BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Natural Gas Distribution Companies and Promotion of Competitive Retail Markets	**))**	**Docket No. L-2008-2069114**

Comments of the
National Energy Marketers Association

The National Energy Marketers Association (NEM)[1] hereby submits these comments as permitted by the August 10, 2010, Advanced Notice of Proposed Rulemaking (ANOPR) issued in the above-referenced docket. The Commission issued this ANOPR on specific issues intended to promote effective competition for natural gas supply service. The rules pertain to the reformulation of the price to compare, adoption of permanent rules for voluntary POR programs, and capacity release rules. The ANOPR continues a proposed rulemaking[2] begun last year, incorporating changes suggested by the stakeholders at that time. NEM previously filed comments[3] with the Commission in that rulemaking and appreciates the opportunity to offer further input. We strongly support the proposed rule provisions in the ANOPR as consistent

[1] The National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.
[2] Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets, Docket No. L-2008-2069114.
[3] Docket No. L-2008-2069114, Comments of the National Energy Marketers Association, incorporated by reference herein.

with and advancing Pennsylvania state policy in favor of robust natural gas retail market competition and consumer choice.[4]

I. Price to Compare

With respect to the price to compare (PTC), the ANOPR proposes that,

> "the PTC or commodity rate will be adjusted on a quarterly basis and will consist of the following elements on a per Mcf or Dth basis: the gas cost rate determined in the NGDC's Section 1307(f) proceeding; the reconciliation for over and under collections; the NGDC's natural gas procurement costs (determined via a Section 1308(a) tariff filing); and the Merchant Function Charge (determined via a Section 1308(a) tariff filing). All of these elements shall be embedded in a single PTC rate on the customer's bill." (ANOPR at 18).

NEM supports the revisions the Commission has made to the proposed presentation and calculation of the utilities' price to compare, subject to the modifications suggested herein. We believe the PTC as proposed will provide consumers with a more meaningful basis upon which to compare utility commodity offerings and competitive supply offerings, as it will bear a greater resemblance to market conditions and more fully reflect the utilities' full costs of providing commodity service.

A. Quarterly Adjustment of the PTC

The Commission has proposed to continue with a quarterly adjustment of the PTC. While NEM supported monthly adjustments to the PGC rate in its previous comments, we also noted the statutory language that could be construed to require a utility fixed price option should a monthly utility pricing adjustment be used.[5] NEM was and continues to be very concerned that utility

[4] 66 Pa. C.S. §§ 2203 and 2204.
[5] 66 Pa. C.S. § 1307(f)(II) provides that,

fixed price products would be contrary to the development of robust retail competition in the Commonwealth. With the introduction of the other proposed factors to the PTC, we believe that the Commission has come closer to reflecting an appropriate balance of providing a market-based rate consistent with the statutory construct within which it has to operate.

B. E-Factor Adjustment in the PTC

The Commission has proposed to include the utilities' reconciliation for over and under-collections in the PTC. NEM supports this proposal. As noted in our previous comments, the utility's ability to charge interest on under-collections, and be charged a percentage penalty for over-collections, provides a strong incentive for the utility to underestimate its GCR rate. In so doing, it has acted to understate the PTC against which consumers have been making comparisons and creating a faulty perception that marketer offers are more expensive than the artificially understated utility rates. We support the inclusion of the e-factor in the PTC as a means to make the PTC more reflective of current market conditions and provide consumers with a better basis of comparison of marketing offerings.

NEM requests that the Commission initiate a collaborative process for the purpose of examining the over/under recovery mechanism and whether a monthly adjustment would help to reduce

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A natural gas distribution company may also file a tariff to establish a mechanism by which such natural gas distribution company may further adjust its rates for natural gas sales on a regular, but no more frequently than monthly, basis to reflect actual or projected changes in natural gas costs reflected in rates established pursuant to paragraph (2), subject to annual reconciliation under paragraph (5). In the event that the natural gas distribution company adjusts rates more frequently than quarterly, it shall also offer retail gas customers a fixed rate option which recovers natural gas costs over a 12-month period, subject to annual reconciliation under paragraph (5). The Commission shall within 60 days of the effective date of this subparagraph, promulgate rules or regulations governing such adjustments and fixed rate option, but the Commission shall not prohibit such adjustments or fixed rate option.

uncertainty related to the nature of the true-up mechanism, thus providing better information to the market and consumers. If, after review, it was determined that monthly e-factor adjustment would provide better and more timely information to the market and consumers, then NEM suggests that the e-factor component of the PTC should be recalculated on a monthly basis and made available to all stakeholders consistent with the 1307(f) requirements (i.e., utility website).

We also suggest that the Commission examine the practice of continuing to charge migrated customers the e-factor when they take supply from a competitive supplier. This seriously distorts the price that choice customers pay, particularly coupled with the utility incentive to undercollect that becomes reflected in a large e-factor. Although § 1307(f)(6) contemplates that shopping customers be charged the e-factor, it is to be limited to an "appropriate period" following the consumer's switch. The Commission may wish to consider what should be deemed an "appropriate period" to assess the e-factor against shopping consumers, particularly in view of the concomitant statutory obligation to foster retail competition.

