National Energy Marketers Association

Submission of the National Energy Marketers Association
On Proposed Guidelines for EGS Referral Programs
Dated: January 26, 2010
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The National Energy Marketers Association (NEM) appreciates this opportunity to submit comments in support of Staff's Proposed Guidelines for EGS Referral Programs [hereinafter "Proposal"]. In NEM's earlier comments to the Retail Markets Working Group we noted our support for marketer referral programs because such programs provide a low risk option through which consumers can learn about and participate in energy choice. Marketer referral programs provide benefit to all customers by informing them of competitive alternatives and stimulating the development and expansion of the competitive market.

We note that Staff's proposal is modeled closely after the successful New York referral program approach. By following the New York approach, we believe that this could facilitate suppliers doing business in Pennsylvania as well, since it will allow multi-jurisdictional suppliers to leverage existing internal processes that have been implemented to participate in the New York market. As such it will increase economies of scale for suppliers in serving retail customers.

At the outset of consideration of EGS referral programs, we think it is important that we prioritize the usefulness of referral programs vis a vis the implementation of Purchase of Receivables (POR) by the utilities. Referral programs serve a valuable role in supporting market development after POR is put in place. Indeed, we recognize that there are numerous competing challenges attendant with readying PPL and subsequent utilities for rate cap expiration and that there are a finite set of resources with which to accomplish those challenges. The implementation of referral programs should be a function of available utility resources (subject, of course, to the utilities' good faith efforts), but in no event delay implementation of POR as the priority to market opening. After POR has been successfully implemented at a utility, the utility should expeditiously seek to implement a referral program. In this respect, the referral program is a second tier measure to support market development after consumer "early adopters" have migrated to a competitive supplier. Moreover, the referral program works best when POR is in place because it mitigates the risk of participation for suppliers. This prioritization does not diminish our support for referral programs, but is meant as a practical recognition of the many issues that the utilities, the Commission, suppliers and consumers must grapple with in the coming months.

Overall, we believe that Staff's Proposal is an excellent, comprehensive blueprint for implementing EGS referral programs. We offer the following comments as points of clarification to provide increased certainty to participating suppliers, consumers and utilities as well as to promote the overall usefulness of and participation in the program. Our points of clarification will follow the ordering used in the Proposal.

Selection of an EGS (Proposal para. 2) – NEM agrees with the methods set forth in paragraph 2 for a customer to either specifically select an EGS or to be assigned to a participating EGS in the program on a rotating basis. NEM would like to clarify that in the case that a customer does not affirmatively select an EGS, that the utility service representative should not read a list of potential suppliers to the customer from which the customer would choose. Customers who do not affirmatively mention a desired EGS should be assigned on a rotating basis. This should streamline the enrollment process from the utility perspective.

Enrollment (Proposal para. 4) - NEM requests clarification of certain language used in paragraph 4 of the Proposal that is discretionary ("may"), but that we suggest should more properly be mandatory ("shall"). Paragraph 4 as currently written states that utilities "may accomplish enrollment through a telephonic process" and "[u]tilities may also accomplish this enrollment via a dedicated webpage to the referral program." (emphasis added). NEM requests that the language be changed to the mandatory "shall" to make clear that the utilities must use a telephonic process for referral program enrollment, and will additionally use a web-based process to supplement the telephonic process. We are concerned that the Proposal as drafted could be interpreted to reserve a choice to the utility not to utilize a telephonic enrollment process for referral programs.

The Introductory Period (Proposal para. 5) – As set forth in the Proposal, customers would be eligible to participate in the referral program once every three years. NEM notes that this is a departure from the design of referral programs in New York, which limit a consumer to participating in the program one time. This one time limitation is consistent with the purpose of referral programs – namely, to introduce consumers to choice. Once that purpose has been accomplished, we are concerned that allowing a consumer to participate in the program on multiple occasions has the potential to lead to gaming and would additionally entail use of some type of tracking to ensure the three year limitation is adhered to by the consumer. For these reasons, we recommend that a one-time limitation to participation is appropriate.

Website (Proposal para. 9) - This paragraph as drafted describes the information that would be set forth in dedicated referral program webpages. This would include the "post-introductory period rate offerings for each EGS." NEM questions whether this information should be listed. EGSs are not currently required to report their products in this fashion and creating such a significant regulatory reporting burden attendant with the implementation of the referral program is unwarranted. Indeed, the referral program is premised on the simplicity of a uniform 7% introductory discount from the utility rate, and this is the salient information for participating consumers.

Relatedly, the Proposal would require the listing of, "the EGSs' introductory discount rate." As stated, this requirement is somewhat confusing, since in all cases the introductory discount rate should be 7%, but the language appears to contemplate that it could vary. The 7% discount rate could therefore be expressed as a general benefit of program participation. In addition, it should be clarified that the 7% discount is only on the electric commodity portion of the total bill.

EGS Contract Option Requirements – As described in this section of the Proposal, "the price for electric commodity service shall be set under an 'open price provision' allowing the EGS to change its price upon 15 days notice to the customer, with that notice provided at least 30 days prior to the customer's next scheduled meter read." NEM requests that a definition of "open price provision" be utilized as well as clarification made of what condition triggers the 15-day notice period, and which meter read is being referred to in the "30 days prior" reference. NEM submits that appropriate notice of price changes should necessarily vary by the type of product contracted for by the consumer in the post-introductory period. In the case of a fixed rate product, the 15-day notice period is understandable. In contrast, in the case of a monthly variable rate product, suppliers should not be required to provide a separate notice of each rate change, presuming that the supplier has already disclosed to the customer in the contract that the variable rate product allows the price to vary monthly in response to particular factors. It would simply be impracticable to comply with the 15-day notice under a monthly variable rate product.

In addition, it should be clarified that Section 4 (which states "The customer may cancel the contract without payment of a penalty or termination fee to the EGS") only applies during the proposed one-month rescission period following the two-month introductory period.

A final point of clarification of the Proposal is related to its possible future expansion to include natural gas utilities and customers. As drafted, the Proposal is framed in terms of electric generation suppliers. However, as a participant in the SEARCH process, we note (and strongly support) the Commission's long-standing efforts to facilitate retail natural gas market development. We suggest that it makes sense to simultaneously consider implementation of referral programs for both electric and natural gas customers. In the case that referral programs are expanded to include gas choice customers, there are additional issues that should be considered. These include, for example, whether single commodity marketers will be assigned dual service customers. Moreover, because the Price to Compare remains an open issue, the computation of a 7% introductory discount rate for gas choice customers will be impacted by its resolution. The Staff may wish to consider these related issues as appropriate to the instant Proposal.