

COMMONWEALTH OF PENNSYLVANIA



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December 14, 2011

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17101

RE: Interim Guidelines Regarding Standards for
Changing a Customer's Electricity
Generation Supplier
Docket No. M-2011-2270442

Dear Secretary Chiavetta:

Enclosed for filing please find the Comments of the Office of Consumer Advocate, in the above-referenced proceeding.

Please contact me if you have any questions.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Jennedy S. Johnson".

Jennedy S. Johnson
Assistant Consumer Advocate
PA Attorney I.D. # 203098

Enclosure

cc: Office of Competitive Market Oversight
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Interim Guidelines Regarding Standards :
For Changing a Customer's Electricity : Docket No. M-2011-2270442
Generation Supplier :

COMMENTS
OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: December 14, 2011
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I. INTRODUCTION

On November 14, 2011, the Pennsylvania Public Utility Commission (Commission) entered a Tentative Order seeking to establish Interim Guidelines regarding standards for changing a customer's electric generation supplier (EGS). Through the Tentative Order, the Commission seeks to waive substantial portions of its existing regulations that are designed to implement the requirements of Section 2807(d)(1) of the Public Utility Code prohibiting the changing of a customer's electricity supplier without the customer's consent. 66 Pa.C.S. § 2807(d)(1). Section 2807(d)(1) provides:

The commission shall 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 Commission set forth regulations at 52 Pa. Code Sections 57.171-179 to meet this requirement. The regulations were designed to prevent the unauthorized switching of a customer's account, also known as "slamming," before any costs or harm were incurred by the customer.

At the heart of the Commission's regulations is a letter, now known as the confirmation letter, that is sent to customers before a customer's generation service is changed to a new supplier. 52 Pa. Code § 57.173(2). The confirmation letter is sent from the electric distribution company (EDC) to the customer to notify the customer of the request by an EGS to change the customer's service. Since it is the EGS that requests the change in service for the customer, the confirmation letter serves as both notice to the customer that this request has been made and as confirmation to the EDC that the change is in accord with the customer's wishes.

The customer is provided 10 days from the date of the letter to respond to the EDC if the change in service was not authorized by the customer.

In its Tentative Order, the Commission identifies a concern with the length of time that it takes to switch a customer's service under the existing protocols, procedures, and regulations. As the Commission notes, it can now take from 16 to 45 days to effectuate a switch in a customer's service. The OCA submits that this timeline is the result of many factors. The time frame is driven by EGS enrollment procedures, EDC procedures necessary to effectuate a change in suppliers, meter read cycles and the Commission regulations. The greatest impact on the switching time frame is the meter read cycle. If the procedures to process and confirm an enrollment can be completed before the next meter read date, a switch can be effectuated within 16 days of the receipt of the request by the EDC. If the request is received too close to the next meter read date, up to 30 more days can be added to the switching time frame because the new EGS charges will not be able to be applied until the next meter read is completed.

The OCA is supportive of the Commission's efforts to shorten the switching time frame and to provide more information to consumers about the switching process. The OCA agrees with the Commission's concern that customers could become frustrated if they must wait a long time to see the results of switching decisions, particularly if they do not understand the process. With quarterly changing default service rates, a lengthy wait to have new service initiated could mean that a part of the benefit of the bargain that the customer expected has disappeared with the new default service rates. While the OCA agrees that work should be done to shorten the switching time frame, the OCA does not agree that the means to accomplish this is through the total elimination of the confirmation letter that forms the basis of the Commission's regulations at 52 Pa. Code Section 57.173(2). Rather, as set forth below, the OCA submits that

the time frame for the confirmation letter should be reduced to 5 days and that other changes, such as those contained in the Interim Guidelines and the identified consumer education efforts, should be considered to improve the customer switching process.

