

# RULES AND REGULATIONS

## Title 22—EDUCATION

### STATE BOARD OF EDUCATION

[ 22 PA. CODE CH. 18 ]

#### Financial Recovery

The State Board of Education (Board) adopts Chapter 18 (relating to financial recovery) to read as set forth in Annex A.

#### *Statutory Authority*

The Board is acting under the authority of section 621-A(a)(2)(i) of the Public School Code of 1949 (School Code) (24 P.S. § 6-621-A(a)(2)(i)).

#### *Purpose*

This final-form rulemaking establishes criteria the Secretary of Education (Secretary) may consider in determining whether to place a school district in financial recovery status and provides guidance to the Secretary in determining whether a district would be deemed in either moderate or severe recovery status.

#### *Background*

The act of July 12, 2012 (P.L. 1142, No. 141) (Act 141) added section 621-A(a)(2)(i) of the School Code, which identifies 15 criteria the Secretary may consider in determining whether to issue a declaration that a school district is in financial recovery status. Section 621-A of the School Code also directs the Board to promulgate regulations that establish additional criteria the Secretary may consider in determining whether to issue a declaration of financial recovery status and whether a financial recovery school district should be deemed in either moderate or severe recovery status.

In promulgating the regulations mandated by Act 141, the Board was required under section 621-A(a)(2)(ii)(A) of the School Code to convene and consult with a Statewide Advisory Committee (Committee) comprised of representatives of the Department of Education (Department), the Governor's Office of the Budget, and a superintendent, school board member and school business official representative of urban, rural and suburban school districts. The Committee met four times in 2012 to develop draft proposed regulations for the Board's consideration. The Committee meetings were open to the public and public comment was invited at each meeting.

From its first meeting on September 6, 2012, through the conclusion of its deliberations on December 6, 2012, the Committee worked in conjunction with the Board's Standing Committee on Financial Recovery (Standing Committee). Updates on the development of the draft regulations were reported to the full Board at its public meetings on September 13, 2012, and November 15, 2012. In addition, the full Board reviewed and considered the draft regulations at two additional public meetings in 2013, and reviewed and considered final regulations at its public meeting on November 13, 2014. Opportunity for public comment was part of the agenda at each of the Board's public meetings.

In the early stages of its deliberations, the Committee reviewed its statutory charge and received a presentation on Act 141 so that Committee members had a comprehensive understanding of how their work fit into the broader system of supports for struggling school districts estab-

lished by the General Assembly. This included receiving a presentation on the new Early Warning System developed by the Department to identify districts that show indications of financial challenges and provide them with technical assistance early on in the hopes that their challenges may be addressed before a declaration of financial recovery status would become necessary.

In the next stage of its deliberations, the Committee reviewed approaches used by other states to identify school districts facing financial challenges and discussed whether criteria used by those states were factors that should be included in the Board's regulations. In total, the Committee reviewed relevant policies from Michigan, California, Texas, Florida, Arizona and Illinois. The Committee also reviewed other Commonwealth laws concerning financially distressed entities to be better informed regarding the criteria used in other Commonwealth policies to classify distressed local governments.

Upon receiving the Committee's recommendation on Chapter 18, the Standing Committee held a public meeting on January 9, 2013, and adopted amendments to further refine areas where the Standing Committee felt the Committee's recommendation needed greater clarity. Proposed Chapter 18, as approved by the Standing Committee, was then presented for additional input by both the Board's Council of Basic Education (Council) at its public meeting on January 9, 2013, and the full Board at its public meeting on January 10, 2013. Both the Council and the Board provided an opportunity for public comment prior to approval of the proposed rulemaking.

Subsequently, the Board withdrew its proposed rulemaking to engage in continued discussion of the criteria identified for the Secretary's consideration. On November 14, 2013, the Board discussed and approved a revised proposed rulemaking that removed criteria that were identified as being duplicative and, therefore, unnecessary. An additional opportunity for public comment was made available prior to the Board's consideration of the revised proposed rulemaking at its public meeting on November 14, 2013.

Notice of proposed rulemaking was published at 44 Pa.B. 4514 (July 19, 2014). The public comment period closed on August 18, 2014. The Board reviewed Chapter 18 and adopted it as a final-form rulemaking with minor clarifying technical revisions at the Board's public meeting on November 13, 2014.

#### *Public Comments on the Proposed Rulemaking*

The Pennsylvania School Boards Association (PSBA) submitted comments on the proposed rulemaking in a letter to the Board dated August 13, 2014. PSBA's letter was the only comment that the Board received during the public comment period. PSBA expressed support for the rulemaking. PSBA also suggested the addition of language to § 18.2 (relating to purpose) stating that no weighting of the 18 criteria in the rulemaking may be inferred and that one specific criterion may not be used to make a declaration of recovery status. Act 141 did not include these types of stipulations. The Board believes that these stipulations are unnecessary in the regulations and contrary to the intent of Act 141 and the Board.

A statement that no weighting of the criteria may be inferred could be misinterpreted so as to render each criterion equal to the others. Hence, the suggested language could undermine the Board's intent of not assign-

ing weight to individual criteria. Section 621-A(a)(2)(i) of the School Code states the Secretary “may consider” the criteria in determining whether to issue a declaration. Hence, the Secretary is given the authority to use discretion concerning the criteria. There is not language stating the criteria are all equal. Given the number and variety of school districts across this Commonwealth, each with its unique financial conditions, it would not be prudent to limit the ability of the Secretary to determine and address the financial conditions in a particular district.

The Independent Regulatory Review Commission (IRRC) also submitted comments, which the Board received on September 17, 2014. After noting that Act 141 directs the Board to promulgate regulations establishing additional criteria, IRRC questioned whether the three new criteria in regulations were consistent with the intent of Act 141. IRRC asked if the Board consulted with the General Assembly to determine if the three additional criteria satisfy the mandate of Act 141.

The Chairpersons of the House and Senate Education Committees (Committees) are members of the Board ex officio. Through this statutorily prescribed structure, the Board was in continuous communication with relevant policy leaders of the General Assembly concerning its activities in developing this final-form rulemaking. As previously noted, the Board reviewed the development of Chapter 18 at five different public meetings. The Board shared copies of the rulemaking with the Committee Chairpersons as it was being reviewed and approved by the Board, and as required under the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

#### *Provisions of the Final-Form Rulemaking*

This final-form rulemaking is virtually identical to the proposed rulemaking. There are not substantive revisions. Ten minor changes were made to clarify and streamline the text. More than half of these minor revisions are in § 18.3 (relating to definitions). The revisions streamline definitions by deleting text that repeats the definitions in 602-A of the School Code (24 P.S. § 6-602-A) and conforms Chapter 18 to regulatory drafting standards by referring to the citation when definitions exist in statute. The changes also add a clarifying reference to the *Manual of Accounting and Related Financial Procedures for Pennsylvania School Systems* to the definition of “total annual expenditures.”

In response to a tolling memo submitted by the Office of Attorney General on the proposed rulemaking, the Board also added a reference to section 621-A(a)(2) of the School Code in § 18.7 (relating to moderate and severe recovery status for declarations issued under section 621-A(a)(2) of the School Code) to clarify the scope and purpose of this section. The addition of the cross-reference makes it more explicit that § 18.7 applies only in circumstances when the Secretary has discretion in determining whether to declare a school district to be in financial recovery status after considering the criteria in § 18.5 (relating to issuance of declaration under section 621-A(a)(2) of the School Code).

As noted in the proposed rulemaking, the regulations include provisions from Act 141 for completeness. The final-form rulemaking implements section 621-A of the School Code and includes: procedures for issuance of a declaration of the financial recovery status of a school district by the Secretary; the 18 criteria that the Secretary may consider in determining whether to issue a declaration; the statutory limitation that no more than 9

districts may be declared to be in financial recovery status or in receivership at any time; and delineations of when a district is in moderate or severe recovery status.

Section 18.8 (relating to appeal) refers to section 621-A(c) of the School Code, which states that declarations of financial recovery status are subject to appeal under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law). This is included for completeness.

#### *Affected Parties*

This final-form rulemaking will guide the decision making of the Secretary and affect work of the Department’s staff.

#### *Cost and Paperwork Estimates*

The Commonwealth incurred one-time costs of \$75,000 in Fiscal Year 2012-2013 to develop, populate and reconcile models to be used by the Department for information collected relevant to the Department’s Early Warning System. These models also can be applied to criteria identified in this final-form rulemaking.

This final-form rulemaking also establishes new responsibilities for the Secretary and staff of the Department. The Department estimates it will incur an annual cost of \$738,950 to support staffing necessary to carry out new responsibilities related to collecting and analyzing information pertaining to the criteria in this final-form rulemaking and to undertake certain legal procedures. Based on the Governor’s proposed General Government Operations appropriation, the Department will redirect current resources to absorb these costs and carry out its statutory obligations with no additional funds.

#### *Effective Date*

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

#### *Sunset Date*

The Board will review the effectiveness of Chapter 18 every 4 years in accordance with the Board’s policy and practice respecting its regulations. Therefore, a sunset date is not necessary.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 8, 2014, the Board submitted a copy of the notice of proposed rulemaking, published at 44 Pa.B. 4514, to IRRC and the Chairpersons of the Committees on for review and comment.

Under section 5(c) of the Regulatory Review Act, the Board shall submit to IRRC and the House and Senate Committees copies of comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on June 29, 2016, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 30, 2016, and approved the final-form rulemaking.

#### *Contact Person*

For information about Chapter 18, contact Karen Molchanow, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 787-3787.

*Findings*

The Board finds that:

(1) Public notice of the intention to adopt this final-form rulemaking was given under 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, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking is necessary and appropriate for the administration of the School Code.

*Order*

The Board, acting under the authorizing statute, orders that:

(a) The regulations of the Board, 22 Pa. Code, are amended by adding §§ 18.1—18.8 to read as set forth in Annex A.

(b) The Chairperson of the Board will submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.

(c) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order is effective upon publication in the *Pennsylvania Bulletin*.

KAREN MOLCHANOW,  
*Executive Director*

*(Editor’s Note: See 46 Pa.B. 3894 (July 16, 2016) for IRRC’s approval order.)*

**Fiscal Note:** 6-329. (1) General Fund; (2) Implementing Year 2016-2017 is \$739,000; (3) 1st Succeeding Year 2017-18 through 5th Succeeding Year 2021-22 are \$739,000; (4) 2015-16 Program—N/A; 2014-15 Program—N/A; 2013-14 Program—N/A; (7) General Government Operations (Department of Education); (8) recommends adoption. The Department of Education General Government Operations appropriation, as proposed in 2016-17, is able to absorb the increased cost.

**Annex A**

**TITLE 22. EDUCATION**

**PART I. STATE BOARD OF EDUCATION**

**Subpart A. MISCELLANEOUS PROVISIONS**

**CHAPTER 18. FINANCIAL RECOVERY**

Sec.	
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18.6.	Limitation.
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18.8.	Appeal.

**§ 18.1. Statutory authority.**

The statutory authority for this chapter is section 621-A(a)(2) of the School Code (24 P.S. § 6-621-A(a)(2)).

**§ 18.2. Purpose.**

Consistent with section 621-A(a)(2) of the School Code (24 P.S. § 6-621-A(a)(2)), the purpose of this chapter is to establish criteria that the Secretary may consider in

determining whether to issue a declaration that a school district is in financial recovery status, and whether a school district in financial recovery status is in moderate or severe recovery status.

**§ 18.3. Definitions.**

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

*Average daily membership*—The final average daily membership of a school district as most recently determined by the Department in accordance with procedures established by the Secretary under section 2501(3) of the School Code (24 P.S. § 25-2501(3)).

*Claim*—The term as defined in section 602-A of the School Code (24 P.S. § 6-602-A).

*Deficit*—The term as defined in section 602-A of the School Code.

*Expenditures*—The term as defined in section 602-A of the School Code.

*Financial recovery school district*—The term as defined in section 602-A of the School Code.

*Fixed costs*—Expenditures for utility services, insurance-general, communications, energy and debt service as defined in the *Manual of Accounting and Related Financial Procedures for Pennsylvania School Systems*.

*Fund equity*—The term as defined in section 602-A of the School Code.

*Revenues*—The term as defined in section 602-A of the School Code.

*School Code*—The Public School Code of 1949 (24 P.S. §§ 1-101—27-2702).

*School district*—The term as defined in section 602-A of the School Code.

*Total annual expenditures*—

(i) Reductions in fund equity (including current operating expenses that require the use of fund equity), debt service and capital outlays (including all governmental fund types and all proprietary fund types) as defined in the *Manual of Accounting and Related Financial Procedures for Pennsylvania School Systems*, excluding all fiduciary fund types of the school district.

(ii) The term does not include interfund transfers.

*Unassigned fund balance*—Amounts available for any purpose within the general fund only as defined in the *Manual of Accounting and Related Financial Procedures for Pennsylvania School Systems*.

**§ 18.4. Issuance of declaration under section 621-A(a)(1) of the School Code.**

(a) As provided by section 621-A(a)(1) of the School Code (24 P.S. § 6-621-A(a)(1)), the Secretary will issue a declaration that a school district is in financial recovery status when either of the following applies:

(1) The school district has an average daily membership over 7,500 and receives an advance of its basic education subsidy at any time.

