

**BEFORE THE
ARIZONA CORPORATION COMMISSION**

In the Matter of Possible)
Modifications to the Arizona) **Docket No. RE-00000A-18-0405**
Corporation Commission’s Retail)
Electric Competition Rules.)

COMMENTS OF THE NATIONAL ENERGY MARKETERS ASSOCIATION

The National Energy Marketers Association (NEM)¹ hereby submits Comments on the Draft Rules Package prepared by the offices of Chairman Burns and Commissioner Olson filed on February 10, 2020, in the above-referenced docket. NEM participated in the July 30-31, 2019, Stakeholder Meeting and Workshop and filed related comments dated July 10, 2019.² NEM also participated in the December 3, 2018, Retail Electric Competition Workshop and filed related comments dated December 11, 2018.³ Revising the retail electric competition rules is a significant undertaking. NEM appreciates all of the work undertaken by the offices of Chairman Burns and Commissioner Olson to prepare the draft rules package in order to facilitate further substantive discussion at the Stakeholder Meeting and Workshop scheduled to take place on February 25 and 26, 2020. NEM also appreciates this opportunity to offer its comments on the draft rules package.

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. This document reflects the views of the National Energy Marketers Association and does not necessarily reflect the views of any specific member of the Association.

² NEM’s July 10, 2019, comments were filed in the instant Docket No. RU-00000A-18-0405. NEM hereby incorporates these comments by reference.

³ NEM’s December 11, 2018, comments were filed in Docket No. RU-00000A-18-0284, the Commission’s general inquiry into revisions to the energy rules. NEM hereby incorporates these comments by reference.

I. General Recommendations About the Draft Rules Package

As between the two alternatives presented in the draft rules package, NEM supports Draft A. Draft A provides that all customers are eligible to shop on Day One of market opening. Under Draft A, Provider of Last Resort (POLR) service is competitively-provided by Electric Service Providers (ESPs). Draft A also incorporates best practices from Texas with respect to POLR service and Pennsylvania with respect to consumer protection and marketing standards that have supported robust retail energy competition in those jurisdictions. NEM's prior comments recommended incorporation of those best practices. NEM submits that the provisions included in Draft A, implemented in combination, will result in the best outcomes for market participants and facilitate a dynamic, competitive retail electric market.

By comparison, Draft B is problematic for a number of reasons. Draft B restricts energy choice to customers 100kW or above. As a point of reference, customers 100kW or above are relatively large customers (this is approximately twenty five times larger than a typical residential customer), and so this shopping threshold restricts a large population of consumers from shopping. There is no justification to restrict the availability of choice for mass market customers.

Draft B also permits utilities to continue to provide POLR service. NEM explained in prior comment submissions that retaining the utility in the commodity default service role creates significant associated market distortions and a need for vigorous oversight to ensure a level competitive playing field. Indeed, the retail choice jurisdictions that have chosen to retain the incumbent utility monopoly as a direct competitor with other competitive suppliers in the marketplace have all experienced related market development difficulties as a direct result. This is caused by incumbent utility market power and economies of scale coupled with inadequate utility

delivery rate unbundling and a lack of market-based pricing signals to consumers. While there have been regulatory efforts undertaken in numerous jurisdictions to level the playing field under those circumstances, the numerous and distinct advantages of the incumbent utility monopoly are difficult to overcome when they are permitted to compete in the retail marketplace. It inhibits competitive supplier market entry and participation and limits the ability of suppliers to offer competitive prices, products and innovations against artificially understated utility monopoly rates.

Draft A properly provides for the utility to exit the commodity merchant function and thereby focus on its core delivery function, allowing commodity-related risks to be shifted away from captive ratepayers and to competitive suppliers. It is far more efficient and will encourage greater investment in both utility delivery infrastructure and competitive energy products and services, if ratepayer-backed capital is directed to delivery infrastructure maintenance and upgrades while competitive suppliers at-risk capital is focused on developing and providing energy and energy-related products, services and technologies. Utility ratepayers should not be required to take risks that the market is willing to bear. Competitive market participants are expert at controlling supply-related risks, and they do so without the requisite guaranteed return of and return on utility investments, the risks of which are borne by captive ratepayers.

II. Specific Recommendations Associated with the Draft Rules Package

While there are significant differences between Draft A and Draft B and the electric market structure that would be created as a result of those rules, NEM has recommendations that apply to both sets of draft rules to improve either regulatory construct, if adopted. These recommendations are set forth below in Section A. NEM's recommended modifications that are limited to Draft A

are set forth below in Section B, and recommended modifications that are limited to Draft B are set forth below in Section C.

A. Recommendations Related to Both Draft A and Draft B

1. Date Certain for Market Opening

A date certain for market opening should be established to provide regulatory certainty and incent supplier investments to serve Arizona consumers.

2. Electric Service Provider Certificate of Convenience and Necessity/Rate Filing Requirement (Draft A and B, R14-2-1603, R14-2-1611)

The draft rules have designed a regulatory process that is compliant with the Phelps Dodge decision. We urge the Commission, to the greatest extent possible, to structure the rules so that electric service providers (ESPs) have the maximum amount of flexibility to seize on market opportunities to make product offerings. For example, Commission review of ESP rates and rate changes should be expeditious. Extended notice requirements for ESP rate changes will hamper suppliers' ability to respond to changing market conditions.

3. Written Authorization Requirement (Draft A R14-2-1612(J), Draft B R14-2-1612(C))

A written authorization requirement to switch suppliers is antiquated and unjustified. Other jurisdictions permit telephonic and electronic authorization to switch, in addition to written authorization.⁴ A written authorization requirement is also inconsistent with the federal Electronic Signatures Act.

