BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation of Pennsylvania's Retail Natural Gas Supply Market	**))**	**Docket No. I-2013-2381742**

<u>Comments of the</u>
<u>National Energy Marketers Association</u>

The National Energy Marketers Association (NEM)[1] hereby submits comments regarding the status of competition in the Pennsylvania retail natural gas market pursuant to the September 12, 2013, Order issued by the Commission in the above-referenced proceeding. The Commission opened this investigation, "to assess whether effective competition exists and make recommendations for improvements to ensure that a properly functioning and workable competitive retail natural gas market operates in the state."[2] The Commission will utilize a two phase process for the investigation. The first phase will entail, "assess[ing] the status of the current retail gas market and explor[ing] what changes are needed to allow customers to best realize the benefits of choice."[3] The second phase will be overseen by the Commission's Office of Competitive Oversight (OCMO) and will focus on, "how to best resolve the issues raised and then how to implement the prudent changes identified to improve competition."[4]

With this investigation, the Commission has proactively identified the Marcellus Shale resource as a potential impetus for restructuring the current utility-rendered Supplier of Last Resort (SOLR) service model. NEM strongly agrees and urges the Commission to capitalize on this opportunity to enhance retail gas market competition. By transitioning the utilities out of the commodity merchant function and allowing the utilities to focus their resources on the core utility monopoly competency of upgrading and maintaining delivery infrastructure, the Commission will accomplish the related goals of enhancing retail market competition and facilitating access to Marcellus gas. In the interim while the utilities still perform the SOLR role, in order to enhance competition in the retail gas market, consumers should be permitted to see and respond to improved market-based pricing signals, and the full retail costs of providing SOLR service should be unbundled from delivery rates and included in the price to compare.

[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] Docket I-2013-2381742, Order, at page 2.
[3] Docket I-2013-2381742, Order, at page 3.
[4] Id.

1. **What is the current status of retail natural gas competition for customers, by class and by service territory, and for NGSs? For each such customer class and service territory, how accessible are competitive suppliers?**

In the Commission's SEARCH Order issued in September 2008 it adopted an action plan to increase retail natural gas market competition. This was to entail a two phase approach. Phase One included measures that could be implemented in short order, including: a) establishment of an Office of Competitive Market Oversight (OCMO) at the Commission; b) expansion of POR programs; and c) seeking legislative changes to capacity assignment/release. Phase Two involved rulemakings pertaining to three groups of issues: a) utility issues - reformulation of the price to compare, POR programs, mandatory capacity release and non-discrimination, cost recovery for competition-related activities and regulatory assessments; b) marketer issues - creditworthiness requirements and reasonable security requirements; and c) business practice issues - standardized utility operating rules, nomination and delivery requirements, tolerance bands and cash out/penalties, and standardization of EBBs. A number of the action plan items were implemented, including establishing OCMO and increasing the availability of utility POR programs. Important rulemakings were also concluded on the calculation of the PTC and supplier licensing. Other initiatives were delayed reflecting a prioritization of stakeholder resources, for example, the proposed rulemaking on standard business practices, relative to the importance of reforming the PTC and implementing POR programs. As we stated in comments at that time, the proper formulation of the PTC is critical to providing consumers with the information they need to make informed shopping decisions. Likewise, POR programs have been invaluable to facilitating supplier participation in retail choice programs across the country. We commend the Commission on its efforts thus far to facilitate retail gas market competition.

The current status of retail natural gas competition can be evaluated using a number of different indicia, including migration statistics, supplier participation in the market indicating ease of competitive entry, and number and types of competitive offerings. One additional point of reference is level of residential consumer shopping at the time the SEARCH Order was issued compared with current shopping levels. As of October 1, 2008, there were 154,292 residential consumers shopping, representing a 5.93% residential migration rate.[5] The most recent switching statistics reveal that 316,606 residential consumers are shopping, representing a 12% residential migration rate. Accordingly, a modest increase in residential shopping has occurred over the past five years. As was the case in 2008, the majority of residential shopping is taking place in the Columbia Gas (105,015 customers, 27.9% migration rate) and Peoples (80,868 customers, 25% migration rate) service territories. The largest overall gain in residential shopping took place at PECO, increasing to nearly 52,000 customers from only 561 customers in 2008. Shopping levels for commercial (57,916 commercial customers, 25% migration rate, 67.4% load) and industrial (3,054 industrial customers, 61.1% migration rate, 99.5% load) customers continue to be relatively robust.

