

# PROPOSED RULEMAKING

## BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[ 49 PA. CODE CH. 43b ]

### Schedule of Civil Penalties—Podiatrists

The Acting Commissioner of Professional and Occupational Affairs (Commissioner) proposes to add § 43b.27 (relating to schedule of civil penalties—podiatrists) to read as set forth in Annex A.

#### *Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

#### *Statutory Authority*

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of the licensing boards.

#### *Background and Purpose*

Act 48 authorizes agents of the Bureau to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's boards and commissions. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. An individual who receives an Act 48 citation retains his due process right to a hearing prior to the imposition of judgment. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts. Section 5(b)(4) of Act 48 authorizes the State Board of Podiatry (Board), as a licensing board within the Bureau, to levy a civil penalty of not more than \$10,000 on any licensee or unlicensed person who violates a provision of the Podiatry Practice Act (act) (63 P. S. §§ 42.1—42.21c) or regulations of the Board. However, section 5(a) of Act 48 limits the civil penalty that may be levied by citation to no more than \$1,000 per violation.

This is the first time that the Board will participate in the Act 48 citation program. The Commissioner and the Board believe it is necessary to implement the civil penalties in this proposed rulemaking to streamline the disciplinary process.

#### *Description of the Proposed Rulemaking*

The Commissioner, in consultation with the Board, proposes to add § 43b.27 to establish a schedule of civil penalties for practicing on a lapsed license and for failure to complete 50 hours of approved continuing education as required by the act and regulations.

This proposed rulemaking would also progressively increase the civil penalties for continuing violations for the listed offenses based on the length of the violation. For example, the penalty for practicing on a lapsed

license would increase depending on the length of time that the license has lapsed. For a first offense of practicing on a lapsed license for less than 2 months, the civil penalty would be \$250. Practicing on a lapsed license for 2 months to 5 months would result in a civil penalty of \$500, while practicing on a lapsed license over 5 months to 12 months would be a \$1,000 civil penalty. For second offenses by a licensee, practicing on a lapsed license for less than 6 months would result in a civil penalty of \$500, and practicing on a lapsed license from 6 months to 12 months would be a penalty of \$1,000. If a license would lapse for more than 12 months, the result would be formal administrative action.

Likewise, the penalty for failure to complete 50 hours of approved continuing education would increase depending on the number of hours a licensee is deficient in continuing education. For a first offense of failure to complete continuing education, the Board would use a formula of \$50 per hour of deficiency, not to exceed \$1,000 (the maximum for an Act 48 citation). For a first offense of failure to complete more than 20 hours of continuing education, the result would be formal administrative action. For a second offense, the penalty increases to \$100 per hour of deficiency, not to exceed \$1,000, and a deficiency more than 10 hours would result in formal administrative action.

#### *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking would not have adverse fiscal impact on the Commonwealth or its political subdivisions, and would reduce the paperwork requirements of the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements and adjudications/orders for those violations subject to the Act 48 citation process. The only fiscal impact of this proposed rulemaking would be borne by those persons who violate the act or regulations of the Board and are subject to the civil penalties proposed by the new schedule.

#### *Sunset Date*

The Bureau and the Board continuously monitor the effectiveness of the regulations. As a result, a sunset date has not been assigned.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 20, 2015, the Commissioner submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commissioner, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Louis Lawrence Boyle, Assistant Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, RA-STRegulatoryCounsel@pa.gov within 30 days following publication of this proposed rulemaking in

the *Pennsylvania Bulletin*. Reference No. 16A-4413 (schedule of civil penalties—podiatrists), when submitting comments.

IAN J. HARLOW,  
*Acting Commissioner*

**Fiscal Note:** 16A-4413. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL PENALTIES AND PROCEDURES FOR APPEAL**

**§ 43b.27. Schedule of civil penalties—podiatrists.**

**STATE BOARD OF PODIATRY**

<i>Violation under 63 P. S.</i>	<i>Violation under 49 Pa. Code</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 42.12	Section 29.14(a)	Practicing or offering to practice podiatry by a person whose license is expired	1st offense—less than 2 months—\$250; 2—5 months—\$500; over 5—12 months—\$1,000; over 12 months—formal action  2nd offense—less than 6 months—\$500; 6—12 months—\$1,000; over 12 months—formal action
Section 42.9a	Section 29.61(a)	Failure to complete required hours of continuing education during the 2 years preceding renewal or reactivation	Subsequent offenses—formal action 1st offense—\$50 per hour of deficiency, not to exceed \$1,000; over 20 hours—formal action  2nd offense—\$100 per hour of deficiency, not to exceed \$1,000; over 10 hours—formal action  Subsequent offenses—formal action

[Pa.B. Doc. No. 15-1050. Filed for public inspection June 5, 2015, 9:00 a.m.]

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

[ 52 PA. CODE CH. 62 ]

[ L-2015-2465942 ]

**Customer Information Disclosure Requirements for Natural Gas Suppliers Providing Natural Gas Supply to Residential and Small Business Customers**

The Pennsylvania Public Utility Commission (Commission), on March 25, 2015, adopted a proposed rulemaking order to amend its customer information disclosure regulations for residential and small business natural gas supply customers relating to disclosure statement and notice requirements, and expiration or change in contract terms.

*Executive Summary*

The Pennsylvania Public Utility Commission (Commission) proposes to amend its customer information disclosure regulations at 52 Pa. Code §§ 62.72 and 62.75 for residential and small business natural gas supply customers. Section 62.72 provides regulatory definitions while Section 62.75 in Title 52 of the *Pennsylvania Code* discusses the disclosure statement and notice requirements of the natural gas supplier (NGS) to the customer. The Commission also proposes to add new regulations in Section 62.81 governing notice requirements for NGSs regarding the expiration or change in contract terms for residential and small business customers. The Commission proposes these enhanced disclosure requirements as part of its broader Investigation of Pennsylvania’s Retail Natural Gas Supply Market. See Docket No. I-2013-2381742 (Final Order entered December 18, 2014) (hereinafter Gas RMI Final Order). The Gas RMI Final Order narrowed and outlined the issues to be explored in the

Retail Natural Gas Supply Market Investigation. In the Gas RMI Final Order, the Commission specifically sought from stakeholders comments and recommended revisions to the existing natural gas supplier disclosure requirements in Chapter 62 of the Commission's regulations.

Public Meeting held  
March 26, 2015

*Commissioners Present:* Robert F. Powelson, Chairperson; John F. Coleman, Jr., Vice Chairperson; James H. Cawley; Pamela A. Witmer; Gladys M. Brown

*Rulemaking to Amend and Add Regulations To Title 52 of the Pennsylvania Code, Sections 62.72, 62.75, and 62.81 Regarding Customer Information Disclosure Requirements for Natural Gas Suppliers Providing Natural Gas Supply to Residential and Small Business Customers;*  
L-2015-2465942

### Proposed Rulemaking Order

*By the Commission:*

The Pennsylvania Public Utility Commission (Commission) proposes to amend its customer information disclosure regulations at 52 Pa. Code §§ 62.72 and 62.75 for residential and small business natural gas supply customers. Section 62.72 provides regulatory definitions while Section 62.75 in Title 52 of the *Pennsylvania Code* discusses the disclosure statement and notice requirements of the natural gas supplier (NGS) to the customer. The Commission also proposes to add new regulations in Section 62.81 governing notice requirements for NGSs regarding the expiration or change in terms for residential and small business customers. The Commission proposes these enhanced disclosure requirements as part of its broader Investigation of Pennsylvania's Retail Natural Gas Supply Market. See Docket No. I-2013-2381742 (Final Order entered December 18, 2014) (hereinafter Gas RMI Final Order). The Gas RMI Final Order narrowed and outlined the issues to be explored in the Retail Natural Gas Supply Market Investigation. In the Gas RMI Final Order, the Commission specifically sought from stakeholders comments and recommended revisions to the existing natural gas supplier disclosure requirements in Chapter 62 of our regulations. See *id.* at 37-40.

#### *Background*

On April 3, 2014, the Commission adopted a Final-Omitted Rulemaking Order,<sup>1</sup> extensively revising the disclosure regulations in the electric industry, especially in the context of variable rate pricing. These new regulations, which became effective July 14, 2014, are now significantly different than the analogous natural gas industry regulations at 52 Pa. Code § 62.75 (Disclosure statement for residential and small business customers). These natural gas disclosure rules in Section 62.75 were promulgated in April 2001 and have not been formally reviewed since.<sup>2</sup> As stated above, in the Gas RMI Final Order, we expressly sought comments on the natural gas disclosure rules and directed our Office of Competitive Market Oversight (OCMO) to review any comments submitted and develop a Notice of Proposed Rulemaking to amend the disclosure provisions for natural gas customers. Gas RMI Final Order at 38-40. This Proposed Rulemaking Order is a result of that directive.

