

marketplace. Now is not the time to retreat from the competitive market vision. We are on the verge of fully realizing the promise of a competitive marketplace as enabled by technological advancements. Smart meter investments, and the data derived therefrom, will enable a plethora of innovative energy product and service offerings. The competitive market should be relied upon to fulfill this function. Utility-provided default service should retain its character as a “plain vanilla” or “standard offer.” Additionally, utility default service plans should not incorporate long-term contracts for renewable energy.

I. The Competitive Marketplace Should Be Relied Upon for the Provision of Time-of-Use Rate Offerings

The law contemplates a limited utility default service time-of-use (TOU) rate offering,⁴ and the Commission has previously interpreted that requirement in a way to minimize the harm to the competitive retail market.⁵ However, the questions raised in the instant matter appear to contemplate that utility default service would be expanded to include a menu of differing TOU

⁴ 66 Pa. C.S. § 2807(f)(5) provides that,

By January 1, 2010, or at the end of the applicable generation rate cap period, whichever is later, a default service provider shall submit to the commission one or more proposed time-of-use rates and real-time price plans. The commission shall approve or modify the time-of-use rates and real-time price plan within six months of submittal. The default service provider shall offer the time-of-use rates and real-time price plan to all customers that have been provided with smart meter technology under paragraph (2)(iii). Residential or commercial customers may elect to participate in time-of-use rates or real-time pricing. The default service provider shall submit an annual report to the price programs and the efficacy of the programs in affecting energy demand and consumption and the effect on wholesale market prices.

⁵ It has been the Commission’s “recommendation that EDCs contemplate contracting with an EGS in order to satisfy their TOU requirement.” Docket L-2011-2237952, Final Order, Investigation of Pennsylvania’s Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans, entered December 16, 2011, at page 47. See also Docket P-2015-2506002, Petition of Duquesne Light Company for Approval to Implement a Time-of-Use Program for the Year commencing June 1, 2016 and Ending May 31, 2017, Order entered January 28, 2016. The Commission’s recommendation and approach to satisfying the TOU requirement was not disturbed by the Commonwealth Court’s decision in Dauphin County Industrial Development Authority v. Pa. PUC, which was limited to addressing the issue that EDCs are required to offer a TOU rate to customer-generators. 123 A.3d 1124 (Pa. Cmwlth. 2015).

rate offerings. NEM is opposed to this expansion of utility default service rate structures that would intrude into the domain of competitive market offerings.

NEM has long maintained that the lack of timely wholesale settlement data was impeding competitive supplier efforts to offer consumers time-differentiated products.⁶ Historically, competitive suppliers have settled to a standard load profile that is developed using average utility usage data. Under this structure, residential and small commercial consumers would see little or no value to reducing demand as it would not be reflected in the average usage numbers used for wholesale settlement purposes for any given demand response-minded consumer.

With the deployment of smart meters, the utilities are “developing updated wholesale settlement procedures and integrated cost allocation methods for energy, capacity and transmission costs via actual hourly energy use, as adjusted for losses and other factors, as well as ‘tickets’ assigned to individual customers based on allocation methods for capacity and transmission documents in each EDC’s Attachment M-2 in the PJM Interconnection, LLC (PJM) Tariff.” (Order at 2). These modifications to the wholesale settlement process are intended to facilitate offerings of time-differentiated products to consumers.

In view of these developments, the Order queries “how Pennsylvania can begin the process of evolving default service rate design and structure given the new meter infrastructure and wholesale market design of the future.” (Order at 6). More specifically, the Order posits that “[w]ith the installation of smart meters, the long-term benefits associated with positive customer usage behaviors can be flowed back to customers if changes in the rate design for previously non-interval

⁶ See NEM’s White Paper “Achieving Significant, Near-Term Demand Response by Residential and Small-Commercial Customers,” February 2010, available at: <http://energymarketers.com/Documents/ACF82C.pdf>

customers are more aligned with wholesale cost allocation methods. Absent a change in retail rate design for default service, such benefits will only flow to the wholesale LSEs, such as wholesale DSPs or EGSs. Without direct methods for rewarding customers in a timely manner for positive behaviors, customer responses to market prices will be stunted, or suboptimal.” (Order at 3-4). From this argument flows the Commission proposal to expand default service to a menu of TOU rate offerings.

