

PROPOSED RULEMAKING

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 59]

Standards for Changing a Customer's Natural Gas Supplier; Advance Notice of Proposed Rule- making

Public Meeting held
December 22, 2016

Commissioners Present: Gladys M. Brown, Chairperson;
Andrew G. Place, Vice Chairperson; John F. Coleman,
Jr.; Robert F. Powelson; David W. Sweet

*Rulemaking to Amend the Provisions of 52 Pa. Code,
Chapter 59 Regulations Regarding Standards For
Changing a Customer's Natural Gas Supplier;
L-2016-2577413*

Advance Notice of Proposed Rulemaking Order

By the Commission:

The Commission adopts this Advance Notice of Proposed Rulemaking Order to solicit comments about amending and adding to our regulations at 52 Pa. Code §§ 59.91—59.99. These regulations address the process for transferring a customer's account from a service of last resort (SOLR) provider to a competitive natural gas supplier (NGS or supplier), from one supplier to another supplier and from a supplier to SOLR service. The proposed regulatory changes are intended to accelerate this process while preserving safeguards to prevent the unauthorized switching of a customer's account, also known as "slamming."

The current NGS switching regulations were adopted on July 7, 2000 and became effective July 8, 2000.¹ Due to changes in the competitive retail gas and electric markets since the adoption of these regulations, the Commission has reviewed these regulations, previous relevant orders, and comments from interested parties regarding an accelerated switching process. With this Order, the Commission seeks comments on its proposals to revise its regulations to facilitate accelerated switching without endangering safeguards to protect customers against unauthorized switching.

Background

The Commission's statutory authority for the existing switching regulations arises from Section 2206(b) of the Public Utility Code, 66 Pa.C.S. § 2206(b). This Section requires:

The commission shall, by order or regulation, establish procedures to ensure that a natural gas distribution company does not change a retail gas customer's natural gas supplier without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier.

66 Pa.C.S. § 2206(b).

Following this statutory directive, the Commission promulgated regulations in 2000 to address the supplier switching process and to guard against "slamming." These

regulations are found at 52 Pa. Code §§ 59.91—59.99 (relating to standards for changing a customer's natural gas supplier) and set forth the following timeframes for the switching process:

- Section 59.93(1) requires the NGS to notify the NGDC of the customer's selection "by the end of the next business day following completion of the application process."

- Section 59.93(2) requires the NGDC to mail a 10-day confirmation letter to the customer "by the end of the next business day following the receipt of the notification of the customer's selection of a NGS." This regulation also states that "[t]he 10-day waiting period shall begin on the day the letter is mailed." Id. This 10-day waiting period is intended to give the customer time to contact the NGDC to cancel the switch of supplier in cases where the customer did not authorize the switch of supplier. Notably, this 10-day waiting period is made available to cancel switches in instances of slamming and not intended to act as a contract rescission period. See Re: Nor Am Energy Management, Inc., Docket No. P-00981625, 1999 WL 632769 (Order entered Feb. 12, 1999). As explained in more detail later, this 10-day waiting period was reduced to 5 days by the Commission through the Final Order in the October 2012 Interim Guidelines, Docket M-2011-2270442.²

- Section 59.94 requires the NGDC to "make the change at the beginning of the first feasible billing period following the 10-day waiting period."

Customer information regulations at 52 Pa. Code §§ 62.75 (relating to disclosure statement for residential and small business customers) also include timeframes that can affect the switching process for residential and small commercial customers:

- Section 62.75(d) requires that customers be provided "a 3-day rescission period following receipt of the disclosure statement."

- Sections 62.75(d)(1) and (2) state that the 3-day rescission period is "3 business days" and "begins when the customer receives the disclosure statement from the NGS."

The Commission's supplier marketing regulations at 52 Pa. Code §§ 111.1—111.14 also include guidance as to the disclosure statement and the relevant timeframes—specifically 111.11 (relating to receipt of disclosure statement and right to rescind transaction):

(a) When a transaction is completed by a customer without the presence of or interaction with an agent and is not submitted to the verification process, a supplier shall provide the customer with a copy of its disclosure statement as soon as it is practical. A customer shall have the right to rescind the transaction within 3 business days after receiving the disclosure statement. See § 54.5(d) (relating to disclosure statement for residential and small business customers), which applies to EGSs, and § 62.75(d) (relating to disclosure statement for residential and small business customers), which applies to NGSs.

(b) After a transaction that involved an agent has been completed and verified, a supplier shall provide the customer with a copy of its disclosure statement.

¹ See Final Rulemaking Order re: Rulemaking Establishing Procedures to Ensure Customer Consent To A Change of Natural Gas Supplier, Docket L-00990145 (Order entered May 12, 2000).

² See Interim Guidelines Regarding Standards For Changing A Customer's Electricity Generation Supplier, Docket M-2011-2270442 (Order entered October 25, 2012).

The disclosure statement may be provided in-person or by United States mail. The disclosure statement may be provided electronically if the customer consents to electronic delivery. A customer shall have the right to rescind the transaction within 3 business days after receiving the disclosure statement.

(c) There shall be a rebuttable presumption that a disclosure statement correctly addressed to a customer with sufficient first class postage attached shall be received by the customer 3 days after it has been properly deposited in the United States mail. If delivered in-person, the disclosure will be considered received by the customer on the date of delivery. If delivered electronically, the disclosure will be considered received by the customer on the date it was transmitted electronically.

All of the above requirements can impact the time it takes a consumer to switch suppliers and must be taken into account when establishing switching procedures.

History Of The Commission's Review Of Its Supplier Switching Regulations

Our efforts to accelerate NGS switching begins with reviewing our past efforts to accelerate EGS and NGS switching. Based on customer complaints and supplier concerns and at the request of the Commission, in 2011 the Office of Competitive Market Oversight (OCMO) started exploring options to shorten the timeframe for switching a customer to another supplier. Switching timeframes were the result of a variety of Commission regulations as noted above, as well as supplier and utility procedures that were established in large part to guard against slamming. The delay in transferring a customer's account has been perceived by consumers to be a lost "savings opportunity" that results in customer frustration, disappointment, and a less than favorable opinion of the competitive retail market. Because customer satisfaction is key to the success of any retail market, OCMO became concerned that the length of the switching timeframes had become an impediment to achieving an effective competitive retail energy market in Pennsylvania.

To understand the mechanics behind the current switching process, OCMO had informal discussions with a number of utilities. OCMO also consulted informally with regulators from Texas and Maryland to learn about their enrollment timeframes and any steps they have taken to accelerate the switching process. Finally, OCMO presented this topic to the CHARGE³ working group on March 24, 2011, in order to obtain the perspectives of the suppliers, OCA, and other interested parties. With the initiation of the Electric Retail Markets Investigation (Electric RMI) in 2011, it was decided to bring this issue to that forum as well and to give Electric RMI participants an opportunity to present their perspectives and concerns.⁴ OCMO's working group met 19 times between March 24, 2011 and February 7, 2013 to discuss, among other topics, the issue of accelerating supplier switching timeframes.⁵

OCMO examined utility procedures, some of which were adopted to comply with the above-cited regulations but also impact the time needed for a customer to switch

suppliers. Supplier switches were traditionally executed based on meter read dates according to the customer's regular meter-reading schedule for billing purposes. The possibility of using mid-cycle, off-cycle, or estimated meter reads was considered as a means to shorten the switching timeframe. The diversity of metering capabilities and practices among utilities complicates any attempt to develop a mid-cycle read protocol. Some utilities have advanced metering systems,⁶ while others still utilize traditional basic meters that require field visits and manual readings to obtain metering information. In fact, some utilities only read customer meters on a bi-monthly basis and issue estimated bills during the non-read months. In the electric industry, the implementation of smart meter technology offers the ability to support off-cycle reads and short-period bills.

Supplier procedures were also examined by OCMO to determine if changes could be made to shorten the switching timeframe. Some supplier practices may adversely affect the switching process timeframes. For example, the practice of batching enrollments before sending them to the utility instead of sending enrollments to the utility one at a time may unnecessarily delay transfers.

Shortening the 10-Day Confirmation Period to 5-Days in 2011:

OCMO's initial exploration of these issues culminated in a November 10, 2011 Tentative Order, which proposed several options to accelerate switching timeframes. Interim Guidelines Regarding Standards For Changing a Customer's Electricity Generation Supplier, Docket M-2011-2270442 (Order entered Nov. 14, 2011). In the Tentative Order we declared that changing the 3-business day rescission period at 52 Pa. Code § 54.5 is not feasible because it reflects existing Pennsylvania consumer contract law. Id. at 9; see Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1—201-9.3. Federal law also requires a 3-business day "cooling off period" for door-to-door transactions. Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations, 16 CFR Part 429. Further, we saw no point in changing the "first feasible billing period" language in 52 Pa. Code § 57.174 unless we first changed all of the other timeframes and requirements that necessitate the current switching timeline.