(2) The school district receives an advance of its basic education subsidy at any time and either of the following applies:

(i) The school district is subject to a declaration of financial distress under section 691 of the School Code (24 P.S. § 6-691).



(ii) The school district is engaged in litigation against the Commonwealth in which the school district seeks financial assistance from the Commonwealth to allow the school district to continue in operation.

(b) As provided by section 621-A(a)(1)(ii)(B) of the School Code, the Secretary may decline to issue a declaration that a school district is in financial recovery status when the Secretary determines that the school district, within the previous 5 years, has faced an emergency that caused the occurrence of a circumstance in subsection (a).

(c) As provided by section 621-A(b) of the School Code, a school district will not be declared in financial recovery status if the circumstances in subsection (a) have been caused by the failure of the Commonwealth to make a payment of money due to the school district at the time the payment is due, including payment of Federal funding that is distributed through the Commonwealth.

**§ 18.5. Issuance of declaration under section 621-A(a)(2) of the School Code.**

(a) Consistent with section 621-A(a)(2)(i) of the School Code (24 P.S. § 6-621-A(a)(2)(i)), the Secretary may consider the following criteria when determining whether to issue a declaration that a school district is in financial recovery status:

(1) The school district receives at least 85% of its per pupil funding from the Commonwealth and collects less than 50% of local taxes levied to fund the school district.

(2) The school district's unreserved fund balance has declined for 3 consecutive years and is less than 5% of the school district's annual expenditures. As used in this paragraph, a school district's unreserved fund balance means the school district's unassigned fund balance.

(3) The school district's fixed costs are at least 30% of the school district's total annual expenditures.

(4) The school district's total outstanding debt is greater than the school district's total annual expenditures.

(5) The salaries of teachers or other employees of the school district are unpaid at least 15 days after payment is due.

(6) The school district is subject to withholding of its State appropriation under section 633 of the School Code (24 P.S. § 6-633).

(7) The school district is subject to withholding of its State appropriation under section 785 of the School Code (24 P.S. § 7-785).

(8) The school district is subject to withholding of its State appropriation under 53 Pa.C.S. § 8283(c) (relating to remedies).

(9) The school district has defaulted on the payment of a debt due to a school district, intermediate unit or charter school that remains unpaid on or after January 1 of the year following the school year it was due and there is not a dispute regarding the validity or amount of the claim.

(10) The school district's assigned and unassigned total fund balance is less than zero in the school district's general fund.

(11) The school district's assigned and unassigned total fund balance in the school district's general fund as a percentage of total expenditures is less than 3%.

(12) The school district experiences a delinquent tax rate of more than 10%.

(13) The assessed valuation of taxable real estate in the school district, as certified by the State Tax Equalization Board, has not increased over the previous 5 years.

(14) An amount due a joint board of school directors under a joint board agreement remains unpaid beyond the due date specific in the joint board's articles of agreement.

(15) The school district has contracted a loan not authorized by law.

(16) The school district has accumulated and operated with a deficit equal to at least 2% of the assessed valuation of the taxable real estate within the school district for 2 successive school years.

(17) The school district experiences a deficit of 3% or more for 3 consecutive school years resulting in a reduction of unassigned fund balance each year.

(18) A new, merged or union school district has been formed and one or more of the former school districts which compose the merged or union school district was a distressed school district under section 691 of the School Code (24 P.S. § 6-691) or a financial recovery school district under Article VI-A of the School Code (24 P.S. §§ 6-601-A—6-693-A) at the time of the formation of the new, merged or union school district.

(b) As provided by section 621-A(b) of the School Code, a school district will not be declared in financial recovery status if the circumstances in subsection (a) have been caused by the failure of the Commonwealth to make a payment of money due to the school district at the time the payment is due, including payment of Federal funding that is distributed through the Commonwealth.

(c) The Secretary may decline to issue a declaration that a school district is in financial recovery status when the Secretary determines that the school district, within the previous 5 years, has faced an emergency that caused the occurrence of a circumstance in subsection (a).

(d) When the Secretary issues a declaration that a school district is in financial recovery status, the Secretary will specify the criteria in this section that placed the school district in financial recovery status.

**§ 18.6. Limitation.**

(a) As provided by section 621-A(a)(1)(ii)(A) of the School Code (24 P.S. § 6-621-A(a)(1)(ii)(A)), no more than nine school districts may be under a declaration of financial recovery status or in receivership at any time.

(b) The Secretary may not use information that is more than 5 years old when considering criteria under § 18.5 (relating to issuance of declaration under section 621-A(a)(2) of the School Code).

**§ 18.7. Moderate and severe recovery status for declarations issued under section 621-A(a)(2) of the School Code.**

(a) *Moderate recovery status.* The Secretary will issue a declaration that a financial recovery school district is in moderate recovery status under section 621-A(a)(2) of the School Code (24 P.S. § 6-621-A(a)(2)) if the financial recovery school district is not declared by the Secretary in severe recovery status.

(b) *Severe recovery status.* The Secretary will issue a declaration that a financial recovery school district is in severe recovery status under section 621-A(a)(2) of the School Code if the financial conditions of the school district indicate that the school district is unable, or is reasonably unlikely to be able, to fulfill the 180 days of

instruction for pupils requirement provided by section 1501 of the School Code (24 P.S. § 15-1501) for the present school year or for the following school year due to the lack of existing revenue sources and additional revenue sources as are provided by and allowed under law, including the Taxpayer Relief Act (53 P.S. §§ 6926.101—6926.5006).

**§ 18.8. Appeal.**

As provided by section 621-A(c) of the School Code (24 P.S. § 6-621-A(c)), a school district may appeal the Secretary's declaration of financial recovery status under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law).

[Pa.B. Doc. No. 16-1390. Filed for public inspection August 12, 2016, 9:00 a.m.]

**Title 52—PUBLIC UTILITIES**

**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 April 21, 2016, adopted a final 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) amends 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 discusses the disclosure statement and notice requirements that a Natural Gas Supplier (NGS) must provide to customers. The Commission adds new regulations in Section 62.81, which governs the notice requirements that NGSs must provide to residential and small business customers at the end of a contract or when contract term changes are proposed. These enhanced disclosure requirements resulted from the Commission's broader Investigation of Pennsylvania's Retail Natural Gas Supply Market, Docket No. I-2013-2381742 (Final Order entered Dec. 18, 2014) (Gas RMI Final Order). 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, which have not been formally reviewed since being promulgated in April 2001.

Public Meeting held  
April 21, 2016

*Commissioners Present:* Gladys M. Brown, Chairperson; Andrew G. Place, Vice Chairperson; Pamela A. Witmer, statement follows, recusal; John F. Coleman, Jr.; Robert F. Powelson

*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*

**Final Rulemaking Order**

*By the Commission:*

In this Rulemaking Order, the Pennsylvania Public Utility Commission (Commission) finalizes its amended 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 adds 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 finalizes 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).

*Background*

The Public Utility Code requires the Commission to establish regulatory requirements for both NGSs and natural gas distribution companies (NGDCs) to ensure that retail gas supply customers receive accurate information in an understandable format so that customers may make informed choices when purchasing retail gas supply. 66 Pa.C.S. § 2206(c). The Commission's disclosure regulations in the electric industry, 52 Pa. Code §§ 54.5 and 54.10, 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). The electric disclosure rules were expeditiously promulgated in July 2014 in response to the polar vortex events of the winter of 2014.<sup>1</sup>

The natural gas disclosure rules in Section 62.75 were promulgated in April 2001 and have not been formally reviewed since.<sup>2</sup> The Commission has 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, explicit disclosure of limits or the lack of limits on price variability, supplier contract summary pages, and supply contract expiration notice requirements. We believe that both customers and suppliers benefit from substantially consistent cross-industry rules. 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>

<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 April 3, 2014); see 52 Pa. Code §§ 54.5, 54.10.

<sup>2</sup> See Final Rulemaking Order: Customer Information Disclosure Requirements for Natural Gas Distribution Companies and Natural Gas Suppliers, Docket No. L-0000149 (Adopted November 29, 2000).

<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. L-2014-2409385 (Order entered October 2, 2014).

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 Gas RMI Final Order at 37—40. The Commission directed its 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. *Id.* at 38—40. Accordingly, the Gas RMI Final Order served, in essence, as an Advanced Notice of Proposed Rulemaking Order, enabling the Commission to solicit comments<sup>4</sup> from all parties and then use those comments to frame the issues in a Notice of Proposed Rulemaking Order. On March 26, 2015, the Commission issued that Proposed Rulemaking Order. 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, Docket No. L-2015-2465942 (entered March 26, 2015) (hereinafter Proposed Rulemaking Order).

As required by the Regulatory Review Act (71 P.S. § 745), the Proposed Rulemaking Order, Executive Summary thereof, and the Regulatory Analysis Form were submitted to the Office of Attorney General and the Office of Budget on April 15, 2015, receiving approval by the Attorney General as to form and legality on May 8, 2015. The Proposed Rulemaking Order, Executive Summary, and Regulatory Analysis Form were submitted on May 20, 2015, to the Independent Regulatory Review Commission (IRRC), the Legislative Reference Bureau, and the legislative committees. See 71 P.S. § 745.5a; 1 Pa. Code § 305.1. The Legislative Reference Bureau published the Proposed Rulemaking Order in the *Pennsylvania Bulletin*, providing for a 30-day public comment period. 45 Pa.B. 2705 (June 6, 2015).

#### *Comments to the Proposed Rulemaking Order*

As a preliminary matter, the Commission notes that there are three versions of Annex A. The first version is Annex A to the Commission's Proposed Rulemaking Order Entered on March 26, 2015, available on the Commission's website at [www.puc.pa.gov/pcdocs/1349995.docx](http://www.puc.pa.gov/pcdocs/1349995.docx). The second version is proposed-form Annex A, which was published in the *Pennsylvania Bulletin* on June 6, 2015. 45 Pa.B. 2705. The third is final-form Annex A, which is attached to this Final Rulemaking Order. Of importance, Annex A available on the Commission's website and proposed-form Annex A as published in the *Pennsylvania Bulletin* differ in their treatment of proposed Section 62.81. Comments to the Proposed Rulemaking Order were filed by the Office of Consumer Advocate (OCA); the Public Utility Law Project (PULP); WGL Energy Services, Inc. (WGL Energy or WGL); the Pennsylvania Energy Marketers Coalition (PA Marketers); the National Energy Marketers Association (National Marketers); the Retail Energy Supply Association (RESA); and IRRC. Of those who commented on Section 62.81, IRRC, RESA and PULP referred to proposed-form Annex A as published in the *Pennsylvania Bulletin*, while OCA, WGL and NEMA referred to Annex A available on the Commission's website. The Commission believes that the commentators were clear in their references to Section 62.81, and for

<sup>4</sup> Comments to the Gas RMI Final Order, pertaining to disclosure statement requirements in the gas industry, were filed by Columbia Gas of PA; Dominion Retail, Inc. d/b/a Dominion Energy Solutions; Shipley Choice, LLC d/b/a Shipley Energy; Rhoads Energy Corp. and AMERlgreen Energy; the National Energy Marketers Association; the Office of Consumer Advocate; PECO Energy Company; Peoples Natural Gas Company LLC and Peoples TWP LLC; Philadelphia Gas Works; the Retail Energy Supply Association; UGI Distribution Companies; Valley Energy, Inc.; and WGL Energy Services, Inc.

ease of review we will refer in this document to proposed-form Annex A as published in the *Pennsylvania Bulletin*.

Per the Commonwealth Documents Law, we reviewed the comments, which we will summarize and discuss, as necessary and applicable, to explain the determination of our final-form regulations. See 45 P.S. § 1202.

First, we will summarize IRRC's comments. Next, we will organize our summaries of comments into five main subject areas: 1) Regulation Uniformity, Variable Pricing, and Historical Pricing Information in the Disclosure Statement; 2) Disclosure Statement Customer Notification Requirements; 3) Contract Summaries; 4) Supplier Requests for Commission Review of Contract Terms; and 5) Notices Regarding Contract Expiration or Changes in Terms. In the Discussion section of this Order, we will provide dispositions of the comments in finalizing the changes to our specific regulatory provisions.

#### *IRRC's Comments*

In finalizing this rulemaking, IRRC asks the Commission to provide more details as to the costs and expenses pertaining to the rulemaking in the Regulatory Analysis Form submitted to IRRC with the final rulemaking. IRRC Comments at 1.

As to proposed Section 62.72, IRRC asks the Commission to ensure that terms such as billing cycle and billing month are clear, consistent, and unambiguous. *Id.* at 2.

