

**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 Staff’s Report Regarding Possible Modifications to the Retail Electric Competition Rules filed on July 1, 2019, in the above-referenced docket. NEM participated in the December 3, 2018, Retail Electric Competition Workshop and filed comments dated December 11, 2018.² Revising the retail electric competition rules is a significant undertaking. NEM appreciates all of the work that Staff engaged in to prepare its proposed revisions. NEM also appreciates this opportunity to offer its comments on the proposed revisions with this submission and at the July 30th workshop.

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. NEM was formed when the retail choice movement was just beginning and is celebrating its 22nd anniversary this year. NEM and its members have participated in regulatory proceedings across the country related to the implementation of energy choice. NEM members

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

serve energy consumers of all sizes in the jurisdictions open for competition, and NEM members look forward to serving the energy consumers of Arizona with a diverse array of energy products, services and technologies. Given this experience, NEM can meaningfully contribute to the record to be developed by the Commission in this matter.

In anticipation of the July 30th workshop, Chairman Burns requested in a May 3, 2019, letter in the instant docket, that stakeholders describe “what they believe retail competition should look like in Arizona.” In other words, stakeholders were asked for their vision of an ideal retail market. NEM’s comments and the recommendations set forth herein are submitted from that perspective. In brief, the foundation of a successful retail electric market begins with the utilities exit from the commodity merchant function and competitive suppliers provision of energy and energy-related products, services, information and technologies to consumers. All consumers should be eligible to shop in the marketplace for energy as a result of an individual purchasing decision (outside of an aggregation). Default service pricing and utility delivery rate unbundling are critical to market transparency and informed consumer shopping. Rules should be designed to provide competitive suppliers with flexibility to make innovative product offerings and to rapidly respond to changing market conditions. Rules should also be designed to permit efficient and expeditious customer switching, streamlined and robust sharing of customer data, and customer-centric billing. These recommendations are addressed in greater detail below.

NEM’s comments are also submitted in view of Staff’s explanation in the Report that these proposed revisions “present an initial draft of Staff’s proposed modifications to the current rules” that “may undergo substantial revisions after the workshop process and informal comment before they are finalized, and the formal rulemaking process begins.” In this context, NEM’s comments are focused on the broader, foundational issues associated with designing and implementing a successful retail electric market.

I. Eligible Customers (R14-2-1601.20., R14-2-1604.A.)

Staff proposes that the availability of retail electric competition be limited to “eligible customers” defined as “all non-residential consumers who use more than 100 kW demand monthly.” Alternatively, consumers not meeting the monthly demand of 100 kW may combine their load to meet a minimum aggregation threshold of 1 MW in order to shop for a competitive supplier. Additionally, the proposed revisions would allow municipalities to procure power from a competitive supplier on behalf of residents, businesses and municipal accounts. NEM strongly recommends that *all* classes of consumers should be permitted to shop for a competitive electric supplier, and residential consumer shopping should not be limited to aggregations. In Texas (electric) and Georgia (natural gas), where the most successful energy choice markets have been instituted, all consumers were eligible for choice upon market opening, not just non-residential customers.

Staff’s Report offers no rationale or justification for imposing limitations on consumer eligibility to shop. Indeed, NEM submits that no reasonable rationale or justification exists. Consumers, including residential consumers, are becoming increasingly savvy about energy and technology-enabled energy products and services and are demanding access to energy choice options. 21st century consumers are far more technologically savvy, and the internet provides unfettered access to abundant informational resources, that can be supplemented through targeted consumer education campaigns about retail energy choice. Moreover, consumers in the digital age expect to be able to shop and purchase all manner of goods and services and have those purchases fulfilled instantaneously, or nearly so. There is simply no reason to differentiate energy and energy-related services from the products that consumers to shop for.

Competitive energy providers are uniquely situated to meet the needs of the 21st century energy consumer. Utility monopoly core competencies do not lie in the creation, development and offering of innovative energy products and services. That is where competitive energy suppliers excel – proactively identifying consumer preferences and then nimbly and swiftly creating responsive products to meet evolving consumer demand. Competitive energy providers that make these offerings available are funded by at-risk capital rather than ratepayer-backed guarantees.