Instead, we focused on the confirmation waiting period during which the utility holds the enrollment request in order to give the customer an opportunity to respond to the confirmation letter. In our November 10, 2011 Tentative Order, we proposed to eliminate the 10-day waiting period. We also raised the possibility of off-cycle meter readings to effectuate switching.

Seventeen parties filed comments in response to the Tentative Order.⁷ In the comments to this Order, the parties generally supported reducing customer wait time for switching suppliers. Utilities commented that enacting changes would be better facilitated through the rule-

⁶ Note that these advanced meters are generally not classified as "smart meter technology" as defined at 66 Pa.C.S. § 2807(g) (relating to duties of electric distribution companies), but have a capability to be read remotely.

⁷ Those parties were AARP/Pennsylvania Utility Law Project/Community Legal Services Inc. (AARP/PULP/CLS); Columbia Gas of Pennsylvania (Columbia Gas); DTE Energy Supply Inc. (DTE Energy); Duquesne Light Company (Duquesne); Energy Association of Pennsylvania (EAP); FirstEnergy Solutions Corp. (FE Solutions); Industrial Customer Groups; Metropolitan Edison, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power (collectively FirstEnergy); National Energy Marketers Association (NEMA); Office of Consumer Advocate (OCA); PA Energy Marketers Coalition (PEMC); PECO Energy Company (PECO); Philadelphia Gas Works (PGW); PPL Electric Utilities (PPL); Retail Energy Supply Association (RESA); Verde Energy USA (Verde Energy); and Washington Gas Energy Services, Inc. (WGES).

³ CHARGE (Committee Handling Activities for Retail Growth in Electricity) participants include EDCs, EGSs, industry trade organizations, consumers, the Office of Consumer Advocate (OCA), and the Office of Small Business Advocate (OSBA).

⁴ RMI participants include EDCs, EGSs, residential, small business and industrial consumer representatives and other interested parties. For more information on the Commission's RMI, see the Commission's web page at http://www.puc.pa.gov/utility_industry/electricity/retail_markets_investigation.aspx.

⁵ See Master List of CHARGE Agenda Items. Pa. Public Utility Commission, OCMO, at 16. Available at http://www.puc.pa.gov/electric/pdf/OCMO/CHARGE_Issues-Master_List.pdf.

making process (as we are doing here) instead of through guidelines issued via Commission order. Suppliers noted that shortening the switching timeframe is important because the current switching process is out of line with standards for service in other industries.

After careful review and consideration of the comments, we decided that instead of the complete elimination of the 10-day confirmation period at 52 Pa. Code § 57.17, we would retain the confirmation period but shorten it to five days. We would then gauge the impact of this change before considering the elimination of the confirmation period altogether. We also decided not to require the use of off-cycle readings at that time. As such, we issued a Final Order⁸ (Interim Guidelines Final Order) that provided interim guidelines to shorten the confirmation waiting period from 10 to 5 days. *Id.* at 12–14. We believed that a 5-day period provided sufficient notice for customers while also shortening supplier switching timeframes. At the same time, we reserved taking more substantial actions until after we observed the impact of the change from 10 to 5 days.

Also in the Interim Guidelines Final Order, concerning the natural gas industry, we agreed that the operational differences between the two industries warranted a separate proceeding involving the broader issues that will be focused solely on that industry. However, at the same time, we saw no reason not to apply to the natural gas industry the shortened 5-day confirmation period. This also made sense in that it kept the rules for electric and gas as similar as possible—especially important for suppliers and utilities that sell both electric and gas—and for their customers who shop for both electric and gas. Having a 10-day confirmation period for gas and a 5-day period for electric would simply invite confusion and frustration. Accordingly, we waived 52 Pa. Code § 59.93(2) to the extent necessary to provide for a 5-day waiting period instead of a 10-day period:

Upon receipt of the notification required by 52 Pa. Code § 59.93(1), the NGDC shall send the NGDC ratepayer of record a confirmation letter noting the proposed change of NGS. This letter should include notice of a 5-day waiting period in which the order may be canceled before the change of the NGS takes place. The notice shall include the date service with the new NGS will begin unless the customer contacts the NGDC to cancel the change. The 5-day waiting period shall begin on the day the letter is mailed. The letter shall be mailed by the end of the next business day following the receipt of the notification of the customer's selection of a NGS.

By an October 5, 2015 Final Order,⁹ these guidelines were extended for the natural gas industry for an additional three years (through October 25, 2018) with the waivers of 52 Pa. Code §§ 59.93(2) and 59.94 remaining in place as to allow the five-day waiting period to continue. It was envisioned that this extended waiver would allow time for permanent changes to the natural gas switching rules to be promulgated via a formal rulemaking process.

Accelerating EGS Switching in 2014

The next initiative in the Commission's ongoing efforts to accelerate supplier switching occurred in the wake of the January 2014 Polar Vortex. At its February 20, 2014

Public Meeting, the Commission opened a proceeding¹⁰ to examine current rules, policies and consumer education measures regarding variable rate retail electric products. (Variable Rate Order). In the Variable Rate Order, the Commission expressed particular concern for customers receiving their electric supply service from an EGS under a contract with a monthly adjusted variable rate. Therefore, the Commission sought to learn about and facilitate mid-cycle supplier switching so that customers could respond more rapidly to retail market price offers and mitigate potential price increases associated with variable-priced contracts.

In an effort to obtain more feedback from stakeholders on proposed changes to the standards for changing a customer's electric generation supplier, the Commission issued a Secretarial Letter on March 18, 2014, alerting affected parties of the Commission's intent to promulgate a Final-Omitted Rulemaking that would amend the existing EGS switching regulations at 52 Pa. Code, Chapter 57. In an Annex attached to the Secretarial Letter, the Commission included proposed language changes to 52 Pa. Code §§ 57.172–57.179.

In an April 3, 2014 Final-Omitted Rulemaking Order¹¹ that followed careful review and consideration of the comments filed in response to the Secretarial Letter,¹² the Commission adopted revised regulations that require EDCs to accelerate switching time frames through off-cycle meter readings that will allow consumers to switch suppliers in as little as three business days once the EDC has been notified. The revisions to the EGS switching regulations included the following:

- § 57.172: An exception was created allowing for the EDC to change a customer's EGS in the context of a Commission-approved program (the Standard Offer Program, for example). Language was also added clarifying that the customer can contact the default service provider directly to drop from an EGS to default service.

- § 57.173: The EGS is now directed to submit the customer's enrollment to the EDC at the expiration of the 3-day rescission period provided for by 52 Pa. Code § 54.5(d). However, the EGS can submit sooner, or later, with the consent of the customer. The EDC still sends the customer a confirmation letter—but the confirmation letter no longer includes a "waiting period."

- § 57.174: The EDC is now expected to switch the customer's EGS within three business days of receiving the enrollment from the EGS. The EDC is to obtain a meter reading to effectuate the switch. If the EDC does not have advanced metering capability, the EDC has the option of obtaining a meter reading; or using an estimated meter reading; or obtaining a meter reading from the customer to effectuate the switch.

- § 57.179: The EDC has to maintain for three years slamming dispute records concerning switching to both EGSs and to default service.

EDCs were required to implement the changes within six months of the new regulations becoming final. Cost

¹⁰ See Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products, Docket No. M-2014-2406134 (Order entered March 4, 2014).

¹¹ See Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 57 Regulations Regarding Standards For Changing a Customer's Electricity Generation Supplier, Docket No. L-2014-2409383 (entered April 3, 2014).

¹² Comments to the March 18, 2014 Secretarial Letter were filed by the Office of Small Business Advocate (OSBA); NEMA; the Industrial Customer Groups; the Public Utility Law Project (PULP); UGI Utilities, Inc.—Electric Division (UGI Electric); NRG Retail Northeast (NRG); RESA; EAP; PPL; OCA; the Electronic Data Exchange Working Group (EDEWG); WGES; Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company (Citizens and Wellsboro); FE Solutions; FirstEnergy; PECCO; UGI Energy Services, LLC (UGI Energy); Pike County Light & Power Co. (Pike County); Duquesne; and Anna Perederina.

⁸ See Final Order on Interim Guidelines Regarding Standards For Changing a Customer's Electricity Generation Supplier. Docket No. M-2011-2270442 (Public Meeting of October 24, 2012).

⁹ See Investigation of Pennsylvania's Retail Natural Gas Supply Market—Interim Guidelines Regarding Standards For Changing a Customer's Natural Gas Supplier, Docket No. I-2013-2381742, (Order entered October 5, 2015).

recovery for implementation was to be addressed in each EDC's subsequent base rate proceeding.