<sup>1</sup> See Final-Omitted Rulemaking Order: Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Renewal or Changes in Terms. Docket No. L-2014-2409385 (Order entered Apr. 3, 2014).

<sup>2</sup> See Final Rulemaking Order: Customer Information Disclosure Requirements for Natural Gas Distribution Companies and Natural Gas Suppliers, Docket No. L-00000149 (Adopted Nov. 29, 2000).

We have determined that concerns regarding variable rates and disclosure statements in the electric supply industry are relevant to the customer disclosure information in the natural gas industry. This customer disclosure information includes the availability of historical pricing information, notice of price changes, and explicit disclosure of limits or the lack of limits on price variability. We are also examining the applicability to the natural gas industry of the electric generation supplier (EGS) contract summary page and supply contract expiration notice requirements. See 52 Pa. Code § 54.10. We perceive that both customers and suppliers will benefit from consistent cross-industry rules. The current inconsistencies between the two sets of rules can lead to customer confusion and inefficiencies for suppliers, especially for those customers who obtain both gas and electric service from the same supplier.<sup>3</sup>

In our Gas RMI Final Order, we determined that enhancing the disclosure rules is a high-priority agenda item in the Gas Retail Markets Investigation. We concluded that a rulemaking would be necessary to effectuate the aforementioned goals of enhancing notices and disclosures to customers, alleviating customer confusion, and establishing consistent cross-industry rules. In the Gas RMI Final Order, we sought from stakeholders comments and recommended revisions to the existing NGS disclosure requirements in Chapter 62 of our regulations. See *id.* at 37-40. Accordingly, the Gas RMI Final Order served, in essence, as an Advanced Notice of Proposed Rulemaking Order (ANOPR), enabling us to solicit comments from all parties and then use those comments to frame the issues in this Notice of Proposed Rulemaking Order (NOPR), which we committed to issue in early 2015. See *id.*

In the Gas RMI Final Order, we directed parties to the regulations at 52 Pa. Code § 62.75 (Disclosure statement for residential and small business customers) and to our recent revisions of the analogous rules in the electric industry at 52 Pa. Code §§ 54.5—54.10<sup>4</sup> to assist in the formation of their comments. We specifically sought comments in the following areas:

- Enhanced disclosure concerning variable prices; explanation and disclosure of any limits or caps.
- Explicit statement of no limits if there are no limits to a variable price.
- The price charged for the first billing period (a "starting price" if the price is variable).
- Explanation of when the customer becomes aware of their variable price for the billing period (before the billing period, at the time of billing, etc.).
- The provision of historical pricing information for variable products. If so, how much history and how should it be made available to customers?
- The use of a contract summary that includes key contract provisions in a simple, easy-to-read format. If so, what format is needed and what provisions should be included—keeping in mind that a summary, to be effective, has to be brief, in plain language, and prominent?

<sup>3</sup> We note that the Commission has already examined some of the issues resulting from the current inconsistency between the electric and gas disclosure rules. See Final Order on Request for Clarification on Notice Requirements for Combined Electricity & Natural Gas Disclosure Statements, Docket No. L2014-2409385 (Order entered October 2, 2014).

<sup>4</sup> See Final-Omitted Rulemaking Order: Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Renewal or Changes in Terms. Docket No. L-2014-2409385 (Order entered Apr. 3, 2014).

• What changes, if any, are needed to contract expiration notices and the rules that should apply if a customer fails to respond to the notices? Please refer specifically to 52 Pa. Code § 62.75(g)(1) and (2). Are additional rules needed for those customers that are rolled onto variable-priced products upon expiration of their original contract similar to what is now in place for the electric industry, such as prior notice of price changes?

See Gas RMI Final Order, Docket No. I-2013-2381742, at p. 39-40.

#### *Discussion*

The Public Utility Code grants the Commission the power to license natural gas suppliers (NGSs) and establish standards to govern the conduct of NGSs, including the provision of clear, adequate, accurate, and timely information to customers. See 66 Pa.C.S. §§ 2208(a) and 2208(f) (citing Chapter 56 of Commission regulations regarding Standards and Billing Practices). Section 501 of the Public Utility Code empowers the Commission to promulgate regulations that are necessary or proper to exercise its powers and perform its duties. 66 Pa.C.S. § 501. Through this Order, we propose revisions to our existing natural gas customer disclosure information regulations at 52 Pa. Code §§ 62.72, 62.75.

The Commission has reviewed the comments filed in response to the Gas RMI Final Order. Comments were filed by Columbia Gas of PA (Columbia); Dominion Retail, Inc. d/b/a Dominion Energy Solutions, Shipley Choice, LLC d/b/a Shipley Energy, Rhoads Energy Corp. and AMERIGreen Energy (NGS Parties); the National Energy Marketers Association (NEM); the Office of Consumer Advocate (OCA); PECO Energy Company (PECO); Peoples Natural Gas Company LLC and Peoples TWP LLC (Peoples); Philadelphia Gas Works (PGW); the Retail Energy Supply Association (RESA); UGI Distribution Companies (UGI); Valley Energy, Inc. (Valley Energy); and WGL Energy Services, Inc. (WGL Energy).

We will organize our summaries and dispositions of stakeholder comments in our Discussion section in four main subject areas: 1) Regulation Uniformity, Variable Pricing, and Historical Pricing Information; 2) Contract Summaries; 3) Notices Regarding Contract Expiration or Changes in Terms; and 4) Supplier Requests for Commission Review of Contract Terms. We will then discuss specific language changes to our regulations.

#### *Regulation Uniformity, Variable Pricing, and Historical Pricing Information*

##### *Comments*

RESA supports uniformity between EGS and NGS disclosure requirements and contract renewal notice rules, but would prefer to establish acceptable requirements for the natural gas industry and then harmonize any important issues with the electric industry after more retail market experience is gained. RESA Comments at 3. RESA supports including the initial price and the conditions of price variability in the disclosure statements, but opposes any requirement for a limit or cap on a variable price. Id. RESA also opposes any requirement for the use of an explicit formula or index, as RESA believes this would restrict an NGS's flexibility to price its product and could unfairly signal its pricing methodology to competitors. Id. RESA does not support including 24 months of average historical pricing in connection with variable price contracts in situations where the NGS offers an indexed product that is based on a pre-defined pricing formula or publicly available market indices, provided that an NGS gives the customer the tools necessary to

calculate the price independently. Id. at 4. Otherwise, providing historical pricing information is likely to create more customer confusion while increasing costs for the NGS to gather and accurately maintain this information. Id.

The NGS Parties do not believe there are any issues in the natural gas industry regarding variable rates, as were present in the electric industry during the Winter of 2014. NGS Parties Comments at 10. However, the NGS Parties still support uniformity between the rules in the electricity and natural gas markets. Id. at 1, 3. As to the disclosure of variable prices, the NGS Parties believe that the disclosure statement should explicitly state that there are no limits to the variable price for those products that do not have limits. Id. at 4. Yet, the NGS Parties caution that consumer education is critical here. Id. The NGS Parties also point out that the requirement of providing the starting price has proven to be problematic for many suppliers who offer variable rate products because many variable rate products are calculated after-the-fact, based upon the actual costs of serving that customer through the billing cycle. Id. By requiring suppliers to provide a starting price, before those costs are known or knowable, the Commission would require the supplier to estimate future costs and thus take on risk for at least one billing cycle. Id. at 4-5. The NGS Parties understand the customer's need to know the price in order to make accurate comparisons of one supplier's fixed rate offering to another; however, some customers have difficulty understanding that an advance price notification for one billing cycle may not be indicative of prices in future billing cycles. Id. The NGS Parties contend that it may be better for a supplier to adequately explain this to the customer rather than forcing the supplier to fix a rate for the first month. Id.

Additionally, so long as the Commission does not seek to regulate when suppliers may calculate a price, the NGS Parties believe that a regulation informing the customer when the price will be calculated may effectively educate and empower the customer to know the customer's exposure to potential market or price volatility. Id. at 6. However, as to the provision of historical pricing data, the NGS Parties ask: "why require suppliers to provide information that we all recognize may be of dubious value to customers?" Id. at 7. The NGS Parties believe that 24 months of history may not provide customers with any real basis for determining future prices and may result in customers reaching incorrect conclusions. Id.

