

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PPL Electric Utilities Corporation Retail Markets) Docket No. M-2009-2104271

**Comments of the
National Energy Marketers Association**

The National Energy Marketers Association (NEM)¹ hereby submits its comments in strong support of the measures to facilitate retail market development set forth in the Tentative Order [hereinafter “Order” or “Tentative Order”] issued in the above-referenced proceeding as published in the June 6, 2009, Pennsylvania Bulletin. In the Tentative Order the Commission, “identified eight areas in which we believe PPL, and later other EDCs, can improve the conditions for retail competition in its service territory in accordance with the policy goals and statutory provisions of Chapter 28.” (Order at 3). In anticipation of the expiration of PPL's electric rate caps at the end of the year, the Tentative Order was issued to direct PPL to take certain actions to reduce barriers to entry for competitive retail suppliers of generation. The Commission stated that, "there are certain standards, rules and operational protocols which will make the retail market viable for those EGSs which wish to offer retail generation service to PPL customers. Insofar as PPL is one of the largest EDCs in the Commonwealth, it is important that its market contain competitive alternatives for its customers, that its customers are aware of these competitive alternatives and that there are no barriers to entry from the incumbent

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.

EDC." (Order at 3). Additionally, the Commission is examining, "whether these measures or others are reasonable, lawful and appropriate to further the legislative goal of a competitive retail market for generation in each EDC's service territory." (Order at 19).

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

These were:

- 1) Provision of updated customer lists to suppliers, subject to consumers right to opt out;
- 2) Improving data access for suppliers by revising EDI transactions;
- 3) Utility provision of both bill ready and rate ready billing;
- 4) Requiring timely utility completion of EDI certification and recertification;
- 5) Implementation of a purchase of receivables (POR) program, with little or no discount, commencing January 1, 2010;
- 6) Conduct of a customer awareness education program about electric power choices and how to contact competitive suppliers;
- 7) Commitment to a process for the development of a uniform supplier tariff; and
- 8) Requiring the appointment of utility ombudsmen and expansion of the Commission's Office of Competitive Market Oversight to include electric market oversight.

To fund the institution of the enumerated retail competition measures, PPL (and subsequent utilities) would be permitted to implement a surcharge mechanism to recover incremental costs of implementation.

In addition, NEM includes in these Comments a recommendation to fully unbundle competitive functions from utility base rates. As explained below in Part C, a robust competitive market design will be premised on the proper allocation of costs between delivery functions and competitive (and potentially competitive) commodity-related functions.

A. Eight Retail Market Measures Enumerated in Tentative Order

NEM strongly supports PPL's implementation of the eight measures identified by the Commission to facilitate market development in PPL's service territory, and likewise the subsequent implementation of the eight measures in the other electric utility service territories in Pennsylvania. Indeed, NEM has supported these measures in its comments to the Commission in its default service docket, to the Retail Markets Working Group, as well as to the gas SEARCH collaborative.² Drawing on the experience of our members in other choice jurisdictions across the country, it is clear that the Commission has identified eight programs that have been instrumental in supporting supplier entry and participation in markets and resulted in the provision of energy choice products and services to customers. Perhaps the best way to illustrate the success of these measures is to examine the robust consumer participation and marketer participation statistics achieved in New York, a jurisdiction that identified and implemented many of the programs under consideration in this proceeding.³ Recent retail energy choice

² 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.

³ The New York Public Service Commission identified best practices to achieving competitive markets in 2004. The best practices included purchase of receivables, marketer referral programs, unbundling utility bills, improving marketer access to customer account numbers, outreach and education initiatives, and utilities designation of ESCO ombudsmen. The NYPSC also established an Office of Retail Market Development that was charged with overseeing the implementation of these best practices. NYPSC Case

participation statistics posted on the NYPSC website plainly illustrate the steady progress that has been made.⁴ As of January 2009, 1,168,888 customer accounts were participating in electric choice, representing 17.7% of accounts and 43.4% of load.⁵ In Spring 2007, the NYPSC reported that over 100 energy marketers were eligible to do business in the State, and that in each of the six major combined utility service territories there were at least six electric and six gas marketers actively serving customers.⁶ The increase in migration, particularly for mass market customers, and increase in marketer participation over a brief period has been dramatic and presents compelling evidence in support of the implementation of utility best practices such as POR. Marketers have made a significant resource investment in the utility service territories to serve consumers with an increasingly expanding array of energy products and services. And energy competition has engendered price savings for New York consumers as well.⁷

The Commission clearly has the statutory authority under the cited Public Utility Code Sections 501(a), 2801-2809, and 2811 to direct PPL, and the other EDCs, to take these

00-M-0504, Competitive Opportunities Proceeding, Statement of Policy on Further Steps Toward Competition in Retail Energy Markets, issued August 25, 2004.

