

COPY

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE

RECEIVED  
2013 OCT 1 AM 10 53  
DELAWARE P.S.C.

IN THE MATTER OF ADOPTION OF \*  
RULES AND REGULATIONS TO IMPLEMENT \*  
THE PROVISIONS OF 26 DEL. C. CH.10 \*  
RELATING TO THE CREATION OF A \*  
COMPETITIVE MARKET FOR RETAIL \*  
ELECTRIC SUPPLY SERVICE (OPENED \*  
APRIL 27, 1999; RE-OPENED JANUARY 7, \*  
2003; RE-OPENED SEPTEMBER 22, 2009; \*  
RE-OPENED SEPTEMBER 7, 2010; RE- \*  
OPENED JULY 17, 2012) \*

PSC REGULATION DOCKET NO. 49

**COMMENTS OF WASHINGTON GAS ENERGY SERVICES, INC.  
IN RESPONSE TO  
NOTICE OF PROPOSED RULE-MAKING AMENDING  
"RULES FOR CERTIFICATION AND REGULAITON OF ELECTRIC SUPPLIERS"**

As invited by Order No. 8424 (issued July 30, 2013), Washington Gas Energy Services, Inc. ("WGES") hereby files these comments in response to the Notice of Proposed Rulemaking and proposed revised Supplier Rules. WGES participated actively in the workshops convened by the Commission Staff to address proposed revisions to the Supplier Rules, and appreciates the time, attention, and energy the Commission Staff and other stakeholders have devoted to this matter.

WGES is a licensed retail electricity supplier headquartered in Herndon, Virginia. A reliable and committed competitive retail energy supplier, WGES has operated in the Mid-Atlantic Region since 1996. WGES serves nearly 350,000 electricity, natural gas, and renewable energy customers that include the full spectrum of customer classes, from large commercial to residential. In Delaware, WGES serves over 10,000 customers.

In general, WGES is supportive of the proposed revisions to the Supplier Rules. The proposed revisions recognize advancements in the retail energy marketplace and enhance consumer protections. WGES recommends some minor revisions to the proposed Supplier Rules.

**I. Price Requirements**

In the proposed revisions to the Supplier Rules, the definition of "Price" or "Rate" and accompanying regulations are very restrictive. WGES recommends reworking these provisions to allow for more flexibility and innovation.

The proposed definition of "Price" or "Rate" in § 1.0 of the proposed revisions to the Supplier Rules is stated:

"Price" or "Rate" means the charge(s) for Electric Supply Service applied against the billing determinants for electricity usage of the Customer.

Later in the proposed revisions, at § 2.1.1.9.1.2, a proposed revision to the regulations concerning Disclosure Statements provides:

[The Disclosure Statement shall contain] [t]he Price stated in cents per kWh for all products....

Further in the proposed revisions, at § 5.1.3.8, proposed language regarding verification of an agreement made via a door-to-door or telesales contract provides that the Verification Process shall:

State the Price per kWh, whether the Price is fixed for a period of time or variable, and the length of the contract;

WGES understands the intent of these provisions, which is to provide customers with clear and accurate information about the prices they will pay for their electric supply service. However, these provisions as proposed are very restrictive and will limit the options that are available to customers. Suppliers may be able to price energy on a basis other than a simple kWh basis. Accordingly, suppliers should be afforded more flexibility in the way they price electricity supply service for customers. For example, WGES may be able to offer, and some customers may desire, a flat rate for electricity for one billing period or other period of time. In some states, some suppliers are able to offer free electricity on certain days. Under the provisions listed above, however, these types of innovative and valuable options may not be available to customers.

WGES recommends looking to Maryland and Pennsylvania for examples of pricing regulations that are not as restrictive as those proposed here. In Maryland, regulations for electricity suppliers require full disclosure of pricing information, including all fixed and variable costs, but do not go so far as to require prices to be stated in cents per kWh. COMAR 20.53.07.08A(2)(d) provides, "A supplier contract shall contain all material terms and conditions, including: (d) A price description of each service, including all fixed and variable costs." Similarly, COMAR 20.53.07.09A states, "The supplier's price for service shall include all fixed and variable components." In Pennsylvania, regulations relating to pricing information prohibit any misleading information. 52 Pa. Code § 54.5(a) requires that "The agreed upon prices in the disclosure statement must reflect the marketed prices and the billed prices." 52 Pa. Code § 54.5(c)(1) states, "Generation charges shall be disclosed according to the actual prices."

WGES recommends that the Commission adopt pricing disclosure regulations that do not restrict the types of pricing that suppliers might be able to offer to customers, while at the same time ensuring adequate disclosure of what the customer's price will be. Accordingly, WGES

recommends replacing the first sentence of § 2.1.1.9.1.2 with the language found in Maryland's regulations:

2.1.1.9.1.2 The Price stated in cents per kWh for all products A price description of each service, including all fixed and variable costs.

