

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Investigation of Pennsylvania's) Docket No. I-2011-2237952
Retail Electricity Market:)
End State of Default Service)**

**Comments of the
National Energy Marketers Association**

The National Energy Marketers Association (NEM)¹ hereby submits its comments on the Commission's Tentative Order of November 8, 2012, in the above-referenced proceeding [hereinafter "Tentative Order"]. The Tentative Order sets forth a proposed end state of default electric service from the Commission's Office of Competitive Market Oversight (OCMO), after having received extensive stakeholder input since this Investigation was initiated in April 2011. The Tentative Order proposes to retain the utilities in the role of default service provider but also proposes changes to the default service pricing structure. The Commission opined that while it is,

"confident that the various intermediate measures underway will improve the overall operation of the competitive market, we are convinced that development of the retail market will continue to lag behind our expectations until we effectively address the fact that the currently-structured default service product remains highly regulated and does not reflect current market conditions. The proposed changes provide default supply prices that bear a closer resemblance to market conditions. The changes also provide a regulatory framework that

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encourages further EGS investment in Pennsylvania's retail electric market. We believe, this will move the Commonwealth towards a robust competitive market, where consumers enjoy a wide array of generation supply products and offerings from which to choose." (Tentative Order at 9-10).

This Commission has been a national leader in retail energy market policy. This is reflected in the levels of supplier participation in the markets, and the consumer shopping rates achieved to date, all of which has taken place just in the period since the rate caps expired. However, even with the successes achieved thus far, the Commission has continued to proactively seek out and address remaining barriers to retail market competition. The Commission is to be commended for its fine work. NEM strongly supports the Commission's continuing efforts to expand competitive markets and implement innovative market structures to better the consumers of the Commonwealth.

The central public policy construct of the Tentative Order is a proposal to retain regulated utility monopolies as "default service providers" (DSPs) in the otherwise very competitive Pennsylvania retail electric market. Concomitant with this market construct is the utilities right to a full recovery of and on costs associated with the provision of default service through the use of reconciliation mechanisms and nonbypassable cost pass-throughs. (Tentative Order at 13). Utilities will remain in this role unless and until the Commission approves an alternative DSP, which could occur by utility petition, supplier petition or upon Commission motion. (Id.) It is proposed that this default service market structure would be applicable to all electric utilities, including the smaller utilities. (Id. at 14). One principal change to the current default service structure is to move the default service "product" to "more closely resemble market conditions" with the rationale being that it will "eliminate the boom/bust cycles" that the current default service pricing structure can create and, in so doing, will create more sustained opportunities for

competition. (Id. at 16). The proposal under the Tentative Order is that medium and large commercial and industrial customers (100 kW or larger) that have interval meters should be charged hourly LMP, and those that do not have interval meters should be charged hourly LMP by using customer load profiles. This product would be obtained through a quarterly auction process. (Id. at 16). In effect, the proposal is to expand LMP pricing to medium commercial and industrial customers. It is further proposed that residential and small C&I customers should have fixed quarterly Prices to Compare that are established by quarterly auctions that procure all default service load via tranches of full requirements, load-following contracts for the upcoming quarter. (Id. at 17). The proposal is to utilize a more simplified procurement process to serve these consumers that procures shorter term products that will lead to pricing that is more market based. The Commission proposed a June 1, 2015, effective date for these default service changes to be preceded by utility default service plan filings by July 1, 2014. (Id. at 18).

As an initial comment, NEM notes that it has recommended in its comments throughout this Investigation that default service should be provided by competitive suppliers in the market end state. We suggested that in the interim until such end state is achieved, that improvements should be made to the current model of utility-rendered default service. This would include: 1) utility default service that utilizes more timely, market based pricing signals to consumers to provide an environment for sustained competitive activity and a more accurate basis upon which consumers can evaluate competitive energy offerings; and 2) utility default service pricing that fully captures the cost of providing no-notice last resort service (in other words utility delivery service rate unbundling that separates out and properly allocates the full retail costs to the utility of providing 24/7 no-notice, last resort default service). Coupled with this two-prong approach to utility default service pricing, NEM also suggested that retail market development could be

improved if there was no longer a presumption that new service customers be required to begin on utility default service and then have the subsequent opportunity to switch to a competitive provider. In other words, consumers should have a choice of supplier from the start of service.