The confirmation letter has brought great credibility to the process of switching suppliers and has helped to ensure that customers are only being changed to a new supplier with their consent. Catching an improper switch (due to mistake or slamming) *before* a customer's service is switched saves money, time and hassle for all involved. The language of Section 2807(d)(1) supports the implementation of a process that prevents an improper switch rather than one that corrects it after the fact. Under Section 2807(d)(1), the Commission must ensure that the EDC does not change the supplier without the customer's consent. In other words, without confirmation of the consent from the customer, the EDC should not act. Indeed, the Commission's proposed Interim Guidelines seem to recognize this point in Proposed Interim Guideline P regarding penalties. There, the Commission proposes language that states it "will" penalize an EDC for an unauthorized transfer of an account. The OCA submits, however, that by totally removing the confirmation letter process, the Commission has removed from the EDC the only means to determine if the change was authorized by the customer before it acts to transfer the account.

As discussed in more detail in these Comments, the OCA submits that the Commission's proposal to waive Section 57.173(2) of its regulations—the Section detailing the

confirmation letter process—should not be adopted.¹ The waiver, which would eliminate the confirmation letter process in its entirety, provides limited benefit in the way of reducing the time it takes to switch a customer, but could greatly harm the credibility of the process. Since rate caps expired across Pennsylvania, shopping activity has picked up, door-to-door marketing and telephone solicitation activity has increased dramatically, and the Commission is considering other competitive enhancements such as customer referral programs and retail opt-in programs. In light of these developments, ensuring that a customer has, in fact, authorized any change in service is more important than ever. Rather than waiving the regulation in its entirety, the OCA recommends that the Commission shorten the confirmation period from 10 days to 5 days, allow customers to receive the confirmation letter by electronic mail if the customer has agreed to the service of utility notices in this manner, and work on clarifications to the language of the letter to ensure that the customer understands that the letter is only intended to confirm the consumer's prior decision.

In addition, the proposed waivers of Sections 57.173(1) (regarding EGS procedures) and 57.174 (regarding time frames) contained in the Interim Guidelines may actually increase rather than reduce the amount of time required to change suppliers. The OCA submits that these waivers should not be adopted as proposed. In waiving Section 57.173(1), an EGS no longer has to send an enrollment to the EDC on the next business day. If an EGS holds

¹ The OCA respectfully submits that such a broad-based waiver of the consumer protection regulations, as contemplated here, would not be in the public interest. The Commission is authorized to waive its regulations, but has typically done so on a limited basis, for a temporary period, upon a finding of unusual or extraordinary circumstances or compelling need. *See, e.g., Pa.P.U.C. v. West Penn Power*, Docket No. P-00072349 at 5 (Order entered August 14, 2008) (denying the petition for waiver as “extraordinary circumstances sufficient to over-ride [Commission] Regulations” did not exist in the case) and *Pa.P.U.C. v. City of Bethlehem*, Docket No. R-00072492 at 32 (Order entered October 14, 2011) (stating that financial considerations do not merit a waiver of the universal metering guidelines). Here, a limited waiver would be a more reasonable approach so that the impact of the additional efforts set forth in the Interim Guidelines can be assessed.

enrollments, even for an additional day or two, the meter read date could pass, resulting in a customer having to wait another month before being able to switch service.

Rather than a broad-based waiver of the regulations as is proposed in the Tentative Order, the OCA supports the Commission's proposals for the provision of further education to customers about the time necessary to effectuate a change of service so that customer expectations are better managed. The OCA also supports a number of the Interim Guidelines as excellent supplements to existing regulations. For example, the OCA agrees with Guidelines B (addressing the scope of the guidelines), H (adding additional language to the Disclosure Statement), I (detailing what constitutes evidence of a customer's authorization to transfer account), and O (explaining how customer disputes will be treated). Finally, the OCA supports a limited waiver of Section 57.173(2) to shorten the time frame for the confirmation period from 10 days to 5 days and to clarify the purpose of the letter.²

In the Comments below, the OCA will discuss the Commission's proposals and the OCA's recommendations. The OCA also provides responses to Commissioner Cawley's questions, comments on the specific Guidelines and offers modifications to the account transfer letter should the Commission decide to pursue this alternative.³

² The Commission has also proposed the full integration of supplier switching into all smart meter deployment plans. Tentative Order at 25. The Commission states that it expects that once smart meters are in use, supplier switching can occur at any given point in time. *Id.* The OCA supports consideration of these issues in the smart meter deployment plans. An examination of these issues will help to identify all necessary system, process and consumer protection issues as well as the associated costs of any such system changes.