As to proposed Section 62.75(c)(2)(iii), IRRC asks the Commission to ensure that the specific requirements for the variable pricing statement are clear to the regulated community. As to proposed Section 62.75(c)(2)(iv), IRRC recommends that the Commission revise the final-form regulation to require the NGS to state the guaranteed length of time that the starting price will be in effect and to require the NGS to provide the price to be charged, per billing unit, for the first month of service after the introductory period. IRRC Comments at 2-3. As to proposed Section 62.75(c)(2)(v), IRRC recommends that the Commission specify not just "when," but "how" a customer will receive notification of price changes. *Id.* at 3. IRRC recommends deleting "The NGS's information shall appear first and be prominent" from proposed Section 62.75(c)(10), finding it unnecessary. *Id.* As to proposed Section 62.75(c)(11), IRRC asks the Commission to consider keeping the language about Commission contact information, should a customer have a concern about the NGS disclosure statement. *Id.* at 3-4. Similarly, IRRC asks the Commission to consider retaining the universal service program information in Section 62.75(c)(13) or explaining why it should be removed. *Id.*

As to proposed Section 62.75(i), IRRC asks the Commission to explain in the final rulemaking how the regulated community could access the contract summary and how the regulated community would be made aware of any contract summary changes. IRRC Comments at 4. As to proposed Section 62.75(j), IRRC recommends that the Commission further require the NGS to provide the customer with notice if the contract is assigned and to include the name and contact information of the new NGS. *Id.* at 5.

As to proposed Sections 62.81(a)(1) and (2), IRRC questions the reasonableness of reducing the existing notice timeframes and recommends that the Commission keep the current timeframes in place until the gas industry moves to accelerated switching. IRRC Comments at 5. IRRC also asks that the Commission clarify the phrase "at least 30 days prior" in Section 62.81(a)(2). *Id.* at 5-6. IRRC also asks for clarification on proposed



Section 62.81(a)(1)(vi). *Id.* at 6. As to Section 62.81(a)(2), IRRC recommends that the Commission revise the final-form regulation to allow a customer to elect to receive the options notice in electronic form as an alternative to first-class mail. *Id.* IRRC asks the Commission to correct and clarify clauses in Sections 62.81(a)(2)(ii)(C) and (D). As to proposed Section 62.81(b), IRRC recommends requiring the disclosure statement to inform the customer as to the possibility of being rolled onto a variable rate plan at the end of a fixed duration contract if the customer does not respond to the notices. *Id.*

*Regulation Uniformity, Variable Pricing, and Historical Pricing Information in the Disclosure Statement: Sections 62.72 and 62.75(c)*

RESA urges the Commission to use this rulemaking as an opportunity to establish a set of fair and balanced rules that adequately protect consumers while not stifling natural gas competition. RESA Comments at 1; see also National Marketers Comments at 1. RESA notes that consistency in the disclosure rules between the electric and natural gas industries is important since unnecessary differences may confuse customers and burden NGSs' operations. RESA Comments at 3. RESA generally agrees with the Commission that modifications should be made to the rules to reflect "lessons learned," and that the electric rules can later be aligned, as necessary, based on the Commission's final determination in this rulemaking. *Id.*

Although we did not propose in the Proposed Rulemaking Order to alter the Section 62.75(c)(2)(ii) requirement that an NGS must provide the starting price in a variable contract, RESA contends that NGSs should not be required to include a starting price in the disclosure statement for a variable price contract. RESA Comments at 2, 4-5. RESA explains that it can be difficult to include a starting price, as some NGSs base their variable prices on the actual costs incurred to purchase natural gas supply in the market. *Id.* at 4. Disclosing the starting price requires those NGSs to estimate future costs and assume the risk for at least one billing cycle. See *id.* In turn, the NGS may need to charge the customer a higher starting price than otherwise necessary to ensure that this risk is covered. *Id.* RESA contends that this could result in an NGS making a business decision not to offer a variable price product or not to offer any products at all. *Id.* at 4-5.

Rather than mandating that NGSs include a starting price in the disclosure statement, RESA believes that the Commission should require NGSs to either include a starting price or prominently disclose to the customer that the starting price will be provided when the first bill is received or through the website of the NGS. RESA Comments at 5. RESA believes this would empower the customer to decide whether or not to switch to an NGS that does not provide the starting price, thereby allowing the market to dictate when and what pricing information is shared. *Id.* Alternatively, if the Commission retains the starting price requirement in the disclosure statement for the first full billing month per existing Section 62.75(c)(2)(ii), RESA urges the Commission to permit this mandate to be fulfilled through the use of a formulaic contract price that enables the customer to calculate the bill using the contract, publicly available rates, or price indices. *Id.* at 5. RESA further stresses that NGSs should be permitted to decide whether ceiling prices are part of their contracts. See *id.* at 2, 6.

RESA explains that advance notice to customers of variable price changes would be very burdensome to

NGSs and unhelpful to customers who will not know about price changes until after receiving their bills. RESA Comments at 6-7. RESA strongly opposes the proposal to provide 24-month historical pricing data, largely based on the proposed disclaimer language itself, "which accurately suggests that the data is essentially meaningless." *Id.* at 7. RESA contends that providing such historical data will more likely confuse and frustrate customers than effectively educate customers. *Id.* at 7. RESA suggests instead that the Commission could require an NGS to share historical information only in the event that a customer requests that kind of historical data. *Id.* at 8. RESA also urges a less stringent requirement wherein NGSs would only need to disclose general historical trends, such as a range of percentages by which prices have changed over the prior two years. *Id.* Moreover, if the Commission maintains the historical data requirement in the final regulations, RESA asks for an express exemption as to the provision of this historical information for an NGS product that is based on a pre-defined pricing formula or on publicly available market indices. *Id.* at 8. RESA notes that new NGSs and those with new variable priced products would not be able to provide this historical data, thereby placing them on uneven footing with incumbent NGSs. *Id.* at 9.

RESA also believes that NGSs should not be required to include a specific prescribed pricing methodology in the disclosure statement, finding that setting forth general conditions of variability is sufficient and consistent with the rules in the electric industry. RESA Comments at 2, 9-10.

In a similar vein to RESA, the National Marketers express concern that the requirement to include the initial starting price will prevent the offering of certain products in the competitive retail natural gas marketplace. National Marketers Comments at 2 (discussing products that utilize NYMEX-plus pricing, where the initial price will likely not be known when the disclosure statement is provided). The National Marketers note that if a competitive variable priced product is linked to the utility default service price, which changes on a quarterly basis, then the NGS will not know or be able to calculate the initial starting price for a contract term beginning after the next quarterly utility default service price change. *Id.* Similar to RESA, the National Marketers contend that disclosing a formulaic contract price should be sufficient to comply with the initial starting price requirement in the variable pricing disclosure statement. *Id.* The National Marketers also assert that changing to a billing month construct instead of a billing cycle construct for the natural gas industry may present operational problems for suppliers and utilities and unnecessarily and negatively impact the pricing structure of competitive products. The National Marketers believe this change in billing system logic would be costly, time-consuming, and unjustified. *Id.* at 3 (further recommending that these changes to the initial starting price requirements may not be prudent until the accelerated switching process and timeline has been fully vetted by stakeholders).

WGL Energy generally supports the uniformity of the disclosure rules between the gas and electric industries, but emphasizes that its comments focus on "recommending enhancement tweaks" and "not broad revisions." WGL Energy Comments at 2-3. WGL Energy also contends that disclosing the initial starting price for a variable priced product is problematic. *Id.* at 4. WGL Energy believes a contract formula or a publicly stated price or an industry index should be sufficient under the rules. *Id.* WGL Energy does not oppose the Commission's proposal in

Section 62.75(c)(2)(ii) requiring the NGS to disclose the ceiling price, if applicable, or the proposal in Section 62.75(c)(2)(iii) to conspicuously state that there are no price limits. *Id.* at 3. WGL also does not oppose a rule that will require NGSs to notify customers when and how they will be informed of future price changes, but does think that requiring advance notice of all price changes would be overly burdensome. *Id.* at 4. WGL suggests permitting NGSs to provide publicly available 24-month historical pricing data “to the extent it exists.” *Id.* at 5. WGL Energy seeks clarification from the Commission on how new NGSs or new products could meet the 24-month historical pricing requirement. *Id.* at 5.

The PA Marketers agree that informing the customer of the risks and benefits of a variable rate product is critical to ensuring that the customer knows what to expect with respect to price changes. PA Marketers Comments at 2. However, the PA Marketers stress that in a truly competitive marketplace NGSs should have the ability to sell an authorized product without discouraging customer interest and understanding. *Id.* The PA Marketers recommend allowing NGSs to include (beyond the “no ceiling statement”) additional educational language that is short, concise, and accurately informs the customer of the potential benefits of a product. *Id.*

The PA Marketers urge the Commission “to chart a middle course between allowing suppliers to only say ‘the variable price will vary’ and requiring a calculable formula based on public indices.” *Id.* at 3. The PA Marketers caution that a specific formula that a customer can use to calculate their bill total for service ahead of receiving the monthly bill may be impossible. *Id.* The PA Marketers explain that the calculation of a variable rate price each month depends on a range of factors: publicly available commodity prices; private factors like hedging and risk mitigation activities; and internal corporate factors (e.g., customer service and operations expenses, legal and regulatory compliance fees, etc.). *Id.* Therefore, the PA Marketers seek flexibility for suppliers who do not have the advantage of cost recovery and reconciliation like the utilities. *Id.*

The PA Marketers ask the Commission to reconsider requiring suppliers to disclose to a potential new customer the previous 24 months’ average monthly billed prices for that customer’s rate class and NGDC service territory. The PA Marketers question the efficacy of this information in light of wholesale energy markets subject to unpredictable price patterns and shifts (e.g., the historic drop in natural gas prices due to hydraulic fracturing). PA Marketers Comments at 4-5. If the Commission proceeds with this proposal, the PA Marketers contend that the 24-month price history should be accompanied by a disclaimer noting: (1) that historical pricing is not indicative of present or future pricing; (2) that the utility price to compare (PTC) and the supplier price term may differ, meaning straight comparisons of rates may be misleading; and (3) that the entire value of a supplier’s fixed price offer must be considered when comparing to the utility rate. *Id.* at 4. As for a new NGS entering the market, the PA Marketers recommend that the NGS disclose that it has no historic prices to provide, but moving forward will provide historical price information on each bill with an additional disclaimer until 24 months of data is available. *Id.* at 5.

OCA believes that while the proposed additional subparagraphs to Section 62.75(c)(2) are beneficial to consumers, Section 62.75(c)(2) may still not provide the necessary level of protection for consumers since the

proposal allows an NGS to state that there is no limit for the pricing. OCA Comments at 4, OCA’s Annex A. In OCA’s view, this simple statement of no limit to the price does not allow the consumer to make an informed choice or assess the risks in a highly complex market. *Id.* Therefore, OCA recommends that the Commission require that a ceiling price be stated for the maximum price or change that can occur under the variable price plan. *Id.* at 5. OCA further contends that requiring a ceiling price on an NGS offer does not constitute price regulation because the NGS would dictate the ceiling price, not the Commission. OCA Comments at 5 (explaining that the ceiling price merely serves as notice to the consumer of how high the price could go, thereby offering some protection and knowledge to the consumer). If the Commission allows variable price products to be marketed without specifying a ceiling price, OCA believes that the regulations should be amended to require that the variable pricing statement include a specific statement clearly indicating that there is no limit on how much the price may increase and that the price can fluctuate each billing period. *Id.* at 5-6, OCA’s Annex A.

OCA agrees with the proposed change requiring an NGS to disclose the price to be charged for the first billing month, but notes it may be insufficient and misleading in this marketplace where introductory rates are common. Accordingly, OCA recommends that the Commission also require an NGS to specify the guaranteed length of time that the starting price will be in effect. OCA Comments at 6. OCA submits that the description of when consumers will receive notification of price changes, as proposed by Section 62.75(c)(2)(v), is unclear and that without information about what price is being charged, the consumer cannot make an informed decision about energy use and the need for a new price plan or supplier. *Id.* at 7.

OCA supports the proposed addition of Section 62.75(c)(2)(vi) regarding historical prices, but believes that one approach should be used to develop the average price in order to allow customers to properly compare average prices of NGS offers. OCA Comments at 7-8. OCA also believes NGSs should be required to disclose the highest and lowest price that has been charged for the customer’s rate class and service territory in the last 60 months to ensure that customers have more complete information. *Id.* at 8, OCA’s Annex A.

RESA, WGL, and OCA support the Commission’s proposal to amend Section 62.75(c)(7) to facilitate “seamless moves” so that a customer can retain the same supply service instead of having to first receive default service when moving to a new location. RESA Comments at 20; WGL Comments at 15; OCA Comments at 10, OCA’s Annex A.

WGL and RESA agree that leaving the language “Automatic renewal is allowed at the same terms and conditions as long as the new agreement is month-to-month” in Section 62.75(c)(8) invites confusion and conflicting requirements and that the rule pertaining to contract expiration and change in terms notices and procedures is better included in proposed new Section 62.81. WGL Comments at 15-16; RESA Comments at 20.

OCA recommends minor changes to proposed Section 62.75(c)(9) to specify that type size should be no less than 12 point font. OCA Comments at 10, OCA’s Annex A. OCA also asks that its website be added to 62.75(c)(11) and proposes other additional changes. See *id.*

RESA and WGL strongly support removing NGDC references in Sections 62.75(c), but agree with including a



reference to the Commission's natural gas shopping website, PaGasSwitch.com. RESA Comments at 20; WGL Comments at 16. The PA Marketers and the National Marketers agree that it is now 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. PA Marketers at 8; National Marketers at 8 (averring that the current requirements place the NGS in the "unseemly position of promoting the utility even though the utility is not a party to the underlying transaction"). The PA Marketers and the National Marketers also support the proposal to reference the Commission's natural gas shopping website as a source for information and a beneficial shopping tool. *Id.*; National Marketers Comments at 8. OCA agrees that the Commission's PAGasSwitch.com website contains valuable information, but believes NGSs should continue to provide the Commission's telephone number, as only providing a webpage assumes that all consumers have internet access. *Id.* OCA also recommends referring consumers to its own website where consumers can access OCA's natural gas shopping guide. *Id.*

PULP objects to the proposal to strike Section 62.75(c)(13) (requiring NGSs to include the name and number of the universal service program), as PULP believes it is critical for economically vulnerable customers to receive this information in order to make more informed decisions about their natural gas supply. PULP Comments at 3.