The Commission's website lists 136 licensed natural gas suppliers in Pennsylvania. However, with respect to residential offerings, the number of competitive suppliers currently making offers

[5] Pennsylvania Office of Consumer Advocate, Pennsylvania Natural Gas Shopping Statistics, October 1, 2008.

available is limited. The number of residential supplier offerings currently posted on the PAGasSwitch site for the different utility service territories is as follows: Columbia Gas (15), Equitable (1), NFG (4), PECO (16), Peoples (6), and UGI Utilities (10). Competitive offers in the marketplace are generally fixed and variable rate plans.

In general, as observed by the Commission when it initiated this investigation, "the number of current customers purchasing gas from a competitive supplier remains dismal at less than thirteen percent on a statewide basis. This causes us great concern because we believe that there are more opportunities for customers to benefit from robust competition in the retail natural gas market."[6] We share the Commission's concern and strongly support its efforts in opening this investigation to identify further measures that can be implemented to facilitate retail natural gas competition in the Commonwealth.

While a reformulated PTC calculation, implementation of POR programs and reformed capacity release rules have improved the competitive landscape, there are fundamental market design issues that have and will continue to prevent the realization of a fully competitive retail gas market. Additionally, as the foregoing migration statistics reveal, progress in retail market development has not been proceeding at the same pace in all utility service territories. As discussed more fully herein, these fundamental market design issues include the provision of improved market-based pricing signals as well as the proper allocation of costs between the utility's no-notice, commodity SOLR service rate and its delivery service rate. Moreover, a truly competitive market cannot be attained so long as utilities continue to function as the supplier of last resort with the associated level of regulatory intervention required to attempt to maintain a level competitive playing field.

2. Are currently effective NGDC rates properly structured to reflect the separation between the costs of the NGDC's role as a distribution utility and its role as a Supplier of Last Resort (SOLR)?

The Commission made a number of necessary changes to the computation and presentation of the PTC in its 2011 Order.[7] First, it required that gas procurement costs be unbundled from utility delivery rates and included in the PTC. The gas procurement costs identified in the Order were as follows:

1. Natural gas supply service management and acquisition costs, including natural gas supply bidding, contracting, hedging, credit, risk management costs, and working capital.

2. Administrative, legal regulatory and general expenses related to those natural gas procurement activities, excluding those related to the administration of firm storage and transportation capacity.[8]

[6] Docket I-2013-2381742, Order, at page 2.
[7] Docket No. L-2008-2069114, Revised Final Rulemaking Order, June 23, 2011.
[8] Id. at 24.

Second, the Commission required that commodity supply-related uncollectible costs be unbundled from utility delivery rates and included in the PTC. The Commission also decided that the PTC should include the e-factor reconciliation for over- and under-collections.

In making these modifications to the PTC, the Commission reasoned that, "the changes we have directed in these regulations to the PTC will, in our judgment, result in an improved ability for customers to know the **commodity costs** charge [sic] by the NGDC for **default service** and, on that basis, to make informed choices from among the offers to be made by competitive suppliers." (emphasis added).[9] NEM strongly supported the Commission's changes to the PTC. However, as underscored by the Commission's reasoning quoted above, the utility delivery rate unbundling that took place was limited to the pure commodity sub-function that is encompassed within the larger role of SOLR. 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 SOLR service has not yet occurred. The embedded cost-based unbundling of all of the retail costs associated with the utilities' provision of SOLR service will ensure that the utilities' rates are properly structured to differentiate between the costs associated with its role as a distribution provider and its role as SOLR.

These retail costs are incurred by competitive energy suppliers and are included in competitive energy supplier pricing. When these same costs are also included in utility delivery pricing it results in a double payment of these costs by consumers. The failure to transfer these costs from the utility delivery rate to the utility default rate, in addition to resulting in a consumer double payment, provides a competitive advantage to the utility. Costs that remain in utility delivery service pricing, for a service that the utility is no longer rendering, is anti-competitive and contrary to proper utility cost of service regulation. The default service rate should be a fully loaded retail price for the product.