⁴ As a point of comparison, in New York at the end of 2001 “[o]verall, 5% of customers, representing nearly 20% of load, had switched from their local utilities to retail service providers,” and that specifically, “over 25% of the load in the non-residential sector, but only 5% of the residential load has switched as of that date.” 2002 State Energy Plan, Section 3.4 Electricity Resource Assessment at page 3-81.

⁵ Specifically, as of January 2009 over sixteen percent of residential electric customers, and nearly fifty two percent of large commercial and industrial electric customers had migrated.

⁶ NYPSC Case No. 07-M-0458, Review of Retail Access Policies, issued April 24, 2007, at page 4. The U.S. Energy Information Administration reported, with respect to retail natural gas markets, “New York has by far the largest number (46) of active marketers, with customers in some parts of the State having a choice of more than 20 marketers and 50 different price offerings.” U.S. Energy Information Administration, Natural Gas Residential Choice Programs, U.S. Summary 2007, available at: http://www.eia.doe.gov/oil_gas/natural_gas/restructure/state/us.html

⁷ The typical residential retail customer experienced a drop in total real electric price of an average of 16% between 1996 and 2004, and most commercial and industrial customers benefited from similar energy bill decreases. New York State Department of Public Service, Staff Report on the State of Competitive Energy Markets: Progress to Date and Future Opportunities, March 2, 2006, page 2. See also Joskow, Markets for Power in the United States: An Interim Assessment, The Energy Journal 2006, page 27, Figure 6 (showing approximate 14% decrease in real residential prices from 1996-2004).

actions. It is clear from the mandatory language in the Competition Act quoted by the Commission that there is an affirmative requirement that consumers in Pennsylvania be provided with meaningful energy choice options on a sustained, continued basis, and not merely an “empty promise of an open market.” (Order at 4). In the passage quoted by the Commission, the Competition Act states that, “[T]he commission **shall** allow customers to choose among electric generation suppliers in a competitive generation market through direct access” (emphasis added) and defines “direct access” as, “the **right** of electric generation suppliers and end-use customers to utilize and interconnect with the electric transmission and distribution system on a non-discriminatory basis at rates, terms and conditions of service comparable” to the utilities own use in the transport of electricity. (emphasis added). Likewise, the Competition Act mandates that, “all customers of electric distribution companies in this Commonwealth **shall** have the opportunity to purchase electricity from their choice of electric generation suppliers. The ultimate choice of the electric generation supplier is to rest with the customer.” (emphasis added). § 2806(a). We agree with the Commission that its grant of statutory authority was not intended for the creation of a competitive market in name only, one that failed to provide an environment for true energy competition. Indeed, by requiring that consumers SHALL have choice and suppliers SHALL have non-discriminatory access to the system, the legislature makes clear that the Commission is to adopt measures that lay the foundation for robust, on-going market activity. We believe the eight measures identified in the Tentative Order that can do just that.

NEM suggests that the retail choice programs at issue here cannot be set up in a vacuum and expected to work. To be effective, these measures should be implemented in tandem

with market-based pricing for consumers.⁸ In order to justify substantive resource investments in the Commonwealth, marketers must perceive a continuous opportunity to participate in a true market and provide consumers with value and options. There is no doubt that the retail choice programs will go a long way in helping marketers cost effectively enroll, aggregate and serve customers. To be sustainable over the long term, however, the market fundamentals must also be there. NEM suggests that market-based pricing and the success of the retail choice programs are inextricably linked and merit simultaneous attention.