*Disclosure Statement Customer Notification Requirements: Sections 62.75(d), 62.75(g), and 62.75(j)*

Although we did not propose any changes to Section 62.75(d) regarding the three-day right of rescission that provides a level of consumer protection, PULP urges the Commission to require NGSs to inform the customer of this three-day rescission period at the time the customer contracts with the supplier and again in the disclosure statement. PULP Comments at 3-4. PULP avers that the three-day rescission period is a critical protection for consumers, particularly for those who agree to move to a competitive supplier during an in-person or telephone sales solicitation or other high-pressure sales pitch. *Id.* at 4.

As to proposed Section 62.75(g), OCA recommends that this provision include two notices, one sent "60 to 45 days" before and the second sent "30 days" before the expiration date or the effective date of the proposed changes. OCA Comments at 11, 14, OCA's Annex A. OCA also notes that the phrase "whenever we propose to change the terms of service in any type of contract" could be misleading to consumers, as it suggests that an NGS has the ability to unilaterally change the terms of a contract. *Id.*

As to proposed Section 62.75(j), OCA agrees that an NGS should be required to inform the consumer that the contract is assignable. OCA Comments at 14. OCA submits that the NGS should be required to disclose this information at the time the consumer enters into the agreement and also be required to provide the consumer with written notice if the contract is assigned to another supplier. *Id.* WGL believes that an assignment clause in a consumer contract is standard in the natural gas industry and that including assignment clauses in contracts should be sufficient disclosure to comply with the revised rule. WGL Comments at 16-17. In contrast, RESA believes that it is reasonable to require NGSs to note in the disclosure

statement that the contract is assignable, as disclosing this information when enrolling the customer should minimize complaints in the future. RESA Comments at 21.

*Contract Summaries: Section 62.75(i)*

RESA supports the proposed basic framework for the one-page contract summary, but stresses that the finalized contract summary should be updated in accordance with the finalized regulations. RESA Comments at 10-11; see also WGL Comments at 5-6. RESA stresses that any periodic Commission revisions to the sample contract summary should be served on each licensed NGS and published in the *Pennsylvania Bulletin* in order to effectuate proper notice. *Id.* at 11. RESA states that the Commission should maintain its position to not require NGDC information on the contract summary, as including that information could lead one to falsely conclude that a business relationship between the NGS and the NGDC exists. *Id.* RESA also submits that including information on renewals of contracts and changes in contract terms is unnecessary in the one-page summary. *Id.* RESA supports including a general description of the expected start date of NGS service in the contract summary. *Id.* at 12.

As to the Commission's proposal that a contract start date be expressed as a generalized statement and not with reference to a specific date, the National Marketers and WGL submit that this approach would facilitate supplier compliance because the actual contract start date depends on the utility switching processes outside of the supplier's control. National Marketers Comments at 5; WGL Comments at 6-7.

WGL also believes that the contract summary need not be reflected in a distinct document that is separated from the contract itself or from other marketing and disclosure materials, as this adds costs to suppliers without adding significant value to the customer. WGL Comments at 6 (adding that including renewal and change of terms notices in a one-page contract summary is confusing and unnecessary); see also PA Marketers Comments at 5-6.

The PA Marketers agree with the Commission's position that: (1) the contract summary should be a brief, single-page document in a graphic/box format, summarizing only the key contract terms necessary to assist a customer when comparison-shopping; and (2) that the inclusion of NGDC contact information is unnecessary and lacks relevance to the customer when shopping, as the inclusion of NGDC information leads some customers to wrongly believe that a utility endorsement or affiliation with the supplier exists. PA Marketers Comments at 5. The PA Marketers suggest that the contract term field for month-to-month variable contracts simply state that the customer will be renewed on a monthly basis. *Id.* at 6.

OCA agrees that a one-page contract summary can benefit the customer, but submits that the following additional information should be included to aid consumers:

- Natural Gas Supplier Information: Inform the customer that "the NGS charges will replace the PTC identified on the customer's bill or the NGS charges of the customer's prior supplier."
- Natural Gas Price Structure: Add "a statement of the highest and lowest price charged by the NGS to this customer class served by this NGDC over the past 60 months."
- Natural Gas Supply Price: Add language indicating that "any introductory rate must be so identified and

state the rate that will be in effect following any introductory or promotional rate. If the price has not been set for the first month after the introductory period, a statement on how the rate will be established, whether or not it is a variable rate, when the rate will be provided to the consumer and state that the rate may be higher than the introductory rate.”

- Statement Regarding Savings: Add “compared to the PTC” to the end.

- Incentives: Add “and any criteria for obtaining any incentive or bonus.”

OCA Comments at 12–14.

*Supplier Requests for Commission Review of Contract Terms*

WGL submits that voluntary, informal reviews of contract summaries are a helpful service. WGL Comments at 7. WGL points out that Commission staff is already obligated to provide informal reviews and non-binding opinions on request as an aid. See 52 Pa. Code § 1.96 (relating to unofficial statements and opinions by Commission personnel). WGL believes that all suppliers have an independent duty to be knowledgeable of Commission regulations for compliance purposes per 66 Pa.C.S. § 2208. Id. at 14-15.

The PA Marketers support the Commission’s proposal to informally review sample contract summaries for all NGSs before they are implemented, just as the Commission did with the electric disclosure regulations. The PA Marketers explain that this will allow the Commission to make any necessary clarifications or corrections to ensure that the contract summary is implemented and disclosed with the interests of the customer in mind. PA Marketers Comments at 5-6.

RESA believes staff review of the contract summary is more beneficial if the staff review carries some weight and authority. RESA Comments at 12. If an NGS seeks informal staff review, RESA believes the NGS should receive a form letter acknowledging the consultation, a copy of which would be included in the NGS’s Commission record folder. Id. As to any subsequent challenge of the adequacy of the contract summary, RESA suggests that “the fact that the NGS made the effort to seek and obtain staff consultation before acting would be documented.” Id. at 12-13. RESA also recommends that the Commission require its Bureau of Investigation & Enforcement (I&E) to review disclosure statements and issue private letters that no action of an enforcement nature will be taken based on the facts presented if I&E deems the proposed terms and conditions to be compliant with current regulations. Id. at 19.

*Notices Regarding Contract Expiration or Changes in Terms: Section 62.81*

RESA and the National Marketers support the proposed time periods for the initial and options notices because they align with the rules applicable to the electric industry. RESA Comments at 13; National Marketers Comments at 5. By implementing the same rules, the Commission avoids potential confusion or frustration for customers receiving multiple notices at different times from their combined NGS/EGS. RESA Comments at 13-14. RESA further contends that uniformity avoids subjecting NGSs serving in a combined role to an overly burdensome administrative process, which discourages the offering of combined products and otherwise interferes with the development of a competitive retail energy market. Id.; see also National Marketers Comments at

5-6. RESA believes that mirroring the timeframes in the electric industry outweighs any concerns about the customer possibly not being able to expeditiously switch suppliers. Id. at 14. RESA states that, at most, the customer would have to remain with the NGS for an additional month, but since changes currently occur within 11–40 days, a customer would have sufficient time to switch to another NGS upon receipt of the options notice 30 days prior to the change. Id. RESA recommends that the Commission consider other alternatives, such as requiring NGSs to add content to the initial notice explaining that if the customer waits for the options notice, the customer may not be able to switch to another NGS until the following month. Id. at 15.

The PA Marketers also recommend adopting the 60-day and 30-day notice time frames from the electric rules, with similar caveats expressed by RESA and the National Marketers. See PA Marketers Comments at 6. While the 60-day and 30-day notice timeframes of the electric rules should easily apply to the natural gas rules, WGL strongly believes that one notice provided forty-five days before the end of a fixed duration contract (of at least one year) should be sufficient. WGL Comments at 8.

RESA opposes the proposed 30-day advance notice of a price change to a customer who was on a fixed term contract and was then converted to a month-to-month contract as a result of not responding to an options notice. RESA Comments at 15. RESA opines that even if NGSs were able to accomplish the “formidable task of accurately forecasting prices far enough in advance to satisfy the 30-day notice requirement, the cost of mailing this would be extremely high.” Id. The resulting inundation of information on a frequent basis would likely confuse most customers. Id. RESA believes that the NGSs would likely need to charge higher rates, making them less competitive, and resulting in higher prices for customers. Id. Instead, RESA recommends requiring NGSs “to inform customers that a failure to respond may result in conversion of a fixed term contract to a month-to-month contract with no advance notice of price changes.” Id. at 15-16 (adding that NGSs that do not plan to use this option would simply leave this information out of the options notice).

As to the automatic re-enrollment provision in proposed Section 62.81(a)(2)(ii)(A)(I), RESA urges the Commission to permit conversion of a fixed term contract to a month-to-month contract without requiring advance notice of price changes. RESA Comments at 17 (adding that requiring advance notice of prices would hinder the Commission’s goal of promoting the retail natural gas market). The National Marketers contend that this requirement for advance notice of price changes for variable priced products is particularly problematic because the supplier cannot forecast the market changes that would be required to provide advance notice. National Marketers Comments at 6 (explaining that this would require more hedging by the supplier). Critically, the National Marketers assert that this increases the costs and risks of providing the product. Id. at 7. Since a customer would be free to leave the next day without an early termination fee, the supplier’s costs and risks are even greater. Id.

The PA Marketers also believe NGSs should not be required to provide 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. PA Marketers Comments at 6. The PA Marketers explain that since significant technical challenges limit an NGS’s ability to predict wholesale market prices 30 days in

advance, the Commission should focus on moving forward to solve the comparably simpler technical challenge of accelerated switching for gas customers. *Id.* Faster switching will ensure that customers have the ability to respond in near-real time to new preferences and opportunities without putting an unreasonable burden on suppliers—“a burden that could have the unintended consequence of driving suppliers away from the marketplace all together.” *Id.* at 6. The PA Marketers urge the Commission to adopt a more reasonable timeframe for the price notification notice, such as 10–15 days, and to include the option of email or SMS text notification to ensure that the customer still receives notice in a timely manner. *Id.* at 6. The PA Marketers also believe that the NGSs should have a more reasonable timeframe by which to determine the variable price for the next billing cycle. *Id.*

RESA, the PA Marketers, and WGL urge the Commission to permit the options notices to be sent electronically, provided that the customer has agreed to accept electronic communications. RESA Comments at 18; PA Marketers Comments at 7; WGL Comments at 14. RESA and the PA Marketers believe that in today’s world of ever-increasing electronic communication, embedding a first class mail requirement in the regulations would be imprudent as that form of communication may become outdated. RESA Comments at 18; PA Marketers Comments at 7. RESA, the PA Marketers, and WGL also believe that the options notice is unnecessary in a situation where the NGS does not propose any changes in terms of service. RESA Comments at 19 (suggesting that the content of the initial notice should be revised to note that an options notice will be sent only if there is a proposed change in the terms of service); PA Marketers Comments at 7; WGL Comments at 14. The National Marketers suggest that if the customer has provided the NGS with an alternative means of contact besides mailing address (e.g., email address or cellular phone number for text notifications), the supplier should be allowed to honor the customer’s expressed preferred means of contact for receiving the options notice. National Marketers Comments at 7-8.

In contrast to the Commission’s assertion in the Proposed Rulemaking Order at this Docket regarding proposed Section 62.81(b)(1)(i), WGL contends that auto-renewals that include cancellation fees are sound public policy. WGL Comments at 10. WGL notes that similar processes have been in place in Maryland since the inception of choice programs there (1997 for gas choice and 2001 for electric choice) and have worked effectively and efficiently. *Id.* WGL, which has one of the largest shopping customer bases in Maryland, reports that the average WGL customer in Maryland has been with the company under a contract with fixed price auto-renewal for seven years. *Id.* at 10-11. In 2014, approximately 90% of WGL Energy customers auto-renewed at a fixed price, about 5% chose to terminate their contract, and the remaining 5% proactively chose to stay with WGL under a new contract with a different pricing option. WGL points out that auto-renewals provided price protection for WGL customers during the polar vortex and other times when prices have spiked. *Id.* at 11. WGL contends that mandating affirmative signatures and disallowing auto-renewals with early cancellation fees will lead to reduced supplier retention rates and diminished competitive markets and product offerings in Pennsylvania. *Id.* at 12.

WGL supports the clarification of the word “term” in Section 62.81 of the regulations to reflect “duration” for

the time length of the contract. WGL Comments at 9. The PA Marketers also support the Commission’s proposal to change the word “term” to “duration,” as “duration” is more accurate than using “length.” PA Marketers Comments at 7. While RESA does not necessarily object to the phrase “fixed duration contracts,” RESA believes that the change may raise more questions since it is not commonly used in other industries. RESA Comments at 16 (opining that “fixed length contracts” may be preferable from the perspective of plain language, as it is more easily understood by the average consumer than “fixed duration contracts”).

