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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 844 Session of  
2015

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INTRODUCED BY GODSHALL, BAKER, COHEN, CALTAGIRONE, GAINNEY,  
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SAYLOR, BIZZARRO, CARROLL, CONKLIN, GABLER, D. COSTA AND  
MOUL, MARCH 26, 2015

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REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MARCH 26, 2015

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AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania  
2 Consolidated Statutes, providing for retail electric consumer  
3 protection.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Title 66 of the Pennsylvania Consolidated  
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 28A

9 RETAIL ELECTRIC CONSUMER PROTECTION

10 Sec.

11 28A01. Scope of chapter.

12 28A02. Definitions.

13 28A03. Variable-rate product contract terms.

14 28A04. Fixed-rate product contract terms.

15 28A05. Contract provisions.

16 28A06. Variable-rate changes.

17 28A07. Investigations and enforcement.

1 28A08. Variable-rate and fixed-rate product rates.

2 28A09. Contract formation.

3 28A10. Duties of electric generation suppliers and electric  
4 distribution companies.

5 28A11. Consumer education information.

6 28A12. Civil penalties.

7 28A13. Applicability.

8 § 28A01. Scope of chapter.

9 This chapter relates to retail electric consumer protection  
10 for residential and small commercial customers.

11 § 28A02. Definitions.

12 The following words and phrases when used in this chapter  
13 shall have the meanings given to them in this section unless the  
14 context clearly indicates otherwise:

15 "Authorized representative." Any of the following:

16 (1) A spouse of a customer.

17 (2) Any other person who is not a spouse of a customer  
18 and who is authorized by the customer to initiate a change of  
19 the customer's electric generation supplier by a signed  
20 document provided to the electric distribution company by the  
21 customer identifying the person as authorized to initiate the  
22 change.

23 "Cancellation fee or early termination fee." An amount  
24 specified in a contract that permits an electric generation  
25 supplier to assess and collect a fee or other similar charge  
26 from a residential or small commercial customer who terminates a  
27 contract before the end of the contract term, regardless of:

28 (1) how the fee or other similar charge is identified in  
29 the contract; or

30 (2) whether or not the fee or other similar charge is

1 fixed or subject to calculation based on market factors.

2 "Contract." The terms and conditions of service provided by  
3 an electric generation supplier.

4 "Default service provider." An electric distribution company  
5 within its certified service territory or an alternative  
6 supplier, including an electric generation supplier, approved by  
7 the commission that provides generation service to retail  
8 electric customers who:

9 (1) contract for electric power, including energy and  
10 capacity, and the chosen electric generation supplier does  
11 not supply the service; or

12 (2) do not choose an alternative electric generation  
13 supplier.

14 "Electric distribution company." A public utility that  
15 provides facilities for the jurisdictional transmission and  
16 distribution of electricity to retail customers, except building  
17 or facility owners or operators that manage the internal  
18 distribution system serving a building or facility and that  
19 supply electric power and other related electric power services  
20 to occupants of the building or facility.

21 "Electric generation supplier." A person or corporation,  
22 including a municipal corporation that chooses to provide  
23 service outside the municipal corporation's municipal limits,  
24 except to the extent provided before January 1, 1997, brokers  
25 and marketers, aggregators or any other entity, that sells to  
26 end-use customers electricity or related services utilizing the  
27 jurisdictional transmission or distribution facilities of an  
28 electric distribution company or that purchases, brokers,  
29 arranges or markets electricity or related services for sale to  
30 end-use customers utilizing the jurisdictional transmission and

1 distribution facilities of an electric distribution company. The  
2 term does not include an electric distribution company or any of  
3 the following:

4 (1) A building or facility owner or operator that  
5 manages the internal distribution system serving the building  
6 or facility and that supplies electric power and other  
7 related power services to occupants of the building or  
8 facility.

9 (2) An electric cooperative corporation, except as  
10 provided in 15 Pa.C.S. Ch. 74 (relating to generation choice  
11 for customers of electric cooperatives).

12 (3) A default service provider.

13 "Fixed-rate product." A retail electric generation product  
14 offered by an electric generation supplier when the rate charged  
15 per kilowatt hour for each billing cycle of the contract term is  
16 an all-inclusive per kilowatt hour price, excluding applicable  
17 sales tax, that will remain the same for at least three billing  
18 cycles or the term of the contract, whichever is later.

19 "Index-based product." A retail electric generation product  
20 in which the price for one or more components of the retail  
21 electric generation service can change according to a predefined  
22 pricing formula or is based on publicly available market  
23 indices.