WGL Energy does not object to requiring an NGS to affirmatively disclose the limits or caps of a particular variable price product. WGL Energy Comments at 4. However, WGL Energy does not believe that an explicit statement declaring that there are "no limits to a variable price" adds value to a customer contract. Id. WGL Energy explains that statement could be misleading and discouraging to customers, especially since a variable rate contract may provide significant savings and benefits in some situations, such as during summer or on warmer winter days. Id.

Peoples expresses support for a comprehensive review of the current rules, noting that each year since 1997, at least 86,000 residential customers on the Peoples system have shopped for an alternative gas supplier. Peoples Comments at 2. Peoples reports that their call center still receives hundreds of calls each year from customers who are confused about who has offered them a supply service or are confused about the supply service they have

selected. *Id.* at 2-3. In general, Peoples supports conforming the natural gas rules to the rules for the electric industry. As to variable price products, Peoples thinks that a clear statement of the price and how often that price is subject to change is important. *Id.* at 3. Instead of a disclosure simply stating that the variable rate will change monthly, Peoples believes that the disclosure should identify how subsequent pricing changes will be applied and providing examples. *Id.* Peoples suggests that if the price is based on a publicly available industry index, the NGS must identify the index and must provide historical pricing for the prior calendar year or previous 12-month period. *Id.*

PECO likewise agrees that, to the greatest extent possible, revisions to the disclosure rules for natural gas customers should mimic the revisions recently adopted for electric customers in order to avoid customer confusion, especially for those who receive both electric and gas service from the same supplier. PECO believes that revisions to the natural gas disclosure rules should: 1) empower customers to make knowledgeable and informed decisions about fixed and variable priced products and 2) minimize customer confusion over these types of products. PECO Comments at 2.

The OCA recommends that, at a minimum, the Commission impose the same disclosure requirements on NGSs that are applicable to EGSs. OCA Comments at 2. Since many suppliers offer both electric and natural gas service during the same customer marketing presentations, it would be unreasonable for customers to experience different disclosures of the material terms of their agreements with NGSs and EGSs. *Id.* However, the OCA contends that the disclosure standards recently adopted in the electric industry have not gone far enough to adequately inform customers, particularly with regard to variable price products. *Id.* at 3. Therefore, the OCA suggests that all disclosure statements for variable price products include a ceiling price. *Id.* at 4. If, however, the Commission allows there to be no price limit, the OCA submits that a specific statement that there is no price limit should be required. *Id.* The OCA believes that this information should be clearly disclosed to residential customers in plain language, as most customers do not understand the unpredictability or pricing methodologies of the wholesale market and may never be able to make a knowledgeable decision with such limited information. *Id.* The OCA recommends that NGSs provide an explanation of the limits on price variability, printed in type size larger than the type size appearing in the terms of service but no less than 12 point font. The OCA objects to any disclosure of a pricing methodology that merely references the “wholesale market” or other vague and unidentified pricing methodology; rather, the NGS should explicitly provide information that the customer can publicly review and assess the price charged each month. *Id.* at 4-5.

The OCA further recommends that if the “starting” price is introductory, the disclosure should state that the price is the introductory price, provide the length of the introductory period, and provide the price for the first month after the introductory period. *Id.* at 5-6. If a price has not been set for the first month after the introductory period, the disclosure should explain how the price will be established. The disclosure should also explicitly state that the price to be charged after the introductory period may be higher than the introductory rate and provide information as to when the new price will be provided to the customer. *Id.*

The OCA supports requiring NGSs to provide a historical presentation of prices and to affirmatively state that a 12-month history of prices (charged to similar customers in Pennsylvania for the applicable natural gas distribution company (NGDC)) is available on the supplier’s website, by calling a toll free telephone number, and through interactions with sales agents. *Id.* at 6. The OCA believes that this information should also include the highest and lowest price charged for the customer’s rate class and service territory over the last 60 months and that a statement that historical prices are not a guarantee of future prices. *Id.* at 6-7. The OCA also urges the Commission to require customers to receive notifications of all changes to a variable price at least 45 days prior to the new price going into effect. *Id.* at 12. The OCA believes that the price to be charged should be known before the customer uses the energy, asserting that unless customers are provided with advance notice of the new price to be charged, customers will continue to receive unanticipated high bills. *Id.* at 11-12.

Finally, the OCA asks that the Commission, upon promulgation of the new disclosure rules, consider requiring NGSs to issue new disclosures to their current customers that set forth the terms of their current agreement and pricing plans in order to educate customers about their current plans and pricing terms. *Id.* at 11.

#### *Disposition*

We agree with RESA, the NGS Parties, Peoples, and PECO that consistency between the electric and natural gas industry disclosure rules is important, as unnecessary differences may confuse customers and burden suppliers’ operations. However, consistency alone will not be our focal point in rendering a determination, as our primary consideration in amending these regulations will be protecting consumers and empowering them by ensuring they receive the information necessary to make informed decisions, especially when considering variable-price products. Notably, we can always revisit the electric rules and later align those rules, as necessary with our final determination in this rulemaking. See RESA Comments at 3. Since the implementation of the electric disclosure rules in July 2014, the Commission and stakeholders have gained experience under those regulations and we look forward to comments from these stakeholders on their experiences to help us develop the rules for the natural gas industry.

In general, we agree with the NGS Parties, Peoples, PECO, and the OCA that our revised electric rules regarding variable pricing should be applied to the natural gas market, with some modifications to reflect “lessons learned” from the implementation of the electric rules. We first note that the natural gas disclosure rules have always required that the ceiling price, if applicable, be disclosed. See 52 Pa. Code § 62.75(c)(2)(ii). While the OCA asks that we require NGSs to have a ceiling price, we have never required a ceiling price in our regulations and we do not believe the Natural Gas Choice and Competition Act, 66 Pa.C.S. §§ 2201 et seq., gives the Commission the authority to cap prices charged by NGSs. Under the Public Utility Code, the Commission does not have traditional ratemaking authority over EGSs and cannot regulate competitive electric supply rates. 66 Pa.C.S. §§ 102, 2802, 2806(a), 2809(e), 2810; see, e.g., *Nadav v. Respond Power, LLC*, Docket No. C-2014-2429159, at p. 7 (Opinion and Order entered Dec. 19, 2014), see also, e.g., *Commonwealth of Pennsylvania, et al. v. Blue Pilot Energy, LLC*, Docket No. C-2014-2427655, (Order entered December 11, 2014), p. 18. Similarly, the

Commission does not have traditional ratemaking authority over NGSs and cannot regulate competitive gas supply rates. 66 Pa.C.S. §§ 102, 2202, 2208(e). However, the Public Utility Code empowers the Commission to promulgate regulations over the licensing, marketing, and sales practices of NGSs. See 66 Pa.C.S. § 2208.

We agree with the OCA's assertion that if there is no ceiling on the variable price, a specific statement to that effect should be required. Since this explicit statement provides vital information for a potential customer considering a variable-priced product, we propose including a requirement analogous to the same requirement in the electric rules at 52 Pa. Code § 54.10. The information concerning limits, or lack thereof, should also be highlighted in a larger type size that stands out to the customer. See Annex A, Section 62.75(c)(2)(iii).

We also propose requiring an NGS to disclose the initial, starting price. While we understand the concerns expressed by the NGS Parties about this requirement, we think a customer should have specific pricing information that allows the customer to compare NGS offers before entering into a contract. Again, this requirement was a vital reform we implemented in 2014 for the electric industry. See 52 Pa. Code § 54.5(c)(2)(iii). However, subsequent experience with the implementation of this regulation has raised a question about this requirement. The regulation for the electric industry specifies "The price to be charged, per kilowatt-hour, for the first billing cycle of generation service." 52 Pa. Code § 54.5(c)(2)(iii). Due to the advent of accelerated, three-day off-cycle switching in the electric industry, the "first billing cycle of generation service" may only consist of a few days. Accordingly, the change in supplier switching timeframes has possibly diminished the value of this particular reform. Since accelerated switching may occur at some future point in the gas industry, we will propose a rule that requires that the initial, starting price must be in effect for at least the first full billing month as opposed to first billing cycle. We will define billing month as "a period of not less than 26 days and not more than 35 days," borrowing from the definition of billing month in Chapter 56 of our regulations. See 52 Pa. Code § 56.2.<sup>5</sup> See Annex A, Proposed Section 62.72. We solicit comments on whether a formulaic contract price that enables a customer to calculate its bill using the contract, publicly available rates or price indices should be considered in compliance with the provision of adequate disclosure of price for the first billing cycle.

