BEFORE THE
PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Rulemaking Re Electric Distribution Companies'	)	
Obligation to Serve Retail Customers at the	)	**Docket No. L-00040169**
Conclusion of the Transition Period Pursuant	)	
To 66 Pa.C.S. § 2807(e)(2)	)	

COMMENTS OF THE
NATIONAL ENERGY MARKETERS ASSOCIATION

The National Energy Marketers Association (NEM)[1] submits these comments pursuant to the Commission's Advance Notice of Final Rulemaking Order (ANOFR) adopted February 8, 2007. NEM supports the Commission's thorough and thoughtful evaluation of default service rules to be implemented at the conclusion of the transition period. The approach the Commission is taking in this rulemaking, in conjunction with the measures in the Proposed Policy Statement on default service and the Tentative Order on policies to mitigate potential electricity price increases will promote a holistic solution addressing the supply and demand side issues of retail market structure. NEM applauds the Commission for its continued commitment to competitive market solutions to serve the consumers of the Commonwealth.

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[1] NEM is a national, non-profit trade association representing wholesale and retail marketers of natural gas, electricity, as well as energy and financial related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, advanced metering, demand and load management firms, billing, back office, customer service and related information technology providers. NEM members are global leaders in the development of enterprise solution software for energy, advanced metering, information services, finance, risk management and the trading of commodities and financial instruments. NEM members also include inventors, patent holders, systems integrators, and developers of advanced power line surveillance and grid reliability technology with advanced uses in Power Line Communications (PLC) technologies as well as new and innovative electrical applications known as Smart Electricity.™

I. Default Service Rates Should Reflect Current Market Conditions

In this proceeding, the Commission introduced a revision to its previous proposal requiring fixed default service rates. The Commission proposed that default service customers be offered a single rate option known as the price to compare (PTC). The PTC is proposed to be adjusted at least quarterly for residential and small business customers and at least monthly for large business customers.

The Commission discusses the corollary between the proposed PTC rates and the current natural gas supply cost adjustments that are made on a quarterly basis. The Commission astutely notes that, "Pennsylvania's residential gas customers, most of whom are also customers of EDCs, are well accustomed to having their gas rate adjusted quarterly. We expect that retail electric customers can manage quarterly adjustments as well." (ANOFR at 19). NEM agrees with this observation.[2] In fact, the Commission should be applauded

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[2] Quarterly adjusted default service rates for electric customers are not without precedent in other states. For example, in Maryland the Public Service Commission recently approved moving to quarterly pricing for the electric utilities' Standard Service Offer Type II customers to be effective June 1, 2007.[2] Given the political upheaval associated with the expiration of utility rate caps in Maryland, the Maryland Public Service Commission's rationale is quite compelling. The Maryland Commission reasoned that,

> The Commission concurs with the parties that rate stability is an important public policy goal generally, and particularly with respect to SOS. Recent experience suggests that longer term fixed prices do not contribute to that goal; indeed they create a false sense of complacency that costs are in fact stable, followed by a painful transition when rates are finally adjusted to reflect current costs. Specifically, residential rates in the BGE territory were frozen for approximately thirteen years. When the rate freeze finally expired a significant rate increase occurred, accompanied by significant customer, political, and other unrest. The large rate increase and the consequent dissatisfaction are directly attributable to the long period of frozen rates. The upshot is that frequent, albeit small rate changes, are a better vehicle for insuring relative rate stability (and a more gradual reflection of changes in current market prices) rather than longer periods of frozen rates, followed by rate shock.[2] Maryland Public Service Commission, Case No. 9056, Investigation into Default Service for Type II Standard Offer Service Customers, Order 81019, issued August 28, 2006, page 16.

The Massachusetts Department of Telecommunications and Energy required the state's electric utilities to implement a quarterly procurement of default service supply for medium and large commercial and industrial customers. The MADTE reasoned that the previous six-month procurement term, "does not send efficient price signals to customers, particularly during the later months of each procurement term."[2]

for rejecting the paternalistic view that consumers are unable to rationally respond to market-based electricity pricing signals despite the fact that consumers must make such decisions on a daily basis with respect to a host of other products and services that they purchase. NEM cannot discern what a reasonable basis is for distinguishing between the frequency of pricing signals that are acceptable for gas customers and electric customers.