Given the foregoing, NEM offers the following in support of the eight retail choice measures identified by the Commission for implementation by PPL, and subsequently by the other electric utilities in Pennsylvania (for ease of reference, we present them in the order set forth by the Commission):

1) Customer Information Database (Customer List)

The Commission directed that PPL provide updated customer lists to suppliers, subject to consumers right to opt out. The utility's database for this purpose would be updated monthly. The consumer opt out process would be repeated prior to end of rate caps and annually thereafter. Customer list information would include interval data and phone numbers for C&I customers. (Order at 5-6).

⁸ Market-based pricing for the commodity portion fosters competition among competitive retail suppliers and the distribution companies' default rate. The unbundled, properly cost-allocated default rate charged by the utility should represent all of the costs (generation, transmission, distribution, and customer-related) that a default service provider will incur on behalf of default service customers in the provision of electricity supply. In this way, competitive retail electric supply prices offered by marketers can be compared on a consistent basis to the utility-provided default service.

NEM supports the provision of customer lists to competitive suppliers. For some time, customer lists have been in use in Pennsylvania by utilities and competitive suppliers without implicating consumer protection problems. The use of customer lists allows suppliers to narrowly tailor the contacts made to only those customers in a particular utility service territory that receive a particular type of service. The customer lists provide an efficient means to ensure that contact is not made with consumers that do not reside in the relevant service area or do not receive the type of service, electric or gas, the supplier is offering. Accordingly, having accurate, up-to-date complete customer lists significantly reduces levels of customer confusion and limits the population of customers contacted. On this basis, NEM supports the provision of updated customer lists to competitive suppliers as set forth in the Tentative Order.

2) Data Access

The Commission directed a number of revisions and improvements to the existing EDI transactions to enhance the quality and types of data shared with competitive suppliers. This would include: a) providing electronic access to VEE (validation, estimation and editing) interval data at no incremental fee; b) implementing EDI 814E updates and a new EDI 867 HIU (historical interval usage) transaction; c) implementing EDI 814 ND (advance notice of intent to drop); d) implementing EDI 867 IU – actual monthly billing cycle interval metered data; e) providing suppliers with a customer’s meter read cycle information in EDI 814 or EDI 867 HU; f) compliance with EDI time standards on supplier data requests for multiple accounts; and g) providing a monthly updated sync list (list of customer usage and account info for supplier’s enrolled customers) on an FTP site for requesting suppliers. (Order at 7-12). NEM supports the proposed enhancements to

the EDI transactions that are currently in use. The changes are appropriately focused on improving supplier access to necessary data as well as on utility responsiveness to data requests and should be approved.

3) Bill Ready and Rate Ready Billing Options

The Commission proposed to require PPL (currently a “bill ready” utility) to support both Bill Ready and Rate Ready consolidated billing options. (Order at 13). Attendant with this change, PPL was also directed to be able to accommodate a minimum of fifty rates per customer across rate classes. (Id.). NEM agrees that the availability of both rate and bill ready billing at each EDC will facilitate competitive entry and maximize the ability of multiple marketers to successfully make competitive offerings consistent with their individual business plans. Nonetheless, NEM is concerned that the timing and cost associated with accommodating fifty rates under rate ready billing not unreasonably delay market opening. NEM suggests that the Commission require the utilities and the competitive suppliers to engage in a dialogue about how many rates are realistically needed. We believe that without unduly delaying the opening of the market, this will allow the parties to identify, in a timely and cost-effective manner, just what billing changes are truly necessary to enable suppliers to make the desired competitive offerings. The Commission should set a firm deadline for the completion of this dialogue between utilities and suppliers, and, in no way should the dialogue inadvertently become a means to slow the opening of the market. Rather, we offer this suggestion as a means to expedite market opening by allowing the utility to focus its IT efforts on the most useful billing changes to the suppliers.

4) Timely EDI Testing

In directing PPL to complete EDI certification and recertification within sixty days of a supplier's initial request (Order at 13-14), the Commission wisely anticipated the post rate cap problem of timely completing EDI testing. We support the Commission's proposed sixty-day time frame. It makes sense, particularly if a large number of suppliers make applications at the same time. It is imperative the EDI testing be complete when the market goes "live." In setting the sixty-day deadline, the Commission has proactively contemplated the problem that marketers have experienced elsewhere of utilities purportedly needing to delay testing when suppliers enter a market. NEM also suggests that once a steady state of new marketers entering the utility service territory is achieved, it may be possible for the utility to achieve faster completion of EDI certification.

