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April 3, 2014

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

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

Dear Secretary Chiavetta:

Enclosed for filing please find the Comments of the Office of Consumer Advocate, AARP, Pennsylvania Utility Law Project and Community Legal Services, Inc. in the above-referenced proceeding.

If you have any questions, please feel free to contact me at the number listed above.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Candis A. Tunilo".

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Assistant Consumer Advocate
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Enclosure

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Review of Rules, Policies and Consumer :
Education Measures Regarding Variable : Docket No. M-2014-2406134
Rate Retail Electric Products :
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OF THE OFFICE OF CONSUMER ADVOCATE,
AARP, PENNSYLVANIA UTILITY LAW PROJECT
AND
COMMUNITY LEGAL SERVICES, INC.

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TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. EXPANDED INQUIRY AND INVESTIGATION IS NEEDED.....	9
A. Introduction	9
B. More Information About The Variable Rate Market And The Impacts Of The Variable Rate Plans Is Needed To Fully Formulate The Policies, Rules And Consumer Education For Variable Price Plans.....	10
1. Public Input Hearings	10
2. Additional Information Should Be Gathered.....	11
III. DISCUSSION AND RECOMMENDATIONS	13
A. Introduction	13
B. Variable Rate Disclosure Statements Must Be Improved	14
1. A Price Limit Must Be Stated In Disclosure Statements For All Variable Price Products	15
2. Disclosure Statements Should Be In Plain Language And Should Include Additional Information To Assist The Consumer In Assessing The Risk Of The Variable Rate Plan.....	17
3. Disclosure Statements Should Not Be Used As A Means To Convert Customers To A Variable Rate Plan After A Fixed Price Plan Term Expires	19
4. Revised Disclosure Statements Should Be Sent to All Existing EGS Customers On Variable Rate Plans	20
C. Consumers Should Receive Advanced Notification Of Price Changes And Switching May Need To Be Accelerated So That Consumers Can Respond To This Information...	20
D. Customers Should Not Be Placed On Variable Rate Plans At The End Of A Fixed Price Term Without Providing Affirmative Consent	22
E. Safeguards Against Deceptive Advertising And Marketing Should Be Strengthened	24
F. Customer Service Requirements For EGSs Should Be Strengthened And Several Changes Are Needed In Light Of The Inadequate Customer Service Provided During These Events.....	26
1. Call Center And Customer Service Requirements For Licensing Should Be Strengthened	27
2. All Consumers Should Be Able To Return To Default Service By Making A Request With The Electric Distribution Company.....	27
G. Additional Protections Are Needed For CAP Customers	28

H. The Purchase Of Receivables Programs May Need To Be Revisited To Address High Uncollectible Expense And Other Utility Costs Resulting From Variable Pricing Practices.....	31
I. Suppliers Should Make Greater Contributions To Consumer Education Efforts	32
IV. RESPONSES TO COMMISSION QUESTIONS/TOPICS.....	33
A. For Variable-Priced Contracts Without Explicit Formulaic Pricing Parameters	33
1. Should EGSs Be Required To Provide Advance Notice of Price Changes To Customers?	33
2. Should the Advance Notice Requirement Be Waived for Minor Contract Price Changes, within a Certain Bounds? If So, What Bounds Are Appropriate?.....	34
3. 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?	35
4. Do Variable Rate Contracts without Explicit Pricing Parameters Provide Consumers with the Information Needed To Make Informed Decisions? If Not, What Is the Remedy?.....	35
B. For Variable-Priced Contracts with Explicit Formulaic Pricing Parameters	38
1. Should EGSs Be Required To Provide a Historical Pricing History for this Formulaic Rate Structure?	39
2. If so, How Many Months Should Be Provided, and Where Should this Information Be Provided so as To Be Available to All Participating Customers?	39
3. Should EGSs Describe Specifically How Future Formulaic Prices Are Determined?.....	40
C. For Daily Recorded and Automatic Meter Reading Capable Electric Utilities	40
1. Under Current Plans, When Will Mid-Cycle EGS Switches Be Implemented?	40
2. How Much Can These Plans Be Accelerated, and At What Additional Cost?	40
D. For Electric Generation Suppliers Who Offer Variable Priced Products.....	41
1. Please Provide Copies of Customer Disclosure Statements for Variable Priced Products Provided through Contracts in Effect for Service Rendered for the Period December 1, 2013 through February 20, 2014.....	41
V. CONCLUSION.....	42

I. INTRODUCTION

The Office of Consumer Advocate (OCA), AARP,¹ Pennsylvania Utility Law Project (PULP),² and Community Legal Services, Inc. (CLS)³ (hereinafter the Residential Consumer Group) appreciate the opportunity to respond to the Public Utility Commission's (PUC or Commission) Order in its Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products at Docket No. M-2014-2406134, Order (March 4, 2014) (March 4 Order). The OCA has also submitted Comments in the Commission's two proposed rulemaking proceedings regarding disclosure requirements and accelerated switching at Docket No. L-2014-2409385 (March 19 Disclosure Rulemaking) and Docket No. L-2014-2409383 (March 18 Accelerated Switching Rulemaking), respectively. The Residential Consumer Group supports efforts to improve the disclosure requirements for variable price plans before the upcoming summer season when prices can be extremely volatile. It is important to recognize, however, that any newly adopted reforms will not change the current situation or address the deleterious impacts on the affordability of essential electric service for the residential customers that have already been caught up in this crisis based on existing disclosure statements, marketing and education. Efforts to assist *all* customers that experienced these variable rate shocks for this winter are imperative.

¹ AARP is a nonprofit, nonpartisan organization, with a membership of more than 1.8 million in Pennsylvania, that helps people turn their goals and dreams into real possibilities, strengthens communities and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse.

² 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 organizations.

³ CLS is a not-for-profit organization that provides free legal services, in civil matters, to low-income Philadelphians. The CLS Energy Unit advocates for the interests of low-income utility customers and client groups on service and payment issues.

As the OCA noted in its Comments in the two rulemakings, the problems identified by the tens of thousands of customers calling about variable price plans require a comprehensive set of measures. Based on a preliminary analysis of the customer information provided to date, the situation facing Pennsylvania consumers cannot be remedied by improved disclosure and accelerated switching alone. The Residential Consumer Group's Comments identify additional consumer protection reforms that need to be adopted.

To that end, the Residential Consumer Group recommends a variety of measures, all of which should be pursued, to allow the retail market for electricity to develop in a manner that results in customer acceptance and knowledgeable participation as well as proper oversight and protection. The PJM wholesale market is extraordinarily complex with hundreds of products and thousands of prices. The suppliers that seek to serve retail electric customers must purchase generation supply in this complex wholesale market and have many tools available to hedge the risks of these markets or mitigate price volatility for the supply. Retail consumers, however, are not familiar with, and cannot be expected to fully understand, these risks and cannot be expected to explore how various suppliers assume or pass through these risks to their customers. The current situation in which suppliers are knowledgeable about their market portfolio risks and purchases, while consumers have little or no publicly available price information regarding the wholesale spot markets, and consumers lack other necessary information to make an informed choice is a recipe for the type of disaster that occurred this winter. Without reform, this situation is likely to be repeated, and could drive consumers out of the retail choice market.

Electricity is essential for the health, safety, and economic well-being of consumers. The goal of this review should be to ensure that consumers of this essential service have adequate protections, full and complete information, and the opportunity to make an

informed choice. Over the last several years, it has become clear that variable pricing plans are playing a greater role in the market. From the OCA's recent review of the PaPowerSwitch website, the OCA identified 30 variable price offers in the PECO service territory and 21 in the PPL service territory. This compares to 69 fixed offers⁴ in the PECO service territory and 56 in the PPL service territory. But the number of offers for new customers on the PaPowerSwitch website does not tell the whole story. Many customers have been moved onto variable price plans at the end of a fixed price term if the customer did not respond to the renewal offer sent for a new fixed price period. One item that we do not yet know is how many of the 1.9 million residential customers that have switched suppliers are being served under a variable price plan.

This winter has been one of the coldest in decades, resulting in record electricity demand and record winter prices in the short-term PJM wholesale markets. It appears that many variable rate suppliers have shifted this risk entirely to their retail customers.⁵ The variable prices that some suppliers have imposed on their customers resulted in shockingly high cents per kilowatt hour charges and shockingly high monthly bills. The few dollars of monthly savings that these customers sought to achieve from the retail choice market were overwhelmed by just one monthly bill. The following are some examples of what the OCA has encountered:

◆ The OCA heard from a single mother with three children from State College whose electric bill nearly quadrupled from one month to the next. Her bill went from \$370 to \$1,456 with no warning. When she called to speak to the supplier to ask for help, she was told: "We are a variable rate company, so we can do that." She told us that "disaster is inevitable," and she may be right for her family.

⁴ Fixed offers in this context are for a specific term but customers could also be moved into variable terms at the end of the fixed period.

⁵ The OCA notes that not all variable rate products or all variable rate providers have approached this winter in the same way. The OCA has seen very different levels of pricing under these variable rate plans, different levels of disclosure, and vastly different quality of customer service among variable rate providers.

