**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|---|---|---|
| **Investigation of Pennsylvania's** | **)** | |
| **Retail Electricity Market:** | **)** | **Docket I-2011-2237952** |
| **Intermediate Work Plan** | **)** | |

**Comments of the**
**National Energy Marketers Association**

The National Energy Marketers Association (NEM)[1] hereby submits comments pursuant to the December 15, 2011, Tentative Order issued in the above-referenced proceeding. In the Tentative Order the Commission adopts Staff's proposed intermediate work plan to facilitate the continued development of the retail electric market. The components of the work plan include: 1) consumer education measures; 2) acceleration of the consumer switching timeframe; 3) initiation of two types of customer referral programs; 4) a retail opt-in auction program; 5) presentation of the utilities' Price to Compare on customer bills; and 6) coordination between utilities and competitive suppliers. NEM supports the Commission's approval of the elements of the intermediate work plan. Our comments are intended to highlight certain issues, the resolution of which should aid in the implementation of the work plan. The Commission and Staff is to be commended for the considerable work undertaken, in an expedited timeframe, to investigate these significant retail electric market issues. The Commission's longstanding and steadfast

[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.

This document reflects the views of the National Energy Marketers Association and does not necessarily reflect the views of any specific member of the Association.

focus on educating consumers about the energy choice options available to them, enhancing retail market development and facilitating consumer and supplier participation in the market has already yielded positive results. We support the Commission's continued efforts in furtherance of these goals, including the approval of intermediate work plan.

## I. Consumer Education

This Commission has historically recognized the importance of incorporating consumer education as a key component of supporting customers' ability to meaningfully exercise choice in the retail energy marketplace. In the work plan, the recognition of the importance of consumer education is continued. The work plan discusses three intermediate measures to familiarize consumers with their ability to shop and the benefits of energy shopping. This will include the utilities mailing of a Commission-endorsed postcard, a tri-fold flyer mailing and a subsequent utility letter that encourages consumers to shop and that includes FAQs. (Tentative Order at 5-6). An integral part of the education efforts in NEM's view is the Commission's endorsement of choice, which sends a strong positive message to consumers. Moreover, since the messaging will draw upon a number of sources – utility mailings and the PA Power Switch website – to reinforce the concepts, in addition to the individual marketing efforts that are undertaken by competitive suppliers, consumers will be exposed to the message in a variety of ways and formats and provided with a means to follow up to learn more about energy choice. The level of consumer shopping in Pennsylvania in a short timeframe has been remarkable and should be acknowledged. However, notwithstanding the levels of migration achieved, in NEM's view the mission of providing effective consumer education must be viewed as a long-term commitment. We strongly support the Commission's efforts to achieve this goal as set forth in the work plan.

## II. Acceleration of Consumer Switching Timeframe

The Commission issued a Tentative Order on November 2011 with a proposal for the acceleration of the consumer switching timeframe. The main element of the proposal aimed at affecting a more timely switch of customers' accounts is the elimination of the ten day waiting period within which the utility holds an enrollment request, during which time the customer can dispute whether consent was given to the transfer to the EGS. Coinciding with this would be the elimination of the confirmation letter sent by the utility to the customer to confirm the transfer to the EGS. In place of the utility confirmation letter, the utility would send an account transfer letter to inform a customer about the transfer of the account to an EGS. NEM filed comments[2] on the proposal supporting the proposed means of accelerating consumer switching but also noting its concern that the proposals appear to be requiring EGSs to incorporate the use of specific starting dates in communications with respect to individual consumers and as such may severely restrict EGSs ability to effectively communicate to mass market residential consumers. NEM also requested clarification of issues associated with the EGS's submission of the account transfer notice to the utility before the switching deadline and satisfaction of the statutory requirement for written evidence of consent to transfer a customer's account. The Commission notes in the Tentative Order in the instant case that it plans to adopt final interim guidelines on accelerated switching timeframes after reviewing the comments it received. (Tentative Order at 9). The Commission also stated that it plans to initiate a rulemaking to revise its switching regulations. (Id.). NEM supports the Commission's efforts to identify and implement business rules that allow for the smooth and administratively efficient transition of consumers from utility service to competitive supply service, such as the proposed revision to the switching rules.

---

[2] Comments of the National Energy Marketers Association, Docket No. M-2011-2270442, Interim Guidelines Regarding Standards For Changing a Customer's Electricity Generation Supplier, dated December 14, 2011.

## III. Customer Referral Programs

In the Tentative Order, the Commission endorses the use of two customer referral programs that it believes, "will benefit our retail electric market." (Tentative Order at 16-17). The first program is the new/moving customer program, and the second is the standard offer customer referral program. NEM has repeatedly stated its support for customer referral programs to the Commission, both in this investigation as well as in prior comments to the Retail Markets Working Group, particularly with respect to programs like the New York-type referral program upon which the proposed standard offer customer referral program is modeled.