In December of 2014, the Commission issued a series of Orders¹³ addressing various waiver requests filed by the EDCs seeking to delay and/or modify elements of the revised switching regulations. In general, the EDCs were permitted an extended period of time to implement fully compliant 3-business day switching on the condition that they had some limited 3-business day switching available to customers in the interim. These interim capabilities usually consisted of making available one on-cycle and/or off-cycle switch per billing period; plus the ability to drop to default service upon customer request. Throughout the course of 2015, most of the major EDCs implemented fully compliant 3-day switching—and as of July 2016, 3-business day switching is available for all but a limited handful of customers at the major EDCs.

Natural Gas Retail Markets Investigation:

On December 18, 2014, the Commission issued the Final Order in the Investigation of Pennsylvania's Retail Natural Gas Supply Market (Gas RMI Final Order)¹⁴ announcing specific topics and issues that were to be the focus of the investigation (Natural Gas RMI). The investigation was intended to examine several aspects of the competitive natural gas market to see what can be done to improve the market for the ultimate benefit of consumers. Through the Natural Gas RMI Final Order, we outlined our priorities and finalized specific action plans to be undertaken by OCMO, including the establishment of working groups and our intent to propose regulations on specific issues. Included in these priorities was a review of natural gas switching timeframes. OCMO was directed to explore this issue and provide recommendations to the Commission.¹⁵

In the summer of 2015, OCMO invited interested parties to participate in an Accelerated Switching Working Group (Working Group). On August 31, 2015, OCMO distributed to the Working Group a discussion document and invited parties to file informal comments in response. The document asked nine specific questions, plus a tenth question where the parties were free to raise any issue not specifically addressed in the nine questions provided. The questions included:

- Should 52 Pa. Code § 59.92 be revised to create an exception for Commission-approved programs that requires the NGDC to initiate a change in NGS service (for example—Standard Offer Programs)? Should we also create an exception for when a customer wants to return to SOLR (upon a reminder to the customer from the SOLR provider of possible early-termination penalties from their current supplier)?

- Should 52 Pa. Code § 59.93 be revised to create an exception for the NGS to hold the enrollment for the 3-business day rescission period under 52 Pa. Code § 62.75 unless the customer insists otherwise? Should we create an exception for, with customer consent, the NGS to hold the enrollment for a distant, future start date?

¹³ See Petition of PECO Energy Company for Temporary Waiver of Regulations Related to the Required Days in a Billing Period, Docket P-2014-2446292 (Order entered December 4, 2014); Petition of PPL Electric Utilities Corporation for Temporary Waivers from Certain Technical Requirements of 52 Pa. Code §§ 57.174 and 57.179, Docket P-2014-2445072 (Order entered December 4, 2014); Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Temporary Waiver of Technical Requirements of 52 Pa. Code § 57.174, Dockets P-2014-2449010; P-2014-2449015; P-2014-2449017; P-2014-2449027 (Order entered December 4, 2014); Petition of Duquesne Light Company For A Waiver Of The Three Business Day Switching Requirements Under 52 Pa. Code § 57.174, Docket P-2014-2448863 (Order entered December 4, 2014).

¹⁴ See Investigation of Pennsylvania's Retail Natural Gas Supply Market, Docket No. I-2013-2381742 (Order entered December 18, 2014).

¹⁵ *Id.* at 26.

- Noting that the 10-day confirmation period has already been shortened to five days (See Investigation of Pennsylvania's Retail Natural Gas Supply Market—Interim Guidelines Regarding Standards For Changing a Customer's Natural Gas Supplier, Order Entered October 5, 2015. Docket No. I-2013-2381742.), should this confirmation period be shortened further or eliminated altogether? Should we make this requirement similar to the electric requirement at 52 Pa. Code § 57.173(2)—which requires a confirmation letter—but no confirmation “hold” period? Or is this contingent upon how much we are able to shorten the gas switching process?

- Should 52 Pa. Code § 59.94 be revised to be more specific than “first feasible billing period?” Should a specific number of days be required—analogueous to the “3-business days” in the electric rules at 52 Pa. Code § 57.173—even if that means switching suppliers off-cycle? If we maintain on-cycle switching only, should new rules and timeframes be required? How many days prior notice before the “next billing period” are needed? Are there utility tariff provisions regarding “blackout dates” or “monthly enrollment deadlines” that are inconsistent with the desire to accelerate the switching process?

- Should 52 Pa. Code § 59.95 be removed since it is not relevant to current NGS switching protocols (NGDCs do not “police” the switching process—they simply act on the directions they receive from NGSs via electronic protocols. They are not expected to, nor do they, screen supplier enrollments for “authorization.”)?

- We noted that 52 Pa. Code § 59.97 has been questioned in that it does not designate which party is responsible for switching the customer “back to the original NGS.” Under current protocols, one NGS cannot “switch” a customer to another NGS. In keeping with the rules requiring that customers have to authorize their switch of supplier—it is the customer who has to initiate this—by either contacting their preferred NGS or the default supplier. We asked if this section should be removed or revised for better clarity.

Nine parties submitted informal comments in response to the discussion document.¹⁶ In addition to the Working Group discussion document and comments, OCMO had informal one-on-one discussions with various NGSs and NGDCs about the switching process and the possibility of making it faster for consumers.

As apparent from the above questions to the Working Group, there are several issues involved in NGS switching to address, but the fundamental issue remains the use of off-cycle switching to accelerate the process. An off-cycle switch is a switch where the NGDC makes a switch effective at any point in the billing cycle, not just at the usual monthly billing point. To accelerate NGS switching to be anywhere analogueous with the timeframes in the electric industry, off-cycle switching would be necessary.

In general, NGDCs expressed strong objections to off-cycle switching. They discussed differences in metering technology, back office systems and the gas nomination process that they suggested will limit the extent to which accelerated supplier switching regulations in the electric and natural gas industries can be aligned. Many of the objections concerned the manner in which wholesale gas markets operate. NGDCs opined that off-cycle switching for gas is inefficient from a market perspective as it runs counter to the rest of the business that operates on a

¹⁶ Columbia; the Energy Association of Pennsylvania (EAP); NFG; OCA; PECO; Peoples; PGW; RESA; and UGI.

“first of the month” basis. Additionally, they averred that any shortening of this timeframe will disrupt their ability to provide advance notice of capacity requirements ahead of “bid week”—that period when wholesale purchases are arranged. NGDCs believe that off-cycle switching would also complicate capacity assignments and the proper allocation of capacity between NGSs to meet customer needs and would require quantities of released capacity to be adjusted much more frequently. Finally, NGDCs note the “significant expense” that would be required to implement off-cycle switches for gas customers, opining that the benefits may not justify the costs.

In their informal comments, NGSs were generally united in their desire to accelerate the switching process, noting that the current timeframes can lead to customer frustration, delayed savings and dissatisfaction with the competitive gas market. Accordingly, NGSs asked the Commission to explore off-cycle switching. However, some NGSs were uncertain about shortening the switching timeframe to three business days as has occurred in the electric industry, pointing to the same need to make capacity assignment nominations that the NGDCs discussed. NGSs also expressed concerns relating to timing of wholesale market purchasing similar to the concerns expressed by the NGDCs. NGSs expressed varying opinions to OCMO as to the minimum amount of time that is needed for them to make capacity assignment nominations and effectuate a switch. Regardless, NGSs would like to see faster switching, even using temporary solutions until advanced metering infrastructure is available. One possibility cited is allowing one off-cycle switch per month, with the meter information either: (1) being read off-cycle by the NGDC; (2) being read by the customer and reported to the NGDC; or (3) being estimated by the NGDC.

In their informal comments, consumer representatives expressed general support for accelerating the switching process, but noted that the cost of doing so should be commensurate with the benefits. Further, they were firm in their opinion that any shortening of the switching timeframe should not interfere with a consumer’s right to the three-business day rescission period found in 52 Pa. Code § 62.75.

Discussion

The Customer Experience

Before moving forward with any regulatory changes, we must first carefully scrutinize the current customer experience with switching suppliers and the impact of the change from a 10-day to a 5-day confirmation period. Mindful that the primary objective of these regulations is to effectuate efficient switching of suppliers while protecting consumers from unauthorized switching, we will first examine “slamming” in the current marketplace.