Similar to another key reform in the 2014 electric rules, we also propose requiring an NGS to notify the customer when the customer will be informed of future price changes. We find that the OCA's request to require advance notice of all price changes may be overly burdensome on NGSs. Instead, we agree with Peoples and the

NGS Parties and believe that the key piece of information for a customer is knowledge as to when and how the customer will know the price the customer will pay for natural gas supply. For the electric industry, we did not imbed this requirement in the disclosure regulation; instead we incorporated it into the contract summary. 52 Pa. Code § 54.5(i). Here, we want to strengthen this reform, and will therefore propose imbedding this important requirement into the disclosure regulation at 52 Pa. Code § 62.75, as well as in the contract summary. See Annex A, Section 62.75(c)(2); see Attachment A of this Order.

We acknowledge, based upon the comments of RESA and the NGS Parties, that one of our more controversial electric reforms was requiring those suppliers selling variable-price products to provide potential customers with a 24-month price history of the product. We understand the concerns with this requirement and agree that it does not always provide meaningful information to customers and could sometimes be construed as misleading. Accordingly, we required the 24-month price history to be accompanied by a disclaimer noting that historical pricing is not indicative of present or future pricing. See 52 Pa. Code § 54.5(c)(14)(i). We agree with the OCA and continue to think that the provision of this information has value, especially in educating customers about the seasonal variability and magnitude of volatility in monthly energy prices. Accordingly, we propose the same rule for the natural gas industry and seek specific comments on how this requirement should be fulfilled by new NGSs entering the market and/or NGSs introducing a new product in the Commonwealth. We reject the OCA's suggestion to require NGSs to issue new disclosures to their current customers, as this would possibly risk inappropriate interference with existing contracts.

#### *Contract Summaries*

##### *Comments*

RESA stresses that if an NGS is ordered to provide a contract summary, then the information therein should be expressed plainly and simply so as to not confuse customers. RESA Comments at 4-5. RESA points out that requiring suppliers to complete fields for both contract terms and renewal terms, as in the template for EGS contract summaries, may confuse a customer in a month-to-month variable contract. *Id.* at 4-5.

The NGS Parties suggest that a "useful" contract summary must only include relevant contract terms, as a regurgitation of the entire contract in the guise of a summary is unhelpful and superfluous. NGS Parties Comments at 7-8. The NGS Parties assert the essential summary elements should include: 1) the type of contract (fixed or variable) and if variable when and how the price will be determined; 2) the price to be charged the first month; 3) whether the quoted price is an introductory price; 4) if an introductory price, how many months it will be charged; 5) if an introductory price, how the price will be set after the introductory period; 6) the term in months; 7) the existence of an early termination or cancellation fee; and 8) if so, the amount of any applicable early termination fee. *Id.* at 8. Furthermore, an uncapped variable rate should include a statement at a conspicuous spot on the page stating that there is no limit on the rate. *Id.*

Peoples thinks that an abbreviated contract summary will encourage customers to learn more about the important provisions of their NGS contract. Peoples Comments at 4. The contract summary should identify the billing

<sup>5</sup> 52 Pa. Code § 56.2 provides: Definition of *Billing month*—A period of not less than 26 days and not more than 35 days except in the following circumstances:

(i) An initial bill for a new customer may be less than 26 days or greater than 35 days. However, if an initial bill exceeds 60 days, the customer shall be given the opportunity to amortize the amount over a period equal to the period covered by the initial bill without penalty.  
(ii) A final bill due to discontinuance may be less than 26 days or greater than 35 days but may never exceed 42 days. In cases involving termination, a final bill may be less than 26 days.  
(iii) Bills for less than 26 days or more than 35 days shall be permitted if they result from a rebilling initiated by the company or customer dispute to correct a billing problem.  
(iv) Bills for less than 26 days or more than 35 days shall be permitted if they result from a meter reading route change initiated by the public utility. The public utility shall informally contact the Director of the Bureau of Consumer Services at least 30 days prior to the rerouting and provide information as to when the billing will occur, the number of customers affected and a general description of the geographic area involved. If a bill resulting from a meter rerouting exceeds 60 days, the customer shall be given the opportunity to amortize the amount over a period equal to the period covered by the bill without penalty.

method (i.e., dual billing, NGDC combined billing, or NGS combined billing) and all pricing should be in the unit of measurement that will be used in billing, with pricing questions directed to the NGS. *Id.*

The OCA suggests that the Commission adopt a contract summary similar to the electric industry version, incorporating any recommended changes resulting from this rulemaking proceeding. OCA Comments at 7-9. The OCA thinks that the Commission should consider requiring NGSs to issue new contract summaries to their current customers. *Id.* at 11. Further, the OCA endorses the development of a uniform disclosure statement for variable price plans. *Id.* at 9.

#### *Disposition*

We agree with the OCA and Peoples about the importance of contract summaries. The Commission recognizes the reality that not all customers will read a multi-page disclosure, but may read a brief, single-page document in a graphic/box format. We agree with the NGS Parties that a useful contract summary must only summarize the key contract terms necessary to assist a customer when comparison-shopping. A recitation of the entire contract is superfluous and defeats the purpose of the summary. The summary should fit on one page. The font should be readable and reasonably-sized, as a summary in “fine-print” again defeats the purpose of the summary. We also think that the summary should be distinct and separate, not buried or hidden amidst other marketing or disclosure materials. See Attachment A.

While we propose the above requirements, we recognize that we must carefully limit the information required in the summary. The electric industry summary is a helpful reference; however, we want to make the gas summary more condensed, so as to only maintain the vital terms and information in a summary fashion to assist a customer when comparison-shopping. We believe that the inclusion of utility (NGDC) contact information is unnecessary and lacks relevance to the customer when shopping. We have found that inclusion of NGDC information leads some customers to wrongly believe that a utility endorsement or affiliation with the supplier exists. While we included in the electric contract summary information regarding the renewal/change of terms notices, like RESA, we now believe that including this information in the contract summary may confuse customers. We invite further comment on this renewal/change of terms issue. We also invite comments on the usefulness of specifying a “contract start date,” as this may often be a situation-specific matter negotiated and agreed upon by the supplier and the customer. Lastly, we invite comment on whether the Commission should, as we did with the electric industry, informally review sample contract summaries for all NGSs before they are implemented.

Notwithstanding the foregoing, we propose adopting the same practice with the natural gas industry that we adopted with the electric industry regarding guidance on contract summary specifics. We will refer to a contract summary in the regulations at Section 62.75(i), but the contract summary will not be embedded in the regulations. See Annex A. However, we will provide the specific requirements of the contract summary in an attachment to this order and the Final Rulemaking Order. See Attachment A. This approach will permit us the flexibility to more easily and readily revise the contract summary in the future to reflect the evolving energy markets without initiating a formal rulemaking.

#### *Notices Regarding Contract Expiration or Changes in Terms*

##### *Comments*

RESA supports shorter time periods for sending out initial notices and options notices, concluding that these time periods should mirror the requirements in the electric industry. RESA Comments at 5. RESA urges the Commission to allow NGSs to send options notices electronically, as embedding in regulations a “first class mail” requirement will likely become outdated in the very near future. *Id.* at 6. RESA argues that first class mail is already less effective than electronic notices for many customers who frequently use smartphones and other electronic devices. *Id.* As to the content of the notices, RESA generally supports the electric regulations, except the requirement for a 30-day advance notice of a price change to a customer who is on a fixed price contract that automatically renews to a month-to-month product, where the price is potentially changing every month. *Id.* at 6-7. RESA contends that even if NGSs could accurately forecast index prices far enough in advance to satisfy the 30-day notice requirement, the mailing costs would be extremely high, and the mailing itself would confuse and inundate the customer with information on a regular basis. *Id.* Regarding the rules that should be implemented to address the situation when a customer fails to respond to either the initial or options notice, RESA supports the approach adopted by the Commission for the electric industry. *Id.* at 7.

The NGS Parties believe the provision of two notices in scenarios where a supplier is not proposing a change can be burdensome to customers and suppliers. NGS Parties Comments at 9. In general, the NGS Parties do not oppose the recent revisions to the regulations for EGSs in the electric industry. See *id.* However, like RESA, the NGS Parties find fault in the requirement for 30-days’ advance notice of price changes, opining that this requirement essentially eliminates the opportunity for suppliers to provide any market-sensitive variable rate to customers, meaning that suppliers will have to hedge or purchase supply well in advance. *Id.* at 9-10. The NGS Parties predict that this “will eliminate the sort of flexibility that some customers may find useful.” *Id.* at 10.

