

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Review of Rules, Policies and Consumer )  
Education Measures Regarding Variable )  
Rate Retail Electric Products )**

**Docket No. M-2014-2406134**

**Comments of the  
National Energy Marketers Association**

The National Energy Marketers Association (NEM)<sup>1</sup> hereby submits comments on this Commission inquiry into the rules, policies and consumer education materials relating to variable priced retail electric products. This proceeding was prompted by the anomalous weather and market conditions experienced in the winter of 2014. Extreme weather conditions, increased demand for natural gas, and infrastructure constraints combined to increase the wholesale price of electricity this winter.<sup>2</sup> Retail electric suppliers in turn had to pay these higher wholesale electricity prices, which price increases were reflected in the retail prices paid by consumers for variable rate products. Consumers that purchased fixed price products were insulated from the price spikes. The Commission noted that it received a record number of consumer bill complaints during this period, many of which were from consumers that purchased competitive variable rate products. NEM members have proactively worked with their customers to mitigate the impacts of

---

<sup>1</sup> 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.

<sup>2</sup> See NEM Media Brief, Winter 2014: Impact on the Energy Marketplace, available at: [http://www.energymarketers.com/Documents/NEM\\_Winter\\_of\\_2014\\_MEDIA\\_BRIEF\\_Final.pdf](http://www.energymarketers.com/Documents/NEM_Winter_of_2014_MEDIA_BRIEF_Final.pdf)

winter 2014, through increased consumer communications, price reductions and rebates, and alternative price offerings. NEM also shares the Commission's commitment to ensuring that consumers receive adequate disclosure about the terms of the products they purchase in the competitive retail energy marketplace.<sup>3</sup>

However, NEM strongly cautions against making drastic rule changes premised on the aberrant market conditions of this winter, particularly when the contributing factors to the price spikes in the wholesale electric market were beyond the control of competitive retail suppliers and the increases were of such magnitude that they were impossible for retailers to foresee or hedge against.<sup>4</sup> Competitive suppliers are exceedingly concerned with ensuring that their customers are satisfied, in order to engender goodwill and earn repeat business.

NEM is concerned that certain of the proposed rule changes would have the unintended consequence of significantly increasing the costs and risks associated with making variable price products available in the marketplace, to the long-term detriment of consumers. Indeed, the performance of the market should not be judged based on the anomalous experience of this winter alone. At times, a variable rate product will offer savings from the default rate. The variable rate product by its nature adjusts with the market conditions. At other times, a fixed rate product will be priced below market conditions, although the predominant value of such products is to offer long term price certainty. NEM is concerned that certain of the proposed rule changes would have the

---

<sup>3</sup> See NEM's National Marketing Standards of Conduct available at: <http://www.energymarketers.com/Documents/ACF74.pdf>

<sup>4</sup> See NEM White Paper, Winter 2014: Impact on the Energy Marketplace, available at: [http://www.energymarketers.com/Documents/NEM\\_Winter\\_of\\_2014\\_MEDIA\\_BRIEF\\_Final.pdf](http://www.energymarketers.com/Documents/NEM_Winter_of_2014_MEDIA_BRIEF_Final.pdf).

practical effect of severely limiting or potentially eliminating variable price products from being offered by EGSSs. As a result, as market conditions change, consumers will be unable to avail themselves of products that could otherwise offer savings and value.

NEM also recommends that the value of competitive offerings be viewed in the proper context. Comparing a competitive supplier's variable rate product with the utility's quarterly-adjusted Default Service rate, is completely inapposite and belies the fact that utilities have guaranteed cost recovery and the ability to defer and collect costs in subsequent periods whereas competitive suppliers do not, which completely skews the utility Default Service price from bearing a relation to current market conditions. Utility Default Service customers are not exempt from the effects of this winter – they will ultimately pay these higher prices, just not in as timely or as transparent a fashion as customers that purchased variable rate products from competitive suppliers. Just as consumers should understand the fixed or variable nature of a competitive product and the price at which it is offered, consumers should also understand how often the utility rate is subject to change and whether and what costs are being deferred for later recovery.

It is with these issues in mind that NEM responds to the specific proposed rule changes suggested by the Commission.

### **For variable-priced contracts without explicit formulaic pricing parameters**

- Should EGSs be required to provide advance notice of price changes to customers?
- Should the advance notice requirement be waived for minor contract price changes, within a certain bounds? If so, what bounds are appropriate?
- If advance notice is required, how far in advance of the meter read date should notice be provided and how can this notice be provided?
- Do variable rate contracts without explicit pricing parameters provide consumers with the information needed to make informed decisions? If not, what is the remedy?

