

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation of Pennsylvania’s) **Docket No. I-2011-2237952**
Retail Electricity Market:)
Recommended Directives on)
Upcoming Default Service Plans)

**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 October 14, 2011, in the above-referenced proceeding [hereinafter “Tentative Order”]. The Tentative Order sets forth intermediate recommendations from the Office of Competitive Market Oversight (OCMO) as to how the electric utilities should develop the format and structure of their upcoming default service plans. The Commission stated that the goals of the intermediate recommendations are the following:

- (1) to ensure that the upcoming default service plans do not hinder the ability of the Commission to implement changes that will be addressed within the Investigation;
- (2) to advise EDCs and other parties that they will be expected to amend proposed default service plans when possible to incorporate changes which may arise out of the Investigation; and
- (3) to provide guidance on default service plan components that the Commission believes can better facilitate the competitive marketplace. (Tentative Order at 3).

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.

NEM supports the goals enunciated by the Commission, and subject to certain recommendations discussed in greater detail herein, believes most of the intermediate recommendations represent an appropriate approach to achieving those goals in a manner that balances the interests of the stakeholders within the legislative, regulatory, contractual and market parameters that currently exist.

A. Default Service Plan Time Period and Energy Contract Durations

The Commission proposed that electric utilities file default service plans that run for two years, under the premise that this is, “a reasonable time period to allow for implementation of any long term changes proposed in the investigation.” (Tentative Order at 4). Implicit in the Commission’s proposal is the recognition that there are practical considerations that effectively require (or at least strongly militate in favor of) the default service plans to be of a certain length, for example, terms of existing utility energy contracts. So, while NEM favors keeping the default service plans to a minimal term so that stakeholders can expeditiously implement the long-term recommendations of the Retail Markets Investigation, we understand that a two year default service plan filing may be the most reasonable outcome under the circumstances.

The Commission declined to mandate a prescriptive portfolio of contract lengths for the default service plan. (Id. at 4). The Commission did, however, propose that the utilities’ plans, “limit or eliminate the existence of short term energy contracts extending past the end date of the default service plan time period,” and, “limit the proportion of long term contracts that make up their default service plan energy portfolio.” (Id. at 5). Toward that end, it was recommended that the utilities use already existing long term contracts as a means of complying with the statutory long term contract requirement. (Id. at 5). NEM supports this approach as it seeks to minimize the

utilities reliance on long term contracts as a component of their overall portfolio. This serves a two-fold purpose of promoting market-based commodity pricing signals and also minimizing the utilities long term contractual obligations and associated costs, which is an important consideration to phasing out their role as default service providers. Accordingly, we believe the recommendations on energy contract durations are reasonable under the circumstances.

B. Retail Opt-In Auctions

The Commission proposed that the utilities include an opt-in auction program as a component of their default service plans. (Id. at 5-6). As defined by the Commission, “In a retail opt-in auction, an EGS bids to provide competitive retail service to a group of residential and/or small commercial customers within a specific EDC territory who have affirmatively decided to have their accounts included in this group.” (Id at 5). The Commission recommended that the utilities use the opt-in auction program format under discussion in the Retail Market Investigation as a starting point. (Id at 6). NEM supports the incorporation of an opt-in auction program as a component of the default service plan.² The opt-in auction represents one of the solutions that can be incorporated in the default service plan to overcome consumer reticence to shopping. NEM does recommend that an opt-in auction program be subject to formal Commission approval prior to its implementation. In other words, the utilities shouldn’t be able to incorporate a placeholder in their plans for the opt-in auction program that does not provide stakeholders with a full opportunity to ascertain the details and does not subject the program to Commission scrutiny. Moreover, at this juncture, NEM suggests that it would be helpful for the Commission to provide some guidance on the structure of an opt-in auction. For example, it is important that

² The commodity merchant function is a naturally competitive function.

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.