³ The Commission also requested comment on whether these Guidelines should apply to Natural Gas Distribution Companies (NGDCs) and Natural Gas Suppliers (NGSs). The OCA would not support application of these Guidelines to NGDCs and NGSs as there is insufficient information with respect to operational considerations for gas shopping and the gas market to support the changes or waiver at this time.

II. COMMENTS

A. In Order to Preserve Important Consumer Protections, the Confirmation Letter Process Should Be Retained, but the Time Frame for the Confirmation Period Should Be Shortened to Five Days.

Through its Tentative Order, the Commission proposes to eliminate the confirmation letter and 10-day confirmation period. Tentative Order at 11. The 10-day confirmation period allows a customer whose service is to be switched to contact the EDC to dispute that consent was given for the transfer of his or her service. As the Commission notes, it is much easier and cheaper for the EDC, EGS and customer to prevent an unauthorized or mistaken switch than to correct such a switch after it occurs. Id. at 10. The Tentative Order states:

The time and expense of switching a customer back to a 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.

Id. Indeed, the language of Section 2807(d)(1) seeks to ensure that the EDC “does not change” the customer’s service without consent, *i.e.*, that a change in service be prevented if the customer has not provided consent. 66 Pa.C.S. §2807(d)(1).

Although recognizing the benefits of preventing slamming, the Commission proposes elimination of the confirmation letter and states:

We believe there is validity to the argument that delaying the switch of suppliers for *all* customers in the name of stopping slamming for a *few* customers is not sensible...

Id. at 12 (emphasis in original). The OCA respectfully submits that, given the increase in customer shopping, new methods of EGS marketing, and new programs under development, now is not the time to eliminate the confirmation letter in its entirety. A more reasonable approach is to reduce the confirmation period while at the same time better educating customers about the

switching process, providing the start date for service in the Disclosure Statement and explaining the factors that may affect the time it takes to switch.

Of the potential 16 to 45 days necessary to change a customer's service, no more than 10 of those days are taken up by the confirmation period. At least six of the 16 to 45 days are necessary for technical process changes, such as interfacing between the EDC and EGS systems, adhering to the PJM rules for scheduling capacity, and allowing time for weekends and holidays. And up to 30 days are a result of the utility's billing schedule. In addition, days can be consumed when EGSs delay in submitting change requests to the EDC. Eliminating the confirmation period, as opposed to shortening the period from 10 to 5 days, would only shorten the overall 16 to 45 day time frame by, at most, 5 days. The OCA submits that eliminating this important consumer protection for a minimal gain in time would not be in the best interest of customers and would not be in the best interests of retail competition.

Maintaining the confirmation letter is important for several reasons. As EDCs have reported through this investigation process, responses to the confirmation letter remain significant. PECO reported that it receives contacts from about 300 customers per week in response to the confirmation letter, representing about 4% of all change requests. Duquesne reported in its comments that it receives approximately 100 requests per week (which represent 11% of shopping customers) to prevent enrollments during the 10-day confirmation period. In the absence of the confirmation letter, these EDCs and customers could have spent considerable time, money and effort in undoing enrollments, correcting billing, reimbursing customers, and potentially pursuing complaints. This is no small undertaking for either the EDC or the customer.⁴

⁴ Additionally, under proposed Interim Guideline P, the EDC would be fined or penalized for making these changes if the customer indicates that consent to the change was not provided.