PULP recommends that the Commission require NGSs to include information about universal service programs in the options notice so that consumers are made aware of all options, including possible financial assistance or energy efficiency and conservation measures, to help reduce monthly bills. PULP Comments at 4-5.

OCA supports the Commission’s proposed Section 62.81, especially the requirement that consumers receive 30 days’ advance notice of a price change if the NGS is placing the customer on a month-to-month contract. OCA Comments at 14. While OCA does not propose thorough language revisions to Section 62.81, it requests that the Commission provide clarification that a customer whose fixed-term contract has expired and who will be placed in a variable priced month-to-month contract receive 30 days’ notice of pricing changes. *Id.* at 15 (citing Final-Omitted Rulemaking Order Re 52 Pa. Code §§ 54.5, 54.10, Docket No. L-2014-2409385 at pp. 33–36 (Order entered April 3, 2014)).

#### *Discussion and Disposition*

The Public Utility Code grants the Commission the power to license NGSs and establish standards to govern the conduct of NGSs, including requiring 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). Under its mission statement, the Commission “balances the needs of consumers and utilities; ensures safe and reliable utility service at reasonable rates; protects the public interest; educates consumers to make independent and informed utility choices; furthers economic development; and fosters new technologies and competitive markets in an environmentally sound manner.”<sup>5</sup> The Commission has a duty to facilitate the competitive natural gas supply market and to remove any impediments to market development without compromising consumer protection. See 66 Pa.C.S. §§ 2203, 2206, 2208; see also 52 Pa. Code Chapter 62 (generally).

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. The Commission need not “consider expressly and at length each contention and authority marshalled by a party to the [rulemaking] proceeding,” but must fully explain its decision in accepting the thesis of one party and rejecting the contentions of another party. *University of Pennsylvania v. Pa. Public Utility Commission*, 485 A.2d 1217, 1222-23 (Pa. Cmwlth. 1984). Through this Order, we finalize revisions to our existing natural gas customer disclosure information regulations at 52 Pa. Code §§ 62.72 and 62.75, and add Section 62.81.

<sup>5</sup> See PUC Mission Statement, available at [http://www.puc.state.pa.us/about\\_puc.aspx](http://www.puc.state.pa.us/about_puc.aspx).



*Disposition of Section 62.72*

As to proposed Section 62.72, IRRC asked the Commission to ensure that terms such as billing cycle and billing month are clear, consistent, and unambiguous throughout the regulations. IRRC Comments at 2. Billing cycle is a term of art in the industry, which refers to billing time periods and the frequency of billing. See National Marketers Comments at 3. In addition to defining what constituted a billing month, we used the term twice in these regulations, in both instances referring to the first time period in which the customer is billed, which must be at least 26—35 days. See Annex A, Sections 62.75(c)(2)(iv), 62.81(a)(2)(ii). The distinction was proposed to ensure that customers who have an introductory rate receive that rate for at least one full month. This issue can arise in the electric industry where customers have accelerated switching that can result in a first bill being issued for less than a full month.

In order to address IRRC's concerns regarding language consistency and unambiguity, we will remove references to billing month throughout the final regulations. See Annex A, Sections 62.72, 62.75(c)(2)(ii), 62.81(a)(2)(ii). This is consistent with the electric regulations where neither billing month nor billing cycle are defined. See 52 Pa. Code § 54.2 (relating to definitions). The Commission is unaware of any issues resulting from the lack of definition of these terms in the electric regulations. The Commission also notes that the supplier switching processes are much different in the gas industry than in the electric industry due to differences in industry operations and markets. Therefore, to the extent that the Commission remains concerned about the length of a customer's introductory rate, it can be raised as part of a future rulemaking on the subject of accelerated switching in the natural gas industry, should such a rulemaking be initiated by the Commission.

In this section on definitions, billed prices is defined as "the disclosed NGS prices on the customer bill." 52 Pa. Code § 62.72. Since we use both singular and plural of billed price(s), we will add appropriate parentheticals to the finalized definition for purposes of clarification. See Annex A, Section 62.72. We will change "price" to "billed price" in Section 62.81 for purposes of clarification. See Annex A, Sections 62.81(a)(2)(ii), 62.81(a)(2)(ii)(A)(I), and 62.81(a)(2)(ii)(A)(II).

*Disposition of Section 62.75**Section 62.75(c)(2)(ii)*

Although we did not propose altering the Section 62.75(c)(2)(ii) requirement that an NGS must provide the starting price in a variable contract, RESA, the National Marketers, and WGL contend that NGSs should not be required to include a starting price in the disclosure statement for a variable price contract. RESA Comments at 2, 4-5; National Marketers Comments at 2; WGL Comments at 2—4. RESA contends that this requirement could result in NGSs making business decisions not to offer variable price products or not to offer any products at all. RESA Comments at 4-5. Instead, RESA proposes that the Commission should require NGSs to either include a starting price or prominently disclose to the customer that the starting price will be provided either when the first bill is received or through the website. Id. at 5. RESA adds that this would empower the customer to decide whether or not to switch to an NGS that does not provide the starting price, thereby allowing the market to dictate when and what pricing information is shared. Id. If the Commission retains the starting price requirement

in the disclosure statement for the first full billing month per existing Section 62.75(c)(2)(ii), RESA urges the Commission to permit this mandate to be fulfilled through the use of a formulaic contract price that enables the customer to calculate the bill using the contract, publicly available rates, or price indices. Id. at 5.

The National Marketers suggest that making changes to the initial starting price requirements may not be prudent until the accelerated switching process and timeline has been fully vetted by stakeholders. National Marketers Comments at 3.

In contrast to the NGS community, OCA recommends requiring that the actual maximum potential ceiling price be stated to offer more protection and knowledge to the consumer. OCA Comments at 5. OCA contends that this would not result in price regulation by the Commission because the NGS (and not the Commission) would dictate the ceiling price.

In its Comments, IRRC notes concerns with the ability of customers to calculate the first month's bill if alternative methods, such as formulas, are used in lieu of an actual projection. IRRC Comments at 3. The Commission has declined to adopt the alternative methods for calculation of the first month's bill that were proposed by the NGS commentators. While we appreciate the comments and concerns of the NGS community that this requirement could impede market development and the availability of certain variable priced products, we believe this requirement governing starting prices and ceiling prices is an important consumer protection, hence our decision not to propose any amendments to Section 62.75(c)(2)(ii). Other stakeholders, such as OCA and PULP, have filed comments seeking more consumer protection measures in this section. See OCA Comments at 4-5; PULP Comments at 2-3. However, we will not require an NGS to provide a ceiling price for the maximum price change that could occur under a variable price plan. While this may not constitute direct price regulation, as OCA seeks to assure us, this requirement would still potentially interfere with certain product offerings and thus indirectly interfere with or affect the prices and products offered in the market. See OCA Comments at 4. Importantly, the statement in Section 62.75(c)(2)(iii) that "there is no limit on how much the price may change" is a simple, clear, and direct notice/alert to the customer.

Furthermore, Sections 62.75(c)(2)(iii)—(vi) also provide more customer protections. The disclosure statement for residential and small business electric supply customers also does not require disclosure of a maximum ceiling price. See 52 Pa. Code § 54.4 (relating to bill format for residential and small business customers). We will also not make any sweeping changes to this provision until the accelerated switching process and timeline has been fully vetted by stakeholders, should the Commission proceed with initiating changes to the regulations relating to supplier switching. See National Marketers Comments at 3. Accordingly, we find that retaining the existing starting and ceiling price provisions is reasonable and balances stakeholder interests. See Annex A, Section 62.75(c)(2)(ii). As will be discussed below, deleted Section 62.75(c)(2)(iv) has been incorporated into final Section 62.75(c)(2)(ii).

*Section 62.75(c)(2)(iii)*

As IRRC points out, in proposing this Section, we inadvertently referred to the NGDC instead of the NGS. IRRC Comments at 2. Therefore, we will replace NGDC with NGS, as the supplier is the entity responsible for

providing “a clear and conspicuous statement that there is not a limit on how much the price may change” from one billing month to the next. See Annex A, Section 62.75(c)(2)(iii).

The National Marketers assert that changing to a billing month construct instead of a billing cycle construct for the natural gas industry may present operational problems for suppliers and utilities and negatively impact the pricing structure of competitive products. The National Marketers believe this change in billing system logic would be costly, time-consuming, and unjustified. National Marketers Comments at 3. As was discussed above, to address the billing month vs. billing cycle concern, we will retain billing cycle in order to avoid any potential operational problems for suppliers and utilities.

OCA believes that the statement proposed in Section 62.75(c)(2)(iii) does not allow the consumer to make an informed choice or assess the risks in a highly complex market. Specifically, OCA requests that the phrase “or on how high the price may go” should be added to the end of Section 62.75(c)(2)(iii). See OCA’s Annex A. We appreciate OCA’s comments, but find that the requested additional phrase is duplicative and unnecessary, especially since we already propose requiring “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.” See Annex A, Section 62.75(c)(2)(iii). Furthermore, this language mirrors the language in our electric regulations. See 52 Pa. Code § 54.5(c)(2)(ii)(B). Therefore, in an effort to prevent redundancies and to maintain unity and harmony between the electric and gas disclosure regulations, we will retain this language. See Annex A, Section 62.75(c)(2)(iii).

*Section 62.75(c)(2)(iv)*

OCA agrees with the proposed change requiring NGSs to disclose the price to be charged for the first billing month, but notes it may be insufficient and misleading in this marketplace where introductory rates are common. Accordingly, OCA recommends that the Commission also require an NGS to specify the guaranteed length of time that the starting price will be in effect. OCA Comments at 6-7. IRRC and OCA recommended that the Commission revise the final-form regulation to require the NGS to state the guaranteed length of time that the starting price will be in effect and to require the NGS to provide the price to be charged, per billing unit, for the first month of service after the introductory period if the starting price is introductory. IRRC Comments at 2-3; OCA’s Annex A. OCA also requests that the phrase “a statement that the price could change in the second month” be added this provision.

The NGS community does not voice opposition specific to the language in this provision, but RESA believes that setting forth general conditions of variability is sufficient and consistent with the rules in the electric industry. RESA Comments at 2, 9-10; see also PA Marketers Comments at 2-3 (seeking flexibility for suppliers who do not have the advantage of cost recovery and reconciliation like the utilities).

We agree with OCA and IRRC that adding information pertinent to a product with an introductory price would provide the consumer with more knowledge when making a decision about a particular product. Therefore, we will add OCA’s recommended language pertaining to introductory prices, modified to use billing cycle in lieu of billing month, as discussed above. See Annex A, Section

62.75(c)(2)(ii). However, we will not add OCA’s desired additional phrase that “a statement that the price could change in the second month,” as that language is unnecessary and duplicative in light of Section 62.75(c)(2)(iii)’s requirement that an NGS “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.” See Annex A, Sections 62.75(c)(2)(ii)—(iii). Also, upon review, we determined that Section 62.75(c)(2)(iv) was duplicative of Section 62.75(c)(2)(ii). Therefore we have revised Section 62.75(c)(2)(ii) to include the pertinent provisions of Section 62.75(c)(2)(iv). We have also renumbered subsequent Sections 62.75(c)(2)(v)—(vii) to account for this change.

*New Finalized Section 62.75(c)(2)(iv)*

As to succeeding Section 62.75(c)(2)(iv) (which was previously Section 62.75(c)(2)(v)), the PA Marketers urge the Commission “to chart a middle course between allowing suppliers to only say ‘the variable price will vary’ and requiring a calculable formula based on public indices.” PA Marketers Comments at 3. The PA Marketers caution that requiring a specific formula that a customer can use to calculate their bill total for service ahead of receiving the monthly bill may be impossible. Id. The PA Marketers explain that the calculation of a variable rate price each month depends on a range of factors. Id. The NGS community desires flexibility for suppliers who do not have the advantage of cost recovery and reconciliation like the utilities. See id.; see also RESA Comments at 6-7; see also National Marketers Comments at 2.

WGL Energy does not oppose requiring NGSs to notify customers when and how they will be informed of future price changes, but thinks that requiring advance notice of all price changes would be overly burdensome. WGL Comments at 4. OCA seeks to add the language “before such price change goes into effect” in order to require some kind of advance notification of a price change to the consumer. See OCA Comments at 7.

IRRC recommends that the Commission specify not just “when,” but “how” a customer will receive notification of price changes. IRRC Comments at 3. We find this reasonable additional language may help consumers and not overly burden suppliers. Therefore, we added “and how” to the final-form regulation. See Annex A, Section 62.75(c)(2)(iv). Mindful of the flexibility sought by the suppliers, this description of when and how the customer will receive notification of price changes must be clear and concise, but need not contain a specific formula. We appreciate OCA’s desire for consumers to be made aware of all price changes in advance, but we believe that the imposition of such a requirement may be overly burdensome to suppliers and may significantly restrict their product offerings.

