



of supplier disclosures that are being made to consumers. NEM notes that this Schumer Box-style disclosure requirement has become a best practice adopted in multiple other retail choice jurisdictions. The proposed Choice Disclosure Sheet, as with other standard disclosure sheets adopted by Commissions elsewhere, utilizes a one-page contract summary that provides for standard disclosures to be made in a highly visible place on the contract, that is easy for the consumer to see and understand, but does not standardize or restrict the unique competitive elements of supplier pricing and terms of service. For these reasons, NEM recommends adoption of this revision to the regulations.

#### **B. Third Party Verification Requirement**

A definition of “Third Party Verification or TPV” is proposed to be inserted in the regulations at 20.53.01.02(15) and 20.59.01.02(16) that is worded as follows, “a recorded audio or video statement that includes all material terms and is recorded by an independent person or company that is not party to the agreement.” NEM requests clarification of the proposed definition, particularly with respect to the term “independent person or company.” NEM recommends that an individual supplier be permitted the discretion to either perform the sales verification in-house or by contracting with an independent third party provider, consistent with the supplier’s business model. Certain suppliers already utilize their own internal verification group, which can identify problems in the verification call quickly and resolve them before they escalate. These suppliers choose to perform this key compliance and quality control tool themselves and should continue to be permitted to do so. Other suppliers may choose to perform this function with an independent third party entity that has developed its own compliance infrastructure. Either method can be utilized in a manner that satisfies the Commission’s goal of protecting consumers and ensuring that contracts are executed in a consensual, informed manner.

In the proposed definition of Third Party Verification the language used references an “independent person or company.” It is unclear whether this is intended to mean that the supplier must use an outside entity to perform this function or that any person other than the sales agent that initiated the sale would be allowed to perform this function. In other words, the supplier would not be required to utilize an outside entity to perform the verification but rather the supplier would ensure that the original sales agent did not make the verification and a separate, independent person within the supplier’s organization would perform the verification. This would address the perceived problem of consumers feeling pressured by door-to-door sales agents but still allow the supplier discretion in the manner in which the verification is performed.

#### **C. Customer Cancellation of Service**

It is proposed that new sections be added to the regulations at 20.53.04.05 and 20.59.04.xx that would allow a customer to cancel supplier service directly with the utility after three business days have elapsed and the request was not processed by the supplier. An important priority in the chain of events precipitating the request by the customer to revert back to utility service is that the customer be required to contact the supplier in the first instance. This ensures that the supplier has an opportunity to address the customer’s concerns and remind the customer of any potential fees associated with the early termination of its contract. While the proposed language appears to contemplate that the customer will have first made contact with the supplier, NEM recommends that this concept be expressly included in the regulatory language.

#### **D. Supplier Posting to Commission Website**

A modification to the existing regulation at 20.53.07.07(C) is proposed that would require electric suppliers to post to the Commission website current and readily understandable

information about their services, prices and emissions disclosures subject to Commission instructions. With regard to the proposal to require supplier posting to the Commission website of “current and readily understandable information about its services, prices and emissions disclosures,” NEM recommends the same approach that it suggested in its comments to RM46 (which it incorporates herein by reference). In RM46 and in the instant matter, NEM recommends that the supplier be required to post its current “generally available offers.” This is the approach that has been adopted by other retail choice jurisdictions. By placing the emphasis on posting “generally available offers” it promotes the goal of providing consumers with pricing transparency while also retaining a necessary level of flexibility for electric suppliers to be able to respond to dynamically changing market conditions. In other words, overly proscriptive price reporting requirements would have the negative consequence of limiting suppliers’ ability to offer innovative services and rates in the market. NEM also suggests that the supplier posting of emission disclosure information on the Commission website should take the place of the current monthly reporting obligation in this regard.

#### **E. Thirty Day Advance Notice of a Variable Rate Change Subject to Customer Approval**

Under the proposed revisions to the regulations at 20.53.07.08(C) and 20.59.07.08(C) suppliers would be required to provide thirty days advance notice of a rate change for existing contracts, with customer approval of same, or if approval is not obtained, service at the supplier’s previous rate or return to SOS service. NEM opposes this proposal on a number of grounds and strongly urges the Commission not to adopt it into the regulations. We also wish to note at the outset that this proposal appears aimed at fixing a problem as to whether the consumer received adequate disclosure *at the time of enrollment* as to a material term of the contract, namely that it will be subject to a variable rate. If the Commission is concerned about the nature of disclosures that are

being made at the time of enrollment, then it should adopt rules that affect those disclosures, at that point in the contracting process. In NEM's view, the adoption of a Choice Disclosure Sheet, such as is also being proposed in this rulemaking, would appropriately address these concerns. Conversely, imposing new disclosure requirements that apply on *an on-going basis after the point of sale* will not address the perceived problem. It will however impose a costly burden on competitive suppliers that will likely result in the elimination of the availability of variable rate products to consumers.

