the letter only if the customer believes that he or she has not authorized the switch.

An obvious approach is to shorten this 10-day period. However, the benefits and detriments of this must be carefully weighed. We would want to shorten it sufficiently to produce a beneficial decrease in switching times, but still provide a reasonable timeframe for customers to respond. The customer response timeframe has to consider mailing time (the time it takes for the confirmation letter to be delivered to the customer) and possible intervening weekends and holidays during which the EDC may not be available for the

customer to contact. However, it could also be argued that providing a shorter time period may instill in the customer a greater sense of urgency that will prompt them to act quickly, as opposed to providing a more leisurely 10-day period that may only encourage a customer to postpone action, and then subsequently forget to follow through.

Some have expressed concerns with any elimination or shortening of the confirmation period. They are concerned that they will hear from consumers only after it is too late to stop the switch.¹ They have emphasized that it is much easier and cheaper for everyone involved (the utility, supplier and customer) to prevent a slam than to reverse a slam that has already occurred. The time and expense of switching a customer back to the previous supplier, correcting the billing, and reimbursements (not to mention possible involvement by the regulators and possible sanctions) far exceed the costs and efforts of preventing a slam.

OTHER POSSIBLE OTHER ALTERNATIVES TO THE CURRENT CONFIRMATION PROCESS:

- The use of electronic and telephonic methods as alternatives to the use of the U.S. mail for customers to respond to the utility's confirmation request that would speed up the confirmation process. Perhaps the confirmation process should be initiated by the supplier and not the utility, again, using new electronic or telephonic methods. Of course, the use of certain electronic technologies raises the issue of how to handle consumers who do not have access to or are not comfortable using such technologies.
- The total elimination of the confirmation process and replacing it with economic sanctions in case slamming occurs. These would punish a supplier for slams that occur by imposing penalties and/or requiring reimbursements to slamming victims and the EDCs for costs incurred in un-doing the "slams." Some also question the need for any confirmation letter/period at all, citing the minimal number of slamming complaints to the Commission, the EDCs, etc. However, others argue that perhaps the minimal numbers is because of the protections that are currently in place, such as the 10-day confirmation period, and that making changes to these protections could invite more slamming complaints.
- Use of Third-Party Verification (TPV) in lieu of a confirmation letter/period. A supplier would hire a TVP to confirm customer enrollments and would provide documentation of the verification to the EDC. The EDC would forgo sending a confirmation letter and would proceed to switch the account. The supplier would be subject to fines for slams that occurred and financially liable for costs incurred by EDCs to correct slams.

¹ There may also be certain PJM requirements that would limit the reduction in days that can be achieved.

PROPOSAL:

After carefully reviewing the many different aspects revolving around this issue, OCMO believes that a combination of short-term and long-term modifications to current regulations and procedures will alleviate most of the concerns related to supplier switching timeframes.

In the short term:

- 1) The revision/waiver of Commission regulations at 52 Pa. Code § 57.173(2) to the extent that the current 10-day confirmation period will be shortened by 5 days, thus creating a confirmation period of 5 days. Utilities switching timeframes (*i.e.*, the 16-day rule) should be shortened by the same number of days.
- 2) Improved customer education focused on switching time frames, including an explanation of meter read dates and their impact on switching dates.
- 3) The need to revise, or to continue the Commission waiver of 52 Pa. Code § 57.173 that requires the EGS to notify the EDC of the customer's selection "by the end of the next business day following the customer contact." The Commission granted the waiver for instances where the customer's service is not to start until some distant, future date and/or to accommodate the 3-day right of rescission at 52 Pa. Code § 54.5 (d). EGSs should be encouraged to implement measures to ensure that they send enrollment transactions to EDCs before the window closes before the next meter read date.

In the long term:

The integration of supplier switching into all EDC smart meter deployment plans, with the expectation that once smart meters are in use, supplier switching will be able to occur at any given point in the meter-reading/billing cycle. This will reduce/eliminate a physical/operational constraint that could delay the transfer of a customer's account for up to 30 days because of the EDCs once monthly meter read schedule.

Process:

To enact this proposal, we recommend that a Tentative Order be issued that would address the waiver/revision of the above-noted regulations. The Tentative Order should establish a 30-day comment period and 15-day reply period. A Final Order will be drafted consistent with the comments received. It is anticipated that the Final Order may direct the initiation of a rulemaking to revise Commission regulations relating to switching and other closely related matters.