3. Does the existing market design of NGDCs serving as the SOLR present barriers that inhibit customer choice or prevent suppliers from fully participating in the retail market?

The existing market design of retaining the utilities in the role of SOLR presents multiple barriers to customer choice and supplier participation in the retail natural gas market. So long as the utilities continue to provide SOLR service, the market and Pennsylvania consumers will continue to suffer from significant inequities, including:

> 1) Retaining a regulated monopoly in a competitive marketplace inherently distorts the competitive playing field and requires a significant amount of regulatory intervention and oversight to try to ensure a level competitive playing field;
>
> 2) 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;

[9] Id. at 30.

3) 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;

4) 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 and/or with other value-added characteristics;

5) Commodity supply and related services, information and technologies are inherently competitive functions. Allowing the utility to remain in the default service role, and provide other competitive products, can discourage competitive entities from doing so;

6) 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. In a truly competitive market, the consumer is entrusted with the responsibility of engaging with prospective suppliers. The competitive suppliers bear the cost of acquiring the customer. By comparison, currently there is a presumption in retail energy markets that a consumer must initiate service with the utility before it can shop. The utility bears no acquisition costs, and the consumer is not engaged in making an affirmative decision to take utility default service. The presumption that a consumer must initiate service with the utility before it can shop is a significant barrier to retail market development and should be eliminated; and

7) So long as the utility is in the SOLR role there will be a group of consumers that will fail to shop, even when it is in their best economic interest to do so. Consumer apathy to shopping, apathy to educating themselves about energy choice, and apathy to choosing a competitive supplier are all by-products of this SOLR structure and presumption that consumers should initiate service with the utility before being able to select a competitive supplier.

4. Should NGDCs continue in the role of SOLR?

No. Utility-provided SOLR service should be viewed as a transitional measure for an interim period after which only competitive suppliers are relied upon to meet consumers' energy commodity needs. During this transitional period, while the utility continues in the SOLR role, it should be premised on the fundamentals of a market-based commodity price (monthly-adjusted rate) to which is added the fully embedded costs of providing retail commodity service. There also need be no presumption in a SOLR model that non-migrated consumers have decided not to shop. Consumers that take SOLR service should have the right and responsibility to be engaged in the market and make an affirmative decision as to their energy supplier. Additionally, 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.

The current law contemplates that the utility would not serve indefinitely in the role of SOLR.[10] Indeed, the law specifically references processes by which the utility can petition to discontinue providing SOLR service[11] and by which another entity can petition to perform the SOLR role.[12] In addition, the Commission, "shall promulgate regulations setting forth the standards for approving an alternative supplier of last resort," "including a mechanism to ensure that the rates charged by any alternate supplier of last resort are just and reasonable."[13]

5. **Are there enhancements and updates to the current SOLR model that would further improve the state of competition within the retail natural gas market?**
    a. **Are there opportunities through the potential restructuring of the SOLR model and retail gas market to encourage expansion of natural gas distribution facilities into areas of the Commonwealth that do not currently have access to natural gas facilities?**
    b. **Are there changes to the retail natural gas market that the Commission can undertake *de novo* through regulation or policy that would promote retail natural gas competition?**
    c. **Are there changes to the retail natural gas market that the Commission can undertake *de novo* through regulation or policy that would remove barriers to retail natural gas competition?**
    d. **What legislative changes should be made to further improve the retail natural gas market in Pennsylvania?**

There is an excellent opportunity presented by the Marcellus Gas resource to encourage the expansion of natural gas distribution facilities coupled with a restructuring of the current SOLR model. The desired market end state should be the competitive provision of SOLR service and the utilities exit from competitive functions. Utilities should be encouraged to focus their resources on their core competency of delivery system reliability. If utilities do not have to divert their finite resources to competitive commodity-related functions as well as monopoly distribution functions, and instead are incented to focus on reliably upgrading and maintaining distribution facilities this should encourage utility delivery system expansion needed to capitalize on the Marcellus resource. As noted in NEM's Response to Question 4, the Commission currently has the statutory authority[14] to undertake a restructuring of SOLR service to transition from a utility default service provider model into a model of competitively-rendered SOLR service.