Customer aggregation programs have been utilized in some states to permit consumers to leverage their joint buying power to procure energy at a lower cost or to buy particular energy products, such as renewable energy, or both. Aggregation programs, when properly designed in a competitively neutral manner, may be an option to consider in market opening, as a means of familiarizing consumers with choice and may potentially enhance mass market consumer participation in retail energy markets. Importantly however, an aggregation program should not supplant individual consumer shopping or prevent individual consumers from exercising their right to shop for a different choice of supplier to suit a consumer's personal preferences.

NEM also submits that it may be premature to address the finer details of the retail electric competition rules without first establishing which consumer classes can shop. The rules should be tailored to address the different needs of competitive supplier service to different consumer groups. For example, differentiating requirements for service to a sophisticated large commercial consumer versus a small mass market consumer.

II. Commencement of Competition (R14-2-1602, R14-2-1604)

The proposed rules do not include a date for the commencement of competition. The sooner a date is established for retail electric competition to commence, the sooner competitive suppliers can initiate investments to participate in the market to serve consumers and to develop energy product

offerings. Moreover, competitive suppliers have amassed significant experience and expertise in serving consumers in other choice jurisdictions, including developing customer service systems, information technology systems and commodity merchant functions. These investments and expertise can be leveraged to expedite the start date of competition in Arizona.

III. Provider of Last Resort and Standard Offer Service (R14-2-1601.37, R14-2-1606)

The proposed rules contemplate that the utilities will serve as the provider of last resort (POLR) and render Standard Offer Service (SOS). NEM submits that utilities should exit the commodity merchant function and that the POLR function can and should be rendered by a competitive electric supplier(s). When utilities exit the commodity merchant function, they can focus their resources on their core competency of maintaining reliable delivery infrastructure. This policy decision is critical to laying the foundation for a well-functioning retail electric market.

In those states where the utilities have exited the commodity merchant function role, specifically Texas (electric) and Georgia (natural gas), consumers have benefitted from robust competition from numerous suppliers offering a diverse array of products. In Texas, over one hundred retailers are participating in the marketplace to provide consumers with over three hundred unique products; an approximate 31% reduction in rates since the introduction of competition; robust customer shopping in all customer classes; extensive availability of price comparison information and consumer education resources; and an exceedingly low complaint rate.³ In Texas and Georgia, energy choice was available to all customers upon market opening – not just for non-residential customers.

³ “2019 Scope of Competition in Electric Markets,” report of the Public Utilities Commission of Texas, pages 2-5, available at: https://www.puc.texas.gov/industry/electric/reports/scope/2019/2019scope_elec.pdf

By contrast, those retail choice jurisdictions that chose 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 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.

When the utility exits the commodity merchant function and focuses on its core delivery function, this shifts commodity-related risks 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. Consumers 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.

The proposed rules are also lacking in detail as to how SOS pricing will be established. It is critical that SOS pricing be reflective of current market conditions to provide transparency to the market and so that consumers can see and respond to market-based pricing signals. The frequency of SOS pricing changes should also be differentiated by customer class. For example, SOS pricing for

large commercial and industrial customers who can be billed hourly could be based on an hourly, time of day rate. With respect to small commercial and residential customers, SOS pricing could be a monthly-adjusted, market-based commodity rate.

IV. Unbundling Delivery Service Rates (R14-2-1606.C-E.)

When a retail electric market is opened for competition, utility rate unbundling permits price competition by suppliers of energy and related products, services and technologies. Rate unbundling also permits consumers to see and understand the full extent of the costs associated with utility commodity default service and to make accurate, informed comparisons with competitive offerings. The proposed rules contemplate that the utilities will unbundle certain competitive functions from delivery service rates for that purpose.