- ◆ A church from the Carlisle area contacted the OCA when its rate went from 6.7 ¢/kwh to 20.98¢/kwh with a resulting bill of over \$1,800 rather than the \$700 they expected.
- ◆ A couple in their 80's living on a fixed income in the Chambersburg area saw their bill more than triple with no warning. The rate paid went from 6.98¢/kwh to 22.64¢/kwh. They asked, "How is a senior living on Social Security supposed to afford bills like this?"
- ◆ The OCA heard from a retired widow from the Hamburg area living on a fixed income. She keeps her house at 60 degrees despite the impact it has on her health issues. Her electric bill was over \$800. She has tried calling her supplier to ask them for help but they never answer the phone.
- ◆ A low income customer in the Customer Assistance Program for payment troubled customers received a generation service bill in March of \$650 with a 30.88¢/kwh price when the price with her default service supplier would have been 8.18¢/kwh, or a \$172 monthly bill for generation service.
- ◆ Another customer with automatic bill payment had to put a stop on the automatic payment of her other bills as the electric generation supplier charges cleaned out her account.

These are only a few examples from the thousands of calls to the OCA. The AARP and PULP have also received many contacts from consumers in similar situations.

The impact of these extraordinary bills is wide ranging, from direct impacts on customer households to broad impacts on the entire customer base. Many households have reported to the OCA and PULP that they will need to reduce or cease spending on other household goods or life necessities in order to pay these bills. Other households have expressed the concern that they may not be able to make their payments, resulting in possible termination of service. If customers are not able to pay these extraordinary bills, the cost of uncollectible expenses, as well as the credit, collection, and termination costs will eventually be borne by all other customers.⁶

⁶ The Residential Consumer Group is very concerned about the potential for termination of service for customers unable to pay these bills. The Commission should consider whether a temporary halt to termination of service for variable rate plan customers is needed while these matters are resolved.

The Residential Consumer Group does not view this situation as one in which consumers voluntarily and knowingly selected a product, took a gamble on the market and just made the wrong bet. Consumers here were trying to better their financial situation through *engaging in the retail competitive market as they have been encouraged to do*. There was simply no way for consumers to know from the disclosure statements provided by suppliers, from the marketing of these products, from the education provided about retail choice, or from independent research that they were exposing themselves to such extraordinary risk of short-term wholesale market price volatility and extraordinary bill increases.

Through its work with consumers that have contacted the OCA, some common problems have been identified. This list of problems, however, may not be exhaustive. More questions need to be asked, and the answers analyzed, to fully identify and understand the problems. The key issues that the Residential Consumer Group has identified for these Comments are as follows:

- *Disclosure*. Review of the disclosure statements indicates serious questions as to whether the Commission regulations on variable price disclosure were being followed. In addition, these disclosures raise questions as to whether they were so vague and so open-ended as to be meaningless.
- *Transitioning Consumers to Variable Price Plans at the End of the Fixed Term*. Many consumers reported that they have been moved to variable price plans without their affirmative consent at the end of a fixed price term. Consumers thought they would remain on a fixed price term if they did nothing in response to renewal notices.
- *Introductory Prices*. Many consumers selected an introductory price for a one-or-two month period, which was then followed by a variable price plan. Consumers were unaware of what price would be charged at the conclusion of the introductory period or that the price could increase as substantially as it did.
- *No Advanced Notice of Price*. Consumers were not told, and even upon request could not get, the price that they would be charged before they used their electric service. In other words, the consumer had no notice of the price change, and there was no transparency on the price that the consumer was being charged while the consumer

was using the electricity. Additionally, suppliers do not disclose the methodology of calculation that leads to the monthly price charged to the customer.

- *Delay In The Ability to Switch Suppliers.* This has been a source of frustration for consumers, due to both the long time period it takes to switch suppliers and because many consumers were unable to speak with their suppliers for hours or even days in the wake of the high Winter 2013-2014 billing periods.
- *Deceptive and Misleading Marketing Practices.* Many customers asked how high their price might go when talking to the supplier's sales agents. In many instances, consumers were told by these sales agents that the price would "always be competitive with the price to compare" or that the price would "always be within a few cents of the price to compare."
- *Poor Customer Service.* Many customers had to wait excessive periods of time for a supplier to answer their call, both to complain about their high bills and to exercise their right to return to default service.
- *Need for Increased Education.* Many customers did not fully understand what a variable rate plan was and believed that the price would always be close to the price-to-compare.

These problems, and more that will come to light as additional information is developed, must be addressed to provide adequate consumer protections in this retail market.

The Residential Consumer Group has identified some additional concerns with the operation of the retail market that must be addressed. The operation of the Purchase of Receivables programs raises a concern that increased costs will result to the utility from these variable pricing plans. Increased uncollectible expense, credit and collection costs, and termination costs are all likely to increase as consumers are unable to pay these extraordinary bills. These costs will eventually be borne by all other customers, not the suppliers that employed these pricing practices. The Residential Consumer Group is also concerned that the Commission have sufficient authority to monitor the practices of all Electric Generation Suppliers (EGSs) and assure that no undue advantage of customers is being taken in any circumstance and to provide appropriate remedies when violations are identified. The

Residential Consumer Group is also concerned about whether the low income customers in the Customer Assistance Program (CAP) have adequate protection to maintain affordability and to control program costs. To the extent that the Commission's authority is unclear, legislative action may be necessary.

In Section II of these Comments, the Residential Consumer Group presents additional questions that should be asked and answered before this matter is resolved. The Residential Consumer Group again does not view this as an exhaustive list, but the questions seek fundamental information that the Residential Consumer Group submits is necessary to this inquiry. In addition to the questions, the Residential Consumer Group strongly urges the Commission to conduct a series of public input hearings for consumers to provide information about their circumstances. Similar to the public input hearings regarding storm response, public input hearings would assist all stakeholders in better understanding the needs of consumers in this retail market and the harms to consumers when the market fails so substantially.

Through these Comments, the Residential Consumer Group provides discussion and recommendations in Section III that are designed to address many of the problems identified. The Residential Consumer Group also responds to the specific questions posed by the Commission in its March 4 Order in Section IV of these Comments. The Residential Consumer Group submits that these prospective changes can be in place before the Summer of 2014 and offer improved consumer protections through, *inter alia*, enhanced disclosure requirements, preventing deceptive and misleading marketing, establishing ceilings for variable rates, and greater price transparency.

The Residential Consumer Group recognizes that some of its recommendations here may need to be addressed through legislation. To the extent that legislation is necessary to

implement some of the Residential Consumer Group's Recommendations, the Residential Consumer Group stands ready to work with the Commission and the General Assembly to ensure that adequate consumer protections are in place for this essential service.

Pennsylvania consumers and the retail choice market cannot continue to weather such events. Consumers cannot have confidence in the market unless consumer protections are in place, consumers are provided with full information, and consumers can make informed choices. A properly functioning retail market also requires clear rules and oversight of the practices under these rules. Consumer protections provide the necessary framework for customer dealings with EGSs, and provide consumers with the confidence to engage in the markets. The events of this past winter have clearly shown that more consumer protections, more consumer education, and oversight are needed for the retail choice market to function properly.

II. EXPANDED INQUIRY AND INVESTIGATION IS NEEDED

A. Introduction.

While much information has been sought and much information has been gathered from contacts with consumers, many key facts necessary to determining appropriate resolutions, and even to determining whether any undue advantage was taken of customers during these winter events, has not been developed.

The Commission should expand its current inquiry and engage in a further fact finding effort to gather more information about the variable rate market. There is much that is unknown about the operation of this market and at this time, little information has been developed about the possible consequences to consumers of the extraordinarily high bills that have resulted from these plans. While tens of thousands of consumers have contacted the Commission, the Attorney General's Office, and the OCA about this situation, there is no information available on how many consumers are or were on variable rate plans. We also have little information on how the plans were marketed, what the customers understood about the plans, what the customers were charged, or how some customers obtained a refund. We also have no information at this time about the costs that may be incurred by the Electric Distribution Companies (EDCs) related to these variable price plans as uncollectible expense increases, credit and collection costs are incurred, as well as the impact of these collection activities in triggering new or higher deposit requirements for residential customers, and terminations of service occur from non-payment.

Additionally, from information reported to the OCA, the prices that were charged to customers ranged widely, from 12¢/kwh to 47¢/kwh. The OCA has received reports of even higher prices. The OCA has also seen consumer bills in the same service territory issued a few

days apart that contain vastly different prices. At this point, there seems to be no clear understanding of how PJM market prices are translated into prices for consumers.

The Residential Consumer Group respectfully submits that additional information is necessary to fully understand the issues and to properly resolve these matters. As such, the Commission should continue its fact finding through a public input process and through additional information gathering.

B. More Information About The Variable Rate Market And The Impacts Of The Variable Rate Plans Is Needed To Fully Formulate The Policies, Rules And Consumer Education For Variable Price Plans.

1. Public Input Hearings.

The Residential Consumer Group recommends that the Commission conduct a series of public input hearings across the Commonwealth to gather information from consumers about their experiences in the retail market. These public input hearings would be similar to those conducted by the Commission regarding the recent storms and the response of the utilities to those storms. These hearings would give customers an opportunity to provide information about their experiences in the retail market with variable rate plans so that efforts to make changes can meet customer needs. Additionally, public input hearings would provide a forum for customers not yet able to resolve their concerns with their EGSs or not able to file an informal complaint with the Commission to have their issues heard.