The Commission has recognized in this ANOFR, and NEM agrees, that in the long term, the efficiency of the retail market could be improved if commodity pricing signals followed the market more closely and if utilities implemented embedded cost-based unbundled rates.[3] The Commission's revised proposal moves closer to that goal. However, NEM believes that utility pricing of commodity to large commercial and industrial customers who can be billed hourly should be based on an hourly, time of day rate. With respect to small commercial and residential customers, utility default service pricing should be a monthly-adjusted, market-based commodity rate to which should be added a utility's fully allocated embedded and projected stranded costs associated with providing all of the otherwise competitive commodity related products, services, information and technologies currently bundled in full service rates. NEM notes that this Commission favorably commented that customers of Pike County's parent company, Orange and Rockland, are charged a "market supply charge" that changes <u>every month</u>

[3] The New York Public Service Commission determined that, "one prerequisite to fostering market development is the conduct of cost studies, the ensuing assignment of costs to the utilities' various functions and services, and the establishment of fully unbundled, cost based rates for electric and gas service." (New York Public Service Commission, Case 00-M-0504, Order Directing Expedited Consideration of Rate Unbundling, issued March 20, 2001, page 1). The Commission further found that embedded cost based rates were required. (New York Public Service Commission, Case 00-M-0504, Order Directing Filing of Embedded Cost Studies, issued November 9, 2001). *See also* NYPSC Staff "Report on the State of Competitive Energy Markets: Progress to Date and Future Opportunities," March 2, 2006, p. 4 (recommending that, "Utility bills should continue to fully and separately identify energy supply costs and energy delivery costs, to provide the level of price transparency customers need to compare offers when selecting an energy supplier.")

and that the frequent adjustment of the rate prevented O&R customers from experiencing a "rate shock" as customers in the service territory of Pike County experienced at the end of a prolonged rate freeze.

As part of the quarterly-adjusted PTC rate, the Commission would encourage, but not require, interim rate reconciliations to correct under and over-collections. NEM submits that the very need for interim reconciliations argues in favor of a monthly-adjusted rate. In other words, the rate reconciliations could skew the PTC so as not to be reflective of current market conditions thereby making it more difficult for competitive suppliers to offer a comparable or better rate. This very issue was raised in the Commission's Report on Competition in Pennsylvania's Retail Natural Gas Supply Market and was one of the subjects referred to the gas collaborative for resolution.[4] NEM cautions the Commission against interjecting the reconciliation issue that has harmed the development of the retail natural gas market in the state. Alternatively, the Commission could minimize the problem by implementing monthly-adjusted rates for residential and small commercial customers since the more frequent change in rates should minimize over or under-collections and resultant reconciliations.

The Commission also wisely determined in this ANOFR that fixed rate options should be provided by the competitive marketplace. NEM agrees that the perceived need of consumers for a fixed rate product should be provided by the competitive marketplace.[5]

[4] Docket No. I-00040103, Report to the General Assembly on Competition in Pennsylvania's Retail Natural Gas Supply Market, October 2005, pages 55-60.

[5] On the specific issue of utility fixed price offerings, the NYPSC's Retail Policy Statement directed that, "in future rate proceedings, utilities should not propose fixed rate commodity tariffs or tariffs creating a profit center for commodity sales." NYPSC Case 00-M-0504, Retail Policy Statement, at page 40. More recently, the NYPSC reaffirmed this finding with respect to Central Hudson's gas fixed price offer. In that case the Commission stated that Central Hudson's FPO, "distorts the market, acts as a barrier against ESCO entry into the market, and is an obstacle to innovation in the market," and that, "a fixed price supply

The proper vehicle for utilities to offer such a product is through their competitive affiliates in strict compliance with the code of conduct. The competitive marketplace is best at delivering fixed price products and will provide a superior solution to the over and under recoveries associated with a regulatory guess at market risks and market rates. Captive utility ratepayers should not bear the risk that long term, fixed rates could lock in prices that might turn out to be the highest prices consumers face for many years.

II. The Price to Compare Should Reflect All the Costs of Providing Default Service

The proposed regulations seek to implement a PTC that would "recover all default service costs for an average member of a customer class. Default service costs shall not be recovered through the distribution rate, and distribution costs may not be recovered twice as a result of any reallocation that occurs as a result of this rulemaking." The Commission expects that, "distribution rates will be examined in each EDC's next rate case or a special cost allocation proceeding to resolve the issue of embedded costs." NEM strongly supports the Commission's proposal to examine utility cost allocations to ensure that the PTC reflects all the costs of providing default service.[6] Embedded cost-based rate unbundling will ensure that consumers see and understand the full extent of the costs associated with utility default service and permit consumers to make accurate,

option is a service that could and should be developed and offered by the competitive marketplace." Case 05-G-0311, Order Directing the Future Termination, Subject to Conditions, of a Fixed Price Offer, July 22, 2005, at pages 7-8.

