

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In the Matter of the Pennsylvania	:	
Public Utility Commission	:	Docket No. M-00061957
Investigation into Policies to Mitigate	:	
Potential Electricity Price Increases	:	

**COMMENTS OF
NRG ENERGY CENTER PITTSBURGH AND
CONSTELLATION NEWENERGY, INC.**

On May 19, 2006 the Pennsylvania Public Utilities Commission (the Commission) issued an Investigation Order into Policies to Mitigate Potential Electricity Price Increases (“Order”).¹ Constellation NewEnergy, Inc.² (“Constellation NewEnergy”) and NRG Energy Center Pittsburgh (collectively as the “Joint Parties”) appreciate the opportunity to offer initial comments.

**I.
INTRODUCTION AND BACKGROUND**

NRG Energy Center Pittsburgh (“NRG”) is a district energy company located on Pittsburgh’s north side. As a purchaser of electricity and ultimately both a consumer and seller of energy, NRG is uniquely positioned to offer ideas on how the Commission might address issues identified in this order. Constellation NewEnergy is NRG’s electricity supplier and was chosen as a result of a six month process in which NRG sought to obtain not only economical prices for electricity purchases, but also a partner who understands the competitive retail market in Pennsylvania.

¹ *Investigative Order on Policies to Mitigate Potential Electricity Price Increases*, Commission Docket No. M-00061957 (Enter Into Order, May 24, 2006).

² Constellation NewEnergy, Inc., Constellation Energy Commodities Group, Inc., and Constellation Generation Group, LLC are also jointly submitting Initial Comments in this matter.

Constellation NewEnergy is licensed or certified to act as an alternative retail electric supplier to serve customers located in more than 20 states and provinces throughout the United States and Canada. In Pennsylvania, Constellation NewEnergy is a licensed Electric Generation Supplier (“EGS”) and serves customers in the Duquesne Light Company service territory. Constellation NewEnergy looks forward to serving other markets in Pennsylvania as rate caps expire. Nationwide, Constellation NewEnergy has over 15,500 MW of load under contract with over 10,000 retail customers. In the PJM region, Constellation NewEnergy serves approximately 1,200 MW of industrial and commercial load.

By 2011, all electric generation rate caps expire in Pennsylvania. By the time all electric generation rate caps expire underlying costs of the rates will be in many cases 10 years old or older. Although higher prices in 2011 are not an absolute certainty, recent energy price data indicate a likelihood that electricity prices will be above the existing electricity rate caps. There are a number of factors that are contributing to the recent increases in energy prices, including a sharp increase in fuel costs, potential limitations on generation availability, increasing transmission congestion, growing demand as well as other factors.

The Joint Parties appreciate and support the Commission’s investigation and foresight into ways to help manage or mitigate the impact of increased electricity prices. Advanced efforts to educate consumers, and encourage marketplace enhancements will play critical roles in moderating electricity prices in the longer term. Experience has shown that **all** consumers will be better served if action is taken now rather than “after the

fact” attempts at price mitigation. Such after the fact measures can lead to market and political turmoil.

By submitting these comments, the Joint Parties demonstrate their conviction that EGSs and customers must work together in order to maintain and foster competitive retail markets in the Commonwealth. In other words, Constellation NewEnergy and NRG recognize that a key element of a competitive market is a strong alliance between customers and retail suppliers.

II.

SPECIFIC COMMENTS

In response to the Commission’s Order, the Joint Parties will address several ideas that were raised in the Order as well as other potential issues related to managing the impact of future price volatility and rate increases. It is prudent that the Commission should take steps now to manage the impact of future price volatility and potential rate increases on retail customers. A number of broad ideas are outlined below. Further, while en banc hearing scheduled for next week will provide insight into these issues, it is only one of many steps towards addressing these issues. Rather than view the issue as a one-time, one-solution or “decision” matter, we recommend the Commission consider an ongoing, broader, longer term, and less litigious approach to address future electricity market issues.