Public input hearings are useful to hear directly from consumers about their experiences in the retail electric market and can offer insight into their concerns and suggestions for improvement. As such, the Residential Consumer Group recommends that the Commission convene public input hearings in each EDC's service territory.

2. Additional Information Should Be Gathered.

The Residential Consumer Group also recommends that the Commission gather additional information from EGSs about these variable rate plans and from EDCs about the potential consequences of these variable rate plans. The Commission should also ask EDCs to report on their efforts to assist consumers with payment problems resulting from the variable rate plans and to retain data about payment agreements, collection efforts, and terminations related to the variable rate plans.

The Residential Consumer Group has compiled the following list of needed information and questions as a start to this further inquiry:

1. How many customers are being served pursuant to variable price contracts for each supplier and of those, how many are in an EDC's Customer Assistance Program? This information should be obtained monthly starting in December 2013.
2. How was the product marketed, i.e., door-to-door, telemarketing, outreach events, on-line marketing, direct mail, and what percentage of customers signed up from each marketing channel?
3. What were consumers told at the point of sale about the operation of the variable rate feature in these service agreements?
4. What were consumers told in any renewal notices about the change from a fixed price to a variable price?
5. What prices were actually charged to customers in each billing cycle in December of 2013, and January, February, March, and April of 2014?
6. How have EGSs actually calculated the variable prices imposed on consumers? *This analysis should require EGSs to provide their methodology to calculate and charge monthly variable prices this past winter and in the future under their current service agreements in effect in Pennsylvania. To the extent that part of this methodology involves the determination of supplier margin or profit, that portion of the methodology may be confidential, but should nonetheless be disclosed to the Commission.*
7. What purchasing practices does the EGS utilize for customers on variable rate plans?

8. What steps, if any, the EGS took to mitigate the price impacts. What steps the EGS took, if any, to communicate to customers before the bills were sent.
9. How many customers were charged variable prices after entering into a service agreement with an introductory or promotional fixed price, and how many customers were charged variable prices as a result of a renewal of a previous fixed price contract because the customer failed to respond to the supplier's notice?
10. What is the supplier's internal call center performance standard? The Commission should obtain the call center performance results for the affected suppliers serving Pennsylvania customers for the time period January 2014 to the present.
11. What steps did the EGS take to address call volumes that exceeded available staffing both before the bills were sent, and after the bills were sent?
12. What criteria and policies were followed by each supplier in responding to customer complaints and contacts this winter? On what basis were customers given relief from some of the high prices and others denied this option?
13. How many customers have been provided payment arrangements by the EDCs as a result of a variable price plan bill and what payment arrangement terms have been offered to the customers?
14. How many termination notices have been sent by the EDCs related to non-payment of high bills resulting from this winter's variable rate plans?
15. What costs have the EDCs incurred to respond to the variable rate plan events, to include but not be limited to, customer service expense, additional call center expense, uncollectible expense, credit and collection costs, and termination expenses?
16. What other steps or actions have the EDCs taken to assist consumers on variable rate plans with high bills?
17. What percentage of CAP customers who are shopping paid more than the price-to-compare for each month they were served by an EGS?
18. For programs in which CAP customers are permitted to shop, what percent increase in payment delinquencies and arrearages were experienced in CAP programs this winter? How much of these increases are attributable to variable rate plans?
19. For both EGSs and EDCs, what information, if any, is provided specifically to CAP shopping customers?

20. What compensation programs are in place for the agents?
21. What do EGSs' marketing scripts reveal as to what its agents were telling consumers?
22. How were/are EGSs monitoring compliance of its agents with the marketing scripts?

While this is a start, the Residential Consumer Group submits that this further fact finding effort should be sufficiently broad to provide the Commission with the all necessary information to establish appropriate policy for this retail market.

III. DISCUSSION AND RECOMMENDATIONS

A. Introduction.

The crisis that has been wrought by the operation of variable rate plans in the electric retail choice market has been extraordinary. There is no single step that can be taken to properly ensure that adequate consumer protections are in place to support the proper functioning of the retail market. In the Sections below, the Residential Consumer Group identifies a number of steps that must be pursued to assure fair treatment and appropriate protections for all consumers in the retail market. Some of these steps can be implemented by the Commission through Guidelines issued before the summer and codified in subsequent rulemaking procedures. Others may require legislative action to ensure that the Commission has the necessary authority to protect consumers and to ensure that undue advantage is not being taken of consumers in this retail market. Pennsylvania's retail market will only be sustained if consumers have confidence in the market and confidence that they will be treated equally and fairly. Without these cornerstones, the retail market may simply stall for years to come. As such, the Residential Consumer Group urges the Commission to continue efforts to enforce current policies, conduct the necessary investigations and get the right rules in place as expeditiously as possible. As

more information comes to light, the Commission must also address any new concerns that are identified.

B. Variable Rate Disclosure Statements Must Be Improved.

In the Residential Consumer Group's view, many of these disclosure statements for variable rate products do not meet the minimum standards set forth in the Commission's current regulations and are so vague as to be meaningless. One of the hallmarks of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801 *et seq.*, (Electric Choice Act) was that suppliers "provide adequate and accurate customer information to enable customers to make informed choices." 66 Pa. C.S. § 2807(d)(2). Such information is also required to be provided "in an understandable format that enables consumers to compare prices and services on a uniform basis." 66 Pa.C.S. § 2807(d)(2). If a customer is not fully informed about the terms and conditions of their variable rate service, the customer cannot accurately assess the risk involved in making this choice.

By way of example, the following are actual disclosure statements that were provided to the OCA by customers on variable rate plans:

Variable rate products are subject to change without notice and may change due to current and predicted weather patterns, retail competition, wholesale commodity energy costs, fluctuations in energy supply and demand, industry regulations, pricing strategies, costs to serve customers, among many factors.

Electric Variable Price shall each month reflect the cost of electricity obtained from all sources (including energy, capacity, settlement, ancillaries), related transmission and distribution charges and other market-related factors plus all applicable taxes, fees, charges, or other assessments and [Supplier Name] costs, expenses and margins.

The variable price for all electricity and natural gas sold under this Agreement and established on an approximately monthly basis based upon electricity and natural gas market pricing, transportation or transmission, and other market and business price related factors. Notwithstanding any other provision in this Agreement, [Supplier Name] may change the Variable Price without additional

notice and such price may be higher or lower than LDC's price in any particular month.

The Residential Consumer Group does not see how any residential customer would know from these types of disclosure statements that they were exposing themselves to a potential increase in their bills of 300% to 600% in one month's time and that they were taking on the full risk of the complex PJM wholesale spot markets.

Disclosure requirements must be clarified and improved.⁷ Important to these comments, the Residential Consumer Group submits that the disclosure statements must be required to state a price limit for the variable rate product as required by the Commission's regulations at 52 Pa. Code § 54.5(c). Customers should also be informed as to the methodology used by the EGS to calculate their variable price. Suppliers should be required to provide their full terms and conditions for all of their products on their websites, and once new disclosures are in place, the new disclosures should be sent to all existing customers.

1. A Price Limit Must Be Stated In Disclosure Statements For All Variable Price Products.

The Commission regulations at 52 Pa. Code § 54.5(c)(2), require that the disclosure statements for variable rate products include the conditions of variability and the limits of variability. The Commission had occasion to clarify these regulations in a time period contemporaneous to their passage. See Petition of Shell Energy Services Co., L.L.C. For Declaratory Order and in the Alternative, Waiver of 52 Pa. Code § 54.5(c)(2), Docket No. P-00001848, Order (Dec. 20, 2000) (Shell Energy Order), attached hereto as Appendix A. The Commission's Shell Energy Order is directly on point and instructive as to the proper disclosure

⁷ The OCA filed Comments on March 24, 2014 in the Commission's March 19 Disclosure Rulemaking addressing the Commission's proposal for further disclosure requirements.

necessary for these products.⁸ The OCA has only recently been able to locate the Shell Energy Order in the OCA's archives and is presenting it here for full consideration. The OCA has not been able at this time to locate any further Order that overrules or limits the Shell Energy Order. At a minimum, the Shell Energy Order is instructive as it was entered very close in time to final effective date of the regulations.

In the Shell Energy Order, regarding the requirements of Section 54.5(c)(2), the Commission concluded as follows with regard to the requirement to state the limits of price variability:

By requiring this disclosure of the limits of price variability, our regulations necessarily mandate a description of the extent to which the price might vary. This obligation can be fulfilled only by conveying the floor and ceiling prices. An explanation indicating the absence of limits is simply insufficient to satisfy our disclosure requirements.

Shell Energy Order at 5. (Emphasis added). Further, the Commission stated:

Requiring disclosure of the limits and conditions on variability strikes a necessary and appropriate balance between the statutory mandate of ensuring that customers have access to adequate and accurate information and the development of a competitive market. Without disclosure of an EGS's floor and ceiling prices, residential and small business consumers will have no meaningful basis upon which to compare similar offers from other EGSs.