24 "Month-to-month transition product." A retail electric  
25 generation product in which the the kilowatt hour rate for each  
26 billing cycle may change that is offered by an electric  
27 generation supplier to a residential or small commercial  
28 customer after the customer's initial contract term expired as a  
29 result of the customer not affirmatively entering into a new  
30 contract with the supplier, switching to another electric

1 generation supplier or returning to default service.

2 "Off-cycle switch." A switch to a competitive electric  
3 generation supplier or default service provider that takes place  
4 on a date other than a customer's regularly scheduled meter read  
5 date.

6 "Real-time pricing product." A rate that directly reflects  
7 the different cost of electricity during each hour.

8 "Residential customer." Any of the following:

9 (1) An individual or authorized representative:

10 (i) who enters into a contract to receive service  
11 from an electric generation supplier;

12 (ii) whose name is listed on a residential service  
13 account; and

14 (iii) who is primarily responsible for payment of  
15 bills rendered for the service.

16 (2) An occupant of a residence receiving service who is  
17 18 years of age or older and whose name appears on the  
18 mortgage, deed or lease of the residence, or an authorized  
19 representative.

20 "Small commercial customer." A nonresidential customer who  
21 enters into a contract to receive electric generation service  
22 from an electric generation supplier and has a peak cumulative  
23 demand of less than 25 kilowatts during any 12-month period.

24 "Switch." The transfer of a residential or small commercial  
25 customer from any of the following:

26 (1) An electric generation supplier's service to another  
27 electric generation supplier's service.

28 (2) A default service provider's service to an electric  
29 generation supplier's service.

30 (3) An electric generation supplier's service to a

1 default service provider's service.

2 "Time-of-use rate." A rate that reflects the costs of  
3 serving customers during different time periods, including off-  
4 peak and on-peak periods, but not as frequently as each hour.

5 "Transition." The moving of a customer, upon expiration of a  
6 fixed-rate contract, when the customer has not affirmatively  
7 acted to renew the contract with an electric generation  
8 supplier, switch to another supplier or return to the default  
9 service provider to a product specified in section 28A04(b)(2)  
10 (relating to fixed-rate product contract terms). The term does  
11 not include a request from a customer to an electric generation  
12 supplier for a new or different product upon expiration of the  
13 contract.

14 "Variable-rate product." A retail electric generation  
15 product offered by an electric generation supplier when the rate  
16 charged per kilowatt hour for each billing cycle of the contract  
17 term is an all-inclusive per kilowatt hour price, excluding  
18 applicable sales tax, that can change by the hour, day, month or  
19 other period according to the terms and conditions of a  
20 customer's contract.

21 § 28A03. Variable-rate product contract terms.

22 (a) Contract duration.--A contract for a variable-rate  
23 product offered by an electric generation supplier to a  
24 residential or small commercial customer shall specify the terms  
25 of the contract.

26 (b) Promotional rates.--A contract for a variable-rate  
27 product offered by an electric generation supplier to a  
28 residential or small commercial customer may not include a  
29 promotional or "teaser" per kilowatt hour rate for a period of  
30 less than 60 days.

1 (c) Fees prohibited.--Except for an index-based product, a  
2 contract under subsection (a) may not contain a cancellation fee  
3 or early termination fee.

4 (d) Rate prohibition.--An electric generation supplier may  
5 not enter into any of the following:

6 (1) A contract for a fixed-rate product with a  
7 residential customer who participates in an electric  
8 distribution company's customer assistance program as defined  
9 in section 1403 (relating to definitions) unless the price  
10 for the product is equal to or less than the default service  
11 price at the time the contract is executed.

12 (2) A contract for a variable-rate product with a  
13 residential customer who participates in an electric  
14 distribution company's customer assistance program as defined  
15 in section 1403.

16 (e) Electric distribution company duties.--An electric  
17 distribution company shall include any necessary information on  
18 a customer list provided to an electric generation supplier to  
19 allow the supplier to comply with requirements of subsection  
20 (d).

21 (f) Index-based products.--

22 (1) Except as provided in paragraph (2), an electric  
23 generation supplier may not offer an index-based variable-  
24 rate product to a residential customer.

25 (2) Paragraph (1) shall not apply to a time-of-use rate  
26 or real-time pricing product offered by an electric  
27 generation supplier to a residential customer.

28 § 28A04. Fixed-rate product contract terms.

29 (a) Contract duration.--A contract for a fixed-rate product  
30 offered by an electric generation supplier to a residential or

1 small commercial customer shall specify the term of the  
2 contract.

