**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| **Rulemaking Regarding Electricity Generation Customer Choice, 52 Pa. Code Chapter 54** | ) ) | **Docket No. L-2017-2628991** |

**Comments of the National Energy Marketers Association**

The National Energy Marketers Association (NEM)[1] hereby submits comments on the Notice of Proposed Rulemaking (NOPR) issued in the above-referenced proceeding and published in the Pennsylvania Bulletin on March 24, 2018. The NOPR proposes amendments to existing Commission regulations at 52 Pa. Code §§ 54.3, 54.5, 54.7 and 54.10 pertaining to standards and pricing practices for retail electricity services; a disclosure statement for residential and small business customers; marketing/sales activities; and the provision of notices of contract expiration or changes in terms for residential and small business customers.

The proposed amendments to the EGS rules include: 1) a proposal to ban the imposition of an early termination fee after a supplier has provided the customer with the initial contract expiration notice; 2) a proposal to require the expression of the average price kWh at different usages for products for which the unit price changes based on customer usage or if the product includes fees in addition to the unit price; 3) the creation of two options for disclosure language concerning contract expiration or change notices that differentiate between fixed duration contracts and non-

[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.

fixed duration contracts; and 4) a proposal to require disclosure to the consumer as to whether the EGS intends to obtain customer account and usage information from the utility. NEM's comments are focused on these proposed revisions. Certain other amendments are being proposed to create consistency between natural gas supplier (NGS) disclosure rules adopted in 2016 and the corresponding electric generation supplier (EGS) disclosure rules. This includes NGS rules pertaining to introductory pricing, customer notification of a price change, contract assignment and the removal of references to the utility from the disclosure statement.[2]

**1) Prohibition on the Imposition of Early Termination Fees After the Supplier Provides the Initial Contract Expiration Notice – Proposed Sections 54.3(2), 54.10(1)(vi)**

The NOPR proposes revisions to Sections 54.3(2) and 54.10(1)(vi) that would prohibit the imposition of an early termination fee (ETF) to a customer once a supplier has provided the initial contract expiration notice required under 52 Pa. Code § 54.10. NEM does not recommend adoption of this proposal. Requiring EGSs to send consumers notices of contract expiration and then penalize EGSs for the result is a perverse outcome indeed.

The NOPR explains that the proposal is being made "in response to consumers who object to having an ETF assessed upon them simply because they acted on the expiration notice sent by the supplier." (NOPR at 11). NEM notes that current Section 54.10(1)(vi) requires the initial contract expiration notice to include "*notice of the date when the customer can choose a different product from the customer's existing EGS, choose an alternative EGS or return to default service*." (emphasis added). So, there is an existing requirement to inform the customer of the date upon which they can initiate a change in their service, and the NOPR does not suggest nor is there any

[2] NEM filed comments in Docket L-2015-2465942 expressing its recommendations on the NGS disclosure rules.

reason to believe that this is not occurring. Prior to adopting the significant proposal to ban the imposition of ETFs, NEM suggests it may be more appropriate to explore how the date is placed on the notice and whether it could be improved to facilitate consumer awareness and understanding of the consequences. In any event, instances of consumer "objection" to the ETF are not sufficient to impose this material rule change on the industry.

The NOPR notes that many suppliers waive or forego charging an ETF in these circumstances. EGSs have the discretion to do this as part of their business plan and desire to satisfy consumers. They will continue to exercise this discretion when and if they deem it appropriate. It should not, however, be a requirement. The ETF serves an important role in mitigating supplier risks of serving consumers for the *entire* term of the contract. Suppliers hedge to provide service up to the point when the customer may be served by an alternative product, alternative supplier or the utility. Prohibiting the imposition of ETFs when the sixty-day notice period begins to run, is contrary to the purpose and function of ETFs. Moreover, it may encourage EGSs to "front load" the ETF to avoid the impact of the prohibition.