NEM urges the Commission not to adopt a requirement for advance notice of price changes for variable-priced contracts. This is because the EGS cannot forecast the market changes that would be required to provide advance notice. Rather the EGS waits until the market changes occur and the EGS incurs the cost to serve the consumers, and then uses those inputs to determine any price change to the consumer. Requiring EGSs to give advance notice of a price change for a variable price product, would in effect, cause the creation of something akin to a new two month product. This is because if the EGS is required to provide advance notice of a price change, the EGS must price in advance, which in turn requires more hedging. This increases the costs and risks of providing the product. In current practice, the EGS price to the customer is not a projection. It is the actual cost the EGS incurred to serve the customer over the past billing cycle. As such, it is impossible to inform the consumer of the price ahead of time. The monthly communication of the advance notice of price change would be costly for EGSs as well. Requiring that consumers be provided with “insurance” of this type against variable rates, will ultimately increase the prices consumers end up paying.

NEM notes that the Commission has not defined “explicit formulaic pricing parameters,” and it is not clear exactly what is contemplated by the term. NEM suggests that there is a balance to be struck in providing consumers with meaningful disclosures, but that are not so granular in detail as to be confusing for consumers to understand. NEM notes that in complying with the current requirement to include disclosure of conditions of, and limits on, price variability, that EGSSs already make reference to PJM market pricing and other variables. In general, if the contract for the variable priced product includes wording to the effect that it is a market-based product that is subject to change and not subject to a ceiling, that disclosure should be sufficient.

Requiring EGSSs to disclose formulas for designing rates is equivalent to providing their competitors with highly confidential and proprietary competitive pricing strategies and business strategies. Notwithstanding that utility tariffs are inscrutable and difficult for even energy professionals to understand; imposing similar tariff-like filing regimes on to the lightly regulated competitive marketplace is inappropriate and would restrict innovation and responsiveness to consumer needs as well as undermine the very market innovations that EGSSs specialize in providing.

#### **For variable-priced contracts with explicit formulaic pricing parameters**

- **Should EGSSs be required to provide a historical pricing history for this formulaic rate structure?**
- **If so, how many months should be provided, and where should this information be provided so as to be available to all participating customers?**
- **Should EGSSs describe specifically how future formulaic prices are determined?**

NEM notes that if EGSSs had been required to provide historical pricing information for variable-priced contracts, that it would not have revealed the unusual market conditions

that were experienced this winter. Historical pricing information in general is not a predictor of current or future market conditions, and consumers would need to understand this underlying fact in evaluating the usefulness of the information.

NEM urges that the Commission not impose a reporting burden of EGS rate methodologies and rate formulas that would effectively convert EGSs into regulated utilities subject to the obligation to submit tariff filings. In other words, requiring each element of the EGS rate to be filed and/or published would be an inappropriate, time-consuming and cumbersome regulatory burden similar to a utility tariff filing. This type of process is antithetical to the necessary ability of EGSs to rapidly and efficiently design and offer products that provide value in response to ever-changing market conditions. Moreover, it would also require EGSs to disclose highly confidential and proprietary competitive pricing strategies and business strategies that would provide information on competitive positioning of EGSs that is intrinsic to each entity's business model.

If, despite the foregoing, the Commission determines to impose EGS variable pricing formula disclosure requirements, NEM recommends that such EGS requirements should be accompanied by a commensurate disclosure on the part of the utility for its default service product. In order to create a fair comparison, economic disclosures of this nature must be required across industry players. Otherwise, in only requiring these disclosures from EGSs, they will have been placed at a competitive disadvantage vis a vis the utility in making these explanations to customers. The utility should be required to explain the variable components of its price, that it can defer price increases, and then socialize those price increases across its customer base. Only then will it foster consumer understanding that the EGS price includes the price signal on a more timely and transparent basis, and

that the utility default price is but one *piece* of the ultimate energy price to be paid because of the utility's unique ability to defer cost recovery to a later date.

## **Conclusion**

NEM appreciates this opportunity to offer its comments on Commission rules relating to variable priced retail electric products.

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](mailto:cgoodman@energymarketers.com);  
[srantala@energymarketers.com](mailto:srantala@energymarketers.com)

Dated: April 3, 2014.