NEM continues to recommend that the Commission recognize that the desired market end state is the competitive provision of default service and the utilities exit from competitive functions. The default service structure modifications proposed represent a transitional path to facilitating a fully competitive retail market in Pennsylvania. However, so long as the utilities continue to provide default service, the market and Pennsylvania consumers will continue to suffer from the inequities explained in detail on the record in this proceeding, including: 1) a regulatorily-determined price will always be a poor proxy for a true market-based price as it suffers from timing lags, reconciliations, lack of transparency, and does not reflect the full costs of providing 24/7 no-notice commodity service; 2) utilities have multiple unfair competitive advantages as incumbent monopoly commodity providers because they have instant market share without customer acquisition costs as well as guaranteed cost recovery without the risks faced by their competitive supplier counterparts in the market; and 3) by its very nature, characterizing the utility price as the default service “Price to Compare” distorts the consumer perception of what constitutes value in the competitive marketplace, particularly when evaluating products of different time duration, green attributes and/or with other value-added characteristics. A prolonged process of migrating from the utility monopoly model to a competitive market model increases the social costs of the transition as it continues to require a great deal of regulatory intervention, particularly when the utilities are retained in the default service provider role rather than outsource such functions for private capital to enter the market and offer otherwise competitive supply and related products and services. Importantly also, utility rates were

initially developed in an era when the allocation of costs between delivery service and commodity-related service did not demand the same level of detail and precision. Today, if delivery rates are not properly unbundled on an embedded cost basis, it results in the penalization of shopping customers that end up paying twice for commodity services. It artificially understates the value of the Price to Compare therefore subsidizing and indirectly incenting the continuation of a suboptimal market structure. Consequently, as a result, unless and until the utilities exit competitive functions, the market will continue to be characterized by a patchwork of “fixes” to overcome the inherent market distortions associated with a utility default service Price to Compare and the unfair competitive advantages inherent in retaining the incumbent or historical monopoly in this role for any extended period of time beyond a transition to a fully competitive end-state.

That being said, NEM urges the Commission to find in its final Order in this Investigation that the optimal end state market structure is one in which competitive suppliers are competing to serve as one or more default service providers and utilities have both exited competitive functions and fully reallocated their capital resources into maintaining and upgrading their reliability and delivery infrastructure. It is not necessary for the utility to act as the default service provider because competitive suppliers have the ability and experience to supply these services to customers. Suppliers have long been involved in developing and aggregating electric generation supply, and providing utilities with energy as a commodity. Indeed, that is the model under which utility default service supply would be procured under the Tentative Order. A utility delivering supply 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. In addition, competitive suppliers have risk management assets and skill sets that historically have

not been part of a utility's business model since the Commission normally has acted as the utility's risk manager.

In sum, NEM urges that the Commission find that a fully competitive market structure is both the desired public policy goal of the Commonwealth, and based on the evidence adduced to date, it is also an end-state that best serves the interest of Pennsylvania consumers. In the interim during a transition period until that occurs, it is imperative that the utility default service rate reflect all of the costs of providing 24/7 no-notice default service. This should be accomplished through the embedded cost-based unbundling from delivery rates of all of the costs associated with providing default service so that those costs can be properly allocated to commodity rates and consumers can be presented with a true and accurate basis of comparison when shopping. Alternatively, the Commission should consider the use of a reasonably constructed adder to the proposed default service rate as a proxy to help approximate the absence of such rate unbundling and the proper allocation of default service-related costs.

NEM offers the following comments on the remaining issues identified in the Tentative Order:

A. Portability of CAP Benefits

The Commission has proposed that all utilities develop plans that allow their CAP customers to shop for competitive energy without restriction, on or before January 1, 2015. (Tentative Order at 23). NEM supports the portability of CAP benefits. Indeed, consumers participating in the CAP program and in energy choice can receive a double benefit – the payment assistance garnered as a result of the CAP program as well as potential energy commodity cost savings to be realized from shopping. This double benefit is particularly significant because energy

expenditures comprise a larger portion of the budgets for low income consumers as compared with other households.

B. Supplier Consolidated Billing Option

The Tentative Order provides that OCMO should provide a recommendation to the Commission by July 2013 as to how to proceed with making supplier consolidated billing available as a billing option for suppliers and third parties. (Tentative Order at 28). NEM supports the Commission providing the supplier consolidated billing option in the marketplace. Suppliers currently operating in jurisdictions such as Texas and Georgia have that expertise and functionality, and therefore, it may facilitate market entry by these suppliers to operate and do business in Pennsylvania. However, as the Commission discusses in the Tentative Order, the issue is made somewhat more complicated by the fact that supplier consolidated billing would be made available midstream in the development of the market, rather than at its beginning. For instance, the issue of the appropriate parties to bear cost responsibility for implementation costs would need to be decided. An additional consideration, in Georgia and Texas the utilities do not have credit and collection risk under supplier consolidated billing. This is an important cost offset (benefit) to consider.

C. Accelerated Switching

The Commission has requested comment on series of related issues associated with accelerating the switching process, including accelerating switching timeframes, allowing for seamless moves and permitting consumers to be competitive customers on day one of service. (Tentative Order at 30-31). NEM believes that all of these measures would enhance the operation of the retail market and should be pursued.

NEM supports the initiation of a rulemaking proceeding to explore additional means to achieving customer switching on a timelier basis. The Commission's recent decision to reduce the ten day confirmation period to five days represents an improvement to the switching timeframe. NEM also recognizes that switching timeframes are constrained by currently available utility metering technology. We support exploration of additional measures to enhance the consumer shopping experience through more timely switching that can be achieved as smart meters become more widely available.