WGL Energy submits that the rules in 52 Pa. Code § 54.10 pertaining to the two required notices (that an EGS must provide to an electric customer with an expiring contract) should not be adopted in the revised gas supplier disclosure regulations because these regulations are very difficult to interpret. WGL Energy Comments at 5-6. WGL Energy contends that a better rule to facilitate improvement in the competitive natural gas market would be to authorize workable auto-renewal contract processes with reasonable cancellation fees, which provide some protection to suppliers for hedging costs and further asserting that this would ensure that customers understand their renewal options and can opt out of a renewal contract. *Id.* at 6.

The OCA contends that the regulations should be revised to specifically prohibit NGSs from converting a customer with a fixed rate plan to a variable rate plan without affirmative customer consent. OCA Comments at 10. The OCA opines that allowing this type of material change to terms without affirmative customer consent is unreasonable and exposes customers to significant risk. *Id.* The OCA believes that if the NGS does not wish to serve the customer with a fixed price, the NGS should return the customer to the NGDC as supplier of last resort. *Id.*; see 66 Pa.C.S. § 2207. The OCA endorses

adopting for the gas industry the more clearly defined requirements from the electric industry set forth in 52 Pa. Code § 54.10, which provides that customers placed on month-to-month agreements due to non-response to a renewal notice should be provided 30-days' advance notice of any price changes. Id.

#### *Disposition*

An important reform in the electric industry in 2014 included the clarification of the process and notices that customers should receive from a supplier-either as their fixed-term contract approaches its end or when the supplier proposes a change in terms. See 52 Pa. Code §§ 54.5, 54.10. Historically, these rules were combined in disclosure regulations and guidelines. The Commission decided that the electric industry supplier-to-customer notice procedures constituted sufficient importance to warrant the creation of a separate section in our regulations. See 52 Pa. Code § 54.10. Likewise, we believe that the supplier-to-customer notice requirements for the gas industry warrant a new section; therefore, we will propose adding Section 62.81, which will replace the current notice provisions in 52 Pa. Code § 62.75(g). For the sake of consistency, especially for those customers who obtain both electric and gas supply from the same supplier, the proposed new section will be substantially similar to the electric rules.

We note that the Commission has already issued guidelines addressing the current inconsistency between the notice timeframes found in the two sets of rules for those dual-energy supplier customers.<sup>6</sup> Notably, achieving consistency in the electric and gas industries is complicated by the significantly different supplier switching timeframes presently in place. Supplier switching in the electric industry can occur in as little as three business days. See 52 Pa. Code § 57.174. However, supplier switching in the gas industry can take several weeks. While we intend to explore the possibility of accelerating gas supplier switching in the coming months, the achievable switching timeframes in the gas industry remain unclear at this time. Therefore, we seek comments from utilities and suppliers as to whether the 60-day and 30-day timeframes in the electric rules can, at this time, be applied in the gas industry. If not, we seek comments on the notice requirements that would be appropriate in the gas industry and appropriate for dual-energy supplier customers.

WGL Energy asserts that the electric notice rules are “very difficult to interpret,” but fails to specify the language it finds difficult to interpret or further explain how it should be revised. Accordingly, we invite interested parties to provide the specific language that they find unclear and to suggest improvements. From our experience, there is sometimes confusion with the distinction between “fixed term” and “fixed price.” “Fixed term” means that the length or duration of the contract is fixed for a specific period (e.g., six months, 12 months). “Fixed price,”<sup>7</sup> as used in the regulations, refers to a price that is fixed and does not change (as opposed to a “variable price”). The use of the word “term” can also be confusing for it refers to the “conditions” of a contract (as in “terms and conditions”) but it can also be used more specifically

in relation to the length or duration of the contract (a “term” of six months for example). Accordingly, we will propose changing the word “term” to “duration” in the regulations. However, we ask parties to comment on whether the word “length” or any other word is more appropriate. See Annex A. We also invite comments on the appropriate use of these terms, as proposed in Section 62.81. See id.

As to WGL Energy's request regarding auto-renewal contract processes with reasonable cancellation fees, we have public policy concerns in allowing customers to be automatically re-enrolled into a new product with cancellation fees without affirmative customer consent. See WGL Energy Comments at 6. While WGL Energy may advocate for “reasonable cancellation fees,” the Commission does not have clear authority to set or regulate the amount of those fees. We expect and ask customers to stay alert for and act on expiration notices from suppliers. However, some customers, whether through neglect or inadvertence, will still overlook and ignore notices, later finding themselves automatically enrolled in a new product that potentially has a higher price and a cancellation fee. Aside from harm to individual customers, this could also result in serious harm to the overall impression of the competitive gas supply market. Yet, we also reject the OCA's contention that these customers should be returned to the NGDC's supplier of last resort service, as this is too restrictive and could result in a customer being returned to a more expensive service. However, we agree with the OCA that these customers should be protected from cancellation penalties. We note that this does not preclude a supplier from offering the customer a new product with cancellation fees, though the customer must affirmatively agree to that product.

We also propose adopting the electric rule that requires prior notice of any price changes for a customer that is rolled onto a new product due to that customer's non-response. See Annex A, Section 62.81(a)(2)(ii). While we understand the concerns expressed by RESA and the NGS Parties, we think this additional protection is needed for those customers who may end up on a variable product without affirmatively agreeing to that type of product. We understand that this kind of product may require hedging by the supplier. We also acknowledge that this effectively creates two classes of variable-price customers: 1) customers that affirmatively enroll in a variable-price product and do not receive advance notice of routine price changes, and 2) customers that end up on a variable-price product due to their failure to respond to expiration notices and receive advance notice of price changes. This is a deliberate distinction, based on the assumption that a customer who has affirmatively selected a variable product has reviewed the NGS disclosure, as well as the contract terms and conditions, and who understands and submits to any effects of a variable-price product. This is contrasted with a customer who may not have desired a variable product and ended up with one only due to failure to act on expiration notices.

We also propose to carry over the electric rule requiring the second notice (the “options notice”) to be delivered by first-class mail in a prominently labeled envelope. However, we do invite comment on this, as RESA may have a valid concern that first-class mail is an increasingly outmoded form of communication and that alternatives should be permitted. We also invite comment on the NGS Parties' suggestion that only one notice should be required in instances where a supplier is not proposing any changes upon contract expiration. See NGS Parties Comments at 9.

<sup>6</sup> Final Order on Clarification on Notice Requirements for Electricity & Natural Gas Disclosure Statements, Docket No. L-2014-2409385 (Order adopted Oct. 2, 2014).

<sup>7</sup> In order to avoid confusion and seek consistency in nomenclature, the Commission is striving to use the word “price” when referring to the cost of a supplier's product in the competitive market. Therefore, we use the term “price-to-compare” (PTC) when discussing the default cost of the gas commodity charge provided by the utility to allow consumers to compare the utility's PTC to the supplier offers when shopping for gas supply. See 52 Pa. Code § 62.80. We use the historic term “rate” in the context of public utility ratemaking and the costs of utility service.



*Supplier Requests for Commission Review of Contract Terms*

*Comments*

The NGS Parties suggest that the Commission staff provide reviews of current NGS terms and contractual conditions, noting that currently Commission staff only review NGS terms and conditions at the time the NGS seeks a license. NGS Parties Comments at 3. The NGS Parties suggest that suppliers be able to seek Commission staff review of disclosure revisions and for that review to protect the supplier from complaints that its terms and conditions are non-compliant. *Id.* NGS Parties think this would ensure that customers are more likely to receive compliant materials with consistent terminology, and would ease the risk that suppliers face when making new product offerings, rather than “guess at what staff or an administrative law judge will consider acceptable at some future point.” *Id.*

*Disposition*

As for the NGS Parties’ request that the Commission allow suppliers to ask for reviews of their disclosure statements by Commission staff, we note that informal reviews and opinions are always available upon request. Pursuant to 52 Pa. Code § 1.96, informal opinions are provided solely as an aid to the requester and are not binding upon the Commonwealth or the Commission. Informal opinions are also subject to withdrawal or change at any time to conform with new or different interpretations of the law. Suppliers interested in informal opinions should contact the Bureau of Consumer Services and/or OCMO. However, we remind suppliers of their duty to develop and maintain expertise in these regulations in order to ensure effective compliance. See 66 Pa.C.S. § 2208.

*Miscellaneous Disclosure Proposals and Concerns*

We invite parties to comment on any other issue of concern regarding natural gas customer disclosure information. Here, we will raise a few other specific disclosure issues that were not necessarily addressed in the 2014 review of the electric disclosure regulations but that we think warrant review in this rulemaking proceeding.

