

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Interim Guidelines Regarding Advance Notification) Docket No. M-2010-2195286
By an Electric Generation Supplier of Impending)
Changes Affecting Customer Service; Amendment re:) Docket No. M-0001437
Supplier Contract Renewal/Change Notices)**

**Comments of the
National Energy Marketers Association**

The National Energy Marketers Association (NEM)¹ hereby submits comments as pursuant to the September 2, 2010, Tentative Order adopted in the above-referenced dockets. The Tentative Order concerns proposed changes to the Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Services. The CHARGE group discussed two particular issues related to renewal notices. These issues were what is the appropriate means to communicate Price to Compare (PTC) information in the event of contract renewal as well as what are permissible contract renewal provisions in the event that a pre-existing customer has not affirmatively responded to a renewal notice. The CHARGE group stakeholders expressed different opinions on the appropriate rules going forward. In the Tentative Order, the Commission proposes the following resolutions to the two issues: 1) the provision of an estimated PTC on customer renewal notices, with the notation that the

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.

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PTC is subject to change and that current PTC information can be obtained from the utility or the Commission's papowerswitch website; and 2) when a customer does not affirmatively respond to a renewal notice, the approach in the gas regulations to renewal would be utilized.

NEM believes that the appropriate means to communicate PTC information to renewing customers is from a neutral, credible source such as the Commission's papowerswitch website and an automated phone system. The inclusion of estimated PTC information on the customer renewal notice will be misleading and inaccurate when the renewal offer is of a different term and/or pricing product offering than the PTC and not in furtherance of informed consumer choice. With respect to the proposed treatment of contract renewals in the case that a consumer does not affirmatively respond to the renewal/change notices, NEM is concerned that the Commission not unnecessarily interfere with a consumer's right to enter into informed contractual agreements nor should it unduly restrict a marketer's ability to offer differing products in the marketplace.

I. Provision of PTC Information on Option Notices

The Commission proposed in the Tentative Order that consumers be provided with estimated PTC information on the options notice, including an indication that the PTC is subject to change, and that the current PTC can be obtained from the utility or the papowerswitch website. As the Commission also noted, the majority of competitive suppliers did not support this approach for its potential to provide consumers with inaccurate and misleading information. The Commission seemed to be of the opinion that PTC information will become less confusing and imprecise going forward with the

phase out of declining block rates. (Tentative Order at 7). Nonetheless, NEM notes for instance that block rates in PECO are going to be phased out over a three year period, which is a significant amount of time. But even more importantly, as utility quarterly PTC rates will become the benchmark going forward, consumers will likely not appreciate that the PTC is indeed a variable rate and is therefore not comparable to a longer term fixed rate competitive offering that offers different value, such as price certainty, in addition to just a comparison of overall price. Indeed, the evaluation of utility to supplier product offerings may inherently be an apples to oranges comparison. Supplier product offerings may include other attributes, such as green products, that are not necessarily the same as the utility default rate, nor should they encouraged to be. That is supposed to be the promise of a competitive retail marketplace.

NEM submits that the potential for consumer confusion about the utility PTC should be addressed in a two-fold manner. First, consumers need to be educated about the nature and meaning of the utility PTC, how often it will change, what are the utilities' current PTC rates and when are those rates are applicable. This information should be made available from a neutral, credible source such as the Commission's papowerswitch website and also available via phone for those without internet access. Second, when competitive suppliers send out the options notice to their customers, they should make explicit reference as to how to obtain the most current utility PTC information on that notice. The options notice should not include an estimated PTC for its potential to confuse and mislead as noted above.

NEM does not believe that consumers should be referred to the utility to obtain PTC information. For the reasons expressed in our comments on Marketing Standards,² we are concerned about the importance of competitively neutral communications from the utility to customers, which is particularly important because of consumers' perception of the utility's role in the marketplace. By presenting PTC information from a neutral source, the Commission will have avoided this concern.

II. Permissible Contract Renewal Provisions in the Event that a Pre-Existing Choice Customer Has Not Affirmatively Responded to a Renewal Notice

With respect to permissible contract renewal provisions in the event that a pre-existing choice customer has not affirmatively responded to a renewal/change notice, the Commission has proposed to take the approach in the natural gas regulations. In other words, in the absence of customer response to the renewal notice, a fixed term agreement would be converted to month-to-month, with no cancellation penalties. Alternately, the customer could be converted to a second fixed term agreement but the customer could cancel at any time and with no cancellation penalties. The rationale for this proposal expressed by the Commission is that, "it will better protect customers and encourage competition." (Tentative Order at 15).

With respect to the proposed treatment of contract renewals in the case that a consumer does not affirmatively respond to the renewal/change notices, NEM is concerned that the Commission not unnecessarily interfere with a consumer's right to enter into informed contractual agreements nor should it unduly restrict a marketer's ability to offer differing

² Docket No. M-2010-2185981, Comments of the National Energy Marketers Association.

products in the marketplace. NEM urges the Commission not to overly restrict the product options available to them in the marketplace, including evergreen contracts. Consumers enter into these types of automatic renewal agreements for many different products. There is no question that consumers must be informed up-front at the time of initial contracting about the nature of such agreements. If the consumer makes the informed decision to enter into one of those agreements, they should be permitted to do so.

III. Conclusion

NEM appreciates this opportunity to submit comments as well as the Commission's ongoing efforts to develop retail market rules that protect the consumer while preserving marketers' ability to offer different, innovative products.

Sincerely,

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