While the Commission is extremely concerned with and takes seriously any allegation of slamming, we believe that slamming incidents are relatively rare, when considering that hundreds of thousands of Pennsylvania consumers have been shopping for some time.¹⁷ Regardless, we again reiterate our long-standing “zero-tolerance” policy on slamming that we first enunciated in May 1998 upon adoption of our EGS switching regulations:

Today, we set in place the ‘rules of the road’ by which customers’ requests to switch electric generation suppliers will be processed. We have observed other industries in which unauthorized customer switching,

known as “slamming”, has occurred. We wish to state now, up front and for the record: this Commission will have zero tolerance for slamming by any means and in any form.¹⁸

In that same statement, the Commission continued:

Customer slamming is among the most serious violations of our rules and regulations. There is no grace period. There is no ‘transition period’ as far as slamming is concerned. You can count on this Commission imposing commensurate penalties quickly and without hesitation.¹⁹

Additionally, Commission staff has been monitoring the impact of the October 2012 Interim Guidelines that reduced the confirmation period from ten days to five days. OCMO’s discussions with the utilities and its review of informal complaints filed since 2012 have revealed no significant problems resulting from the shortened confirmation period. One of the mechanisms available to gauge the level of slamming in the marketplace is the number of informal complaints filed with the Commission’s Bureau of Consumer Services (BCS) that allege slamming. In the years 2012 through 2016, there have been just over 147 such complaints; an average of 29 annually. This represents approximately 18 percent of all informal complaints against NGSs. In most of these cases, after reviewing a customer’s complaint and the NGS’s supporting documentation, BCS determined that the slamming allegation was either unfounded and/or there was insufficient evidence to support the slamming allegation. Some of the allegations are the results of customer confusion, such as a customer misunderstanding the distinctions between the NGS and the utility.

Finally, we invite the parties to submit, along with their comments, any data they may have regarding the occurrences of slamming they may be aware of. This will allow us to comprehensively evaluate the level of slamming in the marketplace before we adopt final regulations.

Proposals to Revise the NGS Switching Regulations

We thank the parties that participated in the Working Group’s exploration of these issues for their helpful contributions along with everyone else who has assisted with our examination of supplier switching going back to 2011. Through the numerous initiatives and proceedings since 2011, all parties have gained important experience and insight into these matters. Using the knowledge and experience we have all gained, we now think it is time to propose permanent changes to the NGS switching timeframes.

Given the diversity of opinion and the serious concerns raised by several parties during this process to date, we believe that the initiation of a formal rulemaking subsequent to receipt of comments on the regulation changes proposed in this order is the appropriate mechanism for the exploration of accelerating switching in the natural gas industry. Guidelines or a Tentative Order/Final Order process would not be appropriate in this instance where the Commission is proposing industry-wide norms that may require significant and permanent changes to NGDC systems.

Using the feedback received during the Working Group’s exploration of this issue, we are proposing sub-

¹⁷ See natural gas shopping statistics on the PaGasSwitch.com website at http://www.pagaswitch.com/sites/default/files/GasSwitch_shoppingnumbers_8_31_16.pdf

¹⁸ Statement of Chairman Quain, Vice Chairman Bloom, Commissioner Hanger, Commissioner Rolka and Commissioner Brownell in Pennsylvania Electric Association Petition for Reconsideration of Rulemaking Order Establishing Standards for Changing Electric Suppliers, Docket No. L-00970121 (Public Meeting of May 21, 1998).

¹⁹ Id.

stantial changes to the NGS switching regulations. While we think the NGDCs and NGSs in the Working Group raised and discussed several important issues, we also have to keep in mind the consumer's perspective and also consider the need for consistency with switching timeframes in the electric industry. We believe that accelerating the switching process is essential in creating a more consumer-driven marketplace. With faster supplier switching, consumers can respond more quickly to attractive offers—meaning that suppliers have to work harder to attract and retain customers. Faster switching also allows consumers to escape price increases—especially in the context of variable-price contracts.

Faster switching in the electric industry has created a more flexible, responsive market—benefits we now want to bring to natural gas consumers. We also believe that we need to make timeframes and procedures across the electric and natural gas industries as consistent as possible to avoid customer confusion and frustration. This is important for those consumers and suppliers that participate in both markets—and is especially relevant for those consumers who may obtain both services from the same supplier. Keeping timeframes similar between the two industries may also make the bundling of electric and natural gas service more feasible—providing greater product diversity for consumers to choose from. Accordingly, we are proposing for comment changes to shorten the NGS switching timeframes, such as modifying enrollment windows, tightening notice timeframes, and the use of off-cycle switching. We are also proposing changes to bring the NGS rules into as much alignment with the EGS rules as possible, including allowing consumers to contact the supplier of last resort (SOLR) directly to request a drop to SOLR service.

As mentioned earlier, the Working Group did identify a number of operational concerns for migrating to a faster switching schedule. For instance, the primary concerns of the working group originated around the time it takes to procure natural gas and meter reading data and the potential for stranded commodity. However, we propose that those operational issues as well as others can largely be negated through various strategies and a commitment to eliminate delays within the gas marketplace.

§ 59.91. Definitions.

The definitions currently found in § 59.91:

The following words and terms, when used in this section and §§ 59.92—59.99, have the following meanings, unless the context clearly indicates otherwise:

Customer—A retail gas customer as defined by 66 Pa.C.S. § 2202 (relating to definitions). The term includes all persons identified by the NGDC ratepayer of record, under § 59.95 (relating to persons authorized to act on behalf of a customer), as authorized to act on behalf of the NGDC ratepayer of record in changing the NGS for the account.

Data element—One or more characters that represent numeric or alphanumeric fields of data.

NGDC—Natural Gas Distribution Company—An NGDC as defined by 66 Pa.C.S. § 2202.

NGS—Natural gas supplier—A supplier as defined by 66 Pa.C.S. § 2202.

We propose minor additions to this section. Since we propose using the term “supplier of last resort” in the revised regulations, we think it is important to include a definition of this term. We propose using the definition as

found in the NGS licensing regulations at § 62.101 (relating to definitions). We also propose using the term “current NGS” and “selected NGS” in the revised regulations as we did in the revised electric switching regulations relating to EGSs. Accordingly, as we did with those regulations, we propose defining these terms. We propose revising 59.91 as follows:

§ 59.91. Definitions.

The following words and terms, when used in this section and §§ 59.92—[59.99] 59.100, have the following meanings, unless the context clearly indicates otherwise:

***Current NGS*—The NGS at the time of the customer contact.**

Customer—A retail gas customer as defined by 66 Pa.C.S. § 2202 (relating to definitions). The term includes all persons identified by the NGDC ratepayer of record, under § 59.95 (relating to persons authorized to act on behalf of a customer), as authorized to act on behalf of the NGDC ratepayer of record in changing the NGS for the account.

Data element—One or more characters that represent numeric or alphanumeric fields of data.

NGDC—Natural Gas Distribution Company—An NGDC as defined by 66 Pa.C.S. § 2202.

NGS—Natural gas supplier—A supplier as defined by 66 Pa.C.S. § 2202.

***Selected NGS*—The NGS from which the customer seeks new natural gas supply service.**

***Supplier of last resort*—The term as defined in 66 Pa.C.S. § 2207(a) (relating to obligation to serve).**

§ 59.92. Customer contacts with the NGDC:

This section currently reads as follows:

When a customer orally contacts the NGDC to request a change of NGS, the NGDC shall notify the customer that the selected NGS shall be contacted directly to initiate the change.

We propose to revise this section to make it similar to the analogous electric regulation at 52 Pa. Code § 57.172:

(a) When a customer orally contacts the NGDC to request a change of NGS, the NGDC shall notify the customer that the selected NGS shall be contacted directly to initiate the change. **This notification requirement does not apply when a Commission-approved program requires the NGDC to initiate a change in NGS service.**

(b) **When a customer contacts the supplier of last resort service provider to request a change from the current NGS to supplier of last resort service, the supplier of last resort service provider shall notify the customer that there may be a cancellation penalty to cancel service with the current NGS. Subsequent to this notice and upon express oral or written consent from the customer, the supplier of last resort service provider shall enroll the customer in supplier of last resort service.**

The proposed changes to (a) will facilitate programs like the Standard Offer Program (SOP) found in the electric industry where the utility is directed to enroll customers with a supplier. The Working Group generally supported this proposal—however—some utilities thought it was unnecessary because this is something the Com-

mission could direct via Order when and if any such programs are initiated. While this may be true, we believe that since this involves establishing an industry-wide norm, incorporating this in a regulation is more appropriate and transparent.

The proposed changes to (b) will provide another mechanism for consumers who want to drop their NGS service. In the Working Group, consumer representatives and utilities generally supported this proposal while suppliers opposed it because they fear it inappropriately allows a utility to interfere with consumer supplier choices. While we agree that ideally a consumer should first contact their current NGS to drop their supplier service, we recognize that this may not always be possible. One of the lessons of the January 2014 Polar Vortex is that supplier call centers can be overwhelmed—making contacting them difficult if not impossible in some instances. Allowing consumers to drop their NGS by contacting the utility provides an important safety mechanism for consumers in such situations.