3 (b) Contract expiration.--

4 (1) Upon the expiration of a contract for a fixed-rate  
5 product, an electric generation supplier may not transition a  
6 residential or small commercial customer to a contract for a  
7 variable-rate product.

8 (2) An electric generation supplier may transition a  
9 residential or small commercial customer whose contract for a  
10 fixed-rate product has expired when the customer has not  
11 affirmatively entered into a new contract with the supplier,  
12 switched to another electric generation supplier or returned  
13 to default service, to any of the following:

14 (i) A month-to-month transition product with no  
15 cancellation or early termination fee. Upon transitioning  
16 a customer to a month-to-month transition product under  
17 this subparagraph, no less than 45 days before the  
18 customer's initial contract expires, the electric  
19 generation supplier shall provide notice to the customer  
20 in writing, or via electronic means or other delivery  
21 method agreed to by the customer, that the product is a  
22 30-day product and the initial applicable rate. No later  
23 than 30 days before implementing a change in the rate  
24 charged under a month-to-month transition product under  
25 this subparagraph, the supplier shall provide notice to  
26 the customer in writing, or via electronic means or other  
27 delivery method agreed to by the customer. A month-to-  
28 month transition product offered under this subparagraph  
29 may not be increased more than 30% of the kilowatt hour  
30 rate charges during the preceding bill cycle and the

1 supplier may opt to implement a lower per billing cycle  
2 percentage increase cap.

3 (ii) A new fixed-rate product contract. Upon  
4 transitioning a customer to a new fixed-rate product  
5 under this subparagraph, no less than 45 days before the  
6 customer's initial contract expires, the electric  
7 generation supplier shall provide notice to the customer  
8 in writing, or via electronic means or other delivery  
9 method agreed to by the customer, of the new fixed-rate  
10 contract terms and any applicable cancellation or early  
11 termination fees. A cancellation or early termination fee  
12 under this subparagraph may not exceed \$100.

13 (3) An electric generation supplier shall continue to  
14 provide service to a customer whose fixed-rate product  
15 contract has expired under paragraph (2) until the earliest  
16 of the following:

17 (i) the customer enters into a new contract;

18 (ii) the customer switches to another electric  
19 generation supplier;

20 (iii) the customer returns to a default service  
21 provider's service; or

22 (iv) the electric generation supplier returns the  
23 customer, upon expiration of the contract, to the default  
24 service provider.

25 § 28A05. Contract provisions.

26 (a) General rule.--An electric generation supplier shall  
27 include the following provisions in no less than 12-point font  
28 in a contract for a variable-rate product or fixed-rate product:

29 (1) The name, address, toll-free telephone number,  
30 mailing address, e-mail address, publicly accessible Internet

1 website and commission certification number of the electric  
2 generation supplier.

3 (2) The rate applicable to the contract term. The rate  
4 shall be presented in a cents per kilowatt hour format.

5 (3) The expiration term of the contract.

6 (4) A statement in all capital letters that authorizes  
7 the customer to rescind the contract within three business  
8 days of receipt of the contract without incurring a  
9 cancellation fee or an early termination fee.

10 (b) Mailbox rule.--A contract provided to a customer via  
11 first class mail shall be deemed received by the customer within  
12 three business days of being placed in the mail.

13 (c) Variable-rate product contracts.--An electric generation  
14 supplier shall include the following provisions in no less than  
15 12-point font in a contract for a variable-rate product:

16 (1) An explanation of the method or formula used to  
17 determine the rates for a variable-rate product.

18 (2) A statement specifying that variable rates are  
19 subject to change.

20 (3) The length of time a promotional or initial rate is  
21 applicable.

22 (4) A statement as follows:

23 The rate to be applied during your first billing  
24 cycle or the promotional period is (insert rate); this  
25 rate may increase by no more than (insert percentage of  
26 rate cap) per billing cycle.

27 (5) A publicly accessible Internet website or toll-free  
28 telephone number that a customer may call for current  
29 variable-rate product pricing information.

30 (6) For an index-based product, the formula or market

1 indices used to determine the rate.

2 (d) Fee provisions.--An electric generation supplier shall  
3 include the amount and terms of a cancellation or early  
4 termination fee, if any, in no less than 12-point font in a  
5 contract for a fixed-rate product.

6 (e) Disclosure box.--

7 (1) An electric generation supplier shall include a  
8 customer disclosure box on the top of the first page of a  
9 contract with a residential or small commercial customer that  
10 summarizes the key terms and conditions included in the  
11 product offer or contract. The terms and conditions shall be  
12 in no less than 14-point font and shall be conspicuous and in  
13 plain language so that it may be easily understood by a  
14 layperson.