Similarly, WGES recommends revising the definition of "Price" or "Rate" to reflect the fact that prices for electric supply service can be offered on a basis other than just a per kWh basis:

"Price" or "Rate" means the charge(s) for Electric Supply Service applied against the billing determinants for electricity usage of the Customer.

In addition, WGES recommends revising the Verification Process regulations to provide that the Verification Process shall:

5.1.3.8 State the Price per kWh, whether the Price is fixed for a period of time or variable, and the length of the contract;

## **II. Disclosure Statement – Clarification**

WGES recommends a slight alteration of two provisions regarding Disclosure Statements. WGES's proposed revisions relate to the ability of suppliers to enter into agreements with customers over the telephone.

On page ten of the proposed revisions to the Supplier Rules, at § 2.1.1.2.1.10, the proposed language states that a written Disclosure Statement must include "An area for the Customer to acknowledge receipt of the document by written signature, Electronic Signature, or verbal consent." WGES agrees that the customer must agree to the terms of the customer's contract with the supplier, and that the supplier must provide a complete Disclosure Statement to the customer, outlining all terms and conditions. It appears that the intent of the proposed revisions is to allow for a verbal acknowledgement that the customer will be given a written Disclosure Statement. However, the wording here should be adjusted to clarify the intent, and to recognize that a customer entering an agreement as a result of a telesales call may not have a written Disclosure Statement in hand at the time the agreement is made. WGES recommends revising this provision thus:

2.1.1.2.1.10, ~~An area for t~~The Customer ~~to~~ must acknowledge receipt of the document by written signature, Electronic Signature, or verbal consent. For an agreement entered into as a result of telemarketing, the Customer must acknowledge that the supplier will send the document to the Customer prior to the end of the rescission period.

WGES recommends a similar revision to a proposed regulation relating to the Verification Process. On page 17 of the proposed revisions to the Supplier Rules, in § 5.1.3.10, the proposed language requires that the Verification Process:

Confirm that the Customer has been given a copy of the Disclosure Statement.

This regulation may preclude a telesales arrangement, which WGES does not believe is the Commission's intent. Accordingly, WGES recommends the following revision:

5.1.3.10 Confirm that the Customer has been given a copy of the Disclosure Statement. For an agreement entered into as a result of telemarketing, the Customer must acknowledge that the supplier will send the document to the Customer prior to the end of the rescission period.

### **III. Marketing Provisions – EDC Name or Logo**

WGES is proud of its record as an honest and forthright marketer of energy products and services. One important aspect of WGES's marketing practices is our dedication to educating our customers about their options. In jurisdictions that see a low level of customer shopping, like Delaware, it is important to make sure customers understand what Energy Choice is, how suppliers are different from the utility, and what services the utility will still provide even if the customer switches to a competitive energy supplier. Without some basic education on these points, customers cannot be confident in their decision to switch. It is with this in mind that WGES objects to one provision contained in the proposed revisions to the Marketing and Advertising regulations.

Section 3.8 of the proposed revisions to the Supplier Rules contain many provisions aimed at making sure electricity suppliers market to customers in ways that are not misleading and, to the extent possible, make information very clear to customers. WGES agrees with almost all of these proposed revisions. However, some provisions need reworking. Sections 3.8.2.1 and 3.8.6.1.4 of the proposed revisions prohibit suppliers from depicting or including the Standard Offer Service Supplier ("SOSS") or utility name or logo in any marketing materials.

WGES understands and agrees with the intent to prohibit any suggestion by a supplier that it may have a relationship with the utility that it does not, in fact, have. WGES goes out of its way in marketing to customers to state that we are *not* the utility. For example, all WGES door-to-door sales agents wear a large button that says, in both English and Spanish, "I am NOT a Utility Employee." Many other states have regulations that prohibit the suggestion that a supplier may have some sort of relationship with the utility. However, none go so far as to prohibit the use of the utility's name or logo. The proposed prohibition on the use of the utility's name or logo will make it more difficult to educate customers about their options for choosing a supplier. Further, the proposed prohibition may make it more difficult to assure customers that the utility will continue to repair power outages. Additionally, suppliers commonly bill their

charges to customers via the utility's bill. Without being able to reference the name of the utility, customers may experience more confusion regarding billing practices.

For the reasons stated above, WGES recommends a further revision to this proposed regulation. The Commission should adopt language that is similar to regulations adopted by the Pennsylvania Public Utility Commission. The Pennsylvania PUC has adopted requirements concerning door-to-door sales agents and a prohibition on suggesting a relationship with the utility.<sup>1</sup> These requirements can be adopted more generally in Delaware:

3.8.2.1 No solicitations, advertising and marketing materials may ~~depict the SOSS and/or EDC name or logo~~ suggest a relationship that does not exist with an EDC, NGDC, government agency or another supplier.