C. Referral Programs

The Commission proposes that referral programs be incorporated within the utilities default service plan filings. (Id. at 6). The Commission has likewise proposed that the referral program be premised on the proposal being developed in the Retail Markets Investigation. (Id. at 6). NEM submitted comments³ to the Retail Markets Working Group in support of the referral program concept, in particular the introductory discount rate program utilized by the New York utilities. In NEM's view, referral programs provide a low risk option through which consumers can learn about and participate in energy choice. As we recommended with respect to the inclusion of the opt-in auction program in the default service plans, NEM does suggest that each utility's referral program be subject to stakeholder comment and formal Commission approval prior to its implementation by the utility.

D. Time-of-Use Rates

The utilities have a statutory requirement to offer a time-of-use (TOU) rate option to customers that have smart meters. The Commission proposed that this statutory requirement be satisfied by bidding out the TOU rate offering to retail EGSs. (Id. at 7). NEM supports the Commission's proposal to utilize the competitive market via a RFP or bid process to satisfy the TOU rate option requirement. Indeed, this would seem to be a corollary to the opt-in auction proposal also being considered by the Commission in this proceeding. For example, customers that choose to opt-in

³ http://www.puc.state.pa.us/electric/pdf/RMWG/CRP_Comments-NEMA.pdf; see also NEM Supplemental Position Paper in Docket No. M-00072009 at pages 15-18.

to that product would receive the default service TOU rate, and as such some of the guiding principles of the opt-in auctions may be likewise applicable here. NEM suggests that the RFP for the TOU product be structured in such a way as to make the price determined by formula that applies to all EGSs awarded the service (rather than fixed rates), so that the customer is presented with a true variable rate.

E. Default Service Rate Adjustment Structure

The Commission has presented two proposals with respect to structuring the default service rate – one to be made applicable to residential and small commercial customers and the other to be made applicable to medium-sized commercial and industrial customers. It bears noting that in NEM’s initial comments in this investigation that we recommended that the next step in market evolution should be the provision of increased market-based pricing signals for no-notice default commodity service. NEM recommended that utility pricing of commodity to large commercial and industrial customers who can be billed hourly should be based on an hourly, time of day rate. With respect to small commercial and residential customers, utility default service pricing should be a monthly-adjusted, market-based commodity rate to which should be added a utility's fully allocated embedded costs associated with providing all of the otherwise competitive commodity related products, services, information and technologies currently bundled in full service rates. Indeed, it is NEM’s belief that one of fundamental premises that should underlie the Commission’s investigation of achieving a workable competitive retail electric market should be the provision of improved market-based pricing signals to consumers. The proposal in the Tentative Order to expand hourly-priced default service to the medium-sized commercial and industrial class is consistent with this goal and is supported by NEM. (Id at 8).

However, NEM questions the proposal to move from the current quarterly adjustment of utility default service rates for residential and small commercial customers to semi-annual energy rate adjustments and/or reconciliation adjustments. (Id. at 7). Default service rates should remain at least as market-based as they are at present. The Tentative Order does not offer a justification for making default service rates less reflective of current market conditions. Nor can NEM discern what that rationale might be in the context of a proceeding intended to facilitate market development. Accurate, transparent and market-based default service rates are a pivotal component of a robust retail energy market and informed consumer decisions. On that basis, we request that the Commission decline to adopt the proposal to adjust default service rates for residential and small commercial customers on a less frequent, bi-annual basis.

Conclusion

NEM appreciates this opportunity to offer its views on the intermediate recommendations as to how the electric utilities should develop the format and structure of their upcoming default service plans. There is a balance to be struck among the interests of all of the stakeholders in providing regulatory certainty, providing a platform that permits innovative market structures to be implemented as soon as is practicable, and facilitating improved informed consumer shopping. Subject to the recommendations noted herein, NEM supports the intermediate recommendations as they will permit the utilities to file plans that can accomplish that goal.

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

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