As explained in the Tentative Order, the new/moving customer referral program would be used for new and moving customers as well as existing default service customers that contact utility call centers for any reason, other than an emergency. The new/moving customer program would incorporate the opportunity for a "hot transfer" of a customer from the utility call center to an EGS to facilitate enrollment. In the context of the new/moving customer program, the Commission requested comment on certain implementation issues as follows:

A. **Call Centers** - The Commission requested comment on call center logistics, for example, whether existing utility call centers, a contracted center, a single statewide call center or some combination, should be utilized in the referral program. (Tentative Order at 18). In NEM's view, in order to keep the referral program administratively simple and in the interest of controlling costs, it makes sense to use the utilities existing call centers for the referral program. The other call center approaches would appear to make the process more complicated than it needs to be thereby increasing costs. In addition, since the referral script will be given in response to non-emergency calls to the utilities, it seems most logical to use existing utility call centers for the referral program.

B. **Definition of Eligible Small Business Customer** – The Commission proposes that the new/moving customer referral program be open to residential and small business/commercial customers. (Tentative Order at 18). The Commission proposes that a "small business customer" be defined as the smallest general service business rate class in utility's tariff. (Id.). NEM supports this definition of small business customer for use in administration of the new/moving customer referral program.

C. **"Hot Transfer" from the Utility Call Center to the EGS** – As explained in the Tentative Order a "hot transfer" would entail transferring a customer from the utility call center to the EGS call center immediately without further action when the customer is prepared to exercise the option to switch. (Tentative Order at 18 and note 8). The incorporation of the "hot transfer" approach into the referral program could provide an additional means of overcoming consumer inertia and facilitating seamless customer switching. One of the goals underlying a referral program should be the actual enrollment of customers. Using a "hot transfer" process that puts the consumer directly in contact with the EGS to initiate enrollment is a logical extension of the program.

D. **Eligible Customer Inquiries** – The types of customer inquiries that are appropriate for customer referral scripts should include any non-emergency inquiries that the customer makes to the utility call center. In addition, NEM suggests that for customers of dual commodity utilities, if a customer calls with respect to a non-emergency gas inquiry, the customer should also be informed that it has a choice of electric provider.

The second program endorsed by the Commission in the Tentative Order is the standard offer customer referral program. This is a voluntary program for both customers and competitive suppliers in which a standard introductory discount offer from the utility's PTC would be provided for a minimum three month term. The program would be offered to residential customers that contact the utility with non-emergency inquiries. Participating customers would not be subject to an early termination fee and would be free to leave the EGS at any time unless the post-introductory period agreement with the supplier provides to the contrary.

The standard offer customer referral program proposal is modeled after the New York-type referral program that has been in use for many years.[3] The benefits of the program hinge on its simplicity - ease of use by marketers; ease of administration by the Commission and participating utility; and consumers risk free introduction to choice by virtue of the discounted product coupled with the ability to leave the program without penalty. The program allows participating suppliers to minimize marketing and customer acquisition costs as well.

[3] A distinction between the standard offer customer referral program proposal and the New York referral programs is that the proposed term of the program would be three months, rather than two months as utilized in New York. In order to incent supplier participation and permit suppliers to manage their risk, the Commission may wish to consider that a lower uniform program discount rate may therefore be appropriate (than the seven percent introductory discount rate used in New York).

NEM notes the concerns expressed by some that this type of program would raise customer "bait and switch" concerns. NEM believes these concerns are misplaced. Consumers understand and utilize introductory rate offers with respect to many types of products. The use of the introductory rate concept in the context of energy choice can be accomplished in a manner that satisfies consumer expectations. There is no question that disclosures should be made to participating consumers about the nature of the introductory product they will be receiving as well as the nature of the product they will receive at the end of the introductory period. In New York, at the end of the introductory period the consumer's agreement converts to a month to month variable rate product unless the consumer has provided its affirmative consent to another rate. The consumer's welcome package from the participating supplier explains the introductory offer and what to expect at the end of the introductory period.

## IV. Retail Opt-In Auction Program

The Commission recently issued an Order recommending that the electric utilities incorporate an opt-in auction in their upcoming default service plan filings finding, "that the implementation of a special program designed to incentivize those default service customers who have up to now been reluctant to switch to an EGS is warranted."[4] Consistent with NEM's previously filed comments in that docket,[5] we continue to support the incorporation of an opt-in auction program as a component of the upcoming utility default service plan filings. An opt-in auction represents another means for consumers to exercise their ability to shop for energy and move away from utility default service programs. This may be an effective way of overcoming consumer inertia

[4] Docket I-2011-2237952, Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans, Final Order, dated December 15, 2011, at pages 32-33.