A. Wholesale and Retail Market Interaction

The Commission's Order, as well as the supporting statements, appropriately highlight the interplay between wholesale and retail markets.³ Joint Parties agree that the link between wholesale and retail markets is critical. Vibrant wholesale markets lead to greater efficiencies for retail consumers. On the other hand, strong retail markets, with engaged consumers, make for a more dynamic and liquid wholesale market. It is well-established that decisions made at the PJM, Commission, or the Federal Energy Regulatory Commission ("FERC") directly impact retail market prices and general cost and price trends. Some specific examples are:

- **Education and Price Signals** – Ensuring consumers are more aware, and have more notice of major trends and developments in PJM will assist customers in responding to changing prices. Longer term education strategies and campaigns, described below will familiarize customers with the wholesale energy markets. In addition, efforts should begin now to send customers price signals and improve price transparency for large commercial and industrial customers. These price signals may be provided to large commercial and industrial consumers on an hourly or monthly basis.
- **Demand Response and Conservation:** Price signals are important for encouraging certain behavior, but consumers also need tools to respond to price signals. We encourage further development of the PJM demand response programs that are already in place for commercial and

³ See *infra* Fn 1. See also *Statement of Commissioner Bill Shane*, Commission Docket No. M-00061957 (May 19, 2006).

industrial customers. Additional Commission actions to encourage demand response should be coordinated with the PJM so as to ensure they provide incentives and effective results. Encouraging greater demand response can also only be achieved when PJM permits scarcity pricing to occur. This will in turn allow both load and generators to see the same price signals and respond accordingly.

- **Resource Adequacy:** The efforts by many of the stakeholders to address PJM resource adequacy issues have been substantial but have failed to lead to a final solution. The lack of certainty on RPM has resulted in increased risks (and therefore higher costs) in wholesale and retail markets and has delayed investment in appropriate solutions. The Joint Parties recommend that the Commission participate in the existing processes and proceedings before the FERC to ensure a prompt resolution of RPM related issues as soon as possible, so that the PJM markets are more settled before the expiration of rate caps.
- **Transmission:** Another critical wholesale market component is transmission planning. Transmission decisions can directly impact retail prices particularly in specific areas. PJM is working diligently to implement a comprehensive transmission planning approach that will coordinate both generation and transmission investment. We recommend the Commission continue to participate in the PJM processes regarding transmission planning.

B. Regional Awareness and Coordination

As the Commission's Order and supporting statements indicated, Pennsylvania is not unique in facing rising price challenges.⁴ Surrounding markets and jurisdictions have or will confront the same issue. Indeed, most of the circumstances leading to rising prices are not unique to Pennsylvania such as rising fuel costs and new stresses on the transmission grid. These factors impact the Pennsylvania, New Jersey and Maryland regions as well as adjacent power systems. The interconnectivity and growing interdependence of national electricity markets means that decisions in Pennsylvania to manage retail price impacts should not be made in isolation of these broader issues in neighboring states.

As a result, the Organization of PJM States Inc. ("OPSI") should act as a clearinghouse amongst state regulators for regional ideas for planning, sharing education efforts, and coordination of specific actions that address wholesale market matters. The OPSI consists of representatives of various state agencies from the states within the PJM footprint, and therefore serves an important regional function. We recommend that the Commission explore ways of maximizing communication and actions within the OPSI framework and continue in its leadership role at OPSI. In addition, OPSI could be instrumental in promoting demand side enabling technologies such as "smart" meters,

⁴ See *Investigation Order*, supra Fn 1 at 1, *Statement of Commissioner Bill Shane*, supra Fn 3 at 2

internet platforms for communicating real time price signals and forecasting the potential for high price, high load days.