We propose deleting the second sentence at 52 Pa. Code § 62.75(c)(7), requiring the cancellation of an agreement when a customer moves from one location to another, so that we may facilitate “seamless moves” in the gas industry. See Annex A. A “seamless move” refers to a customer’s ability to transfer their supply service contract from one address to another in the same NGDC service territory. This is currently not possible, as reflected in the current regulation in Section 62.75(c)(7). However, as the Commission announced in the Gas RMI Final Order, we intend to explore this issue and we do not want this regulation to possibly impede the consideration and implementation of seamless moves. By proposing to remove this sentence, we do not prejudice the seamless moves issue; rather, we simply propose to remove a potential impediment to seamless moves if this is found to be in the public interest in a separate proceeding. See Gas RMI Final Order, Docket No. I-2013-2381742, at 22-24.

We also propose deleting the second sentence at 52 Pa. Code § 62.75(c)(8)—“Automatic renewal is allowed at the same terms and conditions as long as the new agreement is month-to-month.” We think this kind of directive is more appropriately included in the proposed new Section 62.81 that addresses contract expiration or change in terms notices and procedures. See Annex A.

Maintaining the language in Section 62.75 could invite confusion and potentially conflicting requirements.

Sections 62.75(9), 62.75(11), and 62.75(13) all require NGS disclosures to identify the NGDC and to provide contact information for the NGDC. There may have been a sensible rationale for these requirements 14 years ago when these regulations were first promulgated. At that time, the NGDCs had robust consumer education programs and were expected to play a key role in informing consumers about the competitive market. However, now we believe it may be unnecessary to require a prominent display of NGDC information on NGS documents, as this may invite customer confusion and even risk, creating the false impression that the NGS is “affiliated with” or “partnering with” the NGDC. We continue our efforts over the years to make clear to customers the distinction between a “utility” and a “supplier” as separate entities. As discussed extensively by many parties during the promulgation of our supplier marketing regulations, misrepresentation and customer confusion between suppliers and utilities is an ongoing concern.<sup>8</sup> Yet our regulations require the NGS to place the utility name and contact information throughout the NGS’s documents, which in part likely yields complaints from customers believing they have been “misled” or are the victim of “misrepresentation.” We propose removing these references in Sections 62.75(9), 62.75(11), and 62.75(13). See Annex A.

To alleviate potential customer confusion and to provide an information resource to customers, we propose revising Section 62.75(c)(12) by referring customers to the Commission’s natural gas shopping website, PaGasSwitch.com. Since the Commission now has a natural gas shopping website, we think referring customers to this website is more effective than directing customers to call the Commission. We invite comment as to whether this is appropriate and sufficient for all customers. See Annex A.

We also propose adding a requirement that if the customer’s contract is assignable, the supplier has to disclose this. See Annex A, Section 62.75(j). The assignment of contracts from one supplier to another, while not common, does occur frequently enough to be a source of some customer confusion. This requirement is also consistent with the guidance provided by a Commission order addressing assignment in the electric industry.<sup>9</sup> In these guidelines, the Commission specified that “Any assignment clause used in a supplier contract must be written in plain language, be prominently printed and explained fully in ‘terms of service and disclosure.’”<sup>10</sup> We invite comments on this issue.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 20, 2015, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Consumer Affairs Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the

<sup>8</sup> See Corrected Final Rulemaking Order: Marketing and Sales Practices for the Retail Residential Energy Market. Docket No. L-2010-2208332 (Order entered October 24, 2012).

<sup>9</sup> See Order on the Interim Guidelines Regarding Notification by an Electric Generation Supplier of Operational Changes Affecting Customer Service and Contracts. Docket No. M-00960890F0013. (Order entered August 14, 1998).

<sup>10</sup> See *id.*, at Appendix, Guideline (II)(B)(1).

close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

*Conclusion*

As in our 2014 revisions and regulatory reforms in the electric industry, the Commission proposes regulations at 52 Pa. Code §§ 62.72, 62.75, and 62.81 regarding customer disclosure information in the natural gas supply market in order to protect consumers and better inform customers about the scope and limits of rate variability, the terms and conditions of an NGS contract, and a customer’s options prior to and after the expiration of their current contract for gas supply. The proposed regulations would require enhanced information from NGSs to customers who enter into variable-priced contracts and for the inclusion of information about what will happen to a customer’s current supply contract if the customer does not respond to either the Initial or Options Notices.

Well-informed customers are essential participants in a successful competitive retail market. During the Polar Vortex in the Winter of 2014, we observed first-hand the frustrations of customers enrolled in variable-priced EGS contracts who were not sufficiently aware of potentially significant price increases due to fluctuating wholesale market conditions. We want to avoid this kind of occurrence in the retail gas supply market. Accordingly, we propose the attached updates and revisions to our regulations in order to create a more user-friendly marketplace that should continue to attract increased numbers of customers. See Annex A, Proposed 52 Pa. Code §§ 62.72, 62.75, and 62.81.

Accordingly, pursuant to sections 501 and 2208 of the Public Utility Code (66 Pa.C.S. §§ 501 and 2208); sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)); section 745.5 of the Regulatory Review Act (71 P. S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P. S. § 232) and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.234, we propose adopting the regulations set forth in Annex A; *Therefore,*

*It Is Ordered That:*

1. A proposed rulemaking be opened to consider the regulations set forth in Annex A.

2. The Secretary shall submit this proposed rulemaking order, Attachment A, and Annex A to the Office of Attorney General for review as to form and legality and to the Governor’s Budget Office for review of fiscal impact.

3. The Secretary shall submit this proposed rulemaking order, Attachment A, and Annex A for review and comments to the Independent Regulatory Review Commission and the Legislative Standing Committees.

4. The Secretary shall certify this proposed rulemaking order, Attachment A, and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. Original written comments referencing Docket Number L-2015-2465942 be submitted within 30 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments may also be filed electronically through the Commission’s e-File System.

6. This Order and Annex A, revising the regulations appearing in Title 52 of the *Pennsylvania Code* Chapter 54 relating to Natural Gas Choice, be served on all licensed Natural Gas Suppliers, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and those parties who submitted comments to the December 18, 2014 Final Order at Docket Number I-2013-2381742.

7. A copy of this Proposed Rulemaking Order, Attachment A and Annex A shall be posted on the Commission’s website at the Office of Competitive Market Oversight web page and on the web page for the Investigation of Pennsylvania’s Retail Gas Supply Market.

8. The contact persons for this matter are Dan Mumford (technical) in the Office of Competitive Market Oversight at (717) 783-1957 and Ken Stark (legal) in the Law Bureau at (717) 787-5558. Inquiries may also be emailed to the Commission’s Office of Competitive Market Oversight at ra-ocmo@pa.gov.

ROSEMARY CHIAVETTA,  
*Secretary*

**Fiscal Note:** 57-309. No fiscal impact; (8) recommends adoption.

**Attachment A**

**Natural Gas Supplier Contract Summary**

<i>Natural Gas Supplier Information</i>	Name, telephone number, website, etc. Plain language statement that NGS is responsible for gas commodity charges.
<i>Natural Gas Price Structure</i>	Fixed or variable. If variable, based on what? If variable, how often is the price expected to vary? If variable, give any applicable ranges/ceilings. If no ranges/ceilings, a plain language statement indicating this fact. If variable, describe when the customer will receive notification of price changes in relation to time of month, final monthly meter read, billing cycle or when the price takes effect.
<i>Natural Gas Supply Price</i>	\$/unit or ¢/unit. If variable price, the first billing cycle’s rate. Any introductory rate with duration of contract.
<i>Statement Regarding Savings</i>	Plain language that the supply price may not always provide savings to the customer

<i>Deposit Requirements</i>	Any deposit requirements necessary for a customer and any terms associated with that deposit, in plain language.
<i>Incentives</i>	Any bonuses, discounts, cashback, etc. offers and any associated terms, in plain language.
<i>Contract Start Date</i>	Plain language regarding start of NGS service.
<i>Contract Term/Length</i>	In months, billing cycles, etc.
<i>Cancellation/Early Termination Fees</i>	Yes or no. If yes, describe the amount of the fee and how to avoid that fee, if possible.
<i>Renewal Terms</i>	Treatment of customer at end of contract. Timing of notices. No cancellation/early termination fees. In plain language.