[6] The New York Public Service Commission similarly determined that, "one prerequisite to fostering market development is the conduct of cost studies, the ensuing assignment of costs to the utilities' various functions and services, and the establishment of fully unbundled, cost based rates for electric and gas service." (New York Public Service Commission, Case 00-M-0504, Order Directing Expedited Consideration of Rate Unbundling, issued March 20, 2001, page 1). The Commission further found that embedded cost based rates were required. (New York Public Service Commission, Case 00-M-0504, Order Directing Filing of Embedded Cost Studies, issued November 9, 2001). *See also* NYPSC Staff "Report on the State of Competitive Energy Markets: Progress to Date and Future Opportunities," March 2, 2006, p. 4 (recommending that, "Utility bills should continue to fully and separately identify energy supply costs and energy delivery costs, to provide the level of price transparency customers need to compare offers when selecting an energy supplier.")

informed comparisons with competitive offerings. Also, consumers that migrate will no longer be penalized by a double payment of commodity-related costs, once to their competitive supplier that is currently providing the service, and once to the utility that is no longer providing the service but is collecting the cost through bundled distribution rates.

III. Default Service Should Ultimately Be Rendered by a Competitive Supplier

The ANOFR revises the proposed rule such that Commission-approved alternative electric generation suppliers can also serve as the default service provider. The proposed rules delineate the ways in which that can occur. A utility can petition to be relieved of the default service obligation. A competitive supplier can petition to be "assigned the default service role." Or, the Commission can propose to relieve a utility of the default service obligation by its own motion. The proposed rules provide that the default service obligation can be "reassigned" based on a Commission finding that it is "necessary for the accommodation, safety and convenience of the public." The alternative DSP would be determined through a competitive process. The Commission opined that it is reasonable to designate the utilities as the initial default service provider.

The proposed modification recognizing the ability of alternative suppliers to serve as default service providers is consistent with state law and current industry development. The Commission has the express authority pursuant to the Electricity Generation Customer Choice and Competition Act to require the utilities to exit the merchant function and to approve an alternative supplier as the default service provider. (66 Pa. C.S. § 2807(e)). As the Commission has recognized by proposing regulations that allow a utility to voluntarily exit the merchant function as well as regulations that allow the

Commission on its own motion to require a utility to exit the default service function, a utility supplying delivery is not inherently more reliable than a contractual obligation to serve by a qualified supplier, unless there are anti-competitive remnants that remain in law or practice. Many competitive suppliers have the scale, capital and scope necessary to act as default service providers. In addition, competitive suppliers have risk management assets that historically have not been part of a utility's business model since the Commission normally has acted as the utility's risk manager.

NEM submits that the Commission may want to provide further details about the circumstances under which it will determine that a competitive provider would assume the role of default service provider. Factors to consider could include: consumer migration levels achieved for a particular customer class, number of competitive suppliers doing business in the service territory, and varieties of competitive offerings available in the marketplace. The presence of these factors can be indicative of whether a market is sufficiently "workably competitive" such that a transition to a competitive default service provider would be appropriate.

The Commission proposed that, whomever the DSP is, it will be subject to assessments for Commission regulatory expenses. NEM questions whether the regulatory assessments can be charged to competitive supplier DSPs consistent with Pennsylvania caselaw precedent. Moreover, since the number of DSP customers will continually diminish as consumers migrate to competitive marketers, the customer base from whom it can be collected will likewise diminish. The Commission should consider collection of the regulatory assessment via the delivery charge to avoid this problem.

IV. The Commission Should Facilitate Notice of Utility Filings that Impact the Competitive Marketplace

The Commission proposed to require the default service provider to serve a copy of its default service program on all competitive suppliers registered in the default service provider's service territory. NEM submits that this is a useful requirement. However, NEM urges the Commission to consider additional ways to facilitate notice to stakeholders of utility filings that impact the competitive marketplace. In other jurisdictions, stakeholders can voluntarily enroll in electronic listservs that are maintained for the purpose of quickly and efficiently notifying parties of important utility and/or Commission actions. The electronic listserv is a valuable way to alert competitive suppliers that are currently or considering doing business in a particular utility service territory that a potentially important change is occurring. Simply providing a hotlink to a relevant filing or attaching the document itself to an email that is sent to the listserv is all that is required. This Commission's planned improvements to its website incorporating electronic document filings will facilitate parties' abilities to locate important information. However, the listserv can function as a "first alert" and can do so on a very cost-effective basis.

V. Conclusion

NEM applauds the Commission for endeavoring to find an approach to default service rules and structure that best serves the needs of consumers of Pennsylvania and simultaneously supports the development of a competitive retail electric market.

Sincerely,

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