

**STATE OF MARYLAND
PUBLIC SERVICE COMMISSION**

Revisions to COMAR 20.32, 20.50, 20.53)	
20.55, and 20.59 – Competitive Markets and)	Administrative Docket
Retail Gas and Electric Customer Choice)	RM62

**COMMENTS OF THE
NATIONAL ENERGY MARKETERS ASSOCIATION**

The National Energy Marketers Association (NEM)¹ hereby submits comments in support of retail market enhancements as proposed in the Phase I and Phase II PC44 workgroup reports filed with the Commission as well as certain subjects proposed for consideration in Phase III of PC44. The Commission opened this rulemaking to consider revisions to COMAR 20.32, 20.50, 20.53, 20.55 and 20.59 to implement changes described in the Phase I and Phase II PC44 workgroup reports. The Phase I report pertains to the distribution and use of customer interval data (in utility service territories with AMI). The Phase II report pertains to enhancements to the competitive market and customer choice framework. The Phase II report also identified possible issues for a potential Phase III workgroup.

One of the guiding principles for PC44 enunciated by the Commission in its January 31, 2017, Notice [hereinafter “PC44 Notice”] is that “[c]ompetitive markets are an integral part of Maryland’s electricity landscape that seek to promote innovation, reduce costs, and increase

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.

customers' choices."² The Commission specifically charged the PC44 Competitive Markets and Customer Choice workgroup with:

1. Developing a statewide standard data sharing format for implementation by utilities that have deployed AMI; and
2. Considering changes to retail choice that will create a more competitive, transparent and customer-friendly market in Maryland.³

NEM appreciates the Commission's longstanding support of competitive retail markets. NEM strongly supports the Commission's decision to examine enhancements to the retail marketplace. The increased experience and maturity of consumers and suppliers, coupled with technological innovations enabled by advanced metering make this an opportune time to consider measures that can improve the consumer energy shopping experience and also facilitate supplier offerings of a greater diversity of products to satisfy consumer needs and expectations.

NEM's comments will address each of the Phase I, Phase II and Phase III proposals below.

I. Phase 1 Report

The PC44 Phase I report detailed discussions and proposals regarding the distribution and use of customer interval data in utility service territories with AMI. Underpinning those discussions was the Commission's recognition in the PC44 Notice that "[c]ustomer data, particularly from smart meters, belongs to the customer. Customers should be able to share data with third parties as easily as is safely possible. Cybersecurity is a real threat that must be taken seriously, but it should not be used as a deterrent to providing customers access to their data."⁴

² PC44 Notice at 3.

³ Id. at 10.

⁴ Id. at 10.

With respect to retail supplier access to smart meter-enabled billing quality interval data in the form of batch files, the Phase I report noted that the Commission previously accepted a Retail Supplier Data Access Work Group report establishing a framework for the utilities. The Phase I report stated that the utilities are “well underway” in establishing procedures to implement the framework and recommended leaving those solutions in place. NEM supports the expeditious implementation of the framework to provide retail supplier access to interval data.

The Phase I report also included proposed revisions to COMAR 20.53.07.08 and 20.59.07.08 regarding supplier contracts. It would include new subsections (q) and (r). Subsection (q) would require the supplier contract to include a description of the issue and purpose for which customer historical interval or interval data will be used. Subsection (r) would require the supplier contract to include a statement that the customer has received the “latest version of the Commission approved educational brochure as defined in COMAR 20.50.01.03(B)(7)/20.55.01.04(B)(4).” NEM notes as a general matter that these requirements can and should only be applied prospectively to supplier contracts. Specifically with respect to the educational brochure, NEM is concerned about creating a regulatory compliance requirement related to the dissemination of a brochure that does not yet exist. For that reason, NEM suggests the regulatory language be slightly modified to reference an “available Commission approved educational brochure.”

The Phase I report also detailed solutions for individual customer authorization to make interval and historical usage data available to a third party. The workgroup endorsed the adoption of the Green Button Connect My Data standard for this purpose but could not agree on which version of the standard to adopt. The draft regulations include both versions at COMAR 20.50.13.04.B. and 20.55.10.04.B. Either the utility maintains an interface for the customer to select authorized recipients of historical interval usage and interval usage data or an electronic interface is

maintained by which an authorized recipient receives access to customer historical interval usage data or interval usage data after having obtained appropriate consumer consent. NEM is concerned that a requirement that a customer log on to the utility online interface would interject an additional unnecessary burden on the consumer. If the consumer has provided consent and authorization to an entity to access its data, that entity should be able to use the utility interface directly to effectuate the customer's direction. Requiring the consumer to take the extra step to authorize the companies on the utility interface seems to add an unnecessary administrative burden that consumers may find unnecessarily complicated and time-consuming.

NEM also notes that the proposed language in COMAR 20.50.13.04.B.2. would appear to be in conflict with 20.50.13.02.B. and 20.50.13.02.E. The same conflict exists in the proposed gas regulations at COMAR 20.55.10.04.B.2., 20.55.10.02.B. and 20.55.10.02.E. Specifically, COMAR 20.50.13.02.B. would require energy consultants and curtailment service providers to obtain a Letter of Authorization from the customer prior to accessing the customer's data. COMAR 20.50.13.02.E. then provides that retail suppliers "may obtain customer authorization to access that customer's Historical Interval Usage and Interval Usage data through their contract and/or enrollment authorization without a separate Letter of Authorization, pursuant to the utility's supplier coordination tariff and COMAR 20.53.03 and COMAR 20.53.07.02." However, the proposed language 20.50.13.04.B.2. would appear to inadvertently and incorrectly require retail suppliers to obtain a separate Letter of Authorization by allowing authorized recipients to have access to customer data, *"if the Supplier or Curtailment Services Provider, or Energy Consultant warrants that it has properly obtained the customer's Letter of Authorization."* In order to rectify this drafting error, NEM suggests that the language in proposed COMAR 20.50.13.04.B.2. and 20.55.10.04.B.2. be modified to permit authorized recipients to access customer data "if the

Supplier or Curtailment Services Provider, or Energy Consultant warrants that it has properly obtained the customer's authorization." This language change accounts for the fact that different providers will obtain the customer's authorization using different methods.