§ 59.93. Customer contacts with NGSs.

This section currently reads as:

When a contact occurs between a customer and an NGS to request a change of the NGS, upon receiving direct oral confirmation or written authorization from the customer to change the NGS, the customer's new NGS shall:

(1) Notify the NGDC of the customer's NGS selection by the end of the next business day following completion of the application process. The NGDC shall verify the accuracy of the information provided by the NGS by matching at least two data elements such as name and account number, or address and account number, with NGDC records.

(2) Upon receipt of this notification, the NGDC shall send the NGDC ratepayer of record a confirmation letter noting the proposed change of NGS. This letter shall include notice of a 10-day waiting period in which the order may be canceled before the change of the NGS takes place. The notice shall include the date service with the new NGS will begin unless the customer contacts the NGDC to cancel the change. The 10-day waiting period shall begin on the day the letter is mailed. The letter shall be mailed by the end of the next business day following the receipt of the notification of the customer's selection of a NGS.

We propose the following changes to this section:

When a contact occurs between a customer and an NGS to request a change of the NGS, upon receiving direct oral confirmation or written authorization from the customer to change the NGS, the **[customer's new NGS] following actions shall be taken by the selected NGS and the customer's NGDC:**

(1) **[Notify] The selected NGS shall notify the NGDC of the customer's NGS selection [by the end of the next business day following completion of the application process] at the end of the 3-business day rescission period under § 62.75(d) (relating to disclosure statement for residential and small business customers) or a future date specified by the customer. The selected NGS may notify the NGDC by the end of the next business day following the customer contact upon customer consent. [The NGDC shall verify the accuracy of the information**

provided by the NGS by matching at least two data elements such as name and account number, or address and account number, with NGDC records.]

(2) Upon receipt of this notification, **the NGDC shall verify the accuracy of the information provided by the NGS by matching at least two data elements such as name and account number, or address and account number, with NGDC records. [the]** The NGDC shall send the NGDC ratepayer of record a confirmation letter noting the proposed change of NGS **or change to supplier of last resort provider. [This letter shall include notice of a 10-day waiting period in which the order may be canceled before the change of the NGS takes place.]** The notice shall include the date service with the new NGS **or supplier of last resort provider** will begin **[unless the customer contacts the NGDC to cancel the change. The 10-day waiting period shall begin on the day the letter is mailed]**. The letter shall be mailed by the end of the next business day following the receipt of the notification of the customer's selection of a NGS **or change to the supplier of last resort provider**.

The revisions to this section are intended to reflect the language in the analogous electric regulations at 52 Pa. Code 57.173. The changes to (1) are intended to accommodate the 3-business day right of rescission. No opposition to this proposal was voiced in the Working Group—with many noting that this would simply reflect current industry practice. However, the proposed changes also allow for flexibility; the switch can be processed sooner—or later—if the customer and the supplier agree. We note that even if the supplier and customer agree to submit the enrollment immediately, the customer still retains their 3-business day right of rescission. Per the regulation and law, a consumer cannot waive their right of rescission.

As for the shortening or elimination of the waiting period in paragraph (2), the Working Group was divided. Several parties suggested that shortening or eliminating the waiting period was contingent upon just how much we are able to shorten the switching period. These parties noted that if switching can be done quickly then a waiting period may not be necessary since customers will be able to quickly reverse any unauthorized switch. Some utilities advocated keeping the waiting period at five days while suppliers generally advocated eliminating the waiting period altogether. Suppliers noted that there are other means that the Commission can use to address unauthorized switching.

We note that in 2012 the Commission adopted the Chapter 111 supplier marketing regulations.²⁰ These regulations contain a number of requirements intended to ensure that the customer understands who they are dealing with, what they are doing, and have consented to the transaction. Section 111.8 requires door-to-door agents and agents that operate in public locations to prominently wear an identification badge clearly identifying the agent and the supplier they are representing. The agent must, upon first contact, identify the supplier they are working for and has to state that they are not working for and is independent of the customer's local utility. Agents are also not permitted to suggest to a customer that they are required to choose a supplier. Section 111.10 has similar provisions applicable to telemarketing agents.

²⁰ See 52 Pa. Code §§ 111.1—111.14.

Further, section 111.7 requires suppliers to verify all sales conducted by door-to-door or telemarketing agents. This verification has to be separate from the sales transaction process, with the customer having the right to have it performed without the sales agent being present. Suppliers have to retain the verification record for at least six billing cycles and provide the verification to the Commission upon request in case of a subsequent dispute. This verification process appears to be an effective mechanism for helping minimize slamming disputes and makes addressing any slamming disputes easier.

Additionally, we have recently revised the NGS disclosure regulations in Chapter 62 to make pricing information—especially for variable products—more transparent and understandable.²¹ Further, the revised regulation no longer requires the NGS to place NGDC information (contact information, universal service information, etc.) on the disclosure—something that was possibly causing consumers to confuse the NGS with the NGDC. The revised regulations also require that a plain-language contract summary accompany the disclosure—with the expectation being that consumers are more likely to read a brief simple summary than an entire disclosure.²²

Finally, in another Natural Gas RMI initiative, the Commission directed NGDCs to develop and implement an NGDC-NGS “Joint Bill.”²³ The “Joint Bill” is intended to make NGS billing information more prominent on the NGDC bill—in effect creating a bill that looks as if it comes from both the NGDC and the NGS (this is obviously only for consumers who are billed for both NGDC and NGS services on the NGDC consolidated bill, which is the case for most residential consumers). This includes placing the NGS logo on the bill. The intent is to make it very apparent to the consumer that their supply service is being provided by an NGS. Along with strengthening the connection between the consumer and the NGS, this heightened visibility of NGS information also helps guard against the possibility of the customer being served by an NGS they did not choose. The fact that the customer is receiving service from an NGS and the identity of the NGS is apparent simply by glancing at the bill.

We also again mention, as we did above, the Commission’s zero-tolerance policy for slamming. If needed, the Commission can and will punish a supplier that enrolls customers without proper customer authorization, including the possible suspension and revocation of the supplier’s license.

§ 59.94. Time frame requirement.

The current regulation reads as follows:

When a customer has provided the NGS with oral confirmation or written authorization to change NGSs, the NGDC shall make the change at the beginning of the first feasible billing period following the 10-day waiting period, as prescribed in § 59.93 (relating to customer contacts with NGSs).

This section gets to the heart of the matter—what should be the timeframe for switching the NGS service? There were concerns expressed in the Working Group that the 3-business day standard we put in place for the electric industry in 2014 may pose some operational

difficulties in the natural gas industry at this time. This is because of a lack of advanced metering, back-office processes, and gas nomination timeframes. However, there was disagreement over just how short the timeframe should be and whether off-cycle switching should be used. In the Working Group, utilities were united in their opposition to any movement to off-cycle switching as being too disruptive of current billing systems and procedures and pointed to the expense of modifying these systems to accommodate off-cycle activity. They also point to the lack of metering information to support off-cycle switching—with many NGDCs having traditional analog meters that require a field visit to read. In general, suppliers pointed out that there are alternatives to a field visit to obtain a meter reading. The utility can estimate a reading or ask the customer for a reading—options that the analogous electric regulations provide for when advanced metering is not available.²⁴ We also note that NGDCs are required to conduct off-cycle reads when customers move or terminate service and with the advent of automated meter reading devices the cost to perform an off-cycle read has been reduced. Suppliers urged the Commission to consider off-cycle switching, noting that without off-cycle switching, some consumers end up waiting as long as 45 days for a switch to take effect. Consumer representatives in the Working Group supported shortening switching timeframes as long as any shortening does not interfere with the customer’s right of rescission and that any changes to the process be cost-effective.

This is a complex matter with many things to consider. As suppliers pointed out in the Working Group, with on-cycle only switching, coupled with NGDC notification deadlines, a customer’s switch can take several weeks. For example, some NGDCs require a 15-day prior notice to perform a switch—meaning that if the NGDC does not get notified at least 15 days prior to the next meter read, the customer’s switch must wait for the following meter read. This could result in a 45-day switching period. This extended timeframe may be unacceptably long; a customer requesting a switch to NGS service at the beginning of winter could still be with their previous supplier or SOLR for a substantial amount of the winter, seriously eroding possible savings.