Id. at 6. Finally, the Commission summed up as follows:

Shell Energy's proposed disclosure statement [that consumers' monthly price will vary according to market conditions] amounts to nothing more than a simple *caveat emptor* and would have the consumer assuming the complete risk of fluctuating market conditions within a potentially volatile market of which they possess only limited knowledge and available information sources. Plainly, the *statutory mandate of the Act and our regulations require more.*

Id.

⁸ The OCA did not discover this case in time to include it in the OCA's Comments on the Commission's March 19 Disclosure Rulemaking at Docket No. L-2014-2409385, but the OCA submits that it should be considered in both rulemaking procedures.

The Commission's analysis here is directly on point, and the events of this winter underscore the need for a clear disclosure of the limits of the price variability. The Residential Consumer Group submits that the Commission must require that the limit of price variability be disclosed to customers. This could be done by stating a per kilowatt hour ceiling price or by stating a specific percentage by which the price may change in a one-month time period. An explanation indicating the absence of limits is insufficient to satisfy the disclosure requirements.

2. Disclosure Statements Should Be In Plain Language And Should Include Additional Information To Assist The Consumer In Assessing The Risk Of The Variable Rate Plan.

The Residential Consumer Group submits that significant improvements are also needed regarding the types of information provided in disclosure statements and the clarity of disclosure statements. All disclosure statements must be in plain language and should use uniform terms so that consumers can compare the terms of service across different suppliers. Many EGS disclosure statements that the OCA reviewed use terms and descriptions that are highly technical and not commonly used by consumers. The Commission may wish to establish a uniform disclosure statement for these variable rate products using plain language terms to better ensure that the proper information is provided to all consumers in an understandable format.

Additional information is also needed on the disclosure statements to better inform customers about the product. In addition to the ceiling price discussed in Section III.B.1, the Residential Consumer Group submits that EGSs should be required to prominently disclose the prices charged over the last twelve months by the EGS. While a statement that historic pricing may not be reflective of future pricing is also needed, this additional information would

assist the consumer in understanding the operation of the variable price plan. The Commission's proposed March 19 Disclosure Rulemaking required the average price for each month of the last 12 months be presented. Either the average price or the actual prices could be used. As the OCA noted in its Comments to the proposed rulemaking, however, since it remains unclear how the averages contemplated by the Commission proposal will be developed when multiple prices are charged to customers in a given month, more work needs to be done to establish comparable average prices. The Commission must ensure that a common approved approach is being used to develop the average price so that proper comparisons can be made if that method of disclosure is used.

In addition, since the use of averages can mask the problem, and the use of twelve-month data may not be representative of the risk of the plan, EGSs should be required to disclose the highest and lowest price per kilowatt hour that has been charged for the customer's rate class and service territory to ensure that customers have more complete information. While some time frame may need to be placed on this proposal regarding the highest and lowest price, it should be no less than 36 months to 60 months to properly reflect energy pricing changes over a reasonable period of time. The OCA recommended the use of a 60-month time frame in its Comments in the March 19 Disclosure Rulemaking to better reflect an energy pricing over a reasonable time frame.

Not all EGSs will have been operating in the retail market for a sufficient period of time to be able to provide this historic data in their disclosure statements. In light of this, and for the purposes of having sufficient information to assess the markets, the Residential Consumer Group recommends that the Commission routinely obtain the variable pricing information from EGSs and maintain the pricing information in a publicly accessible format, such as on

PaPowerSwitch.com. From this data archive, the Commission could provide a highest and lowest price to be used for disclosure statement purposes to EGSs that have not operated for a sufficient period of time. This archive could also be an important source of information for consumers who may wish to examine the operation of variable price plans over a longer period of time. As the markets operate for a longer period of time, it may be useful to have such information provided to the Commission and readily available to consumers.

Variable rate disclosure statements should also contain the methodology that is used to establish the prices charged under the plan on a monthly basis. As it currently stands, customers have no means of determining whether the prices they have been charged bear any relationship to the conditions stated in the disclosure statement. Without such a methodology, customers have no means of knowing whether they have been treated fairly, and they have no means of enforcing the terms of their plan. Furthermore, a disclosed methodology would assist the Commission in reviewing customer complaints about pricing.

3. Disclosure Statements Should Not Be Used As A Means To Convert Customers To A Variable Rate Plan After A Fixed Price Plan Term Expires.

The Residential Consumer Group is concerned that some disclosure statements reference variable price plans that could be used at the end of the fixed price term at the supplier's discretion. By way of example, the following is an actual disclosure statement that was provided to the OCA by customers on variable rate plans:

Upon expiration of your fixed term, your service will automatically continue under [the Company's] default variable month-to-month renewal product. If you do not respond to the renewal notice, at its discretion, [the Company] may renew your electric generation service under the rates described in your renewal notice.

The Residential Consumer Group submits that a disclosure statement should disclose specifically and clearly the terms of the current agreement and obligations but should

not include language that will commit a consumer to unspecified or potential costs in the future. If a conversion to a variable price plan is to be proposed to the consumer, the consumer should be given the full and specific terms and conditions of that plan and provide affirmative consent at the time the new plan is to begin.

Fixed price terms often last for twelve months or longer. Both markets and customers' needs can change dramatically in that time. Customers may purchase new appliances, have children or other relatives move into the home, or any number of other changes in circumstances which will dramatically alter their electricity usage. Disclosure statements that attempt to change the type of product from fixed to variable at the end of that term without affirmative consent should not be allowed.

4. Revised Disclosure Statements Should Be Sent to All Existing EGS Customers On Variable Rate Plans.

Once improved disclosure statements are in place, EGSs should be required to provide the revised disclosure statement to existing customers and provide those customers the opportunity to change their plan or supplier without penalty in response to the updated disclosure statement. This would ensure that existing customers whose decision to select a variable rate product was not fully informed by these disclosure requirements are given adequate information about their current electric service and the opportunity to make a different choice if this is not the product that they thought it was.

C. Consumers Should Receive Advanced Notification Of Price Changes And Switching May Need To Be Accelerated So That Consumers Can Respond To This Information.

In Section III.C.2, the Residential Consumer Group discusses historical information that could be provided to consumers to assist them in comparing and evaluating

products. The Residential Consumer Group fully recognizes that even though such information can be useful, *historical pricing is not indicative of present or future pricing*. The Residential Consumer Group submits, therefore, that it is important to provide notice to consumers of the price being charged to them *before* the billing cycle begins and the energy is used. Without information about what a customer is being charged, the customer cannot make informed decisions about energy use or about whether a new price plan or supplier is needed.

EGSs offering variable rates should be required to provide consumers with *specific notice of all price changes before the price is charged*. Consumers should receive this notice with sufficient time to switch to an alternative electric service provider, return to default service, or to change to another plan with their current supplier. The Residential Consumer Group also submits that these price change notices should include the specific day when the price will take effect, be communicated in the medium of the customer's choice, and include a specific internet address and telephone number where customers can call to get information about their plan or make a change to their plan.

The Residential Consumer Group recognizes that to most effectively implement this recommendation, the time it takes to switch electric service suppliers should be accelerated from the current 16- to 45-day period. The Residential Consumer Group supports accelerated switching so long as necessary consumer protections are respected and the cost to achieve the accelerated switching is reasonable.⁹ Accelerating switching times alone, however, is neither the solution to, nor the cause of, the problem with variable price plans. The Residential Consumer Group submits that the Commission should only make a decision about this issue when stakeholders know how the necessary consumer protections will be implemented and what the

⁹ The OCA and PULP discussed in more detail their respective recommendations regarding accelerated switching in their separately filed Comments in the March 18 Accelerated Switching Rulemaking.

full costs of the initiative will be. In the recent Comments, filed on the March 19 Disclosure Rulemaking, the preliminary estimate of these costs identified by the EDCs is approximately \$25 million and some EDCs have not provided full estimates.

The Residential Consumer Group supports efforts to accelerate the switching process if it can be achieved at a reasonable cost and without compromising consumer protection. Consumer protections such as the 3-day right of rescission and the confirmation period must be preserved. Lengthy switching delays, however, can result in customer frustration and a reduction in attained savings. More importantly, the effectiveness of the consumers' ability to "vote with their feet" by leaving their EGS if they are unhappy with the price being charged or the customer service being offered is diminished if the decisions cannot be quickly made in response to EGS pricing or actions.

The Commission should continue to collect the necessary information about the cost of accelerated switching and collect information about the necessary procedures and protocols that must be put in place to protect consumers. Through a working group process, the stakeholders can further analyze and develop a time frame for accelerated switching and a time frame for implementation. A final decision should only be made when all issues, information, legislative proposals, and necessary changes are identified and agreed upon.

D. Customers Should Not Be Placed On Variable Rate Plans At The End Of A Fixed Price Term Without Providing Affirmative Consent.

Numerous customers did not know that they were on variable rate plans. For many of these customers, they were placed on the variable rate plans at the expiration of fixed price plans. Customers who did not respond to a new fixed price sent through the notification procedures were moved onto variable price plans. The Residential Consumer Group submits that it is imperative to immediately stop the practice of placing customers onto variable rate plans at

the end of a fixed price term without the customer giving express affirmative consent to switch to the variable rate service.¹⁰ Variable rate plans include the assumption of significant risk by the consumer that can only be accepted through full disclosure and knowing acceptance. The practice of placing customers on variable rate plans based on the customer's silence is not supported by the current retail market design or, in the Residential Consumer Group's view, by the Commission's regulations.