15 (2) Any written marketing material promoting a specific  
16 product of an electric generation supplier shall include the  
17 key terms and conditions for the product offered. The terms  
18 and conditions shall be prominently displayed using language  
19 that may be easily understood by a lay person.

20 (3) The customer disclosure box under paragraph (1) and  
21 the written marketing material under paragraph (2) shall  
22 include all of the following:

23 (i) The term of the contract.

24 (ii) For a fixed-rate product offer or contract, the  
25 applicable rate.

26 (iii) For a variable-rate product offer or contract,  
27 the initial or promotional rate, the length of time the  
28 rate is applicable and the terms of variability,  
29 including the applicable cap.

30 (iv) For an index-based product, the formula or

1 market indices used to determine the rate.

2 (v) The dollar amount of a cancellation or early  
3 termination fee, if applicable.

4 (vi) A description of the notices to be provided  
5 upon expiration of the contract term.

6 (vii) Contact information for the electric  
7 generation supplier.

8 (viii) Other information required by the commission.

9 (f) Disclosure modification.--The commission may add to or  
10 modify the disclosures required under this section as necessary  
11 to accommodate changes in market conditions, product offerings  
12 and technology.

13 § 28A06. Variable-rate changes.

14 (a) Limitations on rate changes.--The kilowatt hour rate  
15 charged to a residential or small commercial customer under a  
16 contract for a variable-rate product, other than an index-based  
17 product, may not be increased by more than 30% of the kilowatt  
18 hour rate charged during the preceding billing cycle. An  
19 electric generation supplier may choose to implement a lower per  
20 billing cycle percentage increase cap.

21 (b) Average kilowatt hour rate.--

22 (1) The rate contained in a customer bill for service  
23 provided by an electric generation supplier shall reflect the  
24 average kilowatt hour rate for the applicable billing cycle.

25 (2) Paragraph (1) shall not apply to a time-of-use rate  
26 or real-time pricing product.

27 § 28A07. Investigations and enforcement.

28 (a) Investigations.--The commission may investigate consumer  
29 complaints related to increases in the retail electric rates  
30 charged by an electric generation supplier.

1 (b) Required information.--If the commission is  
2 investigating a consumer complaint related to a variable-rate  
3 contract under subsection (a), the commission may require an  
4 electric generation supplier to provide information on the  
5 formula, mechanism, market indices, wholesale electric rates or  
6 actual costs that provide the basis for the variable rate under  
7 the contract.

8 (c) Coordination.--The commission and the Office of Attorney  
9 General, Bureau of Consumer Protection may work in a coordinated  
10 manner to investigate and share complaint information as  
11 necessary to ensure that the commission and the Office of  
12 Attorney General, Bureau of Consumer Protection have the data  
13 required to determine if a violation of this title or the act of  
14 December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade  
15 Practices and Consumer Protection Law, is likely to have  
16 occurred and may take appropriate independent action.  
17 § 28A08. Variable-rate and fixed-rate product rates.

18 (a) Rate notice.--

19 (1) No less than once every 30 days, an electric  
20 generation supplier offering service to residential or small  
21 commercial customers shall post the present nonpromotional  
22 rate or range of rates for each variable-rate product on the  
23 electric generation supplier's publicly accessible Internet  
24 website and shall make the rate information available to  
25 customers via a toll-free telephone number.

26 (2) Upon request by a residential or small commercial  
27 customer, the electric generation supplier shall provide the  
28 current applicable nonpromotional rate for each variable-rate  
29 product and fixed-rate product in writing to the customer or  
30 via electronic or other delivery method agreed to by the

1 customer. The rate shall be contained in the electric  
2 generation supplier's marketing and sales materials,  
3 including telephone solicitations.

4 (b) Rate history.--

5 (1) No later than January 30 of each year, an electric  
6 generation supplier offering service to residential or small  
7 commercial customers shall post a one-year rate history for  
8 its average monthly billed rates, by rate class and utility  
9 service territory, for each publicly available variable-rate  
10 product and fixed-rate product for the preceding year, or a  
11 history of each product offered for less than one year, on  
12 the PA Power Switch Internet website and the electric  
13 generation supplier's publicly accessible Internet website.  
14 The commission shall maintain an archive of rate history  
15 information under this paragraph and shall make it available  
16 on the PA Power Switch Internet website or its publicly  
17 accessible Internet website.

18 (2) Upon request by a residential or small commercial  
19 customer the electric generation supplier shall provide the  
20 rate history as required under paragraph (1) in writing to  
21 the customer or via electronic means or other delivery method  
22 agreed to by the customer.

