COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Review of Rules, Policies and Consumer	:	
Education Measures Regarding Variable	:	**Docket No. M-2014-2406134**
Rate Retail Electric Products	:	

COMMENTS OF THE CONSTELLATION COMPANIES

I. INTRODUCTION

On March 4, 2014, the Pennsylvania Public Utility Commission ("Commission") entered an Order in the above-docketed proceeding ("March 4th Order" or "Order") opening a proceeding to examine the rules, policies and consumer education materials relating to variable priced retail electric products. The Commission asked that interested stakeholders respond via the submission of comments to information requests listed in the Order.

Constellation NewEnergy, Inc. ("CNE") and Constellation Energy Power Choice, Inc. (formerly MXenergy Electric Inc.) ("CEPCI") (collectively, "Constellation") appreciate the opportunity to provide comments on the March 4th Order and the information requests therein. With the continuing work of the Commission and stakeholders, Constellation looks forward to a competitive retail electric market where customers are provided increased market efficiencies and improvements which, coupled with the Commission's other initiatives, will lead to a more robust retail electricity market.

In the event that the Commission or its Staff prepares a service list for this proceeding or otherwise requires additional information regarding the information presented herein, Constellation identifies the following individuals:

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II. BACKGROUND ON CONSTELLATION

CNE and CEPCI are indirect, wholly-owned subsidiaries of Exelon Corporation, a North American energy company headquartered at 10 South Dearborn Street, Chicago, Illinois, with operations and business activities in 47 states, the District of Columbia and Canada. CNE and CEPCI are licensed electric generation suppliers ("EGSs") in the Commonwealth, pursuant to 66 Pa.C.S. § 2809. Constellation serves Residential, Commercial and Industrial customers in most utility territories in the Commonwealth.

III. CONSTELLATION'S COMMENTS

Constellation commends the Commission for issuing the March 4th Order as part of its efforts to improve the Commonwealth's retail electric market and to address recent consumer concerns resulting from extreme weather-related market volatility. In order to provide context to its responses below, Constellation submits the following regarding its offerings to Pennsylvania residential and small business customers:

Constellation currently markets to Pennsylvania customers only (1) fixed price contracts, and (2) contracts in which the energy component is set (i.e. not subject to price volatility), but there are pass-through provisions and/or variability for non-energy components.[1] To the extent the term of an agreement ends and the Customer does not enter a new fixed-price contract with CNE, but continues to be supplied by CNE, those Pennsylvania customers are rolled into a term contract that is typically equal to the length of their previous term, where the electricity price is set for the entire term, and the customer can leave at any time with no early termination fee. There also exists a subset of legacy CEPCI customers that remain on month-to-month contracts where a set rate is established each month (typically a few weeks prior to the start of the month) for all kilowatts consumed in the month. In this way, in either case, the residential and small business customers that remain with Constellation after the term of their initial contract expires are not exposed to daily or hourly intra-month price volatility.

Constellation does not market to Pennsylvania residential or small business customers any variable index product for electricity (which Constellation interprets the Commission's phrase "variable-priced contracts with explicit formulaic pricing parameters" to mean), or a variable priced electricity contract where there is variability in the energy component of the contract that is not index-based (which Constellation interprets the Commission's phrase "variable-priced contracts without explicit formulaic pricing parameters" to mean). With the foregoing background, Constellation hereby responds to the Commission's information requests.

[1] Pass-through provisions and variable *non-energy components* to retail contracts are often related to non-market-based ("NMB") charges such as the Network Integration Transmission Service (NITS), Generation Deactivation (or "RMR"), and Transmission Enhancement line items on the PJM Interconnection, L.L.C. invoice. Generally, NMB charges are unpredictable and not hedgeable, therefore, absent a pass-through they represent a difficult risk for suppliers to price into retail contracts. Pass-through and other variable provisions relating to NMB charges are not necessary in jurisdictions where a utility has a non-bypassable rider in place to collect these charges from all customers, shopping and non-shopping. It is also important to note that variability relating to NMB charges is in no way tied to the recent weather events and variability in the *energy price component* of retail contracts, which is the focus of this proceeding.

A. For variable-priced contracts without explicit formulaic pricing parameters, should EGSs be required to provide advance notice of price changes to customers?

Constellation appreciates and supports the Commission's efforts to provide consumers with useful, actionable information regarding costs associated with variable-rate products, and is supportive of the concept of advance notice to customers regarding price changes. Constellation submits that the form of notice should be the lowest cost available to meet the objective of customer notification. Constellation recommends a web-based broad notification based on calendar dates that apply across all customer/contract classes.

With regard to timing of the advance notice for variable-priced products, such as CEPCI's legacy month-to-month renewal contracts, the EGS should be required to provide its renewal price closer-in-time to the delivery date, perhaps no earlier than seven to fourteen (7-14) days prior to the first day of delivery under the new price. As explained above, for CEPCI customers that remain on month-to-month contracts, the monthly rate for the upcoming month is typically established a few weeks in advance of the month.

