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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Natural Gas Distribution Companies and the)
Promotion of Competitive Retail Markets)

Docket No. L-2008-2069114
INDEPENDENT REGULATORY
COMMISSION

Comments of the
National Energy Marketers Association

The National Energy Marketers Association (NEM)¹ hereby submits its comments in strong support of the measures identified to “help promote the development of competition in the retail markets for natural gas supply in the Commonwealth” as set forth in the Proposed Rulemaking Order [hereinafter “Rulemaking Order” or “Order”] published in the July 11, 2009, Pennsylvania Bulletin.

In these Comments, NEM will address the four retail market measures which the Commission identified in the Rulemaking Order and for which it requested Comments.

These were:

- 1) Reformulation of the utility “price to compare”;
- 2) Establishment of permanent rules for utility purchase of receivables (POR) programs;
- 3) Mandatory capacity release; and
- 4) Utility cost recovery for costs related to competition activities and utility regulatory assessments.

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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.

NEM will also address the concerns raised by Commissioner Christy in his Statement on the Rulemaking Order.² NEM strongly supports the utilities' implementation of the measures identified in the Proposed Rulemaking by the Commission to facilitate retail gas market development in the Commonwealth. The measures identified are pivotal to creating and sustaining a vibrant marketplace – market-based pricing signals, POR programs, and equitably designed capacity release rules. NEM has supported these measures in multiple comments to the Commission and participation in its gas SEARCH collaborative, default service docket, and to the Retail Markets Working Group.³ The Commission has exhibited strong leadership in all of these dockets to bring the benefits of competitive energy markets to bear for Pennsylvania consumers.

1) Reformulation of the Price to Compare

The Commission in this rulemaking is proposing to reformulate the utilities' Price to Compare (PTC), which it aptly characterizes as the “heart of retail choice.” (Order at 3). The reformulation envisioned by the Commission involves two tasks – changing from a quarterly to a monthly adjusted Purchased Gas Cost (PGC) and unbundling commodity costs from the utilities' base rates and moving said costs into the PTC. NEM supports the implementation of both of these changes and agrees that by making the PTC more reflective of market-based pricing signals as well as reflective of all of the costs incurred in providing commodity service it should provide consumers with a more accurate basis

² The issues set forth in Commissioner Christy's Statement included: 1) the advisability of moving from quarterly to monthly gas price adjustments; 2) whether moving embedded gas procurement costs from base rates to the PTC would result in utility stranded costs; 3) whether the Commission should develop a monthly projection of natural gas prices for the ensuing twelve months to improve information available to consumers; and 4) consumers lack of knowledge of effective migration riders.

³ Default Service and Retail Electric Markets, Docket M-00072009, Retail Markets Working Group, Docket M-00072009, Investigation into Competition in the Natural Gas Supply Market, I-00040103. NEM incorporates its comments in these dockets by reference.

upon which to compare competitive offers. We agree that it would be an improvement if the utility PTC were expressed as a monthly-adjusted, market-based commodity rate to which is added a utility's fully allocated embedded costs associated with providing all of the otherwise competitive commodity related products and services currently bundled in utility full service rates. The efficiency of the retail market will be improved if commodity pricing signals follow the market more closely and if utilities implement embedded cost-based unbundled rates, and we support the Commission's decision to reformulate the PTC to achieve this result.

a. Monthly Adjusted Purchased Gas Costs

By the terms of the Rulemaking Order, the utilities would be required to change from the current quarterly PGC adjustment to a monthly PGC adjustment. (Order at 5). The Commission reasoned that, "In order for the PTC to become a meaningful price indicator, it must be adjusted on a timely basis. Monthly adjustments should accomplish this." (Id.). NEM supports this change. As this Commission well understands, marketers must perceive a continuous opportunity to participate in a true market and provide consumers with value and options in order to justify substantive resource investments in the Commonwealth. The market fundamentals must be present and monthly adjustments to the PGC will enhance the opportunities for sustained competition.⁴

We are aware that Commission Christy questioned the advisability of moving to monthly adjusted pricing as to whether it is sound public policy to make SOLR service volatile or

⁴ While monthly GCR pricing will bear a stronger relationship to the current market, price distortions will still exist because of the reconciliation process by which the utility estimates costs up-front, subject to true-up later. This means that even a monthly GCR price will be an imprecise benchmark with which to compare competitive, market-based offers and will not be as transparent to consumers as it could be. That being said, a monthly GCR is an improvement from the current quarterly adjusted GCR.

