

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

Re: Proposed Rulemaking : Docket No. L-2014-2409383
Standards for Changing a :
Customer's Generation Supplier :

**Comments of
The Pennsylvania Utility Law Project**

Introduction

The Pennsylvania Utility Law Project (PULP) submits these comments in response to the Commission's March 18, 2014, Secretarial Letter, Docket No. L-2014-2409383, which announced proposed amendments to regulatory standards for changing a customer's generation supplier. PULP is grateful to the Commission for its swift action in addressing the recent pricing issues that have left many across the state with unconscionably high electric bills, and appreciates the opportunity to provide comments on this important proposal.

PULP is a specialized statewide project of the Pennsylvania Legal Aid Network designated to assist low-income utility and energy residential consumers. For over 30 years PULP has represented the interests of low income Pennsylvanians in energy and utility matters through direct representation, statewide advocacy, and support and assistance to the staff and clients of local legal aid programs, non-profits and community-based agencies. PULP submits these comments on behalf of its low-income clients.

The regulations that the Commission proposes would amend 52 Pa. Code §§ 57.172-174, which were adopted pursuant to the procedures set forth in the Commonwealth Documents Law, 45 P.S. § 1101 *et seq.*, and were published in the Pennsylvania Bulletin on November 20, 1998.

See 28 Pa. B. 5770. In general, the purpose of the Commonwealth Documents Law is to promote public participation in the promulgation of a regulation. To that end, an agency must invite, accept, review and consider written comments from the public regarding the proposed regulation or changes thereto. Specifically, the Commonwealth Documents Law requires the Commission to issue a notice of proposed rulemaking before amending its regulations. Section 1201 states, in relevant part: “Except as provided in section [1]204 an agency shall give, in the manner provided in section 405 (relating to additional contents of temporary supplements) public notice of its intention to promulgate, *amend or repeal* any administrative regulation.” 45 Pa. C.S. § 1201 (emphasis added).

In its Secretarial Letter announcing this Proposed Rulemaking, the Commission indicated that the public interest requires extraordinary measures be taken to expedite this rulemaking.

Specifically, it cites § 1204(3), which states:

Except as otherwise provided by regulations promulgated by the joint committee, an agency may omit or modify the procedures specified in sections [1]201 and [1]202, if:

...

(3) The agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefore in the order adopting the administrative regulation or change therein) that the procedures specified in sections [1]201 and [1]202 are in the circumstances impracticable, unnecessary, or contrary to the public interest.

45 Pa. C.S. § 1204.

PULP appreciates the seriousness of the situation that has occurred as a result the recent variable rate spike and agrees that prompt action must be taken. However, such prompt action should not lead to haste that may create future difficulties, such as limited recourse for those who are victims of slamming, fraud, or other market abuses. It is with this in mind that PULP makes the following recommendations concerning the changes proposed by the Commission.

PULP supports the proposed changes in so far as they provide for an accelerated switching time-frame, and a much-needed mechanism for consumers to switch from an EGS to default service by a contact to the customer's default service provider. If a customer chooses to switch to default service, he or she should be entitled to the same notices and rights as a customer who switches from an EDC to an EGS or from an EGS to an EGS.

However, PULP is concerned that the proposed regulations remove several critical protections against unauthorized switching. Below, PULP offers recommendations to increase the consistency and clarity of the proposed regulation to better protect low income individuals. Also attached, as Appendix A, is a red-lined copy of the proposed rules, in which PULP offers specific amendments to increase the protective and prospective nature of these particular regulations.

Comments

Section 57-172:

Customer contacts with the EDC [*to request a change in electric supply service*]

→ 57-172(2): Include reference to and require notification of the statutorily required three (3) business day rescission period.

The three (3) business day rescission period, which is statutorily required in §54.5(d), is a critical protection for consumers who have been fraudulently switched or who – upon closer review of the terms of their current supply contract – may later realize the scope of the penalties associated with an early termination of an EGS contract for service. Especially when the switch is initiated by a high-pressure sale at the customer's home or over the phone, where the customer may not have had time to consider the potential pros and cons of switching.

