

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Proceeding to Evaluate Transition to Corrected)
Non-Solar Tier I Calculation Methodology) Docket No. M-2009-2093383**

**Comments of the
National Energy Marketers Association**

The National Energy Marketers Association (NEM)¹ hereby submits comments on the Tentative Order that was entered August 15, 2016, in the above-referenced proceeding in which the Commission is seeking comments on the impact of an unexpected non-solar Tier I Alternative Energy Credit (AEC) quarterly adjustment obligation increase, potential remedies to mitigate the impact and other appropriate action. A July 8th Secretarial Letter notified electric generation suppliers (EGSs) and electric distribution companies (EDCs) of an error in the calculation of the non-solar Tier I quarterly adjustments, resulting in an approximate seven percent increase in the otherwise anticipated obligation for the 2016 compliance year. On August 4th, Commission Staff held a conference call to answer stakeholder questions related to the AEPS Tier 1 quarterly adjustment correction. An August 9th Secretarial Letter extended the true-up period from September 1, 2016, to November 30, 2016, for the non-solar Tier I adjustment obligations for the 2016 AEPS Act compliance year.

The Commission proposed potential remedial actions for comment in the Tentative Order. The first proposal entails a Commission determination of the number of adjustment AECs for each

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.

utility's distribution zone for the 2016 compliance year pursuant to which the utility would procure the credits through the spot market or a competitive bid process. The utilities would transfer the credits to load serving entities (LSEs) in their distribution zone during the 2016 compliance year on a load-weighted basis. Costs would be recovered through a nonbypassable charge. The second proposal is to delay the obligation to settle the adjustment amount associated with the non-solar Tier I credit obligation for an appropriate time period. The Commission also indicated it would consider other proposals submitted by commenters. NEM supports the implementation of the option under which utilities procure the credits for transfer to LSEs with the costs to be recovered in a nonbypassable charge.

It is important to note the negative impacts of the unexpected, retroactive application of these charges against EGSs. EGSs (unlike utilities) do not have a constant customer base against which they can retroactively recover these costs from customers. In addition, the Commission's 2013 decision² about the definition of "fixed price" products ("fixed means fixed") and the use of regulatory out clauses already imposed a substantial risk premium on EGSs that offer such products. The unexpected charges will also impact EGSs in future years for which their product pricing was previously determined and set. Another negative market implication of the calculation error is the creation of an artificial shortage of the credits because market participants are entering the market in reaction to the Commission's actions.

For the purposes of mitigating the impacts of the credit calculation error, NEM recommends implementing the proposed option by which the utilities will procure the credits for transfer to LSEs with the costs recoverable in a nonbypassable charge. The implementation of this option as a one-time, extraordinary measure is appropriate to fix the calculation error because it is

² Docket No. M-2013-2362961, Final Order, entered November 14, 2013.

competitively neutral in its impact to the marketplace and does the least to distort the economics between competitors. This option also does the most to minimize the negative impacts of the unexpected charges against EGSs. The Commission's modification of LSE obligations in this fashion also appears to have been contemplated under the AEPS Act "force majeure" provisions.³

The Commission's proposal to delay the true-up period for the non-solar Tier I adjustment credits, while helpful in mitigating some of the impact to the competitive market, would also create problems going forward. Allowing EGSs to make an adjustment to next year's obligation to reflect the credit shortfall would allow EGSs to modify their pricing to reflect the increased

³ The Alternative Energy Portfolio Standards Act of 2004, Section 3(a)(2) provides that, "an electric distribution company or an electric generation supplier shall be excused from its obligations under this section to the extent that the commission determines that force majeure exists." A process for determining force majeure exists is set forth at 52 PA. Code § 75.66. 52 Pa. Code § 75.1, implementing Section 2 of the AEPS Act, defines "force majeure" as follows:

(i) Upon its own initiative or upon a request of an EDC or an EGS, the Commission, within 60 days, will determine if alternative energy resources are reasonably available in the marketplace in sufficient quantities for the EDCs and the EGSs to meet their obligations for that reporting period under the act. In making this determination, the Commission will consider whether EDCs or EGSs have made a good faith effort to acquire sufficient alternative energy to comply with their obligations. Evidence of good faith efforts include:

- (A) Banking alternative energy credits during transition periods.
- (B) Seeking alternative energy credits through competitive solicitations.
- (C) Seeking to procure alternative energy credits or alternative energy through long-term contracts.
- (D) Other competent evidence the commission credits as demonstrating a good faith effort.

(ii) In further making its determination, the Commission will assess the availability of alternative energy credits in the Generation Attributes Tracking System (GATS) or its successor, and the availability of alternative energy credits generally in this Commonwealth and other jurisdictions in the PJM Interconnection, LLC regional transmission organization (PJM) or its successor. The Commission may also require solicitations for alternative energy credits as part of default service before requests of force majeure may be made.

(iii) If the Commission determines that alternative energy resources are not reasonably available in sufficient quantities in the marketplace for the EDCs and EGSs to meet their obligations under the act, the Commission will modify the underlying obligation of the EDC or EGS or recommend to the General Assembly that the underlying obligation be eliminated. Commission modification of the EDC or EGS obligations under the act will be for that compliance period only. Commission modification may not automatically reduce the obligation for subsequent compliance years.

(iv) If the Commission modifies the EDC or EGS obligations under the act, the Commission may require the EDC or EGS to acquire additional alternative energy credits in subsequent years equivalent to the obligation reduced by a force majeure declaration when the Commission determines that sufficient alternative energy credits exist in the marketplace.

costs. This would ameliorate concerns about EGSs inability to recover retroactively imposed costs. However, in passing on the adjustment to future periods it will have the effect of artificially inflating market prices in the future.

Conclusion

NEM appreciates this opportunity to provide the Commission with its comments on the proposed potential remedial actions to the error in the calculation of the non-solar Tier I quarterly adjustments. NEM submits that the implementation of a one-time, extraordinary measure through which utilities procure the credits for transfer to LSEs, with the costs recovered through a nonbypassable charge, represents the most appropriate solution under the circumstances.

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: August 26, 2016.