The Residential Consumer Group recognizes that if a customer does not respond affirmatively to the notices provided, a pricing proposal must apply to the service rendered on a going forward basis. EGSs, however, should not be able to use silence as a means to make a material change in the customer's service. The Commission should make clear that at the end of a fixed price term, a customer remains on a fixed price that can be cancelled by the supplier or the customer with 30-days prior notice and without any cancellation fee. If the EGS does not wish to serve the customer with a fixed price, the EGS should return the customer to default service.

There may be several options to establish a fixed price for the on-going service for a consumer that does not affirmatively respond to the notices about the end of a fixed price term. If a customer does not respond to the notices, the customer should be charged the fixed price stated in the renewal notice for the stated time in the renewal notice or until such time as the customer cancels the service agreement (without termination fee or cancellation fee) or until the EGS provides the customer with 30 days advance notice of a new fixed price. As noted, no cancellation fees or early termination fees should be permitted. An alternative pricing

¹⁰ The Residential Consumer Group would note that this problem may also exist for the Commission-approved Customer Referral Programs being operated by the EDCs. To the extent that EGSs obtaining customers under this program can place the customer on a variable price plan at the end of the twelve-month referral program period, customers may end up dissatisfied with their experience.

mechanism could be used. For example, the fixed price stated by the EGS on PaPowerSwitch.com on the date the fixed price term ends could also be used. Another possible approach would be to continue the current fixed price being charged to the customer but allow the EGS to cancel the service agreement with 30 days notice and return the customer to default service if the EGS does not wish to continue to serve the customer at that price.

E. Safeguards Against Deceptive Advertising And Marketing Should Be Strengthened.

Deceptive and misleading marketing must be prevented. Many customers have reported that they asked the EGS sales agent how high their price per kilowatt hour might go under their variable rate plan and in many instances, consumers were told that the price would “always be competitive with the price to compare” or that the price would “always be within a few cents of the price to compare.” This was clearly not the case. Unfair and deceptive marketing of these products must not be tolerated.

The Commission has authority to monitor advertising and marketing materials for clarity and compliance with the Commission’s regulations. The Residential Consumer Group submits that the Commission should continue to make monitoring and enforcement of its marketing standards a priority. Despite existing regulations, however, customers appear to be receiving inaccurate information in the sales process. It is very difficult to detect violations of the marketing regulations or deceptive marketing practices, particularly if such violations are occurring in the field during door-to-door marketing. Such violations are often established through detecting patterns from the complaints lodged by consumers with the relevant enforcement agencies. Such violations can also be detected through rigorous third-party verification processes and periodic customer surveys.

The Commission should ensure that rigorous compliance programs, which monitor in-person and telephonic sales calls are in place to ensure that oral interactions with customers are not the source of inaccurate or deceptive information in an attempt to “make the sale.” The Commission should review these compliance programs and should receive periodic reports on the programs.

Sales agent compensation programs also play a key role in potentially incentivizing deceptive sales practices. The Commission may wish to examine sales compensation programs and determine if additional action or guidance is needed in regard to these programs. See Marketing and Sales Practices For The Retail Residential Energy Market, Docket No. L-2010-2208332, Order at 27-29 (October 24, 2012) (October 24 Order).

It is also important that third-party verification through either Interactive Voice Response (IVR) technology or in-person verification be sufficiently robust to determine if the consumer was provided the necessary information or was provided incorrect information. The third-party verification process should include questions to determine if a potential marketing standard was violated. Of particular importance will be to add a statement to the verification script to explicitly state when or if variable prices will be changed under the plan, whether there is a ceiling on the variable price, and whether the historic pricing information has been provided. These questions will need to be coordinated with the actual disclosure requirements that are put in place.

The Commission may also wish to have EGSs conduct periodic surveys of customers, where the customer’s understanding of the product and the customer’s experience with the marketing of the product can be determined. *Better utilizing third-party verification and*

random surveys would allow EGSs and the Commission to more readily identify deceptive marketing practices.

F. Customer Service Requirements For EGSs Should Be Strengthened And Several Changes Are Needed In Light Of The Inadequate Customer Service Provided During These Events.

One of the significant problems reported by customers on variable rate plans was the inability of consumers to speak to a customer service representative in the call center of their EGS. Some customers reported wait times of up to three hours and other customers reported that they could only leave a message on voicemail, but their calls were never returned. Many customers had their calls dropped, forcing them to call back and enter the queue again. This inability to contact EGS call centers had at least three significant impacts on customers.

First, customers who could not get through to their supplier were not afforded any refunds or credits as were some other customers that managed to have their call answered. Second, in light of the provisions of Chapter 14 that a consumer must first talk to their utility, or in this instance their supplier, before the Commission will take in an informal or formal complaint, many customers thought that they were not able to enter the Commission complaint process because they could not affirm that they had contacted the supplier. See 66 Pa. C.S. § 1410. The Commission has clarified that it will accept complaints if the customer made the attempt to contact the supplier but could not get through. This information on the Commission's website and informal and formal complaint forms will assist consumers in understanding the process.

Third, even if the customer wanted to leave the supplier and return to default service, the customer cannot do so without contacting their existing supplier and requesting this switch back to default service. Without access to the supplier call center, any action that the

customer may need to take in these extreme circumstances is delayed. In light of these problems, the Commission should take further actions regarding customer service and should ensure that customers can return to default service by contacting their EDCs.

1. Call Center And Customer Service Requirements For Licensing Should Be Strengthened.

The licensing requirements for EGSs should be strengthened by explicitly requiring a showing of how customer service will be provided and by requiring a plan for addressing situations that overwhelm the EGSs. The Residential Consumer Group submits that it may be beneficial to consumers if suppliers are required to meet more explicit customer service requirements, including a showing of backup plans, as part of the licensing process.

The Commission should also require all EGSs to periodically report to the Commission on their ability to maintain appropriate customer service staff levels. As the number of customers served by an EGS grows, customer service requirements may change. Requiring continued reporting on the ability to meet these changing customer service requirements is needed to be sure that the EGS maintains adequate customer service as the business changes.

2. All Consumers Should Be Able To Return To Default Service By Making A Request With The Electric Distribution Company.

As a result of these customer service problems, the Residential Consumer Group submits that any customer who wishes to return to default service should be able to do so by contacting their EDCs directly instead of being required to contact their EGSs in order to do so. The electric distribution companies that provide default service are subject to Commission

regulation for all service rendered, including customer service. Every consumer should have the right to return to default service by contacting the EDC and making that request.

No customers should be required to wait excessive periods of time for a supplier to answer their calls, as they did during the most recent crisis, to exercise their rights to return to default service. Even with more stringent customer service requirements and monitoring, not all circumstances that negatively impact a customer's ability to contact the supplier and initiate a switch can be known or addressed. The simplest and most efficient solution is allowing customers to contact their EDCs to request a return to default service. The OCA's Comments on the March 18 Accelerated Switching Rulemaking contains a proposal to implement this Residential Consumer Group recommendation. The OCA supported this proposal in its Comments in that rulemaking docket.

G. Additional Protections Are Needed For CAP Customers.

Variable rate plans have caused significant hardships for many Pennsylvania households. Among those households, are low income households, many of whom are participants in the electric distribution companies' Customer Assistance Program (CAP). While the extraordinary bills resulting from the variable rates this winter present a significant burden to all households, for low income customers, including those enrolled in CAP, these high bills can be life changing. The average household income for electric CAP program participants in the Commonwealth in 2012 was \$14,350. A one-month bill that increases the CAP customer payment responsibility by several hundred dollars resulting from a variable price plan could quickly overwhelm this household.

CAP customers in some service territories have been permitted to shop for alternative generation supply, and unfortunately, these households have not met with great

success. In a recent proceeding at the Commission, it came to light that CAP customers in the PPL service territory were often paying more to competitive suppliers than they would have paid if they had remained on default service with PPL. Over the course of 2013, 58% to 82% of PPL's CAP customers who switched to competitive suppliers were paying more than PPL's price to compare. On average for the year, 67% of the bills rendered to CAP customers served by EGSs were higher than the PPL price-to-compare.

CAP customers are not fully insulated from the increased bills resulting from ineffective shopping decisions by their participation in CAP. The CAP programs operate in a manner that shares the increased costs (or the resulting benefits) between the shopping CAP customer and the non-CAP residential ratepayers that bear the costs of the program. As noted above, however, the unfortunate result from the information to date is that bills have increased for CAP customers in the retail markets. These increased bills both challenge the affordability of essential utility service for these low income households and increases the costs of the program to non-CAP residential ratepayers.

CAP customers also do not have as many resources or options available to address this type of volatility in the electric bill. Many CAP customers are already carrying arrearages, often large arrearages of several hundred dollars, and cannot be afforded a Commission payment arrangement if they get behind on their CAP payment amount. 66 Pa.C.S. § 1405(c). If a CAP customer is unable to make a full payment of the increased bill, the customer may also lose some of the arrearage forgiveness that is granted for making timely payments. Additionally, these households also have a more unstable or seasonal income meaning that high bills incurred in the winter may not be able to be caught up on until the summer season, often long after termination of service has occurred.