The Order appears to have drawn the unfounded conclusion that the competitive market cannot provide time-differentiated products to consumers to engage in positive, demand response behaviors. There is no evidence on the record to support that notion.⁷ Moreover, suppliers are only now being provided with the tools to offer these TOU products – widespread deployment of smart meter technology, timely access to customer data and the changes to the wholesale settlement process. At this critical juncture in the evolution of the competitive market, when technological reality has finally caught up to the vision of what the market can potentially provide to consumers, the Commission should remain steadfast in reserving competitive TOU products to being furnished by the competitive marketplace.

Importantly, the Commission should also be concerned with the anti-competitive impacts of allowing utilities to compete with competitive suppliers to offer a menu of TOU products. The utilities should not be allowed to leverage all of their existing competitive advantages (data access, billing capability, control of delivery infrastructure, economies of scale, risk-free product

⁷ Indeed, in the Texas retail electric market, suppliers have long been granted timely access to customer data and this has supported development of numerous innovative product offerings. The Public Utility Commission of Texas reported as of 2018 that there were “315 total unique products” in the market. “The matured competitive market offers a variety of products to customers. As of September 2018, plans are available that offer 100% renewable electricity, time-of-use pricing such as free electricity on the weekends, and prepaid plans that allow customers to better budget.” 2019 Scope of Competition in Electric Markets in Texas Report, Public Utility Commission of Texas, pages 2-3, available at: https://www.puc.texas.gov/industry/electric/reports/scope/2019/2019scope_elec.pdf

offerings) to offer a menu of TOU products. Even if the utility TOU rate offerings are limited, it diminishes competitive supplier opportunities to offer these products. Competitive suppliers are making product offerings with at-risk capital versus the utility's risk-free offering. In addition, utilities are not and should not be relied upon to be market innovators. The regulatory rate-making process, with its inherent time lag and delays, prevents utilities from effectively functioning in that role. However, if utilities are allowed to offer a menu of TOU products, in the long run, it will prevent true innovation in product offerings from being realized in the marketplace for consumers because competitive suppliers will find it difficult to compete.

NEM recommends that the Commission continue to follow its previous precedent that limited the utility role in offering TOU rates and reserved TOU rate offerings to the competitive marketplace. With the availability of timely, granular customer data as enabled by smart meter technology, the competitive marketplace can and should be relied upon to fulfill that role. Any proposals for a modification in utility default service to include increased TOU options should be implemented in a competitively neutral manner.⁸

⁸ ConEd was ordered by the New York Public Service Commission “to test new and innovative rate structures made possible through its investment in smart meters, which offer customers greater control and convenience in managing their energy.” ConEd designed a pilot program for residential and small commercial customers in which “time-variant, demand-based delivery rates would replace the current residential and small commercial rate constructs for Pilot participants, under which customers’ electric delivery costs are based on the total number of kWh that they use in a billing period. Under the Pilot, participants would be charged based on their peak and off-peak demands (“kW”) – i.e., calculated for the purposes of this Pilot as the average of the three highest daily demands during specified peak and off-peak periods.” Designing the pilot in this fashion with the time-differentiated element in delivery rates permits both shopping consumers and non-shopping consumers to participate. New York Public Service Commission, Case 18-E-0397, Proposal for an Innovative Pricing Pilot, filed July 6, 2018; Order Approving Tariff Amendments with Modifications, issued December 13, 2018.

II. Long Term Contracts for Renewable Energy Should Not Be Incorporated into the Default Service Procurement Process

The Commission asked a series of questions in the Order related to whether long term contracts for renewable energy should be incorporated into the default service procurement process. The questions probe the optimal length of such contracts, optimal amount of such contracts, RFP structure, and whether such contracting should be limited to a certain geographical area. More generally, the Commission inquired as to “the prudence of long-term contracts in today’s evolving marketplace.” (Order at 7). NEM suggests that the Commission should also examine the impact of such a requirement on competition between utility default service and competitive electricity suppliers and the problems inherent with locking in a portion of default service pricing for a long period of time.