Rather than eliminate the confirmation letter altogether, the OCA recommends that the Commission retain the confirmation letter, shorten the response time to 5 days from 10 days, and make modifications to the letter to make it clear that a response is required only if the customer did not authorize the change in service. Concurrent with the shortening of the confirmation period, the confirmation letter could also contain a date certain for cancelling a switch in the instance of a mistake or a slam.⁵ In addition, the OCA would support the use of electronic delivery of the confirmation letter to those customers who have previously agreed to electronic billing and/or electronic receipt of EDC notices. These steps will reduce the switching time frame but will maintain this essential consumer protection.

The OCA opposes elimination of the confirmation letter as it provides important consumer protections and brings credibility to the shopping process as a whole. The OCA recommends that steps such as shortening the response period to 5 days, providing a date-certain for response to erroneous switches, using electronic communications to send the confirmation letter when the customer uses electronic billing, and clarifying the purpose of the letter be taken to allow for the switching time period to be shortened while maintaining important customer protections.

B. The OCA Supports the Commission's Proposal to Expand Customer Education, Including Revising the Confirmation Letter and Explaining the Factors that Affect the Switching Time Line.

The OCA agrees with the Commission that other efforts identified in the Tentative Order and Interim Guidelines should go hand in hand with changes to the confirmation

⁵ The inclusion of a date certain may also be useful as the U.S. Postal Service implements changes to its delivery time commitments. The Postal Service has recently announced a proposal to provide first class delivery in two to three days rather than the one to three days that is now in effect. See, http://about.usps.com/news/national-releases/2011/pr11_132.htm. The five day period recommended by the OCA and/or a date certain for response should accommodate these changes, although it will require a much more rapid response by the consumer.

period recommended by the OCA. As noted, the OCA supports any necessary modifications to the confirmation letter to make it clear that the customer should contact the EDC to cancel the switch only if the customer did not authorize the change in service. If the wording of the confirmation letter is causing confusion in this regard, the OCA is willing to work with the Commission and the stakeholders to develop language that makes the intent of the confirmation letter clear.

The OCA also strongly supports the Commission's proposals to better educate customers on the switching process and the time necessary to effectuate a change in generation service providers. The Commission proposal to place the responsibility on the EGS to obtain information about the customer's meter read date and switching deadline (so that the EGS can advise the customer about the time frame for switching in its sales efforts and its disclosure statements) should assist in managing customer expectations and alleviating confusion and frustration. Tentative Order at 14. Additionally, the Commission's proposal to include information on the switching process on the PaPowerSwitch.com website provides a good forum for informing customers of this process. The OCA submits that these educational efforts, and the other educational efforts identified in the Tentative Order, will assist customers in understanding what to expect from the switching process.

Accordingly, the OCA supports the Commission's efforts to revise the confirmation letter, educate customers about the factors that affect the time it takes to switch the customer, have the EGS notify the customer about the switching deadline (including the estimated start of service date), and include the estimated start date in the Disclosure Statement.

C. If The Confirmation Letter Is Eliminated, Changes Should Be Made To The Proposed Customer Account Transfer Letter.

As part of its Tentative Order eliminating the confirmation letter, the Commission has proposed that the EDC send a “customer account transfer letter” to the switching customer. Tentative Order at 13. As discussed above, the OCA does not support the elimination of the confirmation letter. If the Commission decides to eliminate the confirmation letter, however, the OCA submits that changes must be made to the account transfer letter to properly inform customers of the actions that they need to take if they have not authorized the change in service.

The OCA recognizes that the account transfer letter would alert the customer to the change in generation service, provide pertinent information about the EGS, and direct the customer to contact the EGS with questions and concerns. Id. The Commission attached a sample letter to the Tentative Order. It appears, however, that by the time the account transfer letter is received by the customer and the customer is able to act, many of the processing requirements for the switch could be completed and the change in service may have taken place or be imminent.

If the account transfer letter approach is adopted by the Commission, the OCA submits that two modifications are needed. First, the letter should convey to the customer that *immediate* action is needed if the letter does not reflect the correct information. While the OCA agrees with the Commission that the letter should be informative and neutral, the proposed customer account transfer letter should also inform the customer that if the information in the account transfer letter is not correct, then the customer needs to take action *immediately*. Second, the OCA submits that incorrect information should be reported to the EDC since the customer has no relationship with the EGS and has not authorized the EGS to take any actions on

his or her behalf. The OCA has included a proposed modified letter, in redline format, as Appendix A to these Comments to address this issue.