23 § 28A09. Contract formation.

24 An electric generation supplier may not provide service to a  
25 residential or small commercial customer without the customer's  
26 written signature on a contract, electronic consent,  
27 authorization form or other form of verification as permitted by  
28 the commission to initiate service, renew service or switch  
29 service.

30 § 28A10. Duties of electric generation suppliers and electric

1 distribution companies.

2 (a) Electric generation supplier.--An electric generation  
3 supplier shall have the following duties:

4 (1) No later than one business day after a contract to  
5 initiate service, renew service or switch service is  
6 authorized to be formed under section 28A09 (relating to  
7 contract formation), and after the customer account  
8 information has been validated, send a copy of the contract  
9 to the customer. At the option of the customer, the electric  
10 generation supplier shall provide the copy to the customer in  
11 person, by first class mail or electronically.

12 (2) No later than one business day after the expiration  
13 of the three-day rescission period under section 28A05  
14 (relating to contract provisions), notify the electric  
15 distribution company of a switch request by the customer.  
16 Notice under this paragraph may be delayed in order to  
17 accommodate a postdated switching enrollment start date  
18 requested by a customer.

19 (b) Electric distribution company.--No later than five  
20 business days after receiving notice under subsection (a)(2),  
21 the electric distribution company shall complete the switch  
22 request to allow the customer to begin receiving service from  
23 the electric generation supplier or default service provider.

24 (c) Off-cycle switching.--An electric distribution company  
25 shall develop and implement switching protocols to accommodate  
26 off-cycle switching as follows:

27 (1) Beginning six months after the effective date of  
28 this paragraph, the electric distribution company shall have  
29 the necessary protocols in place to accommodate one off-cycle  
30 switch per customer per billing cycle. The commission shall

1 grant a request by the electric distribution company for an  
2 extension of the six-month period under this paragraph for  
3 good cause shown.

4 (2) Beginning one year after the electric distribution  
5 company implements paragraph (1), an electric distribution  
6 company shall have the necessary protocols to accommodate  
7 additional off-cycle switches.

8 (d) Cost recovery.--An electric distribution company shall  
9 recover, on a full and current basis, in accordance with a  
10 reconcilable automatic adjustment clause under section 1307  
11 (relating to sliding scale of rates; adjustments), the  
12 reasonable costs associated with modifying its metering and  
13 billing equipment and systems, information technology,  
14 procedures and protocols necessary to complete switching  
15 requests under this section, including, but not limited to,  
16 annual depreciation, capital costs and ongoing operations and  
17 maintenance expenses. Costs recovered under this subsection  
18 shall not include costs recovered under section 2807(f) (7)  
19 (relating to duties of electric distribution companies).

20 (e) Applicability.--

21 (1) This section shall not apply to an electric  
22 distribution company that is not subject to the requirements  
23 of section 2807(f).

24 (2) An electric distribution company that is not subject  
25 to the requirements of this section shall complete a switch  
26 request in a manner consistent with electronic data transfer  
27 and exchange standards at the beginning of the first feasible  
28 billing cycle after receipt of the switch request.

29 § 28A11. Consumer education information.

30 (a) Information compilation.--The commission shall compile

1 the following information:

2 (1) A list of each electric generation supplier licensed  
3 by the commission.

4 (2) The types of services available in the electric  
5 generation retail market and the advantages and disadvantages  
6 of each service.

7 (3) The percentage rate of customer complaints filed  
8 against each electric generation supplier and the disposition  
9 of the complaints.

10 (4) Any information the commission determines will  
11 assist customers in making informed decisions when choosing  
12 an electric generation supplier.

13 (b) Publication of information.--The commission shall post  
14 the information under subsection (a) on the PA Power Switch  
15 Internet website and, upon request of a customer, make the  
16 information available in writing to the customer or via  
17 electronic means or other delivery method agreed to by the  
18 customer. The commission shall provide the information in a  
19 standard format that is easily understandable by a layperson.

20 § 28A12. Civil penalties.

21 Notwithstanding section 3301 (relating to civil penalties for  
22 violations), an electric generation supplier that violates this  
23 chapter shall pay a fine of not more than \$10,000 to the  
24 Commonwealth for each violation.

25 § 28A13. Applicability.

26 Except as provided in sections 28A03(e) (relating to  
27 variable-rate product contract terms) and 28A10 (relating to  
28 duties of electric generation suppliers and electric  
29 distribution companies), this chapter shall not apply to  
30 electric distribution companies.

1 Section 2. This act shall take effect in 60 days.