The Residential Consumer Group continues to advocate for protections for CAP customers who participate in the retail market. There are several protections that are needed, but key among them is that EGSs that serve CAP customers should not be permitted to charge the CAP customer more than the default service price-to-compare. Simply put, if CAP customers are permitted to shop and switch, they should be guaranteed to save. The New York Public Service Commission (New York Commission) recently issued an Order reaching this exact conclusion. The New York Commission, in its Order Taking Actions to Improve The Residential and Small Non-Residential Retail Access Markets, Case 12-M-0476, Order (February 25, 2014) (New York Order), stated as follows:

Continuing to allow participants in utility low income assistance programs and HEAP to purchase energy commodity from an ESCO, without a guarantee of savings in comparison with what the customer would have paid the utility, or without tangible energy-related value-added services that may reduce a customer's overall energy bill, is not in the public interest. Doing so diminishes the value of utility low income assistance programs and federal and state assistance programs. In addition, it may also interfere with our interest in minimizing the unnecessary termination of essential electricity and natural gas service to residential customers.

Therefore, we agree, in part, with the recommendation of utilities, OAG and PULP/AARP. Specifically, *we require that ESCOs serving customers participating in utility low income assistance programs must do so with products that guarantee savings over what the customer would otherwise pay to the utility.* To comply with this guarantee, an ESCO must be able to compare actual customer bills to what the customer would have been billed at the utility's rates and, on at least an annual basis, provide any required refund as a credit on the customer's bill. Alternatively, ESCOs may also provide these customers energy-related value-added services that are designed to reduce customers' overall energy bills as described above.

New York Order at 24. (Emphasis added).

The Residential Consumer Group recognizes that the Commission does not believe that it has the authority to direct such a result in Pennsylvania. The Residential Consumer Group respectfully disagrees with the Commission's conclusion and urges the

Commission to continue to consider this issue, particularly in light of the New York Order on the same issue.¹¹ If the Commission continues to determine that it cannot establish these types of program parameters for its CAP shopping programs, the Residential Consumer Group asks the Commission to join it in requesting such authority from the General Assembly. Only in this way can it be ensured that essential electric service remains affordable for CAP customers and that the program costs remain reasonable. The variable rate plans, and the potential for CAP customers to have been caught up in this crisis, makes this issue even more pressing.

H. The Purchase Of Receivables Programs May Need To Be Revisited To Address High Uncollectible Expense And Other Utility Costs Resulting From Variable Pricing Practices.

Under the Purchase of Receivables (POR) programs, the EDCs do the billing for the EGSs and then “purchase” the receivables of the EGSs. The EGSs receives payment for their charges whether or not the EDCs receive payment from the customers. In some programs, there is a discount factor for what EGSs will be paid based on the average uncollectible ratio experienced by the EDC for all accounts in the specified rate class. Correspondingly, these programs include an added amount to the price-to-compare to reflect this uncollectible ratio for each rate class. In other programs, there is a “zero discount” since the uncollectible expense remains in distribution rates. In either approach, EGSs bear no risk of increased uncollectible expense as a result of their pricing practices since they receive full payment whether the customer can ultimately pay the bill or not. The utility and its customers, on the other hand, must deal with increased uncollectible expenses, credit and collection costs, and the costs of *potential termination of service*.

¹¹ An appeal of the Commission's Order in the Petition of PECO Energy Company Re: CAP Shopping Plan, Docket No. P-2012-2283641, Orders (January 24, 2014 and March 12, 2014), on the issue of the Commission's authority to impose such a program parameter has been filed in the Commonwealth Court as Coalition For Affordable Utility Services And Energy Efficiency In Pennsylvania, et al. v. Pennsylvania Public Utility Commission, 445 C.D. 2014.

The Residential Consumer Group submits that it may be necessary to examine whether POR programs appropriately allocate risks between these parties and address the potential for high uncollectible costs, as well as the costs of credit, collection, payment arrangements, and terminations resulting from variable rate pricing plans. Some of the POR programs allowed an EDC to adjust the discount rate for a specific supplier if the supplier's uncollectible accounts exceeded the average on a routine basis. This would allow the EDC to reduce the amount paid out to the supplier to address excessive uncollectible expense associated with an individual supplier's product. This, however, was not a uniform component across the POR programs or even across the rate classes within a POR program. In addition, the triggers for implementing this protection may not be uniform. The Residential Consumer Group submits that this protection should be included in each POR program to address the potential for increased uncollectible expense from various pricing practices.

The POR programs also require the EDCs to remit payment to the EGSs in a twenty-day time frame unless the customer has filed a dispute about the charges. A twenty-day time frame may not be sufficient time for a customer to file a dispute and have that dispute conveyed to the EDC so that payment can be withheld. As part of these events, the OCA has only identified one EDC that has withheld payment on a handful of disputes despite a near record number of complaints being filed at the Commission. A process should be developed to ensure that disputed amounts are not remitted until the dispute is resolved by the Commission.

I. Suppliers Should Make Greater Contributions To Consumer Education Efforts.

The Residential Consumer Group submits that consumer education efforts regarding variable rate services and their risks will need to continue and expand as new products enter the marketplace. The Commission has taken several steps to improve education about

these products. See March 4 Order at 5. The OCA has also added information to its website about variable price plans and has been including a more specific discussion of variable price plans in its outreach efforts.

Education will always be part of the retail choice market. Retail choice for electric service is complex and can present a significant financial risk to consumers. Consumers, though, have borne the lion's share of the costs of consumer education in this market. The Residential Consumer Group submits that suppliers, who benefit greatly from these efforts, should be required to provide contributions to establish a broader base of funding for consumer education through a direct assessment.

IV. RESPONSES TO COMMISSION QUESTIONS/TOPICS

In the March 4 Order, the Commission identified four topics and requested that interested parties provide comments to several specific questions within each topic. See March 4 Order at 7. The Residential Consumer Group provides the following comments for the Commission's consideration:

A. For Variable-Priced Contracts Without Explicit Formulaic Pricing Parameters:

1. Should EGSs Be Required To Provide Advance Notice of Price Changes To Customers?

Yes. Without notice of the price the customer is going to be charged, customers cannot make informed choices. The ability to make an informed choice is one of the hallmarks of the Electric Choice Act. See 66 Pa. C.S. § 2807(d)(2); 52 Pa. Code § 54.43. The Act provides the following:

The commission shall establish regulations to require each ... electricity supplier ... to provide adequate and accurate customer information *to enable customers to make informed choices* regarding the purchase of all electricity services offered by that provider. Information shall be provided to consumers in an

understandable format that *enables consumers to compare prices and services on a uniform basis.*

66 Pa. C.S. § 2807(d)(2). (Emphasis added). The Commission’s regulations promulgated pursuant to Section 2807(d)(2) require that EGSs provide such information in order to “protect consumers of this Commonwealth.” 52 Pa. Code § 54.43(1). This requirement is also stated in Section 111.12(d)(4) of the Commission’s regulations. See 52 Pa. Code § 111.12(d)(4).¹²

This winter, the OCA has received multiple bills from customers in the same rate class and in the same service territory and receiving generation service from the same EGS that contained vastly different cents per kilowatt hour charges for the same calendar month. It is unclear how these prices are being set by the EGSs. Consumers must be provided with the most current, easily understandable information in order to make appropriate decisions for their households. One of the most important elements necessary for maintaining service is knowledge of the price to be charged prior to using the electricity. By knowing the price in advance, customers may make appropriate determinations regarding usage, weatherization, and conservation efforts and whether to shop for another supplier or return to default service. As such, EGSs should be required to provide advanced notice of all prices changes to customers.

2. Should the Advance Notice Requirement Be Waived for Minor Contract Price Changes, within a Certain Bounds? If So, What Bounds Are Appropriate?

No. As discussed in Section IV.A.1 above, accurate and adequate information is necessary for consumers. More problematic, however, may be the definition of “minor.” A minor change to one household could be significant to a household of lesser means. The better approach is to require a ceiling price be provided in disclosure statements and be accompanied by an example of the monthly bill for various usage levels at different pricing points up to the

¹² These regulations apply to both EGSs and Natural Gas Suppliers (NGSs). See 52 Pa. Code § 111.1.

stated ceiling price. This approach would provide customers with a better understanding of the possible consequences of selecting a variable price product.

3. 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?

EGSs offering variable rates should be required to provide to customers the price that they will be charged for the upcoming billing cycle before the billing cycle begins. Ideally, this notice would be provided with sufficient advanced time for a customer to determine whether to stay with his current EGS, select another product, select another EGS, or return default service or adjust his usage.

Currently, it can take as much as 40 days to switch from one EGS to another EGS or to default service. The Residential Consumer Group supports efforts to further reduce switching times so long as essential consumer protections remain in place and it can be achieved at a reasonable cost.¹³ Such efforts, however, will take time to investigate and evolve based on the information obtained during the investigation. Until such investigation can be completed and changes implemented, it is difficult to select the required advanced notice period.

With regard to the Commission's inquiry into how EGS can provide notice of price changes, the Residential Consumer Group submits that EGSs can provide notice of price changes by direct mail or electronic communication, if that manner of communication is selected by the consumer.