A legislative proposal made this year that would improve the retail gas market (assuming a continuation of the current SOLR model) is HB 1188. HB1188 would eliminate the migration rider for gas customers and remove the financial incentive the utilities have to underestimate

[10] 66 Pa.C.S. § 2207.
[11] 66 Pa.C.S. § 2207(e).
[12] 66 Pa.C.S. § 2207(h).
[13] 66 Pa.C.S. § 2207(f).
[14] 66 Pa.C.S. § 2207.

their gas costs and collect a carrying charge for it. Implementation of these measures would do much to resolve inequities and confusion embedded within the current presentation of the utility PTC.

6. Are there outcomes from the Commission's recently completed electric RMI that would be applicable and useful to implement in the retail gas market? To the extent possible, please provide comments on the following topics:

a. Seamless Move

Seamless moves should be accommodated for shopping natural gas consumers. In the case of consumer relocation, 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), 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.

b. Accelerated Switching Timeframes

NEM is cognizant that the switching process operates on a different timeline for the natural gas utilities and that different operational standards are in place for the natural gas utilities than are in place at the electric utilities. However, the general goal of achieving the more timely transfer of the switch of a customer's account from the utility to a competitive supplier or between competitive suppliers benefits all consumers regardless of whether they are purchasing natural gas or electricity. As such, while there may need to be certain differences in switching timeframes for the two different commodities, the Commission should pursue rule changes that would allow consumers to switch on an expedited basis. Protracted delays in consumer switching cause unnecessary consumer confusion and dissatisfaction at the beginning of the shopping process when the consumer-NGS relationship has just formed. Moreover, the waiting period built into the switching process is not the correct means to preventing slamming. The Commission's marketing standards are a powerful deterrent for the behavior.

c. Standard Offer Program

The Commission's standard offer program,[15] the voluntary, introductory commodity discount rate program for residential consumers, has direct applicability to and would benefit the development of the retail natural gas market. A standard offer program provides a low risk means for consumers to participate in choice and educate themselves about the competitive marketplace. Customers can request a specific marketer or be assigned to marketers on a random basis. The customer also has the option to return to utility service at any time without penalty. The referral program works in tandem with utility purchase of receivables of participating

[15] The Commission adopted a set of guidelines for the implementation of electric standard offer programs. See Docket I-2011-2237952, Final Order, issued March 2, 2012, at pages 31-32.

marketers. Inasmuch as the natural gas utilities now offer POR, the standard offer program is now ripe for consideration.

For example, the similar program that has been implemented by New York utilities is offered to both electric and natural gas consumers. Indeed, it will enhance supplier marketing opportunities in dual commodity utilities if they can leverage the program to meet all of the consumer's energy shopping needs under a unified program.

d. Low-income customer shopping

Low-income consumers should be permitted and encouraged to shop for natural gas**.** 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.

e. Expanded Consumer Education about shopping

NEM has observed that consumer education about energy shopping in Pennsylvania has historically been focused on electric choice. The Commission recently added the excellent resource of PAGasSwitch to its website. However, the coordinated educational efforts that have been undertaken in recent years by the Commission and the stakeholders in providing energy fairs, bill inserts and other mailers, and additional press coverage to electric choice, in addition to the promotional efforts of competitive suppliers, should be extended to natural gas choice as well.

f. Any additional RMI initiative that would translate well to the retail natural gas market

An additional RMI initiative that would be useful to implement in the retail gas market is the development of a joint branded utility-supplier bill. In the Commission's electric RMI Order in the Retail it found that,

> By the end of 2013, OCMO should submit a recommendation regarding the possibilities for making the utility consolidated bill more supplier-oriented. The current utility consolidated bill looks like the utility's bill – with supplier information often relegated to a few lines, with the supplier's name, phone number, rate and charges. This is an especially incongruent result for many customers whose supplier generation charges actually exceed the utility's distribution charges. We are interested in pursuing options to make the supplier's charges and information more prominent. This could include making the supplier information more visible, incorporating the supplier's logo, providing more space

for suppliers to provide bill messages and even the opportunity to include EGS bill inserts. The expected end-result would look more like a joint EDC-EGS bill.[16]

NEM urges that the same observations offered in the electric RMI Order are also applicable to the natural gas market, i.e., the current natural gas utility consolidated bill offers very limited ability for suppliers to include relevant information for their customers. We suggest that the Commission direct the parties to develop a more supplier-oriented UCB. Doing so will provide suppliers with the enhanced ability to communicate with their customers and offer increased innovation in their product offerings, thereby making the bill more consumer-oriented as a result.