NEM also agrees that seamless moves should be accommodated for shopping consumers. NEM suggests that in the case of consumer relocation, the rules should explicitly recognize that if it is commercially practicable for the supplier (i.e., it currently provides service at the new location) and it is personally practicable for the consumer (i.e., the new service location accommodates the same type of energy supply), that the contract should continue to be valid. This benefits the consumer and the supplier because the consumer may derive value from maintaining the contract. At the same time, the supplier has procured supplies in reliance on the contract and would be unnecessarily harmed if the contract were terminated, particularly if the contract could have been honored in practical terms at the new location.

NEM also agrees that default service could be improved if there was no longer a presumption that new service customers begin on utility service and then have the opportunity to switch to a competitive provider. Indeed, the current presumption that consumers should start service as a utility commodity customer is inconsistent with the retail market competition goals enunciated by the legislature and reinforced by this Commission. In a market that has opened to competition, the presumption that consumers who have not selected a competitive supplier have made an affirmative decision to receive service from the utility is unwarranted and an unfair

advantage to the utility. This presumption acts in concert with and reinforces consumer apathy, evident in that even when provided the opportunity to realize cost savings and other benefits through shopping, the majority of the consumers remain on utility default service.

D. Utility-Provided Metering Services

The Commission has proposed that metering services should be retained by the utility. (Tentative Order at 31-32). Given this proposal, NEM recommends that if the utilities retain all metering services, that the Commission should make the related finding that the utilities must provide suppliers with open, non-discriminatory, real-time access to the meter data. Supplier access to the data attains greater significance as metering upgrades are made and the frequency and granularity of data that can be shared is improved. Access to the data will permit suppliers to devise and offer new and innovative products in the marketplace. Moreover, if the utilities are permitted to operate and compete in the market as retail commodity suppliers they should not be permitted the unfair competitive advantage of superior meter data access versus competitive suppliers.

E. Utility Provision of Energy Efficiency and Conservation Programs

The Tentative Order provides that utilities should continue to provide energy efficiency and conservation services to customers and that EGSs should be encouraged to do so as well. (Tentative Order at 34). NEM submits that energy efficiency and conservation services are competitive services, and as such, the market should be relied upon to provide them. NEM is concerned that designating the utility monopoly as the default provider of energy efficiency and conservation services will cause the same type of market distortions for these services as is caused by retaining the utility as the default commodity supplier. By retaining the utility as the

default energy efficiency and conservation services provider, competitive suppliers will have to overcome the same barriers to entry and participation in the market versus the utility with a dominant market position, instant scope and scale and benefitting from the economies of serving its captive ratepayer base. This will delay and/or prevent competitive energy efficiency offerings from being made available. Expanding a utility's legacy supply monopoly to include a new efficiency and/or demand monopoly is completely contrary to the public interests served by open and robust competitive markets funded by private capital rather than captive ratepayer capital.

F. Statewide Consumer Education Campaign

The Tentative Order discusses the implementation of a statewide consumer education campaign that focuses on communicating the benefits of shopping and PAPowerSwitch. (Tentative Order at 37). The campaign would be targeted at residential and small business customers. (Id. at 38). It is estimated that the campaign would cost \$5 million a year for at least three years. (Id.). It is proposed the campaign funding be collected from competitive suppliers and utilities under a “fair share” approach pegged on migration achieved, with supplier contributions decreasing as levels of migration increase over time. NEM submits that if the campaign funding is pegged on migration levels, then in practice all customers will pay for the education campaign either in the rate paid to their competitive supplier, or in the case of non-shopping customers, in the rates paid to the utility. Moreover, NEM also points out that the creation and maintenance of a well-functioning competitive retail market is a Commonwealth goal set forth by the legislature, and the education campaign will benefit all consumers regardless of their shopping status. That being said, NEM recommends that it would be more appropriate to include the cost of the education campaign in delivery rates as some kind of nonbypassable charge to all customers.

G. Annual Electric Generation Supplier Licensing Fee

The Commission proposes that suppliers should pay an annual licensing fee to the Commission to recover the costs of staff review of reports filed by suppliers, oversight of regulatory compliance issues and bonding requirements. (Tentative Order at 40). Suppliers currently pay a one-time licensing fee of \$350. (Id.). The fee could be a flat annual amount, proposed to be \$1,000, or alternatively, computed as a percentage of an supplier's gross intrastate revenues, subject to a maximum cap, also proposed to be \$1,000. (Id. at 41). NEM members report that other jurisdictions with license renewal processes do not require an annual fee as is being proposed here. If the annual licensing fee is imposed, one issue for consideration is that a flat fee amount will simplify the process from an administrative standpoint for both suppliers and the Commission.

Conclusion

NEM appreciates this and previous opportunities to provide the Commission with its recommendations on enhancing the structure and function of the retail electric market.

Sincerely,

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