4. Do Variable Rate Contracts without Explicit Pricing Parameters Provide Consumers with the Information Needed To Make Informed Decisions? If Not, What Is the Remedy?

¹³ By Secretarial Letter dated March 18, 2014, the Commission sought comments from interested parties on proposed changes to Chapter 57 of the Commission's regulations. The OCA and PULP separately submitted Comments on March 25, 2014.

No, variable rate plans without explicit pricing parameters fail to provide consumers with adequate information needed to make informed decisions regarding electric generation. The Electric Choice Act directs the Commission to establish regulations requiring EGSs to provide “adequate and accurate” information so customers may “compare prices and services on a uniform basis.” See 66 Pa. C.S. § 2807(d)(2). The Commission’s regulations require that variable pricing statements include the conditions of variability (*i.e.* state on what basis price will vary) and the limits on price variability.¹⁴ See 52 Pa. Code § 54.5(c)(2). In its Final Rulemaking Order at Docket No. L-970126 adopting Section 54.5, the Commission stated:

In general, our regulations mandate that all information shall be provided to customers in an understandable format that allows them to compare prices and services on a uniform basis. Additionally, by this final rulemaking order, *we direct that all electricity providers strictly adhere to our Policy Statement at 52 Pa. Code § 69.251 regarding the use of plain language in all written communications with consumers.*

28 Pa. B. 3780. (Emphasis added). See also 28 Pa. B. 3784. Further, the Commission stated that it sought through its regulations to ensure that consumers can “meaningfully compare prices and services offered by a diverse group of electricity providers” and “are sufficiently equipped to make informed decisions about alternative generation sources.” 28 Pa. B. 3781. Without explicit pricing parameters, meaningful comparisons cannot be made.

The Commission entered a Declaratory Order on December 20, 2000, regarding the proper interpretation of the requirement in Section 54.5(c)(2) that variable pricing statements include the conditions of variability (*i.e.* state on what basis price will vary) and the limits on price variability. See *Petition of Shell Energy Services Co., L.L.C. For Declaratory Order and in the Alternative, Waiver of 52 Pa. Code § 54.5(c)(2)*, Docket No. P-00001848, Order (Dec. 20,

¹⁴ By Secretarial Letter dated March 19, 2014, the Commission sought comments from interested parties on proposed changes to Chapter 54 of the Commission’s regulations. The OCA submitted Comments on March 24, 2014.

2000) (Shell Energy Order).¹⁵ In the Shell Energy Order,¹⁶ the Commission stated the following with regard to the provision of its regulations regarding limits on price variability:

By requiring this disclosure of the limits of price variability, our regulations necessarily mandate a description of the extent to which the price might vary. *This obligation can be fulfilled only by conveying the floor and ceiling prices. An explanation indicating the absence of limits is simply insufficient to satisfy our disclosure requirements.*

Shell Energy Order at 5. (Emphasis added). Further, the Commission stated:

Requiring disclosure of the limits and conditions on variability strikes a necessary and appropriate balance between the statutory mandate of ensuring that customers have access to adequate and accurate information and the development of a competitive market. Without disclosure of an EGS's floor and ceiling prices, residential and small business consumers will have no meaningful basis upon which to compare similar offers from other EGSs.

Id. at 6. Finally, the Commission summed up as follows:

Shell Energy's proposed disclosure statement [that consumers' monthly price will vary according to market conditions] amounts to nothing more than a simple *caveat emptor* and would have the consumer assuming the complete risk of fluctuating market conditions within a potentially volatile market of which they possess only limited knowledge and available information sources. Plainly, the statutory mandate of the Act and our regulations require more.

Id. This decision was rendered shortly after the Commission promulgated its regulations pursuant to the Electric Choice Act. The Residential Consumer Group submits that the Shell Energy Order is directly on point. While it is unclear when or why the requirements were relaxed, the events of this winter underscore the necessity for requirements like those announced in the Shell Energy Order and the strict enforcement thereof.

A sampling of the disclosures provided to consumers is as follows:

¹⁵ The Shell Energy Order is attached as Appendix A for the convenience of the Commission.

¹⁶ The OCA did not discover this case in time to include it in the OCA's Comments on the Commission's March 19 Disclosure Rulemaking, but the Residential Consumer Group submits that it should be considered in both rulemaking procedures. The OCA has not located any subsequent order that overrules or limits the Shell Energy Order.

Variable rate products are subject to change without notice and may change due to current and predicted weather patterns, retail competition, wholesale commodity energy costs, fluctuations in energy supply and demand, industry regulations, pricing strategies, costs to serve customers, among many factors.

Electric Variable Price shall each month reflect the cost of electricity obtained from all sources (including energy, capacity, settlement, ancillaries), related transmission and distribution charges and other market-related factors plus all applicable taxes, fees, charges, or other assessments and [Supplier Name] costs, expenses and margins.

The variable price for all electricity and natural gas sold under this Agreement and established on an approximately monthly basis based upon electricity and natural gas market pricing, transportation or transmission, and other market and business price related factors. Notwithstanding any other provision in this Agreement, [Supplier Name] may change the Variable Price without additional notice and such price may be higher or lower than LDC's price in any particular month.

These types of EGS disclosure statements are so vague and open-ended as to be meaningless. It is unclear how customers could determine from these types of disclosure statements how they would be charged for generation service or that they were exposing themselves to bill increases of 300% to 600% in one month's time. Further, there is no way for a residential customer to determine if the prices charged bear any relationship to the cost of electricity in PJM's wholesale market or if the EGS hedged its supply to provide some price protection from the volatile energy market.

As discussed in more detail in Section III.B above, variable price disclosure statements must include at least the following: a maximum price per kilowatt hour, all pricing and term information, early termination penalties, and the details for how the supplier will serve the customer after the expiration of any initial contract period. Further, these components must be provided in plain language that consumers can understand.

B. For Variable-Priced Contracts with Explicit Formulaic Pricing Parameters:

In its review of various EGS terms and conditions for variable priced products received from EGS customers, the OCA has not yet seen any EGS terms and conditions containing explicit formulaic pricing parameters for variable-priced products. Variable price disclosures state that price will vary based on, *inter alia*, market conditions, wholesale energy costs, retail competition, and other non-specific terms. This could be a result of the complex PJM wholesale markets that may not lend themselves to such an approach.

1. Should EGSs Be Required To Provide a Historical Pricing History for this Formulaic Rate Structure?

If a formulaic price structure is used, a price history should be provided with the disclosure statement. A clear and conspicuous statement that historic price is not determinative of future prices should also be included. It would be more useful to consumers for EGSs to provide their highest and lowest price per kilowatt hour charged for the customer class over the prior 36- to 60-month period. If an EGS has not operated in the Commonwealth for the entire 36- to 60-month period, the EGS should provide the highest and lowest price per kilowatt hour charged for the customer class based on information collected by the Commission.

2. If so, How Many Months Should Be Provided, and Where Should this Information Be Provided so as To Be Available to All Participating Customers?

Historical variable price data should be provided to consumers. The historical price on a month-by-month basis should be provided for the prior twelve months. In order for historical pricing data to be most useful to consumers, it must also include an EGS's highest and lowest price per kilowatt hour charged for the customer class over the prior 36- to 60-month period. The 36- to 60-month period will allow for a reflection of energy price changes over a reasonable period of time. If an EGS has not operated in the Commonwealth for the entire 36- to

60-month period, the EGS should provide the highest and lowest price per kilowatt hour charged for the customer class based on the information collected by the Commission. EGSs should provide their variable price information to the Commission so that the Commission can archive it and make available to consumers through PaPowerSwitch.

3. Should EGSs Describe Specifically How Future Formulaic Prices Are Determined?

Yes. Section 111.12(d)(4) of the Commission's regulations require suppliers to provide accurate and timely information regarding rates to customers. See 52 Pa. Code § 111.12(d)(4).¹⁷ In order for a consumer to make a knowing choice of any product and enter into any valid agreement, there must be clear and complete disclosure about the product. For variable rate products, there must be clear disclosure about the level of price increase that the consumer may be exposed to by selecting the product and the type of risk that he or she is assuming in selecting the product. This information, along with the information discussed in Section III.B and Section IV.B.2 above, should be required in all EGS disclosure statements.

C. For Daily Recorded and Automatic Meter Reading Capable Electric Utilities:

1. Under Current Plans, When Will Mid-Cycle EGS Switches Be Implemented?

The Residential Consumer Group does not have information regarding this request. The OCA submits, however, that it is critical to fully understand all implications, costs, and consumer protections before making a final determination here.

2. How Much Can These Plans Be Accelerated, and At What Additional Cost?

¹⁷ These regulations apply to both EGSs and NGSs. See 52 Pa. Code § 111.1.

The Residential Consumer Group does not have information regarding this request but submits that obtaining accurate cost information before making a final determination is critical.

D. For Electric Generation Suppliers Who Offer Variable Priced Products:

1. Please Provide Copies of Customer Disclosure Statements for Variable Priced Products Provided through Contracts in Effect for Service Rendered for the Period December 1, 2013 through February 20, 2014.

This request is directed to EGSs.

V. CONCLUSION

Thank you for the opportunity to comment on this important topic and for allowing the Residential Consumer Group to aid the Commission in its efforts to establish rules, policies, and consumer education measures pursuant to its March 4 Order.