**Annex A**  
**TITLE 52. PUBLIC UTILITIES**  
**PART I. PUBLIC UTILITY COMMISSION**  
**Subpart C. FIXED SERVICE UTILITIES**  
**CHAPTER 62. NATURAL GAS SUPPLY CUSTOMER CHOICE**  
**Subchapter C. CUSTOMER INFORMATION DISCLOSURE**

**§ 62.72. Definitions.**

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

*Basic services*—Services necessary for the physical delivery of natural gas to a retail customer, consisting of natural gas distribution services and natural gas supply services.

*Billed prices*—The disclosed NGS prices on the customer bill.

*Billing month*—A period of not less than 26 days and not more than 35 days.

*City gate*—The point where interstate pipelines deliver gas into NGDC facilities.

\* \* \* \* \*

**§ 62.75. Disclosure statement for residential and small business customers.**

\* \* \* \* \*

(c) The disclosure statement’s terms of service shall be disclosed, including the following terms and conditions, if applicable:

(1) Commodity charges shall be disclosed according to the actual prices and be presented in the standard pricing unit of the NGDC or other Commission-approved standard pricing unit. Commodity charges shall include estimated total state taxes. Commodity charges exclude State Sales Tax and county tax.

(2) The variable pricing statement (if applicable) shall include:

(i) Conditions of variability (state on what basis prices will vary) including the NGS’s specific prescribed variable pricing methodology.

(ii) The starting price and the ceiling price, if the ceiling price is applicable.

(iii) **If there is not a limit on price variability, the NGDC shall provide a clear and conspicuous statement that there is not a limit on how much the price may change from one billing cycle to the next.**

(iv) **The price to be charged, per billing unit, for the first billing month of service.**

(v) **A description of when the customer will receive notification of price changes.**

(vi) **A telephone number and Internet address at which a customer may obtain the previous 24 months’ average monthly billed prices for that customer’s rate class and NGDC service territory. If an NGS has not been providing service in a rate class and NGDC service territory for 24 months, the NGS shall provide the average monthly billed prices for the months available to date.**

(vii) **In plain language, a statement that historical pricing is not indicative of present or future pricing.**

(3) An itemization of basic and nonbasic charges distinctly separate and clearly labeled.

(4) The length of the agreement, which includes:

(i) The starting date.

(ii) The expiration date, if applicable.

(5) An explanation of sign-up bonuses, add-ons, limited time offers, other sales promotions and exclusions, if applicable.

(6) An explanation of prices, terms and conditions for special services, if applicable.

(7) The cancellation provisions, if applicable. **[ When a customer moves from one location to another, even if the move is within an NGDC’s service territory, the agreement is cancelled. ]**

(8) The renewal provisions, if applicable. **[ Automatic renewal is allowed at the same terms and conditions as long as the new agreement is month-to-month.**

**(9) The name and telephone number of the supplier of last resort.**

**(10) ] (9) An explanation of limits on price variability, penalties, fees or exceptions, printed in type size larger than the type size appearing in the terms of service. Penalties shall be disclosed in actual dollars or a specific method for determining the actual dollars shall be disclosed.**

**[ (11) ] (10) Customer contact information that includes the name of the [ NGDC and NGS, and ] NGS, the NGS’s address, telephone number, Commission license number and Internet address, if available. The NGS’s information shall appear first and be prominent.**

**[ (12) A statement that directs a customer to the Commission if the customer is not satisfied after**

discussing the terms of service contained in the disclosure statement with the NGS.

(13) The name and telephone number for universal service program information. ]

(11) A statement providing that information about shopping for a gas supplier is available at [www.PaGasSwitch.com](http://www.PaGasSwitch.com) or other successor media platform as determined by the Commission.

(d) Customers shall be provided a 3-day right of rescission period following receipt of the disclosure statement from the NGS.

\* \* \* \* \*

(g) Disclosure statements shall include the following customer notification:

[ (1) “If you have a fixed term agreement with us that is longer than 3 months and it is approaching the expiration date, we will send you advance written notices at about 90 days and 60 days before the expiration date. If we propose to change our terms of service in any type of agreement, we will send you advance written notices at about 90 days and 60 days before the effective date of the change. If we are billing you directly for our services, then we will provide the notices as a bill message, a bill insert, or in a separate corresponding mailing. If the NGDC is billing our charges for us, then we will provide the notices in separate corresponding mailings. We will explain your options to you in these two advance notifications.”

(2) The NGS may add appropriate language in the notice so that the notice may serve as an amendment to the original agreement if the customer affirmatively reselects the NGS. Affirmative reselection occurs when the customer initiates a telephone call to the NGS and during the conversation the customer accepts the new offer, the NGS initiates a telephone call to the customer and during the conversation the customer accepts the new offer, the customer accepts the new offer by signing a document and returning it to the NGS, or the customer acknowledges the acceptance of the new offer electronically, perhaps by checking a box on a form on the NGS’s website. These are offered as examples and are not meant to be all inclusive. After a customer affirmatively reselects the NGS, the NGS is relieved of its obligation to fulfill outstanding notice requirements. If the change in terms notice is for a reduction in the price of the commodity charges, the NGS is required to send only one written notice at least 60 but not more than 90 days prior to the effective date of the price change. A fixed term agreement may be converted to a month-to-month agreement, either at the same terms and conditions or at revised terms and conditions, as long as the agreement converts from a fixed term to a month-to-month agreement and contains no cancellation penalties, in the event that the customer does not respond to the notice. A fixed term agreement may be converted to another fixed term agreement as long as the new agreement includes a customer initiated cancellation provision that allows the customer to cancel at any time for any reason and contains no cancellation penalties, in the event that the customer does not respond to the notice. ]

“If you have a fixed duration contract approaching the expiration date, or whenever we propose to

change the terms of service in any type of contract, you will receive two separate written notifications that precede either the expiration date or the effective date of the proposed changes. These notifications will explain your options going forward.”

(h) If the supplier of last resort changes, the new supplier of last resort shall notify customers of that change, and shall provide customers with the name, address, telephone number and Internet address, if available.

(i) The NGS shall provide, with the disclosure statement, a separate NGS contract summary in a format provided by the Commission.

(j) If the contract is assignable, the NGS shall inform the customer accordingly.

(Editor’s Note: The following section is new and printed in regular type to enhance readability.)

**§ 62.81. Notice of contract expiration or change in terms for residential and small business customers.**

(a) An NGS shall provide the following notices to customers prior to the expiration of a fixed duration contract or prior to a change in contract terms:

(1) An initial notice shall be provided to each affected customer 45 to 60 days prior to the expiration date of the fixed duration contract or the effective date of the proposed change in terms. For a customer who has elected to receive electronic communications from the NGS, the notice shall be transmitted in the manner chosen by the customer. The initial notice must include:

- (i) A general description of the proposed change in terms of service.
- (ii) The date a change shall be effective or when the fixed duration contract is to expire.
- (iii) An explanation of why a change in contract terms is necessary.
- (iv) A statement indicating when a follow-up options notice shall be issued with details regarding the proposed change.
- (v) A statement explaining that the options notice must discuss the customer’s options to the proposed change in terms of service or expiring fixed duration contract.
- (vi) A statement indicating whether the existing fixed duration contract has a cancellation fee and an explanation of the fee amount and how to avoid the fee, if possible, including notice of the date when the customer can choose a different product from the customer’s existing NGS, choose an alternative NGS or return to the supplier of last resort.

(2) An options notice shall be provided by first class mail to each affected customer at least 30 days prior to the expiration date of the fixed duration contract or the effective date of the proposed change in terms. The options notice must include:

- (i) A statement advising the customer of the specific changes being proposed by the NGS and informing the customer of how to exercise the customer’s options, including the customer’s ability to accept the proposed changes, to choose another product offering from the customer’s existing NGS, to select another NGS or to return to the supplier of last resort.
- (ii) Information regarding the new price or renewal price, including the price to be charged for the first billing month of commodity service.

(A) If a customer fails to respond to the options notice and is converted to a month-to-month contract, the NGS shall provide a disclosure statement under § 62.75 (relating to disclosure statement for residential and small business customers).

(I) Notice of a subsequent change in price shall be provided to the customer at least 30 days prior to the new price being charged.

(II) For a customer who has elected to receive electronic communications from the NGS, notice of the change in pricing shall be transmitted in the manner chosen by the customer. For other customers, notice shall be provided by first class mail.

(B) If a customer fails to respond to the options notice and is entered into a new fixed duration contract, the NGS shall provide the price to be charged and the length of the contract.

(C) The telephone numbers and Internet addresses, as applicable, for the Office of Consumer Advocate, the Commission and PaGasSwitch.com.