5) Purchase of Receivables

The Commission directed PPL to implement a Purchase of Receivables (POR) program modeled after the approach adopted for the natural gas utilities. The POR program is to be provided at little or no discount in the purchase of receivables and commence on January 1, 2010. (Order at 15). NEM strongly supports the availability of POR programs, as perhaps the most determinative factor in supporting retail market development. As discussed in the introduction of these comments, the consumer migration statistics and supplier participation numbers experienced in New York confirm the importance of such POR programs. Ohio provides another leading market example of the significance of POR. In the Dominion East Ohio service territory, the number of customers being served by alternative suppliers as of March 2009 exceeded 850,000,

representing nearly 71% of customers. With well-structured POR programs in place, we hope similar results can be achieved in the Pennsylvania market for consumers as well.

NEM supports the requirement in the Tentative Order that POR be offered at little or no discount (Order at 15) in compensation for the utility's retention of uncollectibles in its base rates. 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. And 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. (Id.).

By the terms of the Tentative Order, a supplier would only be able to bill for basic supply service via the POR program. (Id.). The Tentative Order would have the supplier bill separately for complex pricing options or environmental/renewable products. (Id.). NEM recommends that the Commission encourage utilities to develop service options that would allow non-basic supply service charges to be placed on the utility consolidated bills at the EGS' discretion, even though such charges would not be purchased by the utility. The latter charges could also include charges for supplier energy audits, demand response services, and energy efficiency services. NEM recognizes that utility billing systems may need to be modified to distinguish commodity charges that are subject to POR from non-commodity charges that are not subject to POR. NEM understands that this distinction is necessary to avoid the possibility of customers being disconnected by the utility for non-payment of non-commodity service. Utilities would receive reasonable, cost-based fees for billing non-commodity services. Such options should be developed as soon as practical but their development should not impede the swift

implementation of POR for basic supply services (e.g., January 1, 2010, in PPL's case). Utility billing of such services could stimulate development of innovative products and services and thereby hasten the availability of such products to customers.

6) Customer Awareness Education Program

PPL was directed to undertake a customer education program to inform consumers about electric power choices and how to contact competitive suppliers. (Order at 16). The utility may use bill inserts, media advertising, the internet and other traditional methods of reaching customers to effectuate the education program and will recover the costs of the program through a competitive-related activity surcharge. (Id.). NEM wholeheartedly agrees with the Commission's assessment that consumers need unbiased education about the availability of energy choice, and just as important, how to contact competitive suppliers to exercise their choice.

NEM recommends that an additional component of the customer education program should be to offer a marketer referral program to coincide with the expiration of the rate caps. As constructed in New York, referral programs have been a valuable tool to provide consumers with a no risk introduction to energy choice.⁹ When a customer calls the utility with a non-emergency-related question, the customer is educated about the availability of the referral program. Participating customers receive a two-month introductory discount from their commodity bill. They can either select the marketer to provide them service under the referral program or be randomly assigned. The customer can also return to utility service during the introductory period without penalty.

⁹ For additional details on the New York referral programs see Order Adopting ESCO Referral Program Guidelines and Approving an ESCO Referral Program Subject to Modifications, New York Public Service Commission Case 05-M-0858, dated December 22, 2005.

Recently, the New York Public Service Commission (NYPSC) approved, on a pilot basis, the expansion of ConEd's referral program to new service customers.¹⁰ In other words, the utility would no longer be presumed to be the commodity provider of first resort when a customer initiates delivery service (although it retains the requirement to function as provider of last resort, which should be a different obligation). The NYPSC found that expanding the referral program to new service customers, "is another step to further the growth of the competitive retail energy market in the state. By offering ESCO [marketer] commodity supply to new customers at the time of service initiation, an additional segment of customers are made aware of energy choice while creating an environment for a direct relationship to evolve between the ESCO and the customer."¹¹ Moreover, in Pennsylvania, relatively strict telemarketing rules and door-to-door town permitting requirements represent a significant hurdle to enrolling mass market customers. Referral programs can ameliorate these substantial difficulties. Implementing referral programs could help level the playing field between competitive energy marketers and incumbent utilities that are the presumed commodity supplier. Similarly, it would enhance the consumer education process.