*New Finalized Section 62.75(c)(2)(v)*

Succeeding Section 62.75(c)(2)(v) (which was previously Section 62.75(c)(2)(vi)), pertains to the requirement that a customer may request, from an NGS, historical average prices from the past 24 months for that customer’s rate class and NGDC service territory. A similar provision is found in our electric regulations. See 52 Pa. Code § 54.5(c)(14)(i). The intent behind this historical price requirement is to provide customers with helpful information regarding price variability from month-to-month, season-to-season and between suppliers.

RESA strongly opposes this requirement, contending that the historical data “is essentially meaningless,” especially in light of Section 62.75(c)(2)(vi), which re-

quires a statement that “historical pricing is not indicative of present or future pricing.” RESA Comments at 7. RESA instead offers a less stringent requirement wherein the NGS would disclose general historical trends, such as a range of percentages by which prices have changed over the past two years, upon request by a customer. *Id.* at 8. The PA Marketers question the efficacy of this information as wholesale energy markets are subject to unpredictable price patterns and shifts (e.g., the historic drop in natural gas prices due to hydraulic fracturing). PA Marketers Comments at 4-5. The NGS community also points out that this requirement potentially places new NGSs, who do not have 24 months’ worth of historical data, on uneven footing with incumbent NGSs. RESA Comments at 9; WGL Comments at 4-5; PA Marketers Comments at 5.

In contrast with the NGS community, OCA supports this regulatory provision and seeks even more additional language to ensure adequate disclosure. See OCA Comments at 8 (seeking to require the previous 60 months of historical price information).

The Natural Gas Choice and Competition Act, 66 Pa.C.S. §§ 2201 to 2212, charged the Commission with overseeing restructuring in the natural gas industry and promoting the competitive retail gas supply market while still ensuring consumer protection. See 66 Pa.C.S. § 2206 (relating to consumer protections and customer service). In the Proposed Rulemaking Order, we acknowledged that the 24-month price history requirement does not necessarily provide demonstrative information to consumers. Proposed Rulemaking Order, Docket No. L-2015-2465942, at p. 13. However, we kept it as a proposal in an effort to educate consumers on the seasonal variability and magnitude of volatility of energy prices. See *id.*; see also 52 Pa. Code § 54.5(c)(14)(i). We appreciate OCA’s concerns and proposals, but we do not believe that adding the additional language will necessarily assist the consumer in understanding more about a particular supplier contract or product offering. Importantly, imposing more costs and burdens on suppliers may curtail the ability of suppliers to offer lower, competitive retail prices, which are beneficial to consumers. See RESA Comments at 1-2; WGL Comments at 18; PA Marketers Comments at 3-5; National Marketers Comments at 1.

Therefore, in balancing the comments of OCA and the supplier community, we will retain the historical price requirement as proposed and not enhance or reduce the requirement. See Annex A, Section 62.74(c)(2)(v). This requirement ensures that a consumer is empowered and has access to historical price information from a particular NGS and the means to learn about possible historical price trends, relative price levels, and the degree of any volatility in the gas supply market. Additionally, Section 62.75(c)(2)(vi) provides clear knowledge to consumers about variable prices by requiring in the disclosure statement the phrase “historical pricing is not indicative of present or future pricing.”

We are persuaded by the supplier community’s comments that this requirement potentially places new NGSs (who do not have 24 months of historical data) on uneven footing with incumbent NGSs. RESA Comments at 9; WGL Comments at 4-5; PA Marketers Comments at 5. Therefore, if no price history or no representative price information is available for the product, then the NGS shall inform the customer of this fact. Accordingly, the final-form version of Section 62.75(c)(2)(v) has been amended by adding a sentence as follows:

(v) 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. **If no price history or no representative price information is available for the product, the NGS shall inform the customer of this fact.**

Annex A, Section 62.75(c)(2)(v). We believe the provision, as amended, balances the interests of suppliers and consumers.

*New Finalized Section 62.75(c)(2)(vi)*

Succeeding Section 62.75(c)(2)(vi) (which was previously Section 62.75(c)(2)(vii)) proposes requiring the NGS to provide in “plain language, a statement that historical pricing is not indicative of present or future pricing.” We strongly believe this is an important consumer protection that is not a burdensome requirement on suppliers, hence our recent addition of this provision in our electric disclosure statement regulations. See 52 Pa. Code § 54.5(c)(14)(ii). OCA supports this provision, while other parties do not contest this provision. See OCA Comments at 9. Therefore, we will retain this provision as proposed. See Annex A, Section 62.75(c)(2)(vi).

*Section 62.75(c)(7)*

In Section 62.75(c)(7), we proposed removing the requirement that the NGS must cancel the contractual agreement if the consumer moves from one physical residence to another. We made this proposal in order to facilitate seamless moves, wherein a customer has the opportunity to retain the same NGS when moving from one physical residence to another without first having to go on default supply service provided by the NGDC. See Investigation of Pennsylvania’s Retail Natural Gas Supply Market, Docket No. I-2013-2381742, at p. 22 (Final Order entered December 18, 2014).

RESA, WGL, and OCA support the Commission’s proposal to amend Section 62.75(c)(7) to facilitate seamless moves so that a customer can retain the same supply service instead of having to first receive default service when moving to a new location. RESA Comments at 20; WGL Comments at 15; OCA Comments at 10, OCA’s Annex A. In light of that agreement and our belief that seamless moves promote the retail competitive natural gas supply market, we will retain this provision as proposed. See Annex A, Section 62.75(c)(7).

*Section 62.75(c)(8)*

In Section 62.75(c)(8), we proposed removing the sentence that allows for automatic renewal of contracts at the same terms and conditions so long as the new agreement is a month-to-month contract. WGL and RESA agree with the Commission in that leaving this language in the regulations invites confusion and conflicting requirements and that the rule pertaining to contract expiration and notices in Section 62.81 is a better place to provide automatic renewal standards. See WGL Comments at 15-16; see RESA Comments at 20. OCA asks the Commission to require that renewal provisions be provided for all contractual supplier agreements so that the consumer understands what occurs at the end of the agreement. See OCA Comments at 9.



On review, we agree with RESA and WGL that removing this provision avoids potential confusion, especially in light of our proposed standards in Section 62.81. We appreciate OCA's concern, but do not believe renewal provisions need to be provided for all contracts, as certain contracts may not have renewal provisions and this requirement could improperly interfere with such contracts. Furthermore, Section 62.75(g) regarding the end-of-contract disclosure statement notification also provides a comparable consumer protection. Therefore, we will retain this provision as proposed. See Annex A, Section 62.75(c)(8).

*Deletion of Existing Section 62.75(c)(9)*

In our Proposed Rulemaking Order, we proposed deleting the current Section 62.75(c)(9), believing that an NGS need not provide the name and telephone number of the supplier of last resort, which is most likely the NGDC in that customer's service territory. This requirement could confuse a customer as to the relationship between the NGS and the NGDC. RESA and WGL strongly support removing the NGDC or supplier of last resort reference. RESA Comments at 20; WGL Comments at 16. Other parties did not comment on this proposal. Therefore, we will delete existing Section 62.75(c)(9). See Annex A.

*New Finalized Section 62.75(c)(9)*

As to the succeeding Section 62.75(c)(9) (which was previously Section 62.75(c)(10)), we proposed adding the requirement that the NGS explain the "limits on price variability" in type size larger than the type size for the terms of service. IRRC asks the Commission to ensure that it was being specific in the requirements for the variable pricing statement, so that such requirements are clear for the regulated community. IRRC Comments at 2. OCA recommends adding the phrase "but no less than 12 point" font to the regulation. OCA Comments at 10. Other parties do not comment on this subsection. We appreciate OCA's proposed addition, the intent of which is to ensure that the disclosure statement is in a readable font size. We expect that this explanation of the limits on price variability, penalties, fees or exceptions will be clearly legible and stand out.

While we acknowledge IRRC's concerns, in our parallel electric disclosure regulation at 52 Pa. Code § 54.5(c)(10), we do not mandate a particular font size for this explanation of limits on price variability. In order to maintain uniformity, especially if consumers receive gas and electric from the same supplier, we will not mandate a minimum 12-point font size in these regulations.

*New Finalized Section 62.75(c)(10)*

As to the new Section 62.75(c)(10) (which was previously Section 62.75(c)(11)), IRRC recommended deletion of the sentence: "The NGS's information shall appear first and be prominent." IRRC Comments at 3. Since that sentence is extraneous in light of our determination that only the NGS contact information needs to be provided, we will delete that sentence in the final rule. See Annex A, Section 62.75(c)(10).

*Deletion of Existing Sections 62.75(c)(12)-(13)*

In the Proposed Rulemaking, we proposed deleting Section 62.75(c)(12), which requires a statement directing the customer to the Commission due to dissatisfaction with the contract's terms of service. We believe referring the customer to the natural gas shopping website, PaGasSwitch.com, is more helpful than referring the customer to the Commission, as self-diagnosis of a customer's concern or question may be more effective and

quicker in resolving an issue than first calling the Commission. IRRC also asked the Commission to consider keeping this requirement, as some consumers may not have access to the Internet. We understand IRRC's concern and will therefore add the Commission's general information telephone number in the newly finalized Section 62.75(c)(11). Section 62.75(c)(11) will require "[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, by calling the Commission's telephone number at 1-800-692-7380, and at [www.oca.state.pa.us](http://www.oca.state.pa.us)." The customer may also call the supplier, as the supplier's phone number must be provided on the contract disclosure statement. See Annex A, Section 62.75(c)(11).

We also proposed deleting Section 62.75(c)(13), which requires a statement providing universal service program information. PULP objects to the deletion of 62.75(c)(13), as PULP believes it is critical for economically vulnerable customers to receive this information in order to make more informed decisions. We understand PULP's concern and agree that it is critical for economically vulnerable customers to have access to such information. However, there are other avenues to access this information, such as the Commission's website and phone number and OCA's website,<sup>6</sup> which we will incorporate into these regulations in the newly finalized Section 62.75(c)(11).

In order to alleviate customer confusion, we believe it is important to minimize the inclusion of any contact information other than NGS contact information, as including universal service program information may give the impression that the NGS has customer assistance programs or that the supplier is affiliated with the utility.<sup>7</sup> The Commission has a duty to facilitate the competitive gas supply market and to remove any impediments to market development without compromising consumer protection. See 66 Pa.C.S. §§ 2203, 2206, 2208; see also 52 Pa. Code Chapter 62 (generally). We stress that this disclosure statement governs the contract between the supplier and the customer; it is not a contract with the utility or for any customer assistance program services. Requiring extraneous information and third party information may place unnecessary restraints on these contracts. See RESA Comments at 1—3, 20; PA Marketers Comments at 1, 8; National Marketers Comments at 1, 8; WGL Comments at 2, 16.

*New Finalized Section 62.75(c)(11)*

OCA requests that its website be added to this section (which was previously Section 62.75(c)(12)), along with the Commission's telephone number, in order to provide consumers with more access to information and resources. See OCA Comments at 10-11. We agree with OCA that including this information could aid consumers without adding unnecessary information to the disclosure statement. Therefore, in addition to the reference to PaGasSwitch.com, we will add OCA's website and the Commission's general telephone number to Section 62.75(c)(11). See Annex A, Section 62.75(c)(11).

*Sections 62.75(d), 62.75(g), and 62.75(j)*

Although we did not propose any changes to Section 62.75(d), PULP urges the Commission to require NGSs to inform the customer of the three-day rescission period at the time the customer contracts with the supplier and again in the disclosure statement. PULP Comments at

<sup>6</sup> See [http://www.oca.state.pa.us/information\\_links/UniversalServNos.htm](http://www.oca.state.pa.us/information_links/UniversalServNos.htm).

<sup>7</sup> The Commission's Bureau of Consumer Services has experienced customer confusion regarding this parallel universal service program requirement in the electric regulations at 52 Pa. Code § 54.5(c)(10).

3-4. We believe that requiring the notification of the three-day right of rescission, as currently established in Section 62.75(d), is sufficient customer protection. As the subject matter of Section 62.75 is “Disclosure statement for residential and small business customers,” adding another requirement to inform the customer of the three-day rescission period at another point in time is also beyond the scope of this rulemaking and therefore other parties to this proceeding would not have been provided an opportunity to comment on this proposal by PULP. Furthermore, Chapter 111 of the Commission’s regulations (relating to marketing sales practices for the retail residential energy market) already require a supplier to inform the customer of the three-day rescission period<sup>8</sup> and to provide the customer with accurate and timely information.<sup>9</sup> Therefore, we will not amend existing Section 62.75(d).

As to Section 62.75(g), OCA recommends that this provision include the “45 to 60 days” and the “30 days” timeframes in which consumers will receive the notices. OCA Comments at 11, 14, OCA’s Annex A. OCA also notes that the phrase “whenever we propose to change the terms of service in any type of contract” could be misleading to consumers, as it suggests that an NGS has the ability to unilaterally change the terms of a contract. Id. We agree with OCA’s suggested language clarifications as provided in OCA’s Annex A. Therefore, we will incorporate those language suggestions into the final-form regulation, noting the change in the notice timeframes, given our disposition of Section 62.81. See Annex A, Section 62.75(g).