Respectfully Submitted,

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APPENDIX A

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held December 20, 2000

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice-Chairman
Nora Mead Brownell
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

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OFFICE OF
CONSUMER ADVOCATE

Docket No. P-00001848

Petition of Shell Energy Services Co., L.L.C.
For Declaratory Order and in the Alternative,
Waiver of 52 Pa. Code § 54.5(c)(2).

ORDER

BY THE COMMISSION:

Introduction:

Before the Commission for disposition is a Petition for Declaratory Order filed by Shell Energy Services Co., L.L.C. ("Shell Energy") on October 18, 2000, seeking a Commission ruling that 52 Pa. Code § 54.5(c)(2), relating to disclosure statements by EGSs, does not require a "floor" and "ceiling" price to be stated in a disclosure statement provided to residential and small commercial customers when offering a variable price and does not preclude Shell Energy from stating that its variable pricing has no "floor" or "ceiling" price. Alternatively, Shell Energy's Petition requests that the requirements of Section 54.5(c)(2) be waived to allow Shell Energy to exclude "floor" and "ceiling" prices in its disclosure statement.

In accordance with 52 Pa. Code §§ 5.41 and 5.42, a copy of Shell Energy's Petition was served upon the affected parties, the Office of Trial Staff ("OTS"), the Office of Consumer Advocate ("OCA"), and the Office of Small Business Advocate. On November 3, 2000, OCA filed an Answer to Shell Energy's Petition, encouraging the Commission to reject Shell Energy's interpretation of Section 54.5(c)(2) and to declare that Section 54.5(c)(2) requires the disclosure of the "floor" and "ceiling" prices to be charged by an EGS in a variable pricing scheme. No other Answers to Shell Energy's Petition were received. Thereafter, on November 13, 2000, Shell Energy filed its Response to the Answer of the Office of Consumer Advocate.

Shell's Petition:

Shell Energy seeks a Commission ruling that will remove uncertainty regarding whether the disclosure of the "[c]onditions of variability" and "[l]imits on price variability" as mandated by Section 54.5(c)(2) requires an EGS to disclose the "floor" and "ceiling" prices it will charge for generation of electricity. Shell Energy explains that as a licensed EGS, it intends to implement a retail electricity marketing program for Pennsylvania residential and small commercial customers and is developing a disclosure statement that will include a variable pricing statement. In furtherance of the development of this disclosure statement, Shell Energy asserts that it had informally consulted with Commission staff who interpreted Section 54.5(c)(2) as requiring a variable "floor" and "ceiling" prices to be stated in the disclosure statement. Noting that it appreciates the Commission Staff's informal review of its proposed disclosure statement, Shell Energy now contrarily argues that disclosure of the "conditions" and

“limits” of variability as mandated by Section 54.5(c)(2) does not require that an EGS disclose its “ceiling” or “capped” or “maximum” price as a prerequisite for an EGS variable pricing statement or offer to consumers. In the alternative, Shell Energy suggests that disclosure of the “conditions” and “limits” of variability merely requires it to state a clear and concise description of how the variable pricing mechanism as offered by Shell Energy will function.

Discussion and Resolution:

Section 331(f) of the Public Utility Code, 66 Pa. C.S. § 331(f), provides that the Commission “may issue a declaratory order to terminate a controversy or remove uncertainty.” Under the circumstances, we determine it appropriate to issue a declaratory order.

The Commission’s applicable regulations were promulgated pursuant to Section 2807(d)(2) of the Electricity Generation Customer Choice and Competition Act (the “Act”). Section 2807(d)(2) directs the Commission to establish “regulations to require each . . . electricity supplier . . . to provide adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services offered by that provider.” 66 P.S. 2807(d)(2). Additionally, Section 2807(d)(2) requires that “[i]nformation shall be provided to consumers in an understandable format that enables consumers to compare prices and services on a uniform basis.” *Id.* Pursuant to this mandate the regulation at 52 Pa. Code § 54.5(c)(2) requires that:

The contract’s terms of service shall be disclosed, including the following terms and conditions, if applicable: . . . (2) The variable pricing

statement, if applicable, shall include: (i) Conditions of variability (state on what basis prices will vary). (ii) Limits on price variability.

In support of its position, Shell Energy argues that the express language of Section 54.5(c)(2) does not require or even mention a stated floor or ceiling price, in cent/KWH or otherwise. Indeed, Shell Energy states that if the Commission had intended such a result, it would have explicitly included such a requirement in Section 54.5(c)(2). Shell Energy maintains that the Commission Staff's interpretation regarding the disclosure statement results in *de facto* price controls on the variable pricing offers of an EGS and is contradictory to the very nature and meaning of a "variable" pricing and to the tenets of a competitive market.

In opposition to Shell Energy's Petition, OCA contends that the plain language of Section 54.5(c)(2) dictates a contrary result. OCA submits that the use of "floor" and "ceiling" prices, particularly for residential customers, is a reasonable and necessary means of communicating to customers the "limits on price variability." Indeed, OCA contends, the exclusion of "floor" and "ceiling" prices in a contract's terms of service deprives consumers of their ability to make informed decisions regarding an electricity supplier and fails to enable customers to compare prices and services on a uniform basis.

In reviewing the language of Section 54.5(c)(2), and the overall statutory directives underlying its promulgation, we reject Shell Energy's interpretation of our regulations. Initially, we note that the plain language of Section 54.5(c)(2) requires that an EGS's variable pricing statement include the disclosure of the "[c]onditions of variability" *and* the "[l]imits on price variability." Furthermore, the overall objective of

disclosure statements for residential and small business customers is to assure that those classes of consumers are provided with adequate and accurate information to allow them to meaningfully participate in a competitive electricity generation market. By seeking to exclude a “floor” and “ceiling” price, Shell Energy proposes to circumvent the requirement to disclose the limits on price variability and seeks to deprive the consumer of vital information upon which the meaningful comparison of offers can be made.

We are not convinced by Shell Energy’s argument that a description of its variable pricing policy and its disclosure that “there is no floor or ceiling price for this Service,” is sufficient to satisfy the requirements of Section 54.5(c)(2). At best, Shell Energy’s description of its variable pricing policy is only sufficient to satisfy the disclosure of the “conditions of variability”.¹ By requiring this disclosure of the limits of price variability, our regulations necessarily mandate a description of the extent to which the price might vary. This obligation can be fulfilled only by conveying the floor and ceiling prices. An explanation indicating the absence of limits is simply insufficient to satisfy our disclosure requirements.

We are also not persuaded that requiring the disclosure of floor and ceiling prices results in improper price control or is counterproductive to the development of a competitive market. The regulations do not require, or even imply, that Shell Energy

¹ Shell Energy contends that its adherence to the requirements of the disclosure of the “conditions of variability” is not in dispute in this Petition. While we are inclined to agree that the issue as framed requires our attention to focus on the resolution of the issues of what constitutes disclosure of the “limits on price variability”, we would be remiss in failing to note that it is questionable whether Shell Energy’s proposed disclosure statement sets forth an adequate disclosure of the conditions of variability. Rather than simply asserting that the consumers monthly price will vary “according to market conditions”, Shell Energy should set forth an explanation of its pricing methodology that allows customers to understand the conditions that will affect price.

must limit its ceiling price to a Commission approved level. Rather, they merely require Shell Energy to disclose the limits to which their prices will vary.

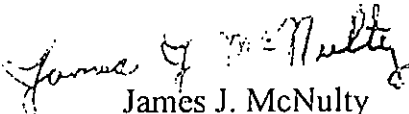
For the same reasons we decline to interpret the provision in the manner suggested by Shell Energy, we likewise reject its request for a waiver of this regulation. Requiring disclosure of the limits and conditions on variability strikes a necessary and appropriate balance between the statutory mandate of ensuring that customers have access to adequate and accurate information and the development of a competitive market. Without disclosure of an EGS's floor and ceiling prices, residential and small business consumers will have no meaningful basis upon which to compare similar offers from other EGSs. As a result of such insufficient and incomplete information, these consumers may be discouraged from participating in the generation supply market, thereby chilling the development of competition.

Shell Energy's proposed disclosure statement amounts to nothing more than a simple *caveat emptor* and would have the consumer assuming the complete risk of fluctuating conditions within a potentially volatile market of which they possess only limited knowledge and available information resources. Plainly, the statutory mandate of the Act and our regulations require more. **THEREFORE;**

IT IS ORDERED:

1. That the Petition for Declaratory Order filed by Shell Energy is hereby granted to the extent that we have addressed the issues raised by the Petition and denied as to Shell Energy's request for certain declaratory relief.
2. That the Petition for Waiver of 52 Pa. Code § 54.5(c)(2) filed in the alternative by Shell Energy is also hereby denied.

BY THE COMMISSION


James J. McNulty
Secretary

(SEAL)

Order Adopted: December 20, 2000

Order Entered: **DEC 20 2000**

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the
Comments of the Office of Consumer Advocate, AARP, Pennsylvania Utility Law Project and
Community Legal Services, Inc., upon parties of record in this proceeding in accordance with the
requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the
persons listed below:

Dated this 3rd day April 2014.

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