3.8.6.1.4 Must not present any materials ~~including or depicting the logo or name of the SOSS and/or EDC or that~~ suggest any relationship between the Electric Supplier and the EDC or SOSS;

#### **IV. Marketing Provisions – Prices, Terms and Conditions**

Among the provisions of the proposed revised Supplier Rules that need reworking is the provision found at § 3.8.2.4. That regulation states:

Any marketing materials that make statements concerning Prices, terms and conditions of service shall contain information that accurately discloses the Prices, terms and conditions of the products or services that the Electric Supplier is offering or selling to the Customer.

WGES agrees that all supplier marketing materials should contain accurate information. However, the language above is confusing, and may be interpreted to mean that any marketing materials that contain price information, or other information concerning any terms and conditions of a supplier offer must include a full set of terms and conditions. WGES does not believe that is the intent of this regulation, and recommends the language be clarified.

It makes sense for any supplier materials by which a customer can enter into a contract to contain a full set of terms and conditions, but not all supplier advertising or marketing material should be subject to that requirement. For example, a postcard advertisement may state a price, and direct a prospective customer to contact the supplier for more details. It is not practicable to include a full set of terms and conditions on the back of a postcard. Moreover, the postcard itself is not a means by which the customer could enter a contract. Accordingly, for simple advertising materials such as postcards or radio ads, the regulation should be clarified. WGES recommends the language be revised as follows:

---

<sup>1</sup> See 52 Pa. Code § 111.8.

3.8.2.4 Any marketing materials that make statements concerning Prices, terms and conditions of service shall contain accurate information. Any marketing materials through which a Customer may contract with an Electric Supplier must that accurately discloses the Prices, terms and conditions of the products or services that the Electric Supplier is offering or selling to the Customer.

## V. Door-to-Door Sales – Telephone Number

WGES believes the proposed revised regulations contain very good provisions relating to door-to-door marketing. With only minor suggested revisions, WGES believes these regulations will enhance the customer experience when engaging with door-to-door marketing agents.

WGES believes that the “introduction” language proposed at § 3.8.6.1.3 may be too specific and too wordy. This regulation requires the door-to-door agent to identify the “name and toll-free telephone number of the Electric Supplier she/she is representing.” There is no question that a door-to-door agent must identify the supplier he or she is representing, but stating the toll-free telephone number upon greeting is not necessary, as long as the toll-free telephone number is on leave-behind materials or is left with the customer in another format.

Later in this section, of regulations, § 3.8.6.3.1.4 requires a door-to-door agent to provide the customer with the agent’s own telephone number. WGES strongly disagrees with this requirement. While a door-to-door agent may represent WGES, we strongly encourage customers to contact our central customer service center with concerns or questions. Accordingly, the proposed regulation should be revised to require the door-to-door agent to provide the customer with the telephone number of the Electric Supplier.

WGES’s recommended revisions to the telephone number requirements are as follows:

3.8.6.1.3 State the name ~~and toll-free telephone number~~ of the Electric Supplier he/she is representing;

3.8.6.3.1.4 The telephone number of the Electric Supplier’s ~~representative, or Agent of an Electric Supplier;~~

## VI. Verification Process – Cancellation Fees

WGES is pleased that the proposed revisions to the Supplier Rules include a Verification Process for verifying a customer’s intent to enroll with a supplier following a door-to-door or telephone sales experience. The Verification Process has proven to be an effective consumer protection tool in various jurisdictions. While WGES agrees with most of the proposed regulations concerning the Verification Process, we are concerned about the requirement for the verification agent to state the amount of any cancellation fees and/or any other charges. WGES’s cancellation fees generally are not flat. For example, WGES’s residential cancellation fee may vary according to the amount of time left on the customer’s contract. The fee for a small

commercial customer may be the cost-to-cover the customer in the event of early cancellation, which also will vary based on the amount of time left on the customer's contract. Given the potential variability of the cancellation fee, WGES is concerned that the customer may become confused. Accordingly, WGES recommends revising this provision as follows:

5.1.3.9 State the amount of any cancellation fees and/or any other charges included in Section 2.1.1.9.1.3. If the amount of a cancellation fee or other charge is not fixed, then the Verification Process shall state the existence of such a fee and refer the Customer to the Disclosure Statement;

## VII. Conclusion

WGES appreciates the opportunity to submit these comments and looks forward to continued participation in the development of regulations that will enhance the retail electricity marketplace in Delaware.

Respectfully submitted,



Melanie Santiago-Mosier  
Director, Regulatory & Legislative Affairs  
Washington Gas Energy Services, Inc.  
13865 Sunrise Valley Dr., Suite 200  
Herndon, VA 20171  
(703) 793-7565  
[mmosier@wges.com](mailto:mmosier@wges.com)

October 1, 2013

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Comments of WGES was mailed on October 1, 2013 to each person or party on the official service list.

*Melanie Santiago Mosier*

Melanie Santiago-Mosier