D. Responses of the OCA to the Questions Posed by Commissioner Cawley

In addition to seeking comments on the Tentative Order, Commissioner Cawley issued a Statement on November 10, 2011 seeking comments on four issues. The OCA submits the following responses.

1. *How important is it to consumers that they have a good faith estimate of the projected starting date for EGS service in the Disclosure Statement?*

OCA Response: The OCA submits that it is important to include a projected starting date for EGS service in the Disclosure Statement. Providing an estimated starting date will bring greater certainty to the shopping experience, allow customers to better understand the process of switching, and reduce customer confusion and complaints. The OCA also supports adding an explanation of the impact of the meter read date on the enrollment process to the Disclosure Statement. Providing the meter read date, an explanation of the importance of that date, and a projected starting date will provide clarity in what can be a complex and confusing process.

2. *Are there other means or timelines that would more beneficially provide information to customers regarding the service starting date?*

OCA Response: The OCA would support adding an explanation of the actual process of switching (*i.e.*, the impact of the meter read date) to the educational materials provided to customers. As was mentioned above, providing customers with realistic information about account enrollment dates, as well as an explanation of the factors that go into the switching timeline, both alleviates customer confusion and allows the customer to make a more educated decision about when and with whom to shop.

3. *If a customer opts off the ECL and the EGS and/or customer does not readily have information on customer specific meter read dates, will this complicate the*

customer contracting process, and what new processes or EDC information systems can be provided in real time to enable effective contracting between EGSs and customers?

OCA Response: The OCA has no information on this issue.

4. *What is the experience of EGSs with regard to customers having ready access to their billing statements so that EGSs can provide the necessary meter read information to customers during the contracting process? Does the vast majority of customers keep a copy of their bills and/or have a copy available when contracting with an EGS?*

OCA Response: While the OCA does not have information regarding the experience of EGSs in this regard, the OCA would suggest that as part of the educational processes, customers be advised to have a recent electric utility bill statement handy when they are exploring opportunities to switch suppliers. The utility bill statement will include useful information such as the meter read date and account number.

III. OCA'S COMMENTS ON THE PROPOSED GUIDELINES

The OCA submits the following comments on the specific sections of the proposed guidelines:

A. Interim Guideline A: Purpose

In this section, the Commission states that the proposed Guidelines are intended to protect customers against slamming. As is discussed above, however, the OCA submits that the best method to protect customers from slamming is through the confirmation letter process. These Guidelines will not stop the transfer of a customer's account without his or her authorization, as the proposed procedures only provide notice of the account transfer. If the EDC immediately begins the account transfer process, the account transfer may be completed before the customer receives the notice and is able to respond to the EDC. The time and expense of switching a customer back to a 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 an unauthorized switch.

The OCA agrees that it would be reasonable to shorten the 10-day confirmation period to a 5 day period. The confirmation letter should also include a date certain by which the customer must respond. Including a date certain for cancelling the switch makes the customer's responsibility clear and protects the customer from problems associated with the mailing process. Further, electronic delivery of the confirmation letter could be used for those customers who have previously agreed to electronic billing or electronic receipt of EDC notices. Allowing for electronic notice to the growing population of customers who have authorized electronic communications should serve to reduce costs associated with mailing and shorten the confirmation process as a whole.

The OCA submits that these steps, and not the total elimination of the confirmation letter, will protect customers against slamming and allow the Commission to fulfill the objective of Guideline A.

B. Interim Guideline B: Scope

Section B states that the proposed Guidelines are applicable to transfers to EGSs and between EGSs, and not where a customer transfers from an EGS to default service. The OCA agrees with this section.

C. Interim Guideline C: Definitions

This Section provides a number of definitions of terms used in the guidelines. Many are consistent with existing definitions that appear in the Commission's Regulations. The OCA has no comment on this Section.