Also noteworthy to this proposal, is that the current NGS rules provide a longer period – sixty to seventy five days – for the initial consumer notice of contract expiration. If the prohibition were to eventually be considered to be applied to NGSs, which NEM opposes as well, this would impose an even greater risk and potential cost on the industry because of the longer notice period that is applicable. This also argues against adoption of the proposal for EGSs.

For the foregoing reasons, NEM opposes the proposal to prohibit the imposition of ETFs to customers after the initial contract expiration notice is provided by the EGS. Rather, NEM recommends focusing on the manner in which the applicable date for the customer to switch service is communicated on the initial notice and whether it would be beneficial to make it more prominent to enhance consumer awareness of the process.

**2) EGS Calculation and Presentation of the Actual Per kWh Rate at Varying Usage Levels – Proposed Sections 54.5(c)(4) and 54.7(b)**

The NOPR proposes to add Section 54.5(c)(4) and modify Section 54.7 to make more visible and update an existing requirement on EGS calculation and presentation of pricing information at varying usage levels. Section 54.7(b) currently provides that,

> (b) Marketing materials that offer terms of service for acceptance by consumers shall include prices, as follows:
>
> (1) If using a fixed price, the EGS shall show in a table the price per kWh for an average customer using 500, 1,000 or 2,000 kWh of electricity.
>
> (2) If using a variable price mechanism, the EGS shall factor in all costs associated with the rate charged to the customer, and show the average price per kWh for usages of 500, 1,000 and 2,000 kWh of electricity in a table format.

The new proposed Section 54.5(c)(4) and similar language in proposed revised Section 54.7(b), would provide that "if the unit price changes based on customer usage or if the product includes fees in addition to the unit price, the price per kWh shall factor in all costs associated with the rate charged to the customer and show the average price per kWh for usage of 500, 1,000 and 2,000 kWh of electricity in table format." The changes are being proposed because the original language was reflective of the use of block rate structures at the inception of electric choice, which practice has largely been discontinued for both utilities and EGSs.

In his Statement on the NOPR, Vice Chairman Place requested comment on the impact of these rule revisions on the offering of innovative, time variant products enabled by advanced metering. NEM appreciates Vice Chairman Place's question and concern in this regard. NEM agrees that the Commission should be mindful of avoiding rules that prevent innovative products from being offered and prevent the benefits of advanced metering from being realized by consumers. Given the very nascent state of market development with respect to time variant rates for mass market consumers, and the potential for rigid disclosure requirements to hamper product development and availability, it is appropriate to expressly exempt time variant products from the disclosure requirement.

**3) Disclosure Statement Options for Language About Contract Expiration or Change Notices – Proposed Section 54.5(g)**

The NOPR proposes to revise Section 54.5(g) to provide two options for disclosure statement language pertaining to contract expiration or change notices. One option addresses fixed duration contracts, and the other addresses non-fixed duration contracts. The purpose of providing both options rather than a single standard statement is avoidance of consumer confusion that can result from language that is not applicable to all contracts. This is a reasonable proposal that permits EGSs to improve the clarity and quality of the disclosures that are made to consumers and should be adopted.

**4) Disclosure of EGS Intention to Obtain Customer Account and Usage Information From the Utility – Proposed Section 54.5(k)**

The NOPR proposes to add a new Section 54.5(k) to the regulations that would require EGSs to disclose to the consumer if they intend to obtain customer account and usage information from the utility and that the EGSs will maintain the confidentiality of a customer's personal information that is received. It is standard industry practice for EGSs to include such a disclosure to the consumer. It is appropriate to memorialize this requirement in the regulations, as it has become a standard practice, and to make clear to all stakeholders – EGS, consumers, utilities – the Commission’s expectations in this regard.

**Conclusion**

NEM appreciates this opportunity to offer its comments on proposed revisions to the Commission’s EGS disclosure rules.

Sincerely,


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Dated: May 22, 2018.