B. For variable-priced contracts without explicit formulaic pricing parameters, should the advance notice requirement be waived for minor contract price changes, within a certain bounds? If so, what bounds are appropriate?

Constellation recognizes the importance of transparency and communication with customers regarding the terms of their contracts. In light of Constellation's position that any final rule reflects the most cost-effective and least burdensome means to achieve this end, Constellation recommends a web-based notification format that allows for EGS posting of the monthly variable rate for each customer class on a customer-accessible area of the EGS's website. To the extent the Commission agrees with this – the lower-cost and highly efficient form of notification – a waiver from notification requirements becomes less necessary. In this regard, Constellation supports establishment of a workshop to develop standards for electronic customer notification.

C. For variable-priced contracts without explicit formulaic pricing parameters, if advance notice is required, how far in advance of the meter read date should notice be provided and how can this notice be provided?

As described above, consistent with the practices of other EGS, Constellation manages its month-to-month variable rates on a calendar-month basis. Prices are set, typically a few weeks in advance of the month, for the entire customer base that will bill in that month. This calendar-based approach applies to entire classes of customers and is not individualized. Therefore, questions regarding lead time are most properly contemplated in the number of calendar days prior to the next month, rather than a customer-specific number of days before a meter read date.

Constellation recommends a web-based notification format that allows for EGS posting of the monthly variable rate for each customer class, on a customer-accessible area of the EGS's website. With regard to timing of the notice, the EGS should be required to provide its renewal price closer-in-time to the delivery date, perhaps no earlier than seven to fourteen (7-14) days prior to the first day of delivery under the new price. Requiring EGSs to make this determination further in advance increases risk and uncertainty, which likely will result in suppliers establishing a higher rate for the upcoming month in order to reflect this additional risk. Furthermore, in light of the Commission's proposed rule changes for accelerated switching within three (3) days, a seven to fourteen (7-14) day advance notice requirement for a variable renewal price will still allow sufficient time for a customer to switch suppliers.[2]

D. Do variable rate contracts without explicit pricing parameters provide consumers with the information needed to make informed decisions? If not, what is the remedy?

As outlined above, Constellation interprets "without explicit pricing parameters" to mean a variable priced electricity contract where there is variability in the energy component of the contract that is not index-based. In the case of the previously described CEPCI customers that remain on month-to-month contracts, the monthly rate for the upcoming month is typically established a few weeks in advance of the month. Constellation derives the monthly rate for these products in a commercially reasonable manner in large part based upon its load forecasts and proprietary hedging/procurement practices. Constellation understands the importance of having informed customers, and recommends inclusion of information relating to "variable" products, including renewal contracts, in contract terms and conditions. Constellation also is supportive of providing historical performance information to customers, which can provide additional insight to consumers regarding patterns of variable rate changes by an EGS.

E. For variable-priced contracts with explicit formulaic pricing parameters, should EGSs be required to provide a historical pricing history for this formulaic rate structure?

As outlined above, Constellation interprets "with explicit pricing parameters" to mean an index contract where variability in the energy component of the contract is formulaically tied to a market index. Although Constellation does not offer index products to Pennsylvania

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[2] *See Secretarial Letter regarding Proposed Rulemaking on Standards for Changing a Customer's Electricity Generation Supplier*, Commission Docket No.: L-2014-2409383 (Mar. 18, 2014).

residential and small business customers, we support providing historical price information, which gives customers additional insight and transparency to inform their energy supply decisions.

F. For variable-priced contracts with explicit formulaic pricing parameters, how many months of historical pricing history should be provided, and where should this information be provided so as to be available to all participating customers?

Constellation submits that any requirement regarding provision of historical pricing information should take into account the costs to suppliers to develop processes and systems to gather, retain and communicate the information to customers. Constellation supports a 12-month look back as a reasonable end-goal, but a shorter "interim" time period should be considered to allow for supplier transition to the provision of 12-month historical pricing information. Similar to Constellation's comments above, the recommended medium to provide this information is via EGSs' websites in a manner accessible to those customers on variable rate products.

G. For variable-priced contracts with explicit formulaic pricing parameters, should EGSs describe specifically how future formulaic prices are determined?

Based on the premise that "with explicit pricing parameters" refers to an index contract where variability in the energy component of the contract is formulaically tied to a market index, the terms of the contract itself, by definition, should describe specifically how prices are determined.

IV. CONCLUSION

Constellation appreciates this opportunity to submit to the Commission its Comments on the March 4th Order. The recommendations herein will promote continued development of the Commonwealth's competitive retail markets, for the ultimate benefit of Pennsylvania's consumers. Constellation looks forward to continued discussions with all stakeholders regarding the issues addressed in this response.

Respectfully submitted,

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On Behalf of Constellation NewEnergy, Inc. and Constellation Energy Power Choice, Inc.

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