D. Interim Guideline D: Waiver of Regulations

Section D lists the provisions of the Commission's regulations that would need to be waived to implement the proposed Guidelines. These waivers would remain in effect until revisions to these provisions are finalized in a Commission rulemaking. The OCA does not support the long term waiver of such a significant portion of the Commission's regulations. In particular, the OCA does not support waiving the requirements of a 10 day confirmation period (52 Pa. Code § 57.173(2)).

The OCA also opposes waiving the requirements of 52 Pa. Code Section 57.173(1), which requires that an EGS notify an EDC that a customer selected the EGS by the end of the next immediate business day. The Commission has stated that it wants to shorten the time it takes to switch a customer, and allowing the EGS to hold enrollments will only serve to lengthen the switching time frame. The OCA understands that the goal of the proposed waiver is to allow for customers who request to switch after the next meter read to delay their enrollment. Such customer-requested delay can be achieved without the complete waiver of Section 57.173(1). Instead, the OCA proposes that waiver of Section 57.173(1) be limited to situations where the customer requests that the switch of their service be delayed until sometime after the next scheduled meter read date.

E. Interim Guideline E: Meter Read Date; Switching Deadline

Guideline E requires an EGS to obtain information about the customer's meter read cycle, so that the EGS can inform the customer of the estimated starting date in all marketing materials. The OCA generally supports the revisions contemplated in this Section as they will assist customers in understanding what to expect from the switching process. Providing customers with realistic information about account enrollment dates, as well as an

explanation of the factors that go into the switching timeline both alleviates customer confusion and allows the customer to make a more educated decision about when and with whom to shop. Guideline E states that the EGS “should” include the good-faith estimate when marketing to a customer. The OCA submits, however, that EGSs should be *required* to provide this information to all customers.

F. Interim Guideline F: EGS Notification to EDC of Customer Account Transfer Notice

This Section requires an EGS to submit an account transfer notice to the EDC before the switching deadline, unless a customer has requested a delay in the service start date. The OCA has no comment on this Section.

G. Interim Guideline G: Customer Receipt of Written Disclosure Statement; Start of 3 Day Contract Rescission Period

This Section restates the rebuttable presumption that a customer will have received a disclosure statement, when correctly addressed and with sufficient postage attached, three days after it is deposited in the mail. The OCA would caution that given the proposed changes in Postal Mail delivery times (*see* footnote 5), the presumption that the customer will have received the letter within three days may need to be examined again in the future.

H. Interim Guideline H: Disclosure Statement

Guideline H addresses the contents of the EGS disclosure statement and explains that when a disclosure statement is at issue in a Complaint proceeding (and the statement contains unclear or ambiguous language relevant to the Complaint), the Commission will interpret that language in favor of the consumer. The OCA supports this guideline.

I. Interim Guideline I: Evidence of Customer's Authorization to Transfer Account

This Section addresses what constitutes evidence of a customer's consent to transfer his or her account and specifically states that neither the account transfer notice from the EGS nor the actual transfer of a customer account to the EGS may be used as evidence in a Complaint proceeding to prove that the customer authorized the EGS to transfer the account. The OCA agrees with this Section.

J. Interim Guideline J: Records

This Section restates the Commission's regulations relating to customer dispute procedures and record maintenance. The OCA has no comment on this Section.

K. Interim Guideline K: EDC Transfer of Customer Account

Guideline K details the waiver of Sections 57.173(2) and 57.174, which address the 10 day confirmation period. As was discussed above, the OCA does not support the elimination of the confirmation letter and confirmation period. The OCA proposes that the confirmation period be readjusted to 5 days and that customers be provided with a date-certain by which they must notify the EDC of an erroneous switch. This modification will allow for a shorter switching time period while maintaining important customer protections.