“ugly.” (Statement at 2). We disagree with this characterization. Indeed, we believe it is more harmful to deprive consumers of the market-based pricing signals by which to assess competitive offerings. We do not subscribe to the view that consumers are unable to rationally respond to market-based energy pricing signals, and we commend the Commission for supporting the same conclusion. Consumers must make such decisions on a daily basis with respect to a host of other products and services that they purchase in response to market-based pricing signals. NEM cannot discern a reasonable basis for restricting natural gas customers from seeing and responding to that same information.

Notwithstanding NEM’s support for monthly adjustments to the PGC rate, we note that the statute contemplates that if monthly utility pricing adjustments are used that a utility fixed price option also be offered.⁵ Succinctly stated, the introduction of fixed rate products by the utilities attendant with moving to a monthly versus quarterly price adjustment is contrary to the Commission’s goals to remove barriers to retail competition. NEM believes that fixed price products are competitive in nature and that consumers that desire the pricing stability of a fixed price option should and can purchase such a product from a competitive supplier, not the regulated utility. NEM would also caution that the addition of a fixed price option could create a confusing shopping environment for

⁵ 66 Pa. C.S. § 1307(f)(II) provides that,

A natural gas distribution company may also file a tariff to establish a mechanism by which such natural gas distribution company may further adjust its rates for natural gas sales on a regular, but no more frequently than monthly, basis to reflect actual or projected changes in natural gas costs reflected in rates established pursuant to paragraph (2), subject to annual reconciliation under paragraph (5). In the event that the natural gas distribution company adjusts rates more frequently than quarterly, it shall also offer retail gas customers a fixed rate option which recovers natural gas costs over a 12-month period, subject to annual reconciliation under paragraph (5). The Commission shall within 60 days of the effective date of this subparagraph, promulgate rules or regulations governing such adjustments and fixed rate option, but the Commission shall not prohibit such adjustments or fixed rate option.

consumers and a potentially harm the competitive market environment as it would create two utility “prices to beat.” The problem is further compounded in that the same commodity supply sources, the same procurement personnel and the same infrastructure would be utilized by the utility to provide both the market-based rate and the fixed rate product. As such, price reconciliation between the two products would become impossible because in practice there will be no way of insulating one customer group from the other. And, the goal of stating the utility commodity rate as a pass-through of costs would be undermined.

Moreover, we note that although the statute would permit a utility fixed price option under said circumstances, it fails to address the costs that utilities would incur as a result of the introduction of fixed price products. Indeed, a different set of procurement techniques would be required, new processes would need to be implemented for managing and administering such products, all at a cost not yet addressed in the utilities’ recovery mechanisms. Any type of fixed product by the utilities would clearly continue to fall under the rate regulations of the Commission, although the question of how such products will be or will not be reconciled would need to be determined.

b. Unbundling Commodity-Related Costs from Utility Base Rates

NEM strongly supports the Commission’s proposal to unbundle commodity-related costs from utility base rates and moving those costs to the PTC. (Order at 4-5). Embedded cost-based rate unbundling will ensure that consumers see and understand the full extent of the costs associated with utility default service and permit consumers to make accurate, informed comparisons with competitive offerings. The Commission declined to

enumerate every cost that should be unbundled from base rates, although it specified that all fuel procurement-related costs, including operation and maintenance expense, procurement-related investment costs, and payroll costs for supply acquisition employees should be removed from base rates. (Order at 4). We understand the Commission's reasoning and believe it is workable so long as each utility arrives at a transparent result.