PULP commends the Commission for requiring EDCs to notify a customer of potential financial penalties that may be levied by an EGS for early contract termination. PULP also recommends that the EDC be further required to notify the customer of the subsequent three (3) business day rescission period because it would provide time for the customer to review their original supply contract, understand the terms, and act to prevent previously unforeseen and undue financial harm.

For vulnerable populations with low and/or fixed income, the ability to rescind their request to avoid significant financial penalty is critical to their continued stability. It may, in fact, mean the difference between a hot meal and a cold shower.

→ **57-172(1): Remove reference to persons authorized to act on a customers behalf.**

In the definitions section, “customer” is already defined to include those who are acting on behalf of a customer. In the interest of ensuring accessibility and increasing readability, PULP asks the Commission to remove the duplicative language.¹

Section 57.173:

Customer contacts [*with*] an EGS to request a change in electric supply service

→ **57-173(1): Require EGSs to also notify customers initiating a service change to examine their contract for potential termination fees or costs that may apply.**

Consistent with proposed section 57.172(2) (Customer contacts with the EDC), suppliers should also be required to provide notice to customers initiating a change in service that there may be a financial penalty associated with terminating service with the current EGS product. There is no less risk of penalty for early termination when a customer switches from EGS to

¹In a related recommendation, PULP also strongly asserts below that it is necessary to retain the regulatory procedure for authorizing individuals to act on the customer’s behalf, which is critical to the prevention of fraud and abuse.

default service than there is when a customer switches from one EGS product to a different EGS product.

→ 57-173(1): Require EGSs to notify customers of their statutory right to rescission within three (3) business days of initiating a new EGS product.

A rescission period is critical to the stability of vulnerable populations across the state. But, the right to rescind a change in electric supply service is meaningless if the customer is not also notified of that right. *See above, recommendation to section 57-172, for additional rationale.*

→ 57-173(2): Restore the provision allowing customers to cancel a change in service within a reasonable time after receipt of the confirmation letter.

The Commission imposed a 10-day waiting period as a safeguard against slamming, harassment by a third party, and other attempts to fraudulently switch a customer to a different supplier. The rationale was that if a customer receives a confirmation letter at their home address, but did not authorize a change in service or did not understand that they had accepted an offer of service during a telephone or door-to-door solicitation, she or he should be able to reverse the switch before any electricity charges are incurred.

In its October 25, 2012 Opinion and Order in *Interim Guidelines Regarding Standards For Changing a Customer's Electricity Generation Supplier*, at Docket No. M-2011-2270442, the Commission waived this section of its regulation and imposed an interim 5-day period. Retention of this 5-day period is essential to ensure unauthorized switching does not occur.

PULP recognizes and appreciates that by proposing to remove the waiting period and cancellation process, the Commission is attempting to narrow the time it takes to switch a customer to more quickly relieve customers stuck in an unaffordable variable rate contract. But, by wholesale eliminating the waiting period, the Commission has opened the door to a potential

increase in slamming, abuse and/or fraud. While the occurrence of unauthorized transfer of service is smaller than legitimate transfers, the harm to those transferred without their permission is significant, and preventing unauthorized transfers is an essential component of an effectively functioning retail electric market.

Pursuant to Pennsylvania law, a customer has a right to file a dispute with the EDC about an alleged error or improper enrollment with an EGS. See 52 Pa. Code § 57.177. The Commission's proposed approach would eliminate or significantly curtail this right by eliminating the waiting period in which a customer could challenge the switch.

Rather than eliminate the cancellation period, PULP urges the Commission to incorporate into its regulations the shorter, but reasonable cancellation period of five (5) days for customers after the confirmation letter is sent. While there have been some complaints by customers that the switching timeframe is too long, their frustration was borne from the unconscionable charges that they were paying, not the switching time-frame itself. Rather than potentially create a future harm with increased slamming, the Commission would be better served addressing the root cause – unsociable supplier contracts – than by simply eliminating this relatively short switching time frame. Customers must have a period of time to rectify mistakes, fraud, and abusive switching. Eliminating this waiting period would at best only rectify a secondary aspect of the problem and the resulting potential for slamming, which would serve to exacerbate the current mistrust of competitive suppliers in Pennsylvania.