II. Phase II Report

The Phase II workgroup examined enhancements to the competitive market and customer choice framework, including seamless moves and instant connects as well as certain RM54 housekeeping items. Regarding retail choice enhancements, the PC44 Notice explained,

Retail choice has existed for almost two decades in Maryland. We support retail choice, both as consistent with Maryland's statutory construct and because of our belief that competitive, transparent, and customer-friendly retail markets will benefit customers. Now is the right time to reexamine certain aspects of Maryland's retail choice market, particularly those administrative or process burdens (not related to consumer protection) that discourage customers from selecting a retail supplier.

NEM supports the adoption of seamless moves and instant connects, as proposed, in Maryland. Seamless move refers to the ability of a customer to relocate to another premise within the same service territory and remain in an existing contract with their supplier, rather than revert to standard offer service as a result of a move. Seamless moves benefit the consumer and the supplier. The consumer may derive value from maintaining the original contract at terms that are no longer available under current market conditions. At the same time, the supplier has procured supplies in reliance on the contract and would be harmed if the contract were unnecessarily terminated. Instant connect refers to a customer's ability to shop for a supplier without delay and with no utility default service period requirement. In other words, instant connect would reverse the current and unwarranted presumption that consumers should start service as a utility commodity customer.

The Phase II report, after discussing utility cost estimates, implementation timelines and utilization rates in other jurisdictions, noted a “divergence in viewpoints” as to “whether it is an appropriate use of ratepayer funds to effectuate seamless moves and instant connect capabilities in the State, especially given other recent Commission efforts to implement a three-day switching rule for AMI customers.” NEM submits that this criticism misses the larger point about the longstanding and improper institutionalization of utility default service as the “norm” - one that has perpetuated consumer apathy and lack of engagement in energy purchasing decisions despite clear state policy in favor of energy choice. In a market that has opened to competition, the presumption that consumers have made an affirmative decision to receive service from the utility is unwarranted and an unfair advantage to the utility. This is precisely the type of “administrative or process burden” that the Commission identified in PC44 Notice as being ripe for change.

The Phase II report also discussed the proposed resolution of outstanding housekeeping items from RM54 and other related matters. These issues include requirements applicable to a supplier’s performance of criminal background checks for door-to-door agents (proposed COMAR 20.53.08.03.B. and 20.59.08.B.); proposed regulations applicable to suppliers’ voluntary offerings of budget billing to customers (proposed COMAR 20.53.05.04.D. and 20.59.05.04.D.); and a draft Commission notice to suppliers to remind them of the obligation to post current open offers to the Commission website (report attachment 4-1). The Phase II report also proposed to modify existing regulations such that any discrepancy between an open offer posted on the Commission website by a supplier and the supplier’s corresponding open offer displayed on the supplier’s own website, should be resolved in the manner most favorable to the customer (proposed COMAR 20.53.07.07.C.2.b. and 20.59.07.07.C.2.b.) NEM submits that these proposals are reasonable and should be adopted. However, the concern noted in footnote 13 of the Phase II report about the

robustness of the Commission web portal should be addressed coincident with these proposals and the imposition of associated regulatory compliance burdens.

III. Phase III

The Phase II report suggested that the Commission initiate a Phase III workgroup to examine, at a minimum, revisions to the Commission's PUA § 7-510.1 website and additional non-residential consumer protections. The Phase II report also identified two more potential issues for Phase III that would require additional Commission guidance to pursue. The first issue requiring Commission guidance is the advisability of requiring retail electricity suppliers to provide electronic advance notice, before any change in rate, to any customer who provides an email address to the supplier whereas suppliers are currently required to make available to a customer his/her rate for the next billing period at least 12 days prior to the close of the customer's billing period. The Phase II report does not set forth a rationale for imposing additional consumer protection requirements at this time. In this regard, NEM notes that extensive consumer protection requirements were just recently adopted through RM54. NEM members are committed to complying with all current Commission consumer protection requirements.

The second issue identified as requiring additional Commission guidance is the implementation of online lookup tools. NEM urges the Commission to include the implementation of online lookup tools in Phase III. As noted in the report, online lookup tools to consider include a secure online portal through which a supplier can obtain the customer account number to perform enrollment as well as "wallet enrollment." Wallet enrollment allows a customer to enroll with a supplier using information typically found in a wallet and does away with the customer choice ID or service number requirement. In this regard, NEM notes that the customer account number requirement

has been a significant barrier to choice. The customer account number is not memorable or easily accessible. Indeed, the bill where the account number is found probably gets thrown in the trash by the consumer once it is paid. Online lookup tools can be implemented in a manner that ensures consumer protections and likewise ensures supplier accountability to deter improper conduct.

IV. Conclusion

NEM appreciates this opportunity to offer its comments on the Phase I and Phase II reports and recommended actions set forth therein

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Craig Goodman", with a long horizontal flourish extending to the right.

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