⁴ See, e.g., 52 Pa. Code 111.7(a) providing that "A supplier shall establish a written, oral or electronic transaction process for a customer to authorize the transfer of the customer's account to the supplier."

4. *Utility Delivery Rate Unbundling* (Draft A R14-2-1606 (B) and (F), Draft B R14-2-1606 (C)(2) and (G))

The rules should contain additional detail on required utility delivery rate unbundling. The proper allocation of commodity and commodity-related costs to default service pricing and out of utility delivery rates is critical to a well-functioning market. When commodity and commodity-related costs are not properly identified and allocated and remain bundled in utility delivery rates, it penalizes consumers that shop. The misallocation of commodity and commodity-related costs to utility delivery rates also leads to an understatement of utility default service pricing, thereby distorting the relative value of competitive offerings in the marketplace.

Delivery rate unbundling must encompass more than a mere identification of wholesale energy costs associated with providing default service. It should include the indirect costs of rendering commodity default service. It should include all of the supply management costs (bidding, contracting, hedging, risk management costs, scheduling and forecasting services, and applicable administrative and general expenses) and the administrative costs (billing, collection, education, regulatory, litigation, tariff filings, working capital, information system and associated administrative and general expenses) of providing commodity default service.

5. *Stranded Cost Recovery* (Draft A and B, R14-2-1607)

The rules would allow the recovery of “unmitigated” costs. The rules should only allow actively and prudently managed and justified stranded costs to be recovered.

6. *System Benefit Charges (SBCs)* (Draft A and B, 14-2-1608, R14-2-1617)

Additional clarifying detail is needed as to the form and purpose of the System Benefit Charges (SBCs). In general, the mechanism to collect SBCs by a nonbypassable charge is competitively neutral and seems acceptable. The manner of distribution of SBC funds to ESPs for meeting renewable energy standards should be clarified.

7. *Billing is a Competitive Service*

Based on experience gathered from other retail choice jurisdictions, consumers prefer to receive a single consolidated bill for utility delivery charges and competitively-provided energy products and services. Draft A and Draft B both reference an ESP's ability to include deposit requirements and advance payment requirements for services rendered (Draft A R14-2-1606(C), Draft B R14-2-16-6(D)), which would appear to contemplate that supplier consolidated billing is permitted. However, for the sake of clarity, the rules should explicitly reference the option of a supplier consolidated bill.

8. *Customer Switching Timeframe*

No explicit customer switching timeframe is referenced in the draft rules package. The best practice from other retail choice jurisdictions for effectuating customer switching is three business days.⁵ Given technological advances, consumers expect to be able to effectuate purchases instantaneously or nearly so for all manner of goods and services. Moreover, an

⁵ Pennsylvania PUC Docket L-2014-2409383, Order, issued April 3, 2014; Maryland Public Service Commission, RM54. For electric customers under Maryland COMAR 20.53.04.02B, "A utility shall process an electronic enrollment or drop from a supplier to be effective within 3 business days after receipt of the electronic transaction."

expedited customer switching timeframe ensures that consumers receive the benefit of the bargained for price without delay.

B. Recommendations Specific to Draft A

1. *Price to Beat* (Draft A 14-2-1604(E))

The rules incorporate the term “Price to Beat” without including a definition or computation mechanism. The establishment of a Price to Beat at a level that permits competitive entry and sustained opportunities for competitive offerings is critical.

2. *Provider of Last Resort (POLR)* (Draft A R14-2-1613)

NEM supports the incorporation of language from the Texas Public Utility Commission’s regulations on competitively-provided POLR. However, some acronyms from the Texas regulations have been included without definitions such as “VREP” and “ESI ID.” Clarification of these terms is necessary to ensure compliance with the rules.

3. *Only Utilities Perform Reliability Functions* (Draft A R14-2-1612 (K)-(N) and (Q) compare with Draft B R14-2-1612(A))

Draft A appears to mistakenly require ESPs to satisfy a number of reliability-related functions that the utility alone is responsible for and capable of performing. The regulatory language should be revised to limit reliability functions to the utility only. Draft B properly limits these reliability-related functions to utilities.

4. *Updating Date References* (Draft A R14-2-1614(B), R14-2-1615(E) compare with Draft B R14-2-1614(B), R14-2-1615(E))

Certain dates included in Draft A need to be updated with respect to the reporting schedule and commencement of a consumer education program. The dates in Draft B with respect to these items have been appropriately updated.

C. Recommendations Specific to Draft B

1. *Full Transition to Competition*

Draft B institutes a 100kW threshold for consumer shopping. As previously noted, there is no justification for restricting consumer energy shopping. Draft B should include a mechanism for a transition to full competition for *all* customers by a date certain.

2. *Provider of Last Resort (POLR) and Standard Offer Service (SOS)* (Draft B R14-2-1604, R14-2-1606, R14-2-1613)

NEM supports the competitive provision of POLR/SOS service for the reasons previously stated. Draft B includes a number of provisions pertaining to both utility-provided POLR service and competitively-provided POLR service that would benefit from clarification. For example, Draft B appears to allow the utility and the utility affiliate to offer SOS. It is unclear if this is to occur simultaneously or some transition to the utility affiliate is contemplated. Draft B also permits competitively-provided POLR service. It is unclear if this is to be implemented coinciding with utility SOS. It is also unclear if there is a triggering event to transition exclusively to ESP-provided POLR service.

III. Conclusion

NEM appreciates this opportunity to submit comments on the draft rules package prepared by the offices of Chairman Burns and Commissioner Olson that was filed on February 10, 2020. NEM strongly believes that the public interest would be well-served through the implementation of retail electric competition for all consumers in the State of Arizona. We look forward to continuing to engage with the Commission and stakeholders in this proceeding.

Respectfully submitted,

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