BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Act 129 of October 15, 2008;	**)**	
Default Service	**)**	**Docket No. L-2009-2095604**
Proposed Policy Statement Regarding Default	**)**	
Service and Retail Electric Markets	**)**	**Docket No. M-2009-2140580**

Comments of the
National Energy Marketers Association

The National Energy Marketers Association (NEM)[1] hereby submits its comments on the Commission's proposed revisions to the default service regulations and policy statement to implement the provisions of Act 129. The Commission issued proposed Default Service Regulations and a Proposed Policy Statement that was published in the May 1, 2010, Pennsylvania Bulletin. In particular, both the proposed regulations and policy statement pertain to the Act 129 "least cost" standard for electric utilities' generation purchases. Act 129 was passed in 2008, subsequent to the default service regulations and policy statement adopted by this Commission in 2007. NEM offers the following recommendations with respect to the issues identified by the Commission for consideration in this proceeding:

- The "least cost to customers over time" standard should be consistent with the competitive electric market principles adopted for the Commonwealth in the Electricity Generation Customer Choice and Competition Act;

[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.

- In a true "least cost" regime the market-based rate will yield the lowest cost over time to consumers with the appropriate time frame for evaluating whether a utility's procurement plan will yield the "least cost" to consumers correspondingly keyed to current market conditions;

- Competitive market forces, rather than regulatory intervention, should be permitted to identify and meet the need for new capacity resources, and PJM's Reliability Pricing Model was implemented to function in this manner.

I. The "Least Cost Procurement" Standard Should Be Implemented Consistently with Competitive Market Policies

The Commission's first question to commenters in the instant proceeding is, "What is meant by 'least cost to customers over time'?" As a general matter, as the Commission adopts revised electric default service policy in this proceeding, NEM submits that it is important to simultaneously consider the other electric laws adopted by the Pennsylvania legislature to ensure that related laws are read in a manner that fully effectuates their purpose and leads to a consistent result.[2] Significantly, the legislature decided in 1996 when it passed the Electricity Generation Customer Choice and Competition Act that, "Competitive market forces are more effective than economic regulation in controlling the cost of generating electricity."[3] It bears noting that, this standard was not changed with the passage of Act 129. The legislature in 1996 further determined that, "it is now in the public interest to permit retail customers to obtain direct access to a competitive generation market as long as safe and affordable transmission and distribution service is available at all levels of reliability that are currently enjoyed by the citizens and businesses of this Commonwealth."[4] NEM submits that in implementing a "least cost"

[2] "Statutes in pari material shall be construed together, if possible, as one statute." 1 Pa.C.S.A. § 1932(b).
[3] 66 Pa.C.S.A. § 2802(5).
[4] 66 Pa.C.S.A. § 2802(3).

procurement requirement that the policies embedded in the Electric Customer Choice law should be integrated into the Commission's interpretation.

II. The Least Cost Procurement Standard Should Entail Reliance on Current Market-Based Pricing

In NEM's view, the "least cost to customers over time" standard should not only be consistent with the competitive electric market principles adopted for the Commonwealth in 1996, this standard must also be implemented in a way that *promotes* the availability of competitive market choices to consumers. By this we mean that a "least cost" procurement standard must be based upon and yield market-based utility default service pricing. The Commonwealth has already experienced the impact of prolonged rate freezes followed by significant price increases when utility rates "catch up" to the market. The harmful impact to consumers in terms of budgeting for utility price increases, delaying the availability of energy choice options, and general confusion caused by utility rates that are not transparent, can be avoided and should not be repeated.

In a true "least cost" regime the market-based rate should yield the lowest cost over time to consumers. NEM submits that consumers can be significantly harmed by utility long-term pricing that bears little resemblance to market conditions. Either the utility will have unnecessarily locked in an above market rate, resulting in higher prices for ratepayers over a prolonged period, or the utility will lock in a below market rate that distorts the value of competitive market offerings. Long term contracts are akin to prolonged rate freezes. When utilities are permitted to lock in rates that are below market, consumers may experience rate shock when those contracts expire and rates need to be adjusted upward, possibly dramatically. NEM urges against adopting a "least cost"

procurement standard that puts consumers in the position of either paying above market rates for energy, or alternatively, facing rate shock. Additionally, consumer price comparisons of supplier offerings are undermined when there is a lack of market-based utility rates. Both situations occur to the detriment of consumers. Moreover, by aligning utility rates with the market it will also avoid the creation of utility "stranded costs."