[5] Comments of the National Energy Marketers Association, Docket I-2011-2237952, Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans, at pages 3-4.

to remain on utility default service, particularly for those consumers that have not heretofore availed themselves of the option to shop. Although it was not made explicit in the proposed program structure, NEM suggests that the name of the supplier chosen to serve a customer by virtue of the auction be included on the customer bill.[6] This should allow consumers to become better acquainted with the suppliers and forge the type of retail consumer-supplier relationship that is the end goal associated with all of the intermediate work plan elements.

With that in mind, NEM cautions that it is inappropriate to undermine the consumer shopping activities that have taken place to date. In other words, those consumers that have already chosen to shop don't need additional encouragement to do so. As such, the auction program should be targeted at non-shopping customers. Communications about the auction program should honor the sanctity of existing contracts. The auction program will create uncertainty for competitive suppliers that are currently serving consumers in Pennsylvania and could potentially interfere with existing customer contracts. NEM urges the auction program be designed to mitigate these consequences. In addition, it should be made clear to consumers that even if they are not enrolled in the auction that they can still shop and avail themselves of different energy products in the marketplace and that they can participate in the introductory referral program.

The Commission expressed a preference that the retail auction occur prior to consumer enrollments so that consumers will know the exact price that they will be asked to pay if they participate. (Tentative Order at 32). Attendant with this issue, it is important that an opt-in auction program ensure the prospect of successful participation by a varied group of retail suppliers and that no one supplier be allowed to dominate the process. To encourage a wide

---

[6] The Ohio gas utilities indicate the name of the supplier on the customer bill for those customers served under their Standard Choice Offer auction.

range of supplier participation, suppliers must be able to effectively manage their risk. If the sequence utilized is for customer enrollment to follow after the retail auction, safeguards should be in place in case there is extreme wholesale price fluctuation. The enrollment window should be of a limited duration to limit potential exposure. Additional elements of the program such as the program term should also be tailored to managing the risk of conducting the auction before the number of customer enrollments are known.

## V. Presentation of the Utilities' Price to Compare on Customer Bills

The Commission proposes that the utilities be required to place their current Price to Compare (PTC) on customer bills, including a statement of when the PTC will be in effect. (Tentative Order at 44). In addition a statement would be required that the PTC is subject to change and with what frequency. (Id.). Finally, bill space permitting, the utilities must also include a reference to the PA Power Switch site. (Id.). In NEM's view, the PTC is of most use to customers when it is conveyed to them as a function of transparent, market-based commodity pricing. The current applicable utility rate should be conveyed in a transparent manner to consumers by:

1) Utilizing a market-based commodity rate;

2) Being fully unbundled on an embedded cost basis;

3) Disclosing all price components of utility default service in a manner that is easily read and understood on the utility bill and website;

4) Disclosing whether and how utility hedging is reflected;

5) Disclosing how frequently the utility rate is subject to change and under what conditions;

6) Disclosing whether the default service rate is subject to adjustment for true-ups; and

7) Disclosing what current utility rate adjustments are in effect.

We support the Commission's proposal on the utilities' presentation of the PTC on customer bills as it will provide consumers a greater understanding of the true nature of the utility default service rate and the bases upon which that rate will change. We also support the Commission's proposal on the provision of a customer-specific PTC for certain rate classes. We suggest that not only those utilities that currently provide customer-specific PTC information for certain rate classes be required to continue to do so but also that the remaining utilities be directed to provide customer-specific PTC information as well.

The Commission provides an example of how the utilities could present the PTC information on a customer bill. (Tentative Order at 45). NEM notes that the proposed language states that the PTC "can" change quarterly. NEM suggests that the language be modified to state that the PTC "will" change quarterly. This more accurately reflects the fact that the utility PTC is not a fixed rate and should not be expected to stay the same over time. Accordingly, NEM suggests the customer bill language be modified as follows:

> Your Price To Compare for your rate class is X.XXX per kWh through __/__/__. This ~~can~~**will** change quarterly. For more information and supplier offers visit www.PAPowerSwitch.com. (changes indicated in bold and strikethrough).

In addition, NEM requests that the Commission consider redefining the term "Price to Compare" as the electric utility's "default service rate." Related to our previous observation of the variable nature of the utility's rate and setting appropriate consumer expectations as to that aspect of the rate, NEM notes that by labeling the utility Price to Compare as such it implies that price is the only relevant basis of comparison. Consumers should be encouraged to understand and evaluate the all of the different elements of product offerings – price, term, fixed/variable, green products, and other value added components – and decide which suit their individual needs.