NEM opposes the incorporation of long-term contracts for renewable energy into the default service procurement process. Indeed, such a requirement would be counter to all of the work that has been done to transform the formerly vertically integrated utility monopoly model that existed in Pennsylvania into a competitive retail marketplace. History has shown that establishing default service rates that remain fixed for prolonged periods is detrimental to retail competition. History has also demonstrated the costs and risks associated with utilities entering into long-term contracts.⁹

⁹ In 1978, in response to skyrocketing fuel costs, interest rates and large plant construction, Congress passed the Public Utility Regulatory Policy Act (PURPA). The purpose of PURPA was to encourage electric energy conservation, increased energy efficiency, and equitable retail rates. PURPA required the electric utilities to purchase energy and capacity from “qualifying facilities,” co-generators and independent power producers (IPPs). Many of the long-term contracts entered into in the late 1980s were based on energy price forecasts that were too high. This was due to reductions in demand for electricity caused by the economic slowdown and a lower-than-forecasted price of oil. Utilities ended up paying more for independent power than if they had generated the energy themselves or purchased the power on the spot market.

The Commission and stakeholders have invested two decades of work and resources to developing a competitive retail market. We now stand on the cusp of realizing the truly innovative market offerings that have always been the long-term vision. “Reforming” default service procurements to include long-term contracts for renewable energy would be contrary to that competitive market vision. As NEM has often stated, default service should be structured to be a true “standard offer service” – a plain vanilla product offering. The competitive marketplace can and should be relied upon to provide renewable energy offerings to consumers, consistent with consumer preferences and budgets.

One of the primary reasons for a competitive marketplace is to shift the risk of generation investments away from captive ratepayers and on to private competitive entities. Requiring long term contracts for renewable energy will shift the risk of those investments squarely back to default service ratepayers and possibly lead to the creation of stranded costs. Long-term contracts are often more expensive in the final years of the term because of the uncertainty of regulatory and financial risk. Requiring the utilities to enter into long-term contracts for renewable energy will entail a greater risk, which will concomitantly include the incorporation of risk premiums, that would increase the costs of default service.

The default service structure provided for under statute requires the use of a competitive procurement process.¹⁰ Additionally, the electric power that is procured shall include a “prudent mix” of: spot market purchases; short-term contracts; and long-term purchase contracts defined as having a duration of more than four years and not more than twenty years.¹¹ Long term contracts may not constitute more than twenty-five percent of projected load absent a Commission

¹⁰ 66 Pa. C.S. §2807(e)(3.1).

¹¹ 66 Pa. C.S. §2807(e)(3.2).

determination that good cause exists for a higher percentage to achieve least cost procurement.¹² Residential and small commercial customer default service rates cannot change more frequently than quarterly.¹³ The statutory default service structure, as implemented by the utilities in their default service provider plans, has already proven to be a barrier to competition by locking in prices for extended periods that do not align with current market conditions, creating artificial boom and bust cycles for mass market customer shopping. In so doing, it prevents competitive suppliers from having sustained opportunities to serve consumers, discourages competitive entry and thereby inhibits the availability of energy choice options to consumers. The addition of long-term contracts for renewable energy to the default service procurement process will only exacerbate the problem, further divorcing the default service price from current market conditions and inhibiting robust retail competition even further.

The inclusion of long-term contracts for renewable energy into the default service procurement process can subject default service customers to significant above-market costs if wholesale electricity market prices decline. Conversely, default service pricing that is lower than wholesale market prices may benefit customers in the very short-term. In the long-term, when suppliers perceive that there are only offer limited opportunities to serve consumers in a market, it ultimately deters supplier investment, entry and participation, thereby making the market less competitive, and not more so, and limiting the competitive options available to consumers. Then, when default service prices do again eventually rise, consumers will not be able to shop for alternatives to manage their bills because of a lack of competitive suppliers and competitive offers.

¹² Id.

¹³ 66 Pa. C.S. §2807(e)(7).

Conclusion

NEM appreciates this opportunity to offer its comments on the Commission's investigation into default service. We look forward to future opportunities to engage in the process for providing recommendations to the Commission.

Sincerely,

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

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