7. To take advantage of the opportunity that is present through the Marcellus Shale resource, should NGDCs and NGSs be encouraged to explore opportunities with natural gas exploration and production companies?

The utility's role in maximizing the opportunity presented by the Marcellus Shale resource should appropriately be focused on delivery infrastructure investments that upgrade the system to bring these supplies to market. This is integrally related to the issue of transitioning utilities out of the merchant function. The NGDCs may have opportunities to obtain Marcellus gas significantly below NYMEX rates. It may be very difficult to regulate an adequate amount of transparency from the utility with regard to its procurement, pricing and sale of Marcellus gas or ensuring comparable, non-discriminatory access for competitive suppliers. Nor are competitive suppliers in a position to duplicate the competitive advantage of the utility in seizing upon opportunities and access to Marcellus gas garnered through its distribution system. Coupled with its transition out of the competitive commodity merchant function, the utility should be offered incentive rates of return for focusing its resources on delivery infrastructure improvements that facilitate distribution of Marcellus gas for its sale by competitive natural gas suppliers.

8. Recognizing that the Commission withdrew the proposed rulemaking addressing NGDC business practices at Docket No. L-2009-2069117 and committed to commencing a new proposed rulemaking on these issues, please provide comments on the continued need to address standardized supplier tariffs and business practices with regard to imbalance trading, tolerance bands, cash out and penalties, nominations and capacity.

NEM previously supported the Commission's initiative on the development of standardized supplier tariffs. At the time the proposed rulemaking on utility business practices was withdrawn, NEM had suggested deferring that proceeding because given the finite resources of the all of the stakeholders, including the implementation costs, that resolution of the PTC and POR issues should receive priority as the most immediate goals. With those issues having been moved forward, now is an appropriate time to pursue greater standardization in utility business practices. Greater uniformity in the rules and tariffs across utilities promotes supplier entry and participation in the market because a supplier does not have to create a new and unique system for dealing with each utility. The Commission should also pursue opportunities to achieve standardization in the rules for natural gas and electric choice. Members report that some gas

[16] I-2011-2237952, Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service, Final Order, February 15, 2013, page 67.

utilities do not now even utilize EDI transactions for sharing information, with suppliers having to send flat files with customer information and enrollments.

The need for improved uniformity and upgraded communications is complicated by the fact that the market has been open for some time, and suppliers have invested significant amounts in building systems to accommodate the different utilities in Pennsylvania. There must be a balancing of existing supplier investment with rule standardization and utility system upgrades. As an initial point of going forward, it may make the most sense and be most cost efficient to focus first on standardization and system changes at the major utilities.

With respect to the specific issues of imbalance trading, tolerance bands, cash out and penalties, nominations and capacity, NEM members report that the 2008 SEARCH order improved the capacity release rules, but that these rules could and should be improved upon further. As a general matter, the rules should ensure that assets follow the customer. In other words, as individual customers leave a utility's system supply for that of a competitive supplier, the customer should be assigned capacity, and it should be accomplished under the same terms and conditions as that customer would have received as a utility sales customer. Assets should be made available on an equitable and non-discriminatory basis, both in terms of allocation and utilization rights. This ensures that customers have equal access to the assets for which they pay.

Members additionally report that Pennsylvania's intra- and interstate system is much more complicated in terms of gas flows than other jurisdictions. Some of the utilities also have multiple balancing pools, unlike other jurisdictions. The capacity release rules should be reviewed with a goal of increased transparency for capacity allocations and streamlining of the rules in general.

Conclusion

NEM appreciates this opportunity to provide the Commission with its recommendations on enhancing competition in the retail natural gas market.

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Dated: December 12, 2013.