(D) Language clearly visible on the front of the envelope used to provide the options notice stating that it contains important information regarding the expiration or changes in terms of the customer's natural gas supply contract.

(b) When a customer fails to respond to the initial notice and the options notice, the following apply:

(1) A fixed duration contract shall be converted to one of the following:

(i) A month-to-month contract, either at the same terms and conditions or at revised terms and conditions, as long as the contract does not contain cancellation fees.

(ii) Another fixed duration contract, as long as the new contract includes a customer-initiated cancellation provision that allows the customer to cancel at any time, for any reason, and does not contain cancellation fees.

(2) The converted contracts shall remain in place until the customer chooses one of the following options:

(i) Selects another product offering from the existing NGS.

(ii) Enrolls with another NGS.

(iii) Returns to the supplier of last resort.

[Pa.B. Doc. No. 15-1051. Filed for public inspection June 5, 2015, 9:00 a.m.]

## DEPARTMENT OF TRANSPORTATION

[ 67 PA. CODE CH. 71 ]

### School Bus Drivers

The Department of Transportation, under the authority in 75 Pa.C.S. §§ 1504, 1508, 1508.1, 1509, 1517, 1518 and 6103, proposes to amend §§ 71.2 and 71.3 (relating to definitions; and physical examination) to read as set forth in Annex A.

#### *Purpose of Chapter*

The purpose of Chapter 71 (relating to school bus drivers) is to define more fully the requirements of 75

Pa.C.S. § 1509 (relating to qualifications for school bus driver endorsement) by listing minimum medical requirements for school bus drivers.

#### *Purpose of the Proposed Amendments*

The purpose of the proposed amendments to §§ 71.2 and 71.3 is to: 1) separate two medical conditions (seizure and loss of consciousness) that are currently linked in the school bus driver medical regulations; and 2) update the medical requirements and standards for school bus drivers to ensure they meet the field of vision standards established in accordance with the most current recommendations from the Department's Medical Advisory Board (Board). These proposed amendments will ensure that only school bus drivers who meet appropriate medical standards, established in accordance with the most current medical research as communicated to the Department by the Board, are transporting school children on school buses in this Commonwealth.

#### *Summary of Significant Amendments*

Proposed amendments to § 71.2 add definitions for "seizure" and "seizure disorder." These definitions mirror the definitions of these terms in Chapter 83 (relating to physical and mental criteria, including vision standards relating to the licensing of drivers).

Section 71.3(b)(1)(iv) is proposed to be amended to disqualify individuals who have a binocular visual field defect of 30 contiguous degrees or more. The Department will make an exception to this disqualification if the individual's health care provider verifies in writing that the individual's otherwise disqualifying condition does not pose a risk to the individual's ability to safely drive a school bus and the individual also demonstrates appropriate visual compensation through a knowledge and driving skills evaluation administered by the Department.

Section 71.3(b)(10) is proposed to be amended to specifically address seizure disorders and delete the reference to "another condition likely to cause loss or impairment of consciousness or loss of ability to drive a school bus safely" because proposed § 71.3(b)(15) specifically addresses an episode of loss of consciousness.

Proposed § 71.3(b)(15) adds criteria regarding loss of consciousness. Current § 71.3(b)(15) is renumbered as proposed § 71.3(b)(16).

#### *Persons and Entities Affected*

This proposed rulemaking will affect licensed school bus drivers and individuals interested in being licensed to be a school bus driver, as these individuals will have to meet amended field of vision and loss of consciousness standards based on the most current recommendations from the Board.

#### *Fiscal Impact*

Implementation of this proposed rulemaking will not require the expenditure of additional funds by the Commonwealth or local municipalities. This proposed rulemaking will not impose additional costs on the medical community. Individuals intending to obtain or maintain a school bus driver's license will be required to submit to a field of vision test as part of their annual vision testing.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 21, 2015, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairper-

sons of the House and Senate Transportation Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

*Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* following the appropriate evaluation of comments, suggestions or objections received during the public comment period.

*Sunset Date*

The Department is not establishing a sunset date for these regulations, as the regulations are needed to administer provisions required under 75 Pa.C.S. (relating to Vehicle Code). The Department will continue to closely monitor these regulations for their effectiveness, in coordination with the Board.

*Public Comments*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Kara N. Templeton, Director, Bureau of Driver Licensing, P. O. Box 68676, Harrisburg, PA 17106-8676, ktempleton@pa.gov within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

*Contact Person*

The contact person for technical questions about this proposed rulemaking is Laura Krol, Acting Manager, Driver Safety Division, Department of Transportation, Bureau of Driver Licensing, P. O. Box 68676, Harrisburg, PA 17106-8676, (717) 787-2977, lkrol@pa.gov.

LESLIE S. RICHARDS,  
*Secretary*

**Fiscal Note:** 18-435. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 67. TRANSPORTATION**

**PART I. DEPARTMENT OF TRANSPORTATION**

**Subpart A. VEHICLE CODE PROVISIONS**

**ARTICLE IV. LICENSING**

**CHAPTER 71. SCHOOL BUS DRIVERS**

**§ 71.2. Definitions.**

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

\* \* \* \* \*

*School transportation medical practitioner*—A licensed physician, physician assistant, certified registered nurse practitioner or chiropractor appointed or approved by a school board, or by the authorities responsible for operation of a private or parochial school. The same person

may be appointed or approved as both school transportation medical practitioner and school medical practitioner.

**Seizure**—A paroxysmal disruption of cerebral function characterized by altered consciousness, altered motor activity or behavior identified by a licensed physician as inappropriate for the individual.

**Seizure disorder**—A condition in which an individual has experienced either of the following:

- (i) A single seizure of electrically diagnosed epilepsy.
- (ii) More than one seizure not including seizures resulting from an acute illness, intoxication, metabolic disorder or trauma.

*Symptomatic hyperglycemia*—High glucose levels in the blood that have caused a loss of consciousness or an altered state of perception, including, but not limited to, decreased reaction time, impaired vision or hearing, or both, or confusion.

\* \* \* \* \*

**§ 71.3. Physical examination.**

\* \* \* \* \*

(b) *Requirements of physical examination.* [ A person ] An individual is physically qualified to drive a school bus if the [ person ] individual:

(1) Meets the following visual requirements **without the aid of telescopic and prism lenses:**

(i) Has distant visual acuity of at least 20/40 in the better eye without corrective lenses or visual acuity corrected to 20/40 or better.

(ii) Has at least 20/50 in the poorer eye without corrective lenses or visual acuity corrected to 20/50 or better.

(iii) Has distant binocular acuity of at least 20/40 in both eyes with or without corrective lenses.

(iv) Has a combined field of vision of at least 160[ ° in ] degrees in extent along the horizontal meridian, [ excepting the normal blind spots. ] provided that an individual who has a binocular visual field defect of 30 contiguous degrees or more may not drive unless the following conditions are satisfied:

(A) The individual's health care provider verifies in writing that the individual's condition does not pose a risk to the individual's ability to safely drive.

(B) The individual demonstrates appropriate visual compensation through a knowledge and driving skills evaluation administered by the Department.

(v) Has the ability to determine the colors used in traffic signals and devices showing standard red, green, or amber.

\* \* \* \* \*

(10) Has no established medical history or clinical diagnosis of seizure disorders [ or another condition likely to cause loss or impairment of consciousness or loss of ability to drive a school bus safely ]. A waiver may be granted to an individual provided:

[ (i) A waiver may be granted to these persons provided:

(A) ] (i) There has been no more than a single, nonrecurring episode of altered consciousness or loss of bodily control, occurring at least 2 years preceding application, which did not require treatment.

[ (B) ] (ii) A seizure disorder has been diagnosed, but the person has been episode-free for at least 5 years preceding application and has not required treatment for at least 5 years preceding application.

\* \* \* \* \*

(14) Has no type of tuberculosis in a transmittable stage and has taken the tuberculin test every 2 years as required by section 1418(b) of the Public School Code of 1949 (24 P. S. § 14-1418(b)).

(15) Has not had an episode of loss of consciousness, which is of unknown etiology or not otherwise categorized, within the previous 12 months.

[ (15) ] (16) Has no other condition which in the opinion of the examining physician is likely to impair the ability to drive a school bus safely.

(c) *Physical examination certificate.* The examining school transportation medical practitioner, physician, chiropractor, CRNP or physician assistant shall issue a certificate, valid for the ensuing year, to every driver who passes a physical examination.

\* \* \* \* \*

[Pa.B. Doc. No. 15-1052. Filed for public inspection June 5, 2015, 9:00 a.m.]

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