L. Interim Guideline L: Customer Notice of Account Transfer

Guideline L proposes the use of an "account transfer letter" in lieu of the confirmation letter, to inform a customer about the transfer of his or her account to an EGS. As was explained above, the OCA submits that the requirement of providing a customer confirmation letter should be maintained. It is the OCA's understanding that the proposed "account transfer letter" is to be sent by the end of the next business day after the EDC receives the enrollment request. The OCA also understands that the enrollment will be processed

beginning at this same time. If the EDC immediately begins the transfer process, the customer is likely to get the notice but by the time the customer calls, the customer will not be able to prevent the switch. The OCA submits that the use of such a letter instead of a confirmation letter will save little and may cause greater confusion and cost for the consumer, EDC and EGS.

Further, under the sample letter provided by the Commission, if the transfer information is not correct, the customer must contact the EGS not the EDC. The OCA submits that if the enrollment is a result of slamming, the customer will have no relationship with the EGS and should not have to contact the EGS to resolve the issue. Additionally, the OCA submits that while the letter should be informative and neutral it must also convey to the customer that *immediate* action is needed if the letter does not reflect the correct information. For the foregoing reasons, the OCA submits that the account transfer letter should inform the customer to *immediately* contact the EDC to report that the switch was not authorized. In Appendix A, the OCA proposed modifications to this letter in the event that the Commission moves forward with its proposal to eliminate the confirmation letter.

M. Interim Guideline M: EGS Rescission of Account Transfer

This section allows an EGS to rescind the transfer of a customer's account up to three business days before the switching deadline established by the EDC and requires the EGS to pay the reasonable cost of such rescission. While the OCA supports this provision, the OCA submits that the EGS should also be responsible for reimbursing the customer for any costs incurred as a result of the improperly switch going through. Holding the EGS responsible for customer costs should cause EGSs to exercise due care in the solicitation and enrollment of customers. The OCA proposes the following modifications to Guideline M:

M. EGS Rescission of Account Transfer.

1. An EGS may rescind the transfer of the customer's account no later than 3 business days prior to the switching deadline established by the EDC or DSP for the customer's account. Only an EDC or DSP may rescind the transfer of a customer account after that time.

2. An EGS may use an established EDI transaction to rescind the account transfer.

3. The EGS should reimburse an EDC or DSP for reasonable costs related directly to the rescission of a customer account transfer by the EDC or DSP.

4. The EGS should reimburse a customer who is improperly switched for the reasonable costs related directly to the rescission of the customer account transfer.

54. An EGS may not rescind the transfer of a customer's account to another EGS without written evidence of the customer's authorization to rescind the transfer.

N. Interim Guideline N: EDC Rescission of the Account Transfer

This Section provides that an EDC may rescind the transfer of a customer's account upon the request of an EGS and requires an EDC to treat customer requests to rescind an account transfer as a dispute involving a slamming allegation. The provision appears to state that an EDC cannot rescind a switch at the request of the customer. A customer should be able to contact the EDC and, if the customer asserts that he or she provided no authorization for the account transfer, the transfer should be cancelled immediately. Customers should not be forced to deal with an EGS that slammed them and with whom they have no relationship. Further, if the EDC is going to be penalized for completing the account transfer under Guideline P (below), the EDC should have the right to stop the transfer when the customer informs the EDC that he or she did not authorize the switch.

In addition, this section should also make clear that the EGS is responsible for reasonable costs incurred by the customer for an improper switch. The OCA proposes the following modifications to Guideline N:

N. EDC Rescission of the Account Transfer.

1. An EDC or DSP may rescind the transfer of a customer's account upon the request of an EGS **or a customer claiming the transfer was not authorized by the customer.** The rescission of the transfer of the customer's account shall comply with applicable statutes, regulations and Commission guidelines and orders.

2. The EGS should reimburse an EDC or DSP for reasonable costs related directly to the rescission of a customer account transfer by the EDC or DSP.

3. The EGS should reimburse a customer who is improperly switched for the reasonable costs related directly to the rescission of the customer account transfer.