NEM believes 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. The relevant inquiry as to what constitutes the appropriate time frame for evaluating whether a utility's procurement plan will yield the "least cost" to consumers is therefore keyed to current market conditions, and requires minimal regulatory oversight and intervention to ensure ratepayers are being served with just and reasonable rates.

Just as important, in NEM's view, in implementing a "least cost" utility procurement standard that relies on current market based pricing, is the concomitant impact on the competitive suppliers and their ability to likewise offer "least cost" products in the marketplace. So, just as the utility market-based rate represents a "least cost" offer, by supporting robust competition amongst EGSs that participate in the marketplace, it should also encourage "least cost" offers from these providers. In other words, utility market-based pricing will encourage suppliers to enter the market to serve Pennsylvania

consumers. In so doing, this will exert downward price pressure on competitive market offerings. NEM submits that this is the best result for Pennsylvania consumers.

III. Competitive Market Forces Should Be Relied Upon to Meet Capacity Needs

The Commission also asks whether the default service regulations should be revised to incorporate provisions that ensure the construction of generation capacity in Pennsylvania. NEM urges the Commission to permit competitive market forces, rather than regulatory intervention, to identify and meet the need for new capacity resources. NEM recognizes the import of long-term supply-related investments. However, after twenty-five years of success with increasingly market-based energy policies, regulators, legislators and consumers throughout the nation have learned that cost plus regulations that rely on vertically integrated energy monopolies to provide otherwise competitively-available energy supplies, services and technologies increases both the costs and risks associated with such investments.

NEM is very concerned that a return to utility integrated resource planning and long term contracting represents a huge step backward toward the vertically integrated energy monopoly model. The restructuring of the natural gas and electricity industries was initiated in large part because the historical cost-of-service approach to energy supply and demand facilitated a steady increase in the costs for energy to the ultimate consumer, even in times of declining wellhead prices. Likewise, it was recognized that regulated rates are a poor proxy for the efficiencies, innovations and potential price savings yielded by competitive markets. Competitive market participants are expert at controlling supply-related risks, and they do so without the requisite guaranteed return of and return

on utility investments, the risks of which are borne by captive ratepayers. The competitive marketplace is best situated to meet the technological challenges that will be attendant with new capacity additions that are compliant with future carbon standards. Indeed, the competitive marketplace can respond most efficiently with innovative solutions to generation needs. Given the regulatory lag inherent with the oversight of utility generation building, it is possible that any such utility investments would be technologically obsolete before being placed into service and with a hefty resulting price tag for consumers.

NEM submits that the reallocation of utility capital, credit and resources from competitive commodity-related investments into distribution and transmission investments will increase the long-term reliability of the Pennsylvania energy market. Moreover, NEM submits that one hundred and fifty years of contract law can be relied upon to meet or beat the reliability of regulatory capacity mandates. Regulatory mandates inevitably lead to higher costs than competitive market-based supply and demand-side investments. Simply stated, mandating long-term contracting for the purpose of encouraging capacity additions can artificially inspire new capacity additions, however, it should not be a policy reversal tantamount to retaining utilities in an otherwise competitive merchant function role.

Moreover, many stakeholders have long been focused on the issue of assuring the adequacy and reliability of our electric infrastructure, including FERC, PJM and NERC. This Commission need not duplicate these processes by adding provisions to the default service regulations on the construction of generation capacity. Specifically, PJM has implemented a Reliability Pricing Model (RPM). PJM implemented the RPM in 2007

and it utilizes a competitive auction process for the procurement of capacity three years in advance. NEM submits that the on-going efforts of these entities to ensure the adequacy and reliability of capacity resources need not be duplicated by this Commission requiring construction of generation capacity in Pennsylvania by the electric utilities.

IV. Conclusion

NEM appreciates this opportunity to offer comments on the Commission's proposed revisions to its default service regulations and policy statement. This Commission has adopted numerous best practices and policies that are central to the creation of a robust retail electric market. NEM urges the Commission to rely on competitive market constructs to continue to meet the needs of Pennsylvania consumers.

Sincerely,

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