Section 57.175:
Persons authorized to act on behalf a customer.

→ Restore Process for Designating “Persons Authorized to Act on a Customer’s Behalf.”

PULP urges the Commission to restore section 57.175, “Persons Authorized to Act on a Customer’s Behalf,” to prevent the potential for increased slamming or fraud by a competitive supplier or harassment and abuse by a former or current roommate, partner, family member, or other third party. Low income individuals are the most susceptible to this type of fraud, abuse, and harassment, as they lack the additional financial security needed to absorb the time, money, and resources to pursue a remedy.

The threat posed by eliminating the authorization process in section 57.175 is perhaps most palpable for victims of stalking, domestic violence and other crime. Victims and perpetrators of interpersonal crime often share a life together, have kids together, and know intimate details about each other. Accounts are often in both names and, even if they are not, intimate partners often know enough personal information about their victim to make changes to bank and utility accounts without trouble. Perpetrators go to great lengths to establish and maintain power and control over their victim and, when a victim attempts to separate, perpetrators will often stop at nothing to regain control.² It is therefore critical – for the safety of our most vulnerable populations – to ensure that there is a clear process, involving written or in-person customer consent, for an individual to be designated as a person authorized to act on the customer’s behalf.

² PATRICIA TJADEN & NANCY THOENNES, NAT’L INST. OF JUST. & CTRS. FOR DISEASE CONTROL & PREVENTION, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE (2000); *see also* CALLIE MARIE RENNISON, DEP’T OF JUSTICE, INTIMATE PARTNER VIOLENCE, 1993-2001 (2003).

PULP recognizes that the Commission was attempting to expedite switching by eliminating the written confirmation currently required before allowing third parties to act on a customer's behalf. We support the Commission in this initiative, as it allows individuals to more quickly switch from a supplier that is charging unconscionable rates. But unfortunately, in doing so, the Commission has also eliminated critical protection for populations vulnerable to harassment and abuse by a third party. As such, PULP requests the Commission retain section 57.175, as originally implemented, to protect individuals who are most vulnerable.

Conclusion

Thank you for your consideration of these Comments. We believe that our recommendations are critical to ensure the continued safety and stability of Pennsylvania's most vulnerable populations. We have attached a redlined version of the proposed regulation changes, which provide our specific language consistent with the recommendations made above. In addition, our proposed language suggests basic plain language changes to increase the readability and, hence, the accessibility of the regulations.

Respectfully Submitted,
THE PENNSYLVANIA UTILITY LAW PROJECT
On Behalf of our Low-Income Clients



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APPENDIX A

ANNEX A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED UTILITY SERVICE

CHAPTER 57. ELECTRIC SERVICE

Subchapter M. STANDARDS FOR CHANGING A CUSTOMER'S ELECTRICITY GENERATION SUPPLIER

§ 57.171. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § § 2801—2812.

Customer—A purchaser of electric power in whose name a service account exists with either an EDC or an EGS. In addition, the term includes all persons authorized to act on a customer's behalf pursuant to section 57.175.

Default service provider –As defined by 66 Pa. C.S. § 2803.

EDC—*Electric distribution company*—An electric distribution company as defined in section 2803 (relating to definitions).

EGS—*Electric generation supplier*—A supplier as defined in section 2803 of the act.

Current EGS Product – the EGS product at the time of the customer contact.

Selected EGS Product – the EGS product from which the customer seeks new electric supply service.

§ 57.172. Customer contacts with the EDC to request a change in electric supply service.

(1) When a customer or a person authorized to act on the customer's behalf orally contacts the EDC to request a **switch from the current EGS product or default service provider to a new selected EGS product**, the EDC shall notify the customer that he or she must contact the EGS **offering the selected EGS product shall be contacted** directly to initiate the change. **This requirement does not apply in the context of a Commission-approved program that requires the EDC to initiate a change in EGS service.**

(2) When a customer or a person authorized to act on the customer's behalf orally contacts the default service provider to request a switch from the current EGS product to default

service, the default service *provider* shall notify the customer that there may be a financial penalty associated with terminating service with the current EGS product, *and that the customer has three (3) business days in which to rescind their request.* Subsequent to this notice and given express oral consent from the customer, the default service *provider* shall enroll the customer onto default service.