We are proposing that NGS switching should take no longer than EGS switching: 3-business days. We recognize that this will require, in most cases, off-cycle switching but we agree with those parties that pointed out that there are options available if an off-cycle switch is needed and advanced metering is not available—special meter reading, estimated meter readings and customer-supplied meter readings. These are the same alternative options made available to EDCs when executing a supplier switch. We believe, as mentioned previously, that there are important consumer benefits in keeping the switching timeframe as short and as similar to the electric timeframes as possible. With short switching timeframes, the customer will begin accruing the benefits of shopping, be it cost savings, value-added services or special products, as soon as possible. As already discussed, this consideration is especially relevant in the winter-time where each day can matter. It is also important to keep in mind that from the consumer’s perspective, it is not 3-day switching. As noted in our discussion of § 59.93, in most cases, the supplier will hold the customer’s enrollment until the expiration of the customer’s § 62.75(d) 3-day rescission period. It is only after this initial 3-day period expires and the NGS forwards the enrollment to the

²¹ See Final Rulemaking Order re: Customer Information Disclosure Requirements for Natural Gas Suppliers Providing Natural Gas Supply to Residential and Small Business Customers, Docket No. L-2015-2465942 (Order entered April 21, 2016).

²² See 52 Pa. Code § 62.75.

²³ See Final Order re: Investigation of Pennsylvania’s Retail Natural Gas Market: Joint Natural Gas Distribution Company—Natural Gas Supplier Bill, Docket No. M-2015-2474802 (Order entered August 20, 2015).

²⁴ See 52 Pa. Code § 57.174.

NGDC that the 3-business day clock to switch the account starts ticking. So from a consumer's perspective, even under the accelerated procedure being proposed, the switch will likely take up to six days (if not longer in the case of intervening holidays or weekends).

We also recognize that off-cycle switching will necessitate a change in NGDC billing procedures. We will not specify the billing procedure changes that may be necessary, but point to the fact that in the electric industry, different EDCs have handled this differently, and we expect to maintain the same flexible approach for the NGDCs. Some EDCs maintain the regular monthly bill, placing multiple suppliers on the same bill if a switch is performed off-cycle. Another EDC instead issues a new bill each time a supplier is switched regardless of what point in the billing cycle the switch occurs.

We still have not addressed all operational concerns related to accelerated switching and offer the opportunity for the industry to propose innovative ways to make three day switching work. One such mention may be a collaborative approach between all parties involved in a switch (i.e., the previous supplier and the new supplier). First, it is important to note that capacity and, to a lesser extent, the nomination schedule for the customer follows the customer at all NGDCs. This structure eliminates a hurdle but sets a rigid requirement that purchased commodity (i.e., natural gas) must align with in order to serve the customer. However, we know that the previous supplier would have already contracted for the commodity (at least until the end of the contract term) that perfectly aligns with that customer's capacity and nomination. Therefore, we know that there is at least one option capable of serving the customer on a quick timescale.

Naturally, any interface would need to be market driven (i.e., based upon cost, spot price, hub price, etc.) but the current NGS commodity could be established as a right of first refusal to the selected NGS supplier for a specified period of time after the switch in order to serve the customer. For instance, the commodity or services from the current NGS could be offered for a period of no more than 10 days unless both parties agree to a longer term. Meanwhile, we could marry this right of first refusal to the 3 day customer right of rescission where the selected NGS would need to let the current NGS know their intent of using the right of first refusal. This dynamic would necessitate real time communication between all parties involved and in the case of an NGS to NGS switch would also require NGDC involvement. For these reasons, the NGDC would likely have to serve as a clearinghouse for these dynamics on their individual systems and foster this real time communication between all parties. In addition, these types of features may require NGSs to become more creative with their products to compensate for any costs for accelerated switching. If done properly this sort of clearinghouse could aid further competition within the marketplace, ultimately leading to more shopping opportunities or lower costs for consumers.

These types of marketplace changes may necessitate corresponding regulations. We have not proposed those here as the above discussion may be just one way to accelerate switching. Therefore, we invite interested parties to propose regulation changes consistent with such mechanisms that would accelerate switching.

We also note that, unlike the electric industry where Electronic Data Interchange (EDI) is used uniformly, various NGDCs use different electronic protocols in communicating customer information with NGSs. Nothing in

our proposed rule changes nor is intended to alter this. We prefer, as we did with the electric industry, not to prescribe the mechanics of the switching process—and instead leave that up to the discretion of the NGDCs and NGSs. However, we invite comments from the parties if they believe there are electronic protocol issues they think we need to address in the context of NGS switching.

We propose a revised § 59.94 for comment as follows:

§ 59.94. Time frame requirement.

(a) When a customer has provided the NGS with oral confirmation or written authorization to change NGSs or provided the NGDC with oral confirmation or written authorization to change to supplier of last resort service, consistent with electronic data transfer and exchange standards, the NGDC shall make the change [at the beginning of the first feasible billing period following the 10-day waiting period, as prescribed in § 59.93 (relating to customer contacts with NGSs)] within 3 business days of the receipt by the NGDC of the electronic enrollment transaction.

(b) The NGDC shall obtain a meter read to effectuate the switch of service within the time period provided for in subsection (a). In instances when the NGDC does not have advanced or automated metering capability, the NGDC shall obtain an actual meter read, use an estimated meter read or use a customer-provided meter read. When an estimated meter read is used, the estimated meter read shall be updated when an actual meter read is obtained.

§ 59.95. Persons authorized to act on behalf of a customer.

This section currently reads as follows:

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

We propose to eliminate this section in its entirety. As we discussed in the Working Group, we propose its elimination since it is not relevant to current NGS switching protocols. When this provision was originally promulgated, it was envisioned that NGDCs might have more of a role in "policing" the switching process. However, as the switching process evolved, NGDCs do not "police" the switching process—they simply act on the directions they receive from NGSs via electronic protocols. They are not expected to, nor do they, screen supplier enrollments for "authorization." This is not even possible, given that the electronic data submitted by the NGS to the NGDC does not include who the NGS talked to at the customer's household (and with enrollment transactions that do not involve person-to-person contact, such as direct mail or online enrollments, the NGS has no way of knowing who actually submitted the written or online enrollment form). We fear that retaining this section risks giving too many the false impression that NGDCs police the switching process—or that NGDCs are obligated to police the process.

In the Working Group, utilities generally supported removing this section—noting that "policing" the switching process is not a role they are seeking. Suppliers

likewise supported removing the section—again noting that it would be inappropriate to have NGDCs “policing” the process—and that suppliers have no feasible method currently to obtain from the NGDC the “authorized person(s).” Suppliers further noted that in practice, they routinely ask the individual they are talking to if they are authorized to act on the account. Consumer representatives generally supported retaining this section in the belief that in case of a subsequent dispute, a document on file at the utility that identifies the names of individuals who have the authority to initiate a switch might be helpful.

§ 59.97. Customer dispute procedures.

This section currently reads as:

(a) When a customer contacts an NGDC or an NGS and alleges that the customer’s NGS has been changed without consent, the company contacted shall:

(1) Consider the matter a customer registered dispute.

(2) Investigate and respond to the dispute consistent with the requirements in §§ 56.151 and 56.152 (relating to utility company dispute procedures).

(b) When the customer’s dispute has been filed within the first two billing periods since the customer should reasonably have known of a change of NGSs and the dispute investigation establishes that the change occurred without the customer’s consent, the customer is not responsible for NGS charges rendered during that period. If the customer has made payments during this period, the company responsible for initiating the change of supplier shall issue a complete refund within 30 days of the close of the dispute. The refund or credit provision applies only to the natural gas supply charges.

(c) A customer who has had a NGS changed without having consented to that change shall be switched back to the original NGS for no additional fee. Charges involved in the switch back to the prior NGS shall be the responsibility of the company that initiated the change without the customer’s consent.

(d) If a customer files an informal complaint with the Commission alleging that the customer’s NGS was changed without the customer’s consent, the Bureau of Consumer Services will issue an informal decision that includes a determination of customer liability for any NGS bills or administrative charges that might otherwise apply, rendered since the change of the NGS.

(e) In addition to customer-specific remedies, the Commission may, after investigation and decision, assess fines under 66 Pa.C.S. Chapter 33 (relating to violations and penalties), and initiate proceedings to revoke the license of any NGS that demonstrates a pattern of violating this chapter. The Commission may order a particular NGS that has a pattern of violating this chapter to obtain written authorization from every new customer as a condition of providing service in this Commonwealth. Nothing in this section limits the Commission’s authority.