First, NEM opposes the proposal that suppliers be required to provide consumers with thirty days advance notice of price changes for variable-priced contracts. NEM opposes this proposal as it is contrary to the functioning and pricing of variable contracts and it will significantly increase the costs to suppliers of providing, and consumers of purchasing, these products. NEM filed these concerns in PC35 and reiterates them here. As NEM previously explained, requiring suppliers to give advance notice of a price change for a variable price product, would in effect, cause the creation of something akin to a new two month product. This is because if the supplier is required to provide advance notice of a variable price change, the supplier must price in advance, which in turn requires more hedging. This then increases the costs and risks of providing the variable rate product.

Second, NEM opposes the thirty day notice of variable rate change proposal because it would be costly and unduly burdensome for suppliers to comply with. As proposed, suppliers would have to provide this notice any time the price went up or down. In effect, every time the customer was sent a bill for service the supplier would be required to also send advance notice and approval. In practice, it would require suppliers to send the notice each month. It is not logistically feasible for suppliers to offer a variable rate under these circumstances.

Moreover, this monthly notice requirement will not be meaningful to consumers. A separate monthly notice of price change, in addition to the monthly bill, is likely to do more to confuse customers than educate them.

Then, coupled with the proposed requirement that the customer must affirmatively approve each variable rate change or be served at the supplier's prior rate or revert to Standard Offer Service, it creates the strong likelihood of the supplier losing large numbers of customers - and not because of lack of consent to the price change or dissatisfaction with supplier service but rather the simple failure of the consumer to respond to the notice (forgot, misplaced the notice, etc.). As such, this proposed process is tantamount to expecting the supplier to have to reacquire the customer each month. There is an enormous risk and expense associated with serving consumers under these conditions.

Requiring that consumers be provided with "insurance" of this type against variable rates, will result in the elimination of the availability of variable rate contracts to consumers. NEM submits that it would be contrary to the Commission's statutory charge to create a competitive retail energy market if it made the tacit decision that an entire class of contracts should not be offered in the marketplace. Indeed, as market conditions change, and the relative value of fixed versus variable rate products change, consumers will be dissatisfied if they cannot avail themselves of variable rate products when doing so would allow them to lower their energy bills.

#### **F. Supplier Assignment of Contracts to Another Supplier**

It is proposed that a new section be added to the electric regulations at 20.53.07.12, and a commensurate section in the gas regulations, pertaining to a process to be followed in the event

of a supplier's assignment of contracts to another competitive supplier. NEM supports the delineation of a reasonable and clear process to be followed in the event of customer assignment.

### **G. Supplier Filing of Training and Marketing Materials**

A new provision to the regulations is proposed to be added at 20.51.02.02 requiring a supplier applicant to "provide copies of the training materials offered to the Applicant's unlicensed sales personnel or representatives; as well as the marketing materials that the Applicant will use to advertise to Maryland customers." Current supplier practice is to provide a copy of the marketing materials that supplier intends to use initially in its marketing campaign. NEM requests clarification that this language is not intended to be on-going obligation to continuously file these materials. Over time, the supplier's marketing materials will change and it would be burdensome and unnecessary to have to file all of these materials on an on-going basis. If the Commission has a concern about a supplier's marketing materials, the supplier should be permitted to furnish it upon request.

### **H. Supplier Dress Code**

In the case that a supplier, "has adopted a dress code, color scheme, logos or other physically identifiable and wearable materials for use by licensed or unlicensed representatives," new proposed language at 20.51.02.02 would require a supplier to file that dress code information with the Commission. The provision is applicable only if the supplier has adopted such a dress code. NEM submits the only circumstance under which dress code information is relevant is with regard to door-to-door or other in-person marketing. Accordingly, we suggest the language be modified to note that the dress code information that is filed is in effect only with respect to door-to-door or other in-person representatives.

## Conclusion

NEM appreciates this opportunity to offer its comments on the proposed revisions to COMAR 20.32, 20.51, 20.53 and 20.59 regarding Competitive Electricity and Gas Supply. We look forward to participating in further discussion of these issues.

Respectfully submitted,

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