C. Education

The Joint Parties agrees with the recommendation presented in the Order that a consumer education program that is initiated before the expiration of caps could help mitigate price increases to consumers. In fact, we believe education about changes in the electricity market and its impacts on consumers is essential. General information on prevailing market conditions would help acclimate consumers to these issues. On June 1, 2006, such an approach was recently undertaken by the Illinois Commerce Commission.⁵

Additional analysis on the potential impact on customer bills and accompanied by detailed explanation would be an important component. Care, however, should be taken not to “predict” prices or market developments. Instead, we recommend the communication focus on changing market conditions and price variability. For smaller commercial and residential customers, we recommend general information be made available as soon as possible and conveyed repeatedly. For larger customers, who are increasingly accustomed to analyzing and managing energy costs, the focus should be more on maintaining transparency in the utility rate structure, and ensuring the large customer can “see” market impacts. Further, we recommend any such education fairly represent all aspects of the market, including the competitive retail sector.

D. Energy Conservation

As stated above, information is a key step in educating consumers on the realities of the energy market. Such education is much more valuable, however, if consumers have

⁵ See <http://eweb.icc.state.il.us/E-Agenda/pub/cal/agenda>.

the tools to respond to the information. We agree with the Commission that encouraging and enabling all customers to manage their energy demand on an ongoing basis (not only at critical times) is a critical component to costs and price management. Any incentives for load management should be made available to all customers, whether they are served by EGSs, or remain on the regulated, utility rate.

This can work in two ways.

First, information and incentives to manage demand will provide individual customers with direct benefits. The Joint Parties believe this can be beneficial for all customer classes. As commercial and industrial load often has the most direct and immediate benefit to the system, we recommend that the Commission ensure appropriate programs are established for these groups as well as residential customers.

Second, reduction in demand, particularly at critical times, provides an overall or societal benefit to the system. The more consumers adjust demand and respond to signals, the less stress there is on the system and therefore, costs could be lower than they otherwise would have been. It is recommended that the Commission consider reinvigorating the demand side working group that had been established by Commissioner Fitzpatrick to investigate additional demand side programs.⁶ Further, any new demand side programs should be compatible with the existing PJM demand side programs.

E. Retail Market Developments

The trends in energy markets are not unique to restructured markets or customers who are under regulated tariffs. All consumers in nearly every state will experience these

⁶ *Demand Side Response Working Group*, Commission Docket No. M-0021689 (Secretarial Letter Issued May 8, 2003)

impacts. A viable retail market, with choices and tools for customers, can reduce the need for administrative interference in markets.

Our experience is that those commercial and industrial customers that have the choices and the tools to better manage impending price changes in a manner that suits their needs support the continued development of competitive markets. For example, when the “fixed” standard offer in Massachusetts ended in March 2005, there was little or no public reaction. To be sure, prices were not at the level they are now, however, they were certainly higher than they had been for previous seven years. Approximately forty-five percent of large commercial and industrial load was with already with a competitive supplier and customers continued to make arrangements with suppliers to manage their usage and costs.⁷

F. Establishment of a Formal Working Group

In order for a successful competitive market to evolve, improved communication amongst the stakeholders is critical. These stakeholders should include Commission Staff and key market participants such as customers, licensed EGSs, wholesale suppliers, electric distribution companies and PJM. The Joint Parties’ recommend that the Commission establish a formal, on-going working group to discuss issues in the evolving retail and wholesale electricity markets. The working group should meet on a quarterly-basis and the Commission's Pilot Implementation Committee could serve as a model for the mechanics of the working group.

⁷ Annual 2005 Load Migration Date, Massachusetts Division of Energy Resources, <http://www.mass.gov/Eoca/docs/doer/2005migrate.pdf>

A working group will allow key stakeholders to address and discuss real-life market issues, to help lessen the inherent tensions among EGSs, wholesale suppliers and electric distribution companies, and to resolve issues without the necessity for a contentious litigated proceeding. The Joint Parties welcome the opportunity to participate and ensure the success of realizing a true competitive market.

III.

CONCLUSION

NRG Energy and Constellation NewEnergy applaud the Commission for initiating this investigation and addressing these very important issues that affect all consumers as well as the continued development of the competitive energy markets in Pennsylvania. We look forward to working with the Commission in order to devise ways in which to help control or mitigate the impact of increasing costs and changing prices.

Respectfully submitted,

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