As to Section 62.75(j), IRRC recommends that the Commission further require the NGS to provide the customer with notice if the contract is assigned to another supplier and to include the name of the new NGS and contact information. IRRC Comments at 5; see also OCA Comments at 14. With IRRC’s and OCA’s suggestions for clarification in mind, we will amend and finalize this section as follows:

If the contract is assignable, the NGS shall inform the customer [ **accordingly** ] **at the time the parties enter into the contract. Prior to any contract assignment, the NGS shall provide notice to the affected customer, the affected NGDC and the Commission. The customer notice shall include the name of the new NGS, the contact information of the new NGS and language informing the customer that their contract terms and conditions remain unchanged.**

See Annex A, Section 62.75(j).

*Disposition of Contract Summaries and Supplier Requests for Commission Review*

*Contract Summaries Referenced in Section 62.75(i)*

The Commission will not change the proposed language in Section 62.75(i), which will be finalized as follows: “The NGS shall provide, with the disclosure statement, a separate NGS contract summary in a format provided by the Commission.” See Annex A, Section 62.75(i). We emphasize that the contract summary will not be embedded in the regulations, as this will allow the Commission

the flexibility to more easily and readily revise the contract summary in the future, with stakeholder input, to address arising issues or changes in the evolving energy markets. See Proposed Rulemaking Order, Docket L-2015-246594 at p. 16; see also Final Omitted Rulemaking Order Re Electric Disclosure Statement, Docket No. L-2014-2409385 at pp. 15, 21, 25—27 (Final Order entered April 3, 2014). In response to IRRC’s concern that stakeholders may not be provided an opportunity to comment on any proposed revisions to the contract summary, the Commission notes that as the contract summary is being adopted as written in Attachment A to this Order. The Commission is required to give all stakeholders notice and an opportunity to be heard prior to rescinding or amending this contract summary. See 66 Pa.C.S. § 703(g) (relating to rescission or amendment of orders). The Commission has and will continue to comply with this statutory requirement.

The parties generally agree as to the basic proposed framework for and benefits of the one-page contract summary. See RESA Comments at 10—12, WGL Comments at 5-6, National Marketers Comments at 5, PA Marketers Comments at 5-6, OCA Comments at 12—14. RESA contends that Commission revisions to the contract summary should be published in the *Pennsylvania Bulletin* in order to effectuate proper notice. In response to this concern, the Commission will include a copy of the most updated contract summary on its website. If the Commission or any other stakeholder seeks to revise the contract summary, the Commission will ensure that proper notice is given to all interested stakeholders as required by law.

The supplier community requests that Contract Start Date in the summary be expressed as a generalized statement and not with reference to a specific date, as the actual contract start date depends on the utility switching processes outside the supplier’s control. In light of this valid concern, we will add “the approximate” to the start date row as follows: Plain language regarding the approximate start of NGS service. See Attachment A.

In light of our replacement of the word “term” with “duration” throughout these final-form regulations, we will also replace “term” with “duration” in the contract summary. See *id.*; see Annex A, Section 62.81.

The supplier community also contends that including any information on renewal and change of terms notices in a one-page contract summary is confusing and unnecessary. See RESA Comments at 12; National Marketers Comments at 5; WGL Comments at 6-7. The purpose of this requirement is to make customers aware of what happens at the end of the contract and to take steps necessary to avoid any unexpected and potentially adverse outcome that the customer may encounter upon expiration of the contract. Accordingly, we will maintain this section within the contract summary, but add the label “End of Contract” and shorten the description to “Treatment of customer at the end of contract in plain language.” See Attachment A. Suppliers will be afforded more flexibility to provide a general, concise statement in this portion of the contract summary.

OCA requests the inclusion of additional information to the one-page contract summary in order to aid consumers. See OCA Comments at 12—14. We appreciate OCA’s suggestions, but caution that inclusion of too much information potentially undermines the very purpose of the contract summary: to be a concise and effective tool for easily understanding the significant terms and conditions of the supply contract. However, we do agree with some of OCA’s suggestions and will make the following

<sup>8</sup> “A customer shall be informed of the 3-business-day right of rescission of the transaction under §§ 54.5(d) and 62.75(d) (relating to disclosure statement for residential and small business customers) and the customer’s rights under section 7 of the Unfair Trade Practices and Consumer Protection Law (73 P.S. § 201-7) at the end of the verification process contact.” 52 Pa. Code § 111.7(b)(3).

<sup>9</sup> A supplier “[s]hall provide accurate and timely information about services and products being offered. Information includes rates being offered, contract terms, early termination fees and right of cancellation and rescission.” 52 Pa. Code § 111.12(d)(4).

clarifications to the contract summary. For the Natural Gas Supplier Information section, we will change “gas commodity charges” to “gas commodity/supply charges.” See Attachment A. For Natural Gas Price Structure, we will change “fixed or variable” to “fixed, variable or other,” as the supplier may offer a product with a price structure, such as a flat price product, that does not neatly align with either a fixed or variable pricing scheme. For the Natural Gas Supply Price section, we will add the phrase “full disclosure” to the description of any introductory rate. See *id.* For the Incentives section, we will add “criteria” and “conditions” to the description. See *id.*

#### *Supplier Requests for Commission Review of Contract Terms*

As WGL soundly notes in its comments, Commission staff may provide informal, non-binding opinions as to the form and legality of supplier contracts and supplier contract summaries. See 52 Pa. Code § 1.96 (relating to unofficial statements and opinions by Commission personnel), WGL Comments at 14-15. Suppliers do have an independent duty to know and understand Commission regulations for compliance purposes under 66 Pa.C.S. § 2208(b). See WGL Comments at 14-15. Commission staff and the Commission’s Office of Competitive Market Oversight will continue to provide informal feedback to reasonable requests by suppliers to review contract statements.

RESA contends that Commission staff review of the contract summary would be more beneficial if the staff review carried some weight and authority. RESA Comments at 12. RESA suggests that the Commission require I&E to review disclosure statements and issue private letters that no action of an enforcement nature will be taken based on the facts presented—if I&E deems the proposed terms and conditions to be compliant with current regulations. *Id.* at 19. We note that I&E is an independent bureau that prosecutes service and rate complaints pertaining to utilities and suppliers under the Commission’s jurisdiction. Requiring I&E to issue these private “no action” letters, which are advisory in nature, could hamper and improperly interfere with I&E’s enforcement efforts. See 66 Pa.C.S. § 308.2(b) (relating to prohibition on commingling of functions). Therefore, we will not direct I&E to review disclosure statements for form and legality.

#### *Disposition of Section 62.81*

##### *Use of the Term “Fixed Duration/Length Contract” in Section 62.81*

Most parties endorse the Commission’s proposal to change the word “term” to “duration” in this section for clarification purposes. WGL Comments at 9; PA Marketers Comments at 7. While RESA does not object to “fixed duration,” RESA opines that “fixed length” may be more easily understood by the average consumer. RESA Comments at 16. As “fixed duration contract” is definitionally more precise and less ambiguous than “fixed term” or “fixed length” contract, we will retain “fixed duration contract.”<sup>10</sup> See Annex A, Section 62.81. However, in light of RESA’s concern, we note that the contract summary will refer to the duration/length of the contract in order to facilitate the consumer’s understanding. See Attachment A.

<sup>10</sup> We also note that Ohio’s disclosure statement regulations refer to the “contract duration.” See Ohio Admin. Code 4901:1-29-11(O).

#### *Timeframes for Initial and Options Notices in Sections 62.81(a)(1) and 62.81(a)(2)*

The supplier community generally supports the proposed time period for the initial and options notices because the 45–60 day advance notice for the initial notice and the 30-day advance notice for the options notice align with the rules applicable to the electric industry. RESA Comments at 13, National Marketers Comments at 5; PA Marketers Comments at 6. WGL believes one 45-day options notice is sufficient. WGL Comments at 8. OCA and PULP do not provide language changes or suggestions to the notice timeframes. However, IRRC questions the reasonableness of reducing the existing notice timeframes and recommended that the Commission keep the current timeframes in place until the gas industry moves to accelerated switching. IRRC Comments at 5. Currently, the Commission’s regulations require NGSs to send notices to customers at about 90 days and 60 days prior to the expiration of a contract or the effective date of a proposed change in terms. See 52 Pa. Code § 62.75(g).

This Commission is concerned about forcing uniform notice requirements at this time, since supplier switching standards and timeframes are much different in the gas industry than in the electric industry. However, we still believe it is important to improve internal switching processes and notice timeframes, to the extent possible. The twin goals of uniform gas/electric notice requirements are 1) to avoid subjecting NGSs to more burdensome and costly administrative requirements and 2) to avoid undating and confusing consumers with multiple notices regarding their dual electric and gas supply contracts. As RESA attests, most switches usually occur within 11–40 days of a request. See RESA Comments at 14. Therefore, a customer who receives an options notice 30 days prior to the contract expiration may have to wait another month before effectuating a switch to a new supplier. Therefore, in finding middle ground between the current 60 day requirement and the proposed 30 day requirement, we will adjust the options notice requirement to “at least 45 days prior to the expiration date of the fixed duration contract or the effective date of the proposed change in terms.” See Annex A, Section 62.81(a)(2). This timeframe will better ensure that in most scenarios a customer will not have to wait until the following month if the customer switches soon after receiving the options notice.

Based on the adjustment to the options notice, we will adjust the 90-day initial notice requirement to “60 to 75 days prior to the expiration date of the fixed duration contract or the effective date of the proposed change in terms.” See Annex A, Section 62.81(a)(1). The electric regulations require the initial notice 45–60 days in advance of the contract expiration or change in terms and options notice at least 30 days prior. See 52 Pa. Code § 54.10(1), (2)(ii)(A)(I). Therefore, a supplier providing a dual gas/electric contract can send the dual gas/electric initial notice at least 60 days prior and the dual gas/electric options notice at least 45 days prior in compliance with both regulations. If a dual gas/electric supplier is concerned about the timing of its notices, the supplier may seek informal advice or a formal determination from the Commission. See 52 Pa. Code §§ 1.96, 5.42.

IRRC also expresses a concern that an NGS may attempt to send both the initial and options notice in the same mailing or at the same time. See IRRC Comments at 6. We believe the regulation, as written, indicates that two separate notices are required. However, to clarify that



these notices must be disseminated at separate times, we will rewrite Section 62.81(a)(2) to indicate that the options notice must be disseminated after the initial notice: “An options notice shall be provided after the initial notice to each affected customer...” See Annex A, Section 62.81(a)(2).

*Use of Electronic Notices in Sections 62.81(a)(1) and 62.81(a)(2)*

RESA, the PA Marketers, and WGL Energy urge the Commission to permit the options notices to be sent electronically, provided that the customer has agreed to accept electronic communications. RESA Comments at 18; PA Marketers Comments at 7; WGL Comments at 14. IRRC also asked the Commission to revise the final-form regulation to allow a customer to elect to receive the options notice in an electronic form as an alternative to first-class mail. IRRC Comments at 6. In light of the increasing number of customers who prefer electronic mail, we agree with IRRC and we will allow the options notice to be transmitted electronically, so long as the customer has affirmatively elected to receive electronic notice. Therefore, we will revise and edit Section 62.81(a)(2) to state: “the notice shall be provided by first class mail unless the customer has affirmatively elected to receive electronic communications from the NGS.” See Annex A, Sections 62.81(a)(2).

*Clarification in Section 62.81(a)(1)(vi)*

IRRC asks the Commission for clarification on the language “how to avoid the fee, if possible” in proposed Section 62.81(a)(1)(vi), specifically inquiring as to whether a customer could be charged a cancellation fee, even if the customer has fulfilled all the requirements of the fixed duration contract. If a customer fulfills all the requirements of the fixed duration contract, the customer should not be charged an early cancellation fee. This language is similar to the language in our electric disclosure statement regulations. See 52 Pa. Code § 54.10(1)(vi). As we stated in the electric disclosure statement final rulemaking order, the Commission strongly believes that customers nearing the end of a fixed duration contract need to be made aware if their existing contract has a cancellation fee. See Chapter 54 Regulations Regarding Electric Disclosure Statement for Residential and Small Business Customers, Docket No. L-2014-2409385 at p. 32 (Final-Omitted Rulemaking Order entered April 3, 2014). If the customer desires to switch suppliers, then the customer needs to know how to avoid any cancellation fee and not switch before the end of the contractual agreement with the current supplier. We have not received any complaints related to this language, but in light of IRRC’s concerns, we will slightly modify and clarify the language in Section 62.81(a)(1)(vi). The final-form regulation will provide:

(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 **cancellation** 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.

Annex A, Section 62.81(a)(1)(vi).

*Notice of Price Changes and Month-to-Month Contract Conversions in Section 62.81(a)(2)(ii)*

Due to technical and administrative challenges, an increase in mailing costs, and an increase in business

risks, the supplier community generally opposes requiring a supplier to provide a 30-day notice of a price change if a customer fails to respond to the options notice and is converted to a month-to-month contract. See PA Marketers Comments at 6; RESA Comments at 15-16 (contending this would lead to higher prices for consumers); National Marketers Comments at 7. In suggesting that a 10–15 day notice timeframe of price changes is more reasonable, the PA Marketers also note that suppliers could provide the option of email or SMS text notification to ensure that the customer still receives notice in a timely manner. PA Marketers Comments at 6.