Commissioner Christy noted his concern that unbundling rates may lead to utility stranded costs. We submit that the utilities should be under an on-going obligation to actively and prudently manage their costs and subject to this obligation and potential stranded costs should be minimized. Moreover, we submit that the result of commodity cost unbundling should yield a more equitable result for migrated customers. In other words, consumers that migrate will no longer be penalized with a double payment of commodity-related costs, once to their competitive supplier that is currently providing the service, and once to the utility that is no longer providing the service but is collecting the cost through bundled distribution rates.

c. Consumer Understanding of Effective Migration Riders

Commissioner Christy also stated his concern about customer knowledge and awareness of currently effective migration riders. (Statement at 2). NEM shares Commissioner Christy's concern that the riders are confusing to customers. In response, we suggest that consumers would benefit from the inclusion of the Gas Cost Adjustment (GCA), or e-factor, in the Price to Compare. The e-factor is a mechanism by which the utility recovers the under/over collection from its forecasted Gas Cost Recovery rate. Because the utility is permitted to charge interest on the under-collections, and the utility is

charged a percentage penalty for over-collections, there exists a significant incentive for the utility to underestimate its GCR rate. Large e-factor rates, some are more than 20% of the gas cost rate,¹ remove significant portions of the cost of commodity service from the PTC, which creates the misconception that marketer offers are more expensive than the artificially understated utility rates.

The exclusion of the e-factor from the PTC has the effect of insulating the utility gas costs from current market conditions. If the PTC included the e-factor, consumers would have a more accurate basis of comparison of marketer products. We also note that coincident with a change from quarterly to monthly PGC adjustments, that the e-factor should also be adjusted monthly. In moving to a monthly e-factor, it should result in a smaller change per adjustment period. It would likewise contribute to increased transparency of utility rates.

2) Purchase of Receivables

In the Proposed Rulemaking Order the Commission is proposing to adopt permanent rules for the establishment of POR programs. These are largely based on the interim rules previously adopted by the Commission. As this Commission is well aware, NEM strongly supports the availability of POR programs, as perhaps the most determinative factor in supporting retail market development. The Commission laid the groundwork for successful POR programs in its interim rules⁶ and by granting utilities the ability to terminate for non-payment of marketer charges in a POR program.⁷

⁶ Docket Nos. M-2008-2068982 and I-00040103F0002, Establishment of Interim Guidelines for Purchase of Receivables (POR) Programs, Order, December 18, 2008.

⁷ Docket No. M-2008-2068982, Establishment of Interim Guidelines for Purchase of Receivables (POR) Programs, Order, December 11, 2008.

The Commission states that it will require the utilities and suppliers to negotiate the POR discount rate and that the Commission will not “impose such strictures.” (Order at 6). NEM accepts the Commission’s approach but suggests that it would be useful if the Commission were to give guidance as to what constitutes reasonable bounds for the POR discount rate. For example, NEM notes that in the recently issued PPL Order the Commission required PPL to offer POR at little or no discount in compensation for the utility’s retention of uncollectibles in its base rates.⁸ In other words, so long as uncollectibles remain bundled in utility full service rates, migrating customers should not pay uncollectibles expenses twice, once as a function of the utility delivery rates and once as a function of the POR charge. This approach recognizes that the utility’s risk (and commensurate need to charge a discount rate) is mitigated by its ability to terminate customers for non-payment in the POR program. Additionally, the Commission made clear that the, “discount rate reflect only actual incremental expenses incurred,” by the utility and not become a utility profit center.⁹ This reasoning should also be applicable to gas utility POR programs. In addition, the Commission should retain direct authority to resolve a complaint raised by a supplier that a utility is not negotiating any POR agreement in good faith, or on commercially reasonable terms.

In a change from the interim POR rules, the Commission proposes that suppliers participating in POR programs need not be required to use utility consolidated billing. (Order at 6). We support this proposal from the Commission. We agree that limiting POR participants to utility consolidated billing could limit the development of innovative

⁸ Docket No. M-2009-2104271, PPL Electric Utilities Corporation Retail Markets, Opinion and Order, August 6, 2009, page 29.

⁹ Id.

products and services and thereby delay the availability of such products to customers. Indeed, we note that NFG permits marketers in its New York program to offer supplier consolidated billing, also known as the single retailer model. Marketers value the availability of differing billing options to suit their individual business models.