This section provides important consumer protections against slamming and we are proposing only limited changes to it. This section is key to the Commission’s role in policing the switching process—specifically the provisions in (1) and (2) that require all slamming allegations to be treated as disputes under Chapter 56 and thus

referred to the Commission. However, as discussed in the Working Group, there are some practical concerns with subsection (c) that requires a customer that has been “slammed” to be returned to their original NGS. The current regulation fails to specify who is responsible for making this happen; the customer, the NGDC, the NGS that slammed the customer, or the NGS that lost the customer? How the switching process has evolved has made some of these possibilities problematic if not impossible. An NGS cannot switch a customer to another NGS. And NGSs and NGDCs are not to switch anyone without oral or written authorization from the customer. Further, there may be instances where the customer’s former NGS is no longer able, willing or allowed to take back a customer they may have lost. In general, for a customer to be switched to any NGS, both the customer and the NGS must be aware of the switch and both must authorize it. This makes any kind of “automatic” switch back to the previous NGS problematic.

The Working Group generally agreed that some additional guidance in this section would be helpful, but had difficulty in identifying which entity should be responsible for switching the customer back to their original NGS. There was consensus that the process ideally should be as seamless and burden-free upon the customer as possible—but there was also recognition that the customer may have to be involved in the process. Suppliers generally proposed that the customer should contact their original NGS and seek re-enrollment as to ensure that this is indeed what the customer wants and that the NGS is still in a position to serve the customer.

Accordingly, we propose to clarify in subsection (c) that to be switched back to their previous supplier, a customer should contact that supplier and seek to re-enroll with that NGS or contact the supplier of last resort to enroll in SOLR service. While we dislike placing this obligation on the slamming victim, we believe that it is the safest option available—one that ensures that the customer has indeed consented and wants to return to their previous NGS—and that the NGS is willing and able to take them back. This preserves the fundamental principle that all switching should be done only upon the request and authorization of the customer. However, we invite parties to suggest any alternatives that may be preferable, keeping in mind that any alternative has to comply with the switching regulations.

While not specifically discussed in the Working Group, we also ask parties to comment on the adequacy of the language in subsection (b) concerning reimbursing the customer for charges that accrued upon being slammed. The current rule states that “The refund or credit provision applies only to the natural gas supply charges.” Should this language be broadened to include refund and reimbursement for things like early cancellation fees or enrollment fees that the customer may have been charged as a result of a slam?

We propose to revise this section accordingly; see subsections (c) and (d):

§ 59.97. Customer dispute procedures.

(a) When a customer contacts an NGDC or an NGS and alleges that the customer’s NGS has been changed without consent, the company contacted shall:

(1) Consider the matter a customer registered dispute.

(2) Investigate and respond to the dispute consistent with the requirements in §§ 56.151 and 56.152 (relating to utility company dispute procedures).

(b) When the customer's dispute has been filed within the first two billing periods since the customer should reasonably have known of a change of NGSs and the dispute investigation establishes that the change occurred without the customer's consent, the customer is not responsible for NGS charges rendered during that period. If the customer has made payments during this period, the company responsible for initiating the change of supplier shall issue a complete refund within 30 days of the close of the dispute. The refund or credit provision applies only to the natural gas supply charges.

(c) A customer who has had a NGS changed without having consented to that change [**shall be switched back to**] **may contact the original NGS to arrange for re-enrollment with the original NGS** for no additional fee, **provided that the original NGS agrees**. Charges involved in the switch back to the prior NGS shall be the responsibility of the company that initiated the change without the customer's consent. **The customer may also contact the supplier of last resort and request enrollment into supplier of last resort service.**

(d) If a customer files an informal complaint with the Commission alleging that the customer's NGS **or supplier of last resort service** was changed without the customer's consent, the Bureau of Consumer Services will issue an informal decision that includes a determination of customer liability for any NGS bills or administrative charges that might otherwise apply, rendered since the change of the NGS **or supplier of last resort service**.

(e) In addition to customer-specific remedies, the Commission may, after investigation and decision, assess fines under 66 Pa.C.S. Chapter 33 (relating to violations and penalties), and initiate proceedings to revoke the license of any NGS that demonstrates a pattern of violating this chapter. The Commission may order a particular NGS that has a pattern of violating this chapter to obtain written authorization from every new customer as a condition of providing service in this Commonwealth. Nothing in this section limits the Commission's authority.

§ 59.98. *Provider of last resort.*

We propose minor, non-substantial word changes to this section to replace the term "provider of last resort" with "supplier of last resort." "Supplier of last resort" is the preferred term which we propose defining at § 59.91 and reflects the long-standing definition in the NGS licensing regulations at § 62.101 (relating to definitions). Accordingly, we propose the following revisions to this section:

§ 59.98. [**Provider**] **Supplier** of last resort.

Sections 59.91—59.99 do not apply in instances when the customer's service is discontinued by the NGS and subsequently provided by the [**provider**] **supplier** of last resort because no other NGS is willing to provide service to the customer.

§ 59.99. **Record maintenance.**

This section currently states:

Each NGDC and each NGS shall preserve all records relating to unauthorized change of NGS disputes for 3 years from the date the customers filed the dis-

putes. These records shall be made available to the Commission or its staff upon request.

This is an important regulation that enables the Commission to police the switching process to guard against slamming. Because we are proposing a revision to § 59.92 allowing customers to contact the supplier of last resort and request a return to SOLR service, we think it is appropriate to add switching to SOLR service to this record maintenance requirement. This is the same revision we made in 2014 to the analogous electric switching regulation at § 57.179. Accordingly, we propose the following revisions to this section:

§ 59.99. **Record maintenance.**

Each NGDC and each NGS shall preserve all records relating to unauthorized change of NGS **and supplier of last resort** disputes for 3 years from the date the customers filed the disputes. These records shall be made available to the Commission or its staff upon request.

Timeframe For Implementation

When we revised the EGS switching regulations in 2014, we placed in the regulation a new section specifying the implementation date for the new switching procedures.²⁵ Due to the urgent need to get new switching timeframes in place for the following winter, EDCs were provided approximately six months to implement the new rules. However, as noted previously, almost all the EDCs obtained various waivers of some sort to delay full implementation until later in 2015. In effect and in most cases, the EDCs had approximately an entire year to fully implement the new rules.

We propose a similar requirement in these regulations and invite comments from the parties as to the practicality of the deadline proposed:

§ 59.100. **Implementation.**

Each NGDC and NGS shall implement §§ 59.91—59.99 within one year of the final regulation appearing in the *Pennsylvania Bulletin*.

When commenting, we ask that parties be as specific as possible as to the reasons the proposed timeline is reasonable or not, and to propose alternatives.

Costs And Cost Recovery

We acknowledge that there will be costs incurred by the NGDCs in adapting their metering and billing systems to accommodate off-cycle meter readings to effectuate off-cycle NGS switching. We expect NGDCs to implement these new requirements in the most cost-effective manner possible. In the 2014 EGS switching proceeding,²⁶ EDCs were directed to seek recovery of reasonable costs in a future base-rate filing, which would provide the usual full scrutiny of review by the Commission and interested parties. Also, we determined that base-rate recovery was appropriate because accelerated supplier switching is something all utility customers benefit from and have access to.

We invite parties to comment on the costs of the mechanisms and procedures proposed in this order, and the costs of any alternatives they may propose. Finally, we ask parties to comment on the preferable cost recovery mechanism; NGDC base-rate proceedings; pass-through riders; or any other possible alternatives.

²⁵ See 52 Pa. Code § 57.180.

²⁶ See Final-Omitted Rulemaking Order Regarding Standards for Changing a Customer's EGS, Docket No. L-2014-2409383 (Public Meeting of April 3, 2014).

Conclusion

The Commission has deliberated extensively on its electric and natural gas switching regulations over the past several years. We believe the changes to the electric switching rules in 2014 have created a more fluid and responsive electric marketplace, and it is now time to do the same with the natural gas market. We have moved deliberately and cautiously—acknowledging that there are some fundamental differences in technology and wholesale market structures between electric and natural gas. Throughout this order and the attached Annex, we discuss various issues and carefully craft new rules to accelerate the supplier switching process for retail natural gas customers in Pennsylvania. Importantly, we propose to revise our regulations to facilitate accelerated switching without endangering safeguards to protect customers against slamming or unauthorized switching.

We invite parties to comment on all of the matters discussed in this order and on any other issue related to NGS switching that they think we may have overlooked. We urge parties to submit, along with their comments, any data they may have to support their position. This includes any cost data, along with cost data for any alternatives they may propose. Where parties oppose the proposed regulations, we encourage them to offer alternative solutions. These proposed changes to switching are intended to complement our recently completed disclosure rulemaking—forming a comprehensive response to the possibility of price spikes in the natural gas market—as we did in 2014 for the electric market. Faster supplier switching provides a key tool empowering consumers to protect themselves if so needed.