The supplier community also urges the Commission to permit conversion of a fixed duration contract to a month-to-month contract without requiring advance notice of price changes. RESA Comments at 17-18; National Marketers Comments at 7. RESA contends that requiring this advance notice of the price change would “obliterate” the opportunity to convert a customer to a month-to-month contract after the customer fails to respond to the options notice. RESA Comments at 15.

OCA supports the 30-day notice of a price change in proposed Section 62.81(a)(2)(ii)(A)(I). See OCA Comments at 14. The purpose of the provision is to provide additional protection to those customers who do not respond to the options notice and are thereby converted to a month-to-month fixed or variable price contract without affirmatively agreeing to that type of product. See Proposed Rulemaking Order, Docket L-2015-2465942, at p. 21 (Order entered March 26, 2015).

IRRC questions whether it was still reasonable to allow an NGS to convert a customer from a fixed rate plan to a variable rate plan without affirmative customer consent. IRRC Comments at 6. Our electric disclosure regulations currently require the same 30-day notice of a price change and allow for conversion from a fixed rate plan to a variable rate plan. See 52 Pa. Code § 54.10(2)(ii)(A)(I). The conversion from a fixed rate plan to a variable rate plan has been a contractual practice in the retail energy markets since 2001. Accordingly, we implemented and will now finalize important additional consumer protections, such as the revised Section 62.75 on the required disclosure statement and this additional Section 62.81 on required customer notices regarding contract expiration or a change in contractual terms. Further, we agree with IRRC and will require the options notice to inform the customer of what will occur if the customer fails to respond to the notices. IRRC Comments at 6. Critically, a customer may still cancel the variable rate plan at any time without a penalty, as a month-to-month contract in this scenario must not, under these finalized regulations, include a cancellation fee. See Annex A, Section 62.81(b)(1)(i).

With respect to IRRC’s question as to what happens to a customer if the NGS declines to renew a contract upon expiration, we note that the NGS is obligated to inform the customer of the available options in the options notice. In this scenario, a customer cannot remain with the current NGS; so, if the customer does nothing, the customer would return seamlessly to the supplier of last resort. We will add the following language to the regulation to address this scenario:

(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, **and what will occur if the customer fails to respond to the notice. If the NGS intends to discontinue service to the customer at the end of the contract, the options notice must include a statement that the NGS will no longer serve the customer at the end of the contract and that the customer will be returned to the supplier of last resort if the customer does not select another NGS.**

See Annex A, Section 62.81(a)(2)(i).

We understand that the 30-day notice requirement in Section 62.81(a)(2)(ii)(A)(I) may impede the ability of suppliers to offer certain products, especially variable rate products. However, based on the above comments, and at this stage in the development of the market, the Commission believes the 30-day advance notice of price changes is still an important consumer protection. As noted in our Electric Disclosure Statement Final-Omitted Rulemaking Order, because many of the customers enrolled in fixed-term contracts have affirmatively chosen a fixed rate, these customers may need more information regarding the potential variability in rates they may experience upon contract expiration or when the terms of the contract are changed. See Chapter 54 Regulations Regarding Electric Disclosure Statement for Residential and Small Business Customers, Docket No. L-2014-2409385 at p. 32 (Final-Omitted Rulemaking Order entered April 3, 2014). We believe this same rationale applies in the competitive natural gas marketplace, as well. Therefore, we will retain the language in Section 62.81(a)(2)(ii)(A)(I). See Annex A, Section 62.81(a)(2)(ii)(A)(I).

IRRC also asks the Commission to ensure certain terms, such as billed prices and marketed prices, are clear and consistent throughout these regulations. See IRRC Comments at 2. Under the definition in Section 62.72, a “billed price” is the “disclosed NGS price[ ] on the customer bill.” For purposes of clarity, we have inserted the word “billed” into the regulations Sections 62.81(a)(2)(ii), 62.81(a)(2)(ii)(A)(I), 62.81(a)(2)(ii)(A)(II), and 62.81(a)(2)(ii)(B). See Annex A, Sections 62.81(a)(2)(ii), 62.81(a)(2)(ii)(A)(I), 62.81(a)(2)(ii)(A)(II), and 62.81(a)(2)(ii)(B).

#### *Cancellation Fees in Section 62.81(b)*

Overall, commentators suggest few changes to proposed Section 62.81(b). Proposed Section 62.81(b) specifies that if a customer does not respond to the initial notice or options notice, then the fixed duration contract shall be converted into another fixed duration contract or a month-to-month contract, so long as neither converted contract contains cancellation fees. In contrast to that proposal, WGL Energy contends that auto-renewals that include cancellation fees are sound public policy and important features of a competitive market. WGL Comments at 9–13 (asserting that energy choice programs in Maryland that include these processes have been a success). WGL believes that disallowing auto-renewals with early cancellation fees will lead to reduced supplier retention rates and diminished competitive markets and product offerings in Pennsylvania. *Id.* at 12.

Similar to our rationale for Section 62.81(a)(2), the Commission proposed this provision to provide additional protection to those customers who do not respond to the options notice and are thereby converted to a month-to-month fixed or variable price contract without affirmatively agreeing to that type of product. WGL states that about 50% of customers do not re-sign due to inertia or

the hassle of signing and returning a new contract. WGL Comments at 12. WGL argues that allowing auto-renewals with cancellation fees in a regulatory environment with fair rules will benefit the retail energy market and provide customers with more competitive product offerings. See *id.*

We must balance our role of facilitating the market while still protecting the consumer. Notably, this consumer protection provision still exists in our electric regulations, 52 Pa. Code § 54.10(3)(i), and the retail electric supply market continues to grow and remain competitive. As we stated in the Proposed Rulemaking Order, the Commission does not have clear authority to set or regulate the amount of cancellation fees. Docket No. L-2015-2465942, at p. 21 (Order entered March 26, 2015). We expect and ask customers to stay alert for and act on expiration notices from suppliers. However, as WGL notes in its comments, approximately half of the 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. We do not want to establish rules that more easily allow a customer to be ensnared and held captive to hidden cancellation fees that are bundled with an auto-renewal. Aside from harm to individual customers, this could also freeze customer migration and cause serious harm to the overall impression of the competitive gas retail supply market. Therefore, we will retain the proposed language, which prohibits auto-renewals with cancellation fees. See Annex A, Section 62.81(b). Importantly, this regulation does not preclude a supplier from offering the customer a new product with cancellation fees, though the customer must affirmatively agree to that product.

#### *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 the notice of proposed rulemaking, published at 45 Pa.B. 2705 (June 6, 2015), to IRRC and the Chairpersons of the House Consumer Affairs Committee and the Senate Consumer Protection and Professional Licensure Committee (House and Senate Committees) for review and comment.

Under section 5(c) of the Regulatory Review Act, the Commission shall submit to IRRC and the House and Senate Committees copies of comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Commission has considered all comments from IRRC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on June 29, 2016, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 30, 2016, and approved the final-form rulemaking.

#### *Conclusion*

Similar to our 2014 revisions and regulatory reforms in the electric industry, the Commission finalizes regulations at 52 Pa. Code §§ 62.72, 62.75, and 62.81 regarding customer disclosure information in the natural gas supply market. During the polar vortex in the winter of 2014, we observed first-hand the frustrations of customers enrolled in variable priced electric supply 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. We finalize these regulations 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 finalized regulations, which are substantially similar to the finalized electric disclosure regulations, require enhanced disclosure information and notices from NGSs to customers. Well-informed customers are essential participants in a successful competitive retail market. Therefore, we finalize 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 seek to finalize the regulations set forth in Annex A; *Therefore,*

*It Is Ordered That:*

1. The regulations of the Commission, 52 Pa. Code Chapter 62, are amended by adding § 62.81 and by amending §§ 62.72 and 62.75 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

2. The natural gas supplier contract summary is adopted as set forth in Attachment A to this Final Rulemaking Order.

3. The Law Bureau shall submit this Final 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.

4. The Law Bureau shall submit this Final Rulemaking Order, Attachment A and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review by IRRC.

5. The Law Bureau shall deposit this Final Rulemaking Order, Attachment A and Annex A with the Legislative Reference Bureau for final publication in the *Pennsylvania Bulletin*.

6. These regulations shall become effective upon publication in the *Pennsylvania Bulletin*.

7. The Commission's Office of Competitive Market Oversight shall provide further direction to currently licensed natural gas suppliers serving residential and/or small business customers regarding the submission of NGS Contract Summaries to the Commission for informal review.

8. This Order and Annex A, revising the regulations appearing in Title 52 of the *Pennsylvania Code* Chapter 62 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 No. I-2013-2381742 and the Proposed Rulemaking Order at Docket No. L-2015-2465942.

9. A copy of this Final Rulemaking Order, Attachment A and Annex A shall be posted on the Commission's web site at the Office of Competitive Market Oversight web page and on the web page for the Investigation of Pennsylvania's Retail Gas Supply Market.

10. The contact person for legal issues related to this rulemaking is Jennedy S. Johnson, Assistant Counsel, Law Bureau, (717) 265-8423. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Alyson Zerbe, Regulatory Coordinator, Law Bureau, (717) 772-4597.

ROSEMARY CHIAVETTA,  
*Secretary*

*(Editor's Note: See 46 Pa.B. 3894 (July 16, 2016) for IRRC's approval order.)*

**Fiscal Note:** Fiscal Note 57-309 remains valid for the final adoption of the subject regulations.

### 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/supply charges.
<i>Natural Gas Price Structure</i>	Fixed, variable or other. 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. Full disclosure of any introductory rate.
<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, offers, etc. and any associated terms, criteria and conditions, in plain language.



<i>Contract Start Date</i>	Plain language regarding the approximate start of NGS service.
<i>Contract Duration/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>End of Contract</i>	Treatment of customer at the end of contract in plain language.

*Statement of Commissioner Pamela A. Witmer*

In accordance with Section 1102 of the Commonwealth’s Ethics Act, 65 Pa.C.S.A. § 1102, I will recuse myself from this Rulemaking due to my future employment with UGI Energy Services, a Natural Gas Supplier licensed in Pennsylvania.

PAMELA A. WITMER,  
*Commissioner*

**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 price*—The disclosed NGS price on the customer bill.

\* \* \* \* \*

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

(a) The disclosure statement prices must reflect the marketed prices and the billed prices.

(b) The NGS shall provide the customer a written disclosure statement containing the terms of service at no charge whenever:

- (1) The customer requests that an NGS initiate service.
- (2) The NGS proposes to change the terms of service.

(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 must include estimated total state taxes. Commodity charges exclude State sales tax and county tax.

(2) The variable pricing statement (if applicable) must 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. If the price is introductory, the variable pricing statement must include a statement that the price is an introductory price, the duration of the

introductory period and the price for the first billing cycle after the introductory period.

(iii) If there is not a limit on price variability, the NGS 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) A description of when and how the customer will receive notification of price changes.

(v) 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. If price history or representative price information is not available for the product, the NGS shall inform the customer of this fact.

(vi) 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.

(8) The renewal provisions, if applicable.

(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.

(10) Customer contact information that includes the name of the NGS, the NGS’s address, telephone number, Commission license number and Internet address, if available.

(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, by calling the Commission at (800) 692-7380 and at [www.oca.state.pa.us](http://www.oca.state.pa.us).

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

- (1) The 3-day right of rescission is 3 business days.
- (2) The 3-day right of rescission begins when the customer receives the disclosure statement from the NGS.
- (3) The customer may cancel in writing, orally or electronically, if available, by contacting the NGS.
- (4) Waivers of the 3-day right of rescission are not permitted.

(e) The definition for commodity charges is required on natural gas disclosure statements and must be defined in accordance with § 62.80 (relating to common natural gas competition terms). Definitions for other basic charges, if applicable, are required. Definitions for each of the nonbasic services, if applicable, are required. The definition section of the bill must be distinctly separate.

(f) The NGS shall include in the customer's disclosure statement the following statements which may appear together in a paragraph:

(1) "Commodity prices and charges are set by the natural gas supplier you have chosen."

(2) "The Public Utility Commission regulates distribution prices and services."

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

"If you have a fixed duration contract approaching the expiration date, or whenever we propose to change the terms of service, you will receive two separate written notifications, the first approximately 60 to 75 days in advance and the second 45 days in advance of 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 at the time the parties enter into the contract. Prior to a contract assignment, the NGS shall provide notice to the affected customer, the affected NGDC and the Commission. The customer notice must include the name of the new NGS, the contact information for the new NGS and language informing the customer that contract terms and conditions remain unchanged.

**§ 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 60 to 75 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 cancellation fee, 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 after the initial notice to each affected customer at least 45 days prior to the expiration date of the fixed duration contract or the effective date of the proposed change in terms. The notice shall be provided by first class mail unless the customer has affirmatively elected to receive electronic communications from the NGS. 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, and what will occur if the customer fails to respond to the notice. If the NGS intends to discontinue service to the customer at the end of the contract, the options notice must include a statement that the NGS will no longer serve the customer at the end of the contract and that the customer will be returned to the supplier of last resort if the customer does not select another NGS.

(ii) Information regarding the new billed price or renewal billed price, including the price to be charged for the first billing cycle 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 billed 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 billed price 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 billed price to be charged and the length of the contract.

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

(iv) 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 provi-

sion that allows the customer to cancel at any time, for any reason, and does not contain cancellation fees.

(2) The converted contracts must 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.

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