C. Unbundling of Utility Gas Procurement Costs

As in the earlier proposed version of the rules, the Commission has proposed unbundling of the utilities' gas procurement costs. In the ANOPR, the Commission has taken the additional step of enumerating a definition of "natural gas procurement costs." Proposed Section 62.223 defines natural gas procurement costs as follows:

(1) NATURAL GAS SUPPLY MANAGEMENT COSTS, INCLUDING NATURAL GAS SUPPLY BIDDING, CONTRACTING, HEDGING, CREDIT, RISK MANAGEMENT COSTS, ANY SCHEDULING AND FORECASTING SERVICES PROVIDED EXCLUSIVELY FOR SOLR SERVICE BY THE NGDC, AND APPLICABLE ADMINISTRATIVE AND GENERAL EXPENSES RELATED TO THOSE ACTIVITIES.

(2) ADMINISTRATIVE COSTS, INCLUDING EDUCATION, REGULATORY, LITIGATION, TARIFF FILINGS, WORKING CAPITAL, INFORMATION SYSTEM AND ASSOCIATED ADMINISTRATIVE AND GENERAL EXPENSES RELATED EXCLUSIVELY TO SOLR SERVICE.
(3) APPLICABLE TAXES, EXCLUDING SALES TAX.

The Commission agreed with NEM in the ANOPR that rate unbundling and, "the removal of all commodity-related costs, including gas procurement costs is essential to yield a PTC that better reflects the commodity costs incurred by NGS firms seeking to sell natural gas to retail customers." (ANOPR at 15-16). We continue to believe that utility rate unbundling is a prerequisite to permitting consumers to make accurate, informed comparisons with competitive offerings and support the Commission's proposal to do so in the instant case.

NEM's chief observation and suggestion with respect to the proposed definition of natural gas procurement costs is that the use of the words "exclusively to" may inadvertently be limiting the scope of proper costs. In other words, the functions enumerated as natural gas supply management costs and administrative costs may not and likely are not devoted solely, or exclusively, for SOLR service. Nonetheless, if employees are shared and functions are shared as part of the utility's performance of SOLR service, the associated costs should be proportionately allocated to natural gas procurement costs. As such, NEM suggests that the words "exclusively for" in Proposed Section 62.223 be replaced with "in association with" to be more inclusive of the natural gas procurement costs that utilities incur in providing SOLR service.

Commissioner Christy has again noted his concern in this ANOPR that unbundling of utility rates may lead to stranded costs. As NEM stated before, the utilities should be under an on-going obligation to actively and prudently manage their costs and subject to this obligation and potential stranded costs should be minimized. Additionally, in the absence of full rate bundling shopping customers are penalized with a double payment of commodity-related costs, those paid to the competitive supplier from which they are currently receiving service and to the utility from which they are no longer receiving commodity. Unbundling of utility rates avoids this inequitable result.

D. Unbundling of Utility Uncollectible Costs

An additional component of the PTC as set forth in the ANOPR is utility supply-related uncollectible costs. NEM supports this proposal consistent with its recommendations set forth in the previous section of these comments on the importance of utility rate unbundling to achieving an accurate price to compare.

II. Purchase of Receivables Programs

In the ANOPR the Commission is proposing revised voluntary POR program guidelines, despite its finding that it has the legal authority to mandate POR. NEM agrees with the Commission that mandating POR would be consistent with the Commission's statutory authority and obligation to adopt such rules that facilitate effective retail gas competition.[6] Under the proposed POR program rules:

1) Marketers must include all of their commodity-related receivables in the POR program;
2) Marketers must accept all customers without using a credit check or requiring an additional security deposit;
3) The discount rate should compensate for the utility's projected risk of nonpayment and costs of administering the POR program but may not include a generic risk factor above that associated with uncollectibles;

[6] 66 Pa. C.S. §§ 2203 and 2204.

4) The discount rate may vary by customer class if substantial cost and risk differences exist; and
5) Utilities shall be allowed to terminate for non-payment, subject to consumer protection provisions. (ANOPR at 25-28).

NEM supports these provisions, some of which represent a departure from the Commission's previous proposal, as generally consistent with well-functioning POR programs in other jurisdictions.

NEM does not support the proposal in the ANOPR that would require marketers to use utility consolidated billing under the POR program, except in the case where the marketer is providing a service that does not meet the definition of basic natural gas supply or the utility's billing system cannot accommodate the marketer's bill for basic supply service. (ANOPR at 24-25). We continue to believe that in order to support suppliers' ability to make innovative product offerings to their customers that suppliers should not be required to offer consolidated billing. Utilities should continue to offer presently available billing flexibility to participating suppliers. In particular, it is important that marketers continue to be able to do their own billing for non-POR commercial accounts.

NEM also requests that the Commission clarify that supplier receivables under a utility POR program relate only to those customers eligible for the POR program, i.e., only the receivables billed by that utility for that marketer's customers in the specific Pennsylvania service territory. NEM members have experience in other jurisdictions wherein utilities inappropriately seek to include marketer sales that occur outside of the state. By making this clarification, the Commission can preclude such a problem from occurring.

III. Capacity Release

With respect to capacity release, the proposed rules in the ANOPR are designed to ensure competitively neutral administration of the utilities' capacity release and storage programs. They have been proposed without revision from the previous rulemaking. The Commission determined that, "the assets of gas pipeline and storage capacity should follow the customers of each utility, regardless of where they purchase their natural gas supply. Additionally, we want to ensure that useable capacity is released to marketers at fair and equitable rates, not the most expensive and least usable capacity." (ANOPR at 31-32). Consistent with our previously filed comments, NEM strongly supports the proposed capacity release requirements in the ANOPR.

IV. Conclusion

NEM appreciates this opportunity to offer further comments on measures that facilitate competitive retail gas market development as proposed in the ANOPR. We strongly support the Commission's efforts to create an environment that will foster greater competitive supply options for consumers.

Sincerely,

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