Upon careful review and consideration of the comments received in response to this Advance Notice of Proposed Rulemaking, the Commission intends to issue a formal Notice of Proposed Rulemaking with proposed revised regulations; *Therefore*,

It Is Ordered That:

1. The Secretary shall duly certify this Order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

2. Written comments referencing Docket No. L-2016-2577413 be submitted within 45 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, P.O. Box 3265, Harrisburg, PA 17105-3265. Comments may also be filed electronically through the Commission's e-File System.

3. This Order and Annex A proposing to revise the regulations appearing in Title 52 of the *Pennsylvania Code* Chapter 59 (relating to Standards for Changing a Customer's Natural Gas Supplier), be served on all jurisdictional natural gas utilities, all licensed natural gas suppliers, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate.

4. The Office of Competitive Market Oversight shall electronically send a copy of this Advance Notice of Proposed Rulemaking Order and the Annex to all persons on the contact list for the Committee Handling Activities for Retail Growth in Electricity; and to all persons on the contact list for the Investigation of Pennsylvania's Retail Natural Gas Market, order entered December 18, 2014 at Docket No. I-2013-2381742.

5. A copy of this Order and Annex A shall be posted on the Commission's website at the Office of Competitive Market Oversight web page and on the web page for the Retail Markets Investigation—Natural Gas.

6. The contact persons for this matter are Daniel Mumford, Office of Competitive Market Oversight, (717) 783-1957, dmumford@pa.gov; Matthew Hrivnak in the Bureau of Consumer Services, (717) 783-1678, mhrivnak@pa.gov; and Kriss Brown in the Law Bureau, (717) 787-4518, kribrown@pa.gov.

ROSEMARY CHIAVETTA,
Secretary

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 59. GAS SERVICE

STANDARDS FOR CHANGING A CUSTOMER'S NATURAL GAS SUPPLIER

§ 59.91. Definitions.

The following words and terms, when used in this section and §§ 59.92—[59.99] 59.100, have the following meanings, unless the context clearly indicates otherwise:

Current NGS—The NGS at the time of the customer contact.

Customer—A retail gas customer as defined by 66 Pa.C.S. § 2202 (relating to definitions). The term includes all persons identified by the NGDC ratepayer of record, under § 59.95 (relating to persons authorized to act on behalf of a customer), as authorized to act on behalf of the NGDC ratepayer of record in changing the NGS for the account.

Data element—One or more characters that represent numeric or alphanumeric fields of data.

NGDC—*Natural Gas Distribution Company*—An NGDC as defined by 66 Pa.C.S. § 2202.

NGS—*Natural gas supplier*—A supplier as defined by 66 Pa.C.S. § 2202.

Selected NGS—The NGS from which the customer seeks new natural gas supply service.

Supplier of last resort—The term as defined in 66 Pa.C.S. § 2207(a) (relating to obligation to serve).

§ 59.92. Customer contacts with the NGDC.

(a) When a customer orally contacts the NGDC to request a change of NGS, the NGDC shall notify the customer that the selected NGS shall be contacted directly to initiate the change. **This notification requirement does not apply when a Commission-approved program requires the NGDC to initiate a change in NGS service.**

(b) **When a customer contacts the supplier of last resort service provider to request a change from the current NGS to supplier of last resort service, the supplier of last resort service provider shall notify the customer that there may be a cancellation penalty to cancel service with the current NGS. Subsequent to this notice and upon express**

oral or written consent from the customer, the supplier of last resort service provider shall enroll the customer in supplier of last resort service.

§ 59.93. Customer contacts with NGSs.

When a contact occurs between a customer and an NGS to request a change of the NGS, upon receiving direct oral confirmation or written authorization from the customer to change the NGS, the [customer's new NGS] following actions shall be taken by the selected NGS and the customer's NGDC:

(1) [**Notify**] The selected NGS shall notify the NGDC of the customer's NGS selection [**by the end of the next business day following completion of the application process**] at the end of the 3-business day rescission period under § 62.75(d) (relating to disclosure statement for residential and small business customers) or a future date specified by the customer. The selected NGS may notify the NGDC by the end of the next business day following the customer contact upon customer consent. [The NGDC shall verify the accuracy of the information provided by the NGS by matching at least two data elements such as name and account number, or address and account number, with NGDC records.]

(2) Upon receipt of this notification, the NGDC shall verify the accuracy of the information provided by the NGS by matching at least two data elements such as name and account number, or address and account number, with NGDC records. [the] The NGDC shall send the NGDC ratepayer of record a confirmation letter noting the proposed change of NGS or change to supplier of last resort provider. [This letter shall include notice of a 10-day waiting period in which the order may be canceled before the change of the NGS takes place.] The notice shall include the date service with the new NGS or supplier of last resort provider will begin [unless the customer contacts the NGDC to cancel the change. The 10-day waiting period shall begin on the day the letter is mailed]. The letter shall be mailed by the end of the next business day following the receipt of the notification of the customer's selection of a NGS or change to the supplier of last resort provider.

§ 59.94. Time frame requirement.

(a) When a customer has provided the NGS with oral confirmation or written authorization to change NGSs or provided the NGDC with oral confirmation or written authorization to change to supplier of last resort service, consistent with electronic data transfer and exchange standards, the NGDC shall make the change [at the beginning of the first feasible billing period following the 10-day waiting period, as prescribed in § 59.93 (relating to customer contacts with NGSs)] within 3 business days of the receipt by the NGDC of the electronic enrollment transaction.

(b) The NGDC shall obtain a meter read to effectuate the switch of service within the time period provided for in subsection (a). In instances when the NGDC does not have advanced or automated metering capability, the NGDC shall obtain an actual meter read, use an estimated meter read or use a customer-provided meter read. When an esti-

mated meter read is used, the estimated meter read shall be updated when an actual meter read is obtained.

§ 59.95. [Persons authorized to act on behalf of a customer] Reserved.

[**A customer may identify persons authorized to make changes to the customer's account. To accomplish this, the customer shall provide the NGDC with a signed document identifying by name those persons who have the authority to initiate a change of the customer's NGS.]**

§ 59.96. Valid written authorization.

A document signed by the customer whose sole purpose is to obtain the customer's consent to change NGSs shall be accepted as valid and result in the initiation of the customer's request. Documents not considered as valid include canceled checks, signed entries into contests and documents used to claim prizes won in contests.

§ 59.97. Customer dispute procedures.

(a) When a customer contacts an NGDC or an NGS and alleges that the customer's NGS has been changed without consent, the company contacted shall:

(1) Consider the matter a customer registered dispute.

(2) Investigate and respond to the dispute consistent with the requirements in §§ 56.151 and 56.152 (relating to utility company dispute procedures).

(b) When the customer's dispute has been filed within the first two billing periods since the customer should reasonably have known of a change of NGSs and the dispute investigation establishes that the change occurred without the customer's consent, the customer is not responsible for NGS charges rendered during that period. If the customer has made payments during this period, the company responsible for initiating the change of supplier shall issue a complete refund within 30 days of the close of the dispute. The refund or credit provision applies only to the natural gas supply charges.

(c) A customer who has had a NGS changed without having consented to that change [**shall be switched back to**] may contact the original NGS to arrange for re-enrollment with the original NGS for no additional fee, provided that the original NGS agrees. Charges involved in the switch back to the prior NGS shall be the responsibility of the company that initiated the change without the customer's consent. **The customer may also contact the supplier of last resort and request enrollment into supplier of last resort service.**

(d) If a customer files an informal complaint with the Commission alleging that the customer's NGS or supplier of last resort service was changed without the customer's consent, the Bureau of Consumer Services will issue an informal decision that includes a determination of customer liability for any NGS bills or administrative charges that might otherwise apply, rendered since the change of the NGS or supplier of last resort service.

(e) In addition to customer-specific remedies, the Commission may, after investigation and decision, assess fines under 66 Pa.C.S. Chapter 33 (relating to violations and penalties), and initiate proceedings to revoke the license of any NGS that demonstrates a pattern of violating this

chapter. The Commission may order a particular NGS that has a pattern of violating this chapter to obtain written authorization from every new customer as a condition of providing service in this Commonwealth. Nothing in this section limits the Commission's authority.

§ 59.98. [**Provider**] **Supplier** of last resort.

Sections 59.91—59.99 do not apply in instances when the customer's service is discontinued by the NGS and subsequently provided by the [**provider**] **supplier** of last resort because no other NGS is willing to provide service to the customer.

§ 59.99. Record maintenance.

Each NGDC and each NGS shall preserve all records relating to unauthorized change of NGS **and supplier of last resort** disputes for 3 years from the date the customers filed the disputes. These records shall be made available to the Commission or its staff upon request.

§ 59.100. Implementation.

Each NGDC and NGS shall implement §§ 59.91—59.99 within one year of the final regulation appearing in the *Pennsylvania Bulletin*.

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