~~4.3.~~ When a customer contacts an EDC or DSP to request that the EDC rescind the transfer of his or her account to an EGS, the EDC or DSP shall treat the contact as a dispute involving a slamming allegation in accordance with Guideline O (relating to customer disputes; slamming complaints).

O. Interim Guideline O: Customer Disputes; Slamming Complaints

Guideline O requires that all EDCs and EGSs treat all slamming allegations as disputes in accordance with Commission regulations. The OCA agrees with this Guideline.

P. Interim Guideline P: Penalties for Unauthorized Transfer of Customer Accounts

In this guideline, the Commission reiterates its long-standing zero tolerance policy for slamming and lays out penalties for EDCs, DSPs and EGSs for slamming. The OCA notes that the penalty provisions state that a penalty "will result" for an EDC or DSP and only that it "can result" for an EGS. The OCA submits that in order for the Commission's zero tolerance policy to be realized, the Commission must use the stronger mandatory language when

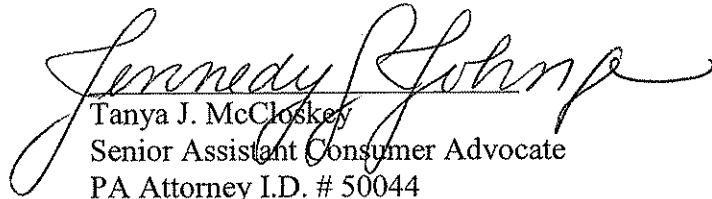
addressing penalties for EGS slamming. The Commission should clearly state that slamming “will result” in a fine or other penalty for an EGS.

The OCA also recommends that the Commission clarify how, or under what circumstances, an EDC could make an unauthorized transfer of a customer account. As now written, an EDC that takes action pursuant to Interim Guideline K to transfer an account upon receipt of the EGS account transfer notice would be subject to a fine if the account transfer notice was the result of an EGS error or an EGS slam. The EDC confirmation letter provided an important validation of the request to transfer by requiring the customer to contact the EDC if the enrollment was erroneous. By eliminating the confirmation letter, the Commission has removed the only mechanism by which the EDC can verify the validity of the enrollment and therefore avoid penalties. For these reasons as well as those discussed above, the OCA submits that the Commission should retain the confirmation letter process.

IV. CONCLUSION

The OCA appreciates the opportunity to provide its Comments on the Commission's Interim Guidelines on the standards for switching EGSs. The OCA submits that the Commission should not eliminate the confirmation letter in its entirety as it provides important consumer protections and brings credibility to the process of shopping for electric supply. Rather, the Commission should reduce the confirmation letter period from 10 days to 5 days and make the other changes that are set forth in these comments to improve the customer switching process. The OCA request that the Commission consider the OCA's position on these issues and consider alternative, more effective methods to reduce the time it takes for a customer to switch to an EGS.

Respectfully Submitted,



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151092

APPENDIX A

APPENDIX A- OCA Revisions to Customer Account Transfer Letter

mm/dd/yy
[CUSTOMER NAME]
[MAILING ADDRESS]

Customer/Account No: [XXXXXXXXXX]

For Service To:
[SERVICE ADDRESS]

RE: IMPORTANT NOTICE ABOUT YOUR ACCOUNT

Dear [CUSTOMER]:

We received notice that the following company will be your electric supplier:

[EGS NAME]
[EGS CONTACT INFORMATION]

Our records also indicate that you will receive [X] bill from [EDC] which will reflect [EDC] charges and those of your electricity supplier.

Your new supplier will begin providing you with energy when your meter is read on or about [XX/XX/XXXX]. You will receive your first bill showing this supplier's charges the following month.

If this information is correct, you do not need to call us. **If this information is not correct, please contact [EDC] immediately at [EDC phone].**

If you have any questions about this notice, please contact your new supplier. The supplier's contact information may be found above or on the disclosure statement you received from your supplier.

If you have any other questions or concerns about your electricity service, you may contact us at 1-[XXX-XXX-XXXX] between the hours of [X] a.m. to [X] p.m. Monday through Friday.

Sincerely,
[EDC]