§ 57.173. Customer contacts *with* an EGS to request a change in electric supply service[with EGSs].

When [a contact occurs between] a customer [and] **contacts** an EGS to request a **switch from** [a change of]the **current EGS product or default service provider to a new selected EGS product**, [upon receiving direct oral confirmation or written authorization from the customer to change the EGS, the contacted EGS shall]**the following actions shall be taken by the EGS offering the selected EGS product and the customer's EDC:**

(1) **The EGS offering the selected EGS product shall** [N]notify the *customer that there may be a financial penalty associated with terminating service with the current EGS product and that the customer has three (3) business days in which to rescind their request.*

(2) *The EGS offering the selected EGS product shall notify the* EDC of the customer's EGS selection **at the end of the 3-business day rescission period provided in § 54.5(d) (relating to disclosure statement for residential and small business customers) with customer consent or a future date that will initiate supply service with the selected EGS product on the date specified by the customer. If no consent for the 3-business day hold or other delay is given by the customer, then the EGS offering the selected EGS product shall notify the EDC** by the end of the next business day following the customer contact.

(~~2~~) (3) Upon receipt of this notification, **or notification that the customer has authorized a switch to default service**, the EDC shall send the customer a confirmation letter noting the proposed change of EGS **or EGS product, or the switch to default service**. ~~†~~This letter shall include notice of a **5-day** waiting period in which the order may be canceled ~~before the change of the EGS takes place.~~ ~~†~~The notice shall include the date service with the new **selected EGS product or default service** will begin ~~†~~unless the customer contacts the EDC to cancel the change. The **5-day** waiting period shall begin on the day the letter is mailed~~†~~. The letter shall be mailed by the end of the next business day following the receipt of the notification of the customer's selection of an EGS.

§ 57.174. Time [] frame requirement.

(1) When a customer or authorized party has provided the EGS **offering the selected EGS product** with oral confirmation or written authorization to [change]**select the new EGS[s] product or move from default service, or a customer or authorized party has provided the current EGS with oral confirmation or written authorization to return the customer to default service**, consistent with electric data transfer and exchange standards, the EDC shall make the change [at the beginning of the first feasible billing period]**within 3 calendar days** [10-day waiting period]**of the receipt by the EDC of the electronic enrollment transaction.**

(2) The EDC shall obtain a meter read to effectuate the switch of EGS service within the time period provided for in paragraph (1). In instances where the EDC does not have advanced or automated metering capability, the EDC shall obtain an actual meter read, use an estimated meter read or use a customer-provided meter read. In instances where estimates are used, the estimated meter read shall be updated when an actual meter read is obtained to reflect the customer's actual usage through the customer's normal meter read cycle.

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§ 57.175. ~~Persons~~ authorized to act on behalf of a customer.

A customer may identify persons authorized to make changes to the customer's account. To accomplish this, the customer shall provide the EDC with a signed document identifying by name those persons who have the authority to initiate a change of the customer's EGS.~~†~~

§ 57.176. ~~Valid~~ written authorization.

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§ 57.17~~7~~~~6~~. Customer dispute procedures.

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§ 57.17~~8~~~~7~~. Default service provider.

(1) This subchapter does not apply when the customer's service is discontinued by the EGS and subsequently provided by the default service provider because no other EGS is willing to provide service to the customer.

(2): This subchapter does apply when the customer elects to receive service from the default service provider.

§ 57.17~~9~~~~8~~. Record maintenance.

(1) Each EDC and each EGS shall preserve all records relating to unauthorized change of EGS disputes for 3 years from the date the customers filed the dispute. These records shall be made available to the Commission or its staff upon request.

(2) The default service provider shall retain all records relating to situations as described in § 57.172 for 3 years from the date of the customer contact with the default service provider. These records shall be made available to the Commission or its staff upon request.

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