## VI. Coordination Between Utilities and Competitive Suppliers

The Commission raised a number of issues related to coordination between utilities and competitive suppliers in the work plan for comment. These include supplier access to sample bills, credit instruments, and the nature and extent of risk underlying utility credit requirements.

### A. Supplier Access to Sample Bills

The Commission proposed that utilities provide EGSs with access to sample bills on the utility websites including sample bills of utility-provided default service, utility consolidated bill and a sample bill under the dual bill scenario. (Tentative Order at 47). NEM agrees with the Commission that suppliers should be provided with access to sample bills on the utility websites. Indeed, by providing suppliers with access to this information it permits them to provide better service to their customers. In reference to Commissioner Cawley's Statement in the instant case, NEM agrees that utility charges for access to customer data and information are very important, even though the issue may not have received as much relative attention in the investigation to date. That being said, we encourage the Commission to undertake additional review of this subject. NEM submits that suppliers should not have to pay fees for reasonable access to customer data that allows for better offers to consumers. Access to data should not become a hidden barrier to competition and supplier participation in the market.

The Commission specifically asked whether in the case where an EGS requests access to a specific customer's bill to resolve a billing problem if the existing Letter of Authorization should be deemed a sufficient expression of customer consent to provide the information. (Tentative Order at 47). NEM believes that existing LOAs should constitute customer consent for supplier access to the customer specific bill information to resolve a billing problem. It is a logical corollary to the supplier providing service to the customer that the supplier be in a position to review and understand the customer's bill in a holistic fashion. This is consistent with consumer expectations. To find otherwise, it would put the supplier and the consumers that they serve at an unreasonable disadvantage.

**B. Credit Instruments**

It is proposed that an EGS may meet its utility credit obligation by demonstrating that it has an investment-grade long-term bond rating from two of the four major rating agencies. (Tentative Order at 49). For EGSs that do not meet the long-term bond rating criteria, credit obligations are proposed to be met by one of the following: an irrevocable Letter of Credit; a Parental Guarantee from a creditworthy corporate parent, *i.e.*, a parent meeting the bond rating requirements; a Surety Bond; a cash deposit established with the utility; including the utility as a beneficiary; or other mutually agreeable security arrangement. (Id.). NEM supports the proposed creditworthiness standard and expanded list of credit instruments. While addressing concerns about supplier creditworthiness, the list of credit instruments will give suppliers appropriate flexibility in meeting utility credit requirements. An additional manner in which EGSs should be permitted to satisfy utility credit obligations in addition to those listed is by the credit rating of a Guarantor that is not a parent company. In Texas,[7] competitive suppliers that do not meet the long-term bond rating criteria are permitted to rely on Guarantor credit ratings, typically those of their wholesale suppliers. This has allowed competitive suppliers to free up capital to offer lower prices by relying on their suppliers' credit ratings. It also allows smaller

---

[7] See Public Utility Commission of Texas Substantive Rules §25.107. Certification of Retail Electric Providers (REPs).

suppliers to better compete with other incumbent suppliers that can rely upon parent company credit ratings.

### C. Nature and Extent of Risk Underlying Credit Requirements

The Commission requested comment on the nature and amount of risk that should be used in establishing utility credit requirements and, "whether the EDCs are demanding amounts higher than could be reasonably expected to incur in the event of an EGS default." (Tentative Order at 50). NEM agrees that this issue merits attention, particularly given the maturity of the market and market participants that has occurred over time. An important recent development that should be factored into utility credit requirements is the implementation of utility POR programs. The utility is made more secure in a POR program scenario because they collect from the consumer before anything gets paid to the supplier. Moreover, under a POR program the event of a supplier default does not pose a financial risk to the utility in any way because the utility is always in possession of supplier receivables. NEM questions whether it is logical for a party (the utility) to demand collateral from another party (the marketer) who can never owe them money. In addition, utility credit requirements should be reflective of the fact that the marketer is also secured at PJM in the event of default.

## VII. Conclusion

NEM appreciates this opportunity to submit comments on the proposed intermediate work plan to facilitate the continued development of the retail electric market. We support the expeditious adoption and implementation of the work plan elements, subject to the clarifications set forth herein, as further improvements to the Pennsylvania retail electric market that will improve consumers' ability to avail themselves of energy choice options.

Sincerely,

Craig G. Goodman, Esq.
President
Stacey Rantala
Director, Regulatory Services
National Energy Marketers Association
3333 K Street, NW, Suite 110
Washington, DC 20007
Tel: (202) 333-3288
Fax: (202) 333-3266
Email: cgoodman@energymarketers.com;
srantala@energymarketers.com

Dated: January 17, 2012.