7) Commitment to a Process for Development of a Uniform Supplier Tariff

The Commission directed PPL to convene a working group of competitive suppliers and other electric utilities to develop a uniform supplier tariff for use in the retail market. (Order at 17). As suggested in the Tentative Order, the creation of a statewide, uniform supplier tariff should yield efficiencies to suppliers competing in multiple service

¹⁰ New York Public Service Commission, Case 07-E-0523, Order Concerning ESCO Referral Program, issued June 3, 2009.

¹¹ Id. at 12.

territories across Pennsylvania, allowing them to more cost-effectively do business. Additionally, because Pennsylvania is in PJM, many of the details that would otherwise complicate a supplier tariff, have already been settled by PJM. This should reduce the impediments to developing a uniform supplier tariff. As such, we support the Commission's recommendation.

8) Ombudsmen for Supplier Issues

The Tentative Order requires PPL to appoint an ombudsman to respond to supplier questions, monitor competitive market complaints and facilitate informal dispute resolution. (Order at 17). The Commission has also announced its intention to expand its own Office of Competitive Market Oversight to include electric market oversight. (Id.). We applaud both of these measures which should facilitate meaningful participation in markets by providing suppliers a knowledgeable and consistent utility contact to address questions and problems. Perhaps even more importantly, creating a Commission ombudsman for electric markets will signal to the competitive market community the Commission's strong commitment to developing a robust retail electric market and its willingness to proactively address market development issues as they arise.

B. Cost Recovery

The Commission provides for utility cost recovery for competition-related activities in the Tentative Order. (Order at 18). PPL would be permitted to implement a surcharge for incremental implementation costs. The Commission made clear that, "to the extent it helps promote retail competition, the surcharge for implementing these competition related activities will benefit all customers. As such, it should be paid by all customers."

(Id.). We support this competitively neutral approach to utility cost recovery for the retail access programs. This is subject, of course, to a Commission determination that the utility's costs incurred were actively managed, prudently incurred, just and reasonable. Nor should the utility 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 Tentative Order and subsequent rulings to promote retail electric choice.

C. Proper Cost Allocation and Unbundled Rates

NEM submits that proper utility rate unbundling is a prerequisite to sending proper price signals, to assist consumers in making educated consumption decisions, and to permit suppliers to invest risk capital to make competitive product and service offerings available to consumers. Thus, utilities should unbundle their rates on an embedded cost basis by removing all costs related to commodity sales from delivery service charges and including all such commodity sales costs in the commodity price. Structuring PPL's default rate so that customers of default service pay the full cost of providing the service is needed to further the legislative goal of a competitive retail market for generation in Pennsylvania.

Suppliers providing retail electric commodity service to customers incur costs in addition to the wholesale cost of the energy commodity, including:

transmission charges, scheduling and control area services, risk management premiums, load shape costs, commodity acquisition and portfolio management, working capital, and taxes, as well as costs for

administrative and general expenses, information exchange, compliance with consumer protection regulations, and customer care, an appropriate return on equity and debt, and potentially billing and collection costs, depending on the billing option chosen.

These costs incurred by competitive energy suppliers are included in competitive energy supplier pricing. When these same costs are also included in utility delivery rates it results in a double payment of these costs by consumers. Keeping costs in utility delivery service pricing for a service that the utility is no longer rendering is anti-competitive and anathema to proper utility cost of service regulation. Failing to unbundle these costs has a devastating effect on the competitive market, since competitive suppliers are unable to compete effectively on the basis of price with the subsidized default service option. By properly assigning costs and unbundling competitive services from monopoly services, the Commission will encourage true competition on the basis of pricing, quality of service, and provision of value-added services. When rates are unbundled in this fashion, retail electric customers in PPL's service territory will be able to compare a market-based utility provided service against the prices offered by retail electric providers, thus promoting the goal of retail electric competition.

Conclusion

NEM appreciates this opportunity to offer further comment to the Commission in support of measures that facilitate competitive retail market development. The Commission has exhibited bold leadership in addressing the needs of consumers, marketers and utilities as rate caps near expiration and opportunities for meaningful consumer and marketer

participation in retail electric choice markets can begin. We look forward to working with the Commission to realize these important goals.

Sincerely,

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