3) Mandatory Capacity Release

The Proposed Rulemaking Order addresses certain issues associated with mandatory capacity release intended to “ensure that requirements that the release, assignment, or transfer of capacity by a NGDC shall be on a nondiscriminatory basis and shall be at the applicable contract rate for such capacity.” (Order at 7). NEM recommends that 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. In other words, assets should follow the customer. This ensures that customers have equal access to the assets for which they pay. In a retail choice environment, utilities need only retain those assets sufficient to meet their remaining firm commodity customer needs and to assure distribution system integrity on peak day and through the design winter period. Gas marketers should be able to use the combination of pipeline and storage assets to lower costs and thereby deliver the full benefits of competition to Pennsylvania gas customers. The rules should ensure that useable capacity is released to marketers at fair and equitable rates, not the most expensive and least useable capacity..

In sum, we think that the rule changes suggested by the Commission are a step in the right direction toward achieving this result. And, we look forward to continuing a dialogue with stakeholders to develop further capacity release rule improvements.

4) Utility Cost Recovery for Competition Related Activities and Regulatory Assessments

The Commission proposed to allow the utilities to recover the costs of competition related activities and regulatory assessments through a nonbypassable surcharge (Order at 7-8). With respect to competition related activities, the Commission stated that this treatment was appropriate because, "competition related activities benefit all customers and, therefore, it should be paid by all customers, shoppers and non-shoppers alike." (Order at 7). As to regulatory assessments, the Commission justified this approach, "insofar as all customers have paid these costs in the past, all customers should continue to pay them through the new surcharge." (Order at 8). Moreover, the Commission made clear that neither the competition related activity surcharge nor the regulatory assessment surcharge be included in the calculation of the price to compare. (Order at 7-8).

We support this competitively neutral approach to utility cost recovery for the implementation of programs that promote the development of the retail natural gas market as well as for the recovery of the regulatory assessment. And, we also agree that cost recovery for these items should not be included in price to compare. Utility cost recovery for competition related activities should be subject to a Commission determination that the utility's costs incurred were actively managed, prudently incurred, just and reasonable. The utility should not be permitted to turn its efforts into a profit center. The utility should provide details of its expenditures to the Commission on this

basis. The Commission may also wish to premise approval of the utility's cost recovery to the utility's cooperation in conforming to the spirit and intent of the Rulemaking Orders it has issued pursuant to the SEARCH process and subsequent rulings to promote retail natural gas choice.

5) A Twelve Month Projection of Natural Gas Prices May Provide Confusing and Inaccurate Information to Consumers

Commissioner Christy suggested that the currently effective utility Price to Compare information does not permit consumers to make informed decisions about selecting a competitive offering. (Statement at 2.) Commissioner Christy proposed that the Commission, "develop a monthly projection of natural gas prices for the ensuing twelve months based upon the best available market information." (Id.). While we agree with Commissioner Christy's conclusion about the inadequacy of the current Price to Compare information for the reasons set forth in Section 1 of these Comments, we do not believe that the remedy suggested by Commissioner Christy would improve consumer understanding, and to the contrary, may serve to confuse and misinform consumers. Indeed, prices can change by the minute on the futures market, and the relevant prices could differ depending on the source. We think that such an approach would be speculative at best and perhaps harmful to consumers at worst. We would suggest, as an alternative, to accomplishing the objective of educating consumers about the variability of rates over time that perhaps the utilities could post twelve months of historical pricing data on their websites. Although past experience is not an indicator of future prices, it would accurately convey the message to consumers that rates do change over time and create an appropriate expectation in that regard.

Conclusion

NEM appreciates this opportunity to offer comments in support of measures that facilitate competitive retail gas market development as set forth in the Rulemaking Order. We continue to support the Commission's initiatives and objectives focused on realizing the benefits of competitive energy markets in the Commonwealth of Pennsylvania.

Sincerely,



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ENDNOTES

¹ This chart displays the quarterly Gas Cost adjustment charges (or *e* factor) for Dominion Peoples, Columbia Gas of Pennsylvania, Equitable Gas Company, National Fuel Gas and PECO from October 2006 through May 2009. This chart reflects that variability and magnitude of the *e* factors of the listed NGDCs over time.