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. This is because the costs incurred by utilities to provide default service are paid by competitive supply customers and utility full service customers in utility delivery service rates even though the utilities incur these costs to serve default service customers *only*. 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 must include the indirect costs of rendering default service. It must 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 default service.

V. Tariffs (R14-2-1603.B.3., R14-2-1610)

In view of the history of market rules in Arizona, including the incorporation of a tariff filing component, it is critical that competitive suppliers be provided with flexibility within that regime to innovate and to offer customized products to consumers. The rules should promote the goals of providing consumers with pricing transparency while also retaining a necessary level of flexibility for competitive electric suppliers to be able to respond to dynamically changing market conditions to offer different pricing plans. In other words, overly proscriptive tariff filing requirements would have the negative consequence of limiting suppliers' ability to offer innovative services and rates in the market.

VI. Customer Enrollment Methods (R14-2-1611.C.)

Enrollment methods should permit competitive suppliers to cost-effectively and efficiently do business. Enrollment methods should also meet consumer expectations about how they should be able to effectuate a switch in supplier while ensuring consumer protections. The proposed rules include provision for "written authorization" by a consumer to switch providers. The proposed rules should reflect and explicitly permit not only written authorization to switch, but also telephonic and web-based enrollments, as is permitted in other choice jurisdictions. Indeed, electronic signatures have the same legal effect as "wet signatures" under federal law.

VII. Customer Data Availability (R14-2-1606.G., R14-2-1611.J.3. and 4.)

The proposed rules address the availability of customer data to competitive suppliers in a limited fashion. The provision of customer data to competitive suppliers is fundamental to the successful functioning of the market, particularly given the evolution of data-driven energy products and services. The availability of data has attained greater significance in view of consumer desire for increasingly innovative energy products and services. Competitive suppliers need timely access to granular data in order to design and provide innovative products that are responsive to consumer needs. A streamlined mechanism must exist by which competitive suppliers can obtain billing quality data for all of their customers, with customer authorization. Customers should be able to authorize third party providers to have access to their information, and the access should be free of charge.

VIII. Consolidated Billing (R14-2-1611.M., R14-2-1611.J.)

The proposed rules are unclear as to the billing options that will be available in the marketplace. Based on experience in other retail choice jurisdictions, consumers prefer to receive a single consolidated bill for utility delivery charges and competitively-provided energy products and services. The proposed rules should explicitly provide for a consolidated billing option, including supplier consolidated billing. Billing is an inherently competitive function as is well-demonstrated in all facets of American commerce. As competitive retail markets have matured, competitive suppliers have increasingly added billing technology, and its expert use, to their menu of services that they can render to provide consumers with more innovative, customer-focused products and services.

IX. Consumer Switching Timeframe (R14-2-1611)

The proposed rules should explicitly include a timeframe within which consumer switching to a different supplier will be processed by the utilities. Many choice jurisdictions have adopted a three business day switching rule.⁴ Assumptions about the timeframe for processing consumer switches that have been held over for two decades since the rules were first drafted should be reexamined in view of technological advances as well as consumer expectations as to how quickly a change in supplier can be effectuated. Consumers have now come to expect that they can purchase products and services and receive them without delay. For example, switching cell phone providers can be effectuated and completed through a single phone call. The rules should reflect these expectations to the extent they are technologically feasible.

X. Renewable Energy Goal and Standard (R14-2-1614)

The proposed rules would require any load serving entity to meet established renewable energy goals or standards. The proposed rules appear to contemplate that funds collected through the System Benefits Charges would be applied to both utilities and competitive suppliers fulfilling that obligation. Further clarification of this mechanism should be provided with a view to ensuring that the costs of a renewable goal or standard are not disproportionately borne by competitive supply customers.

Conclusion

NEM appreciates this opportunity to submit comments on Staff's Report Regarding Possible Modifications to the Retail Electric Competition Rules filed on July 1, 2019. NEM strongly

⁴ 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."

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,

Craig G. Goodman, Esq.
President
National Energy Marketers Association
3333 K Street, NW, Suite 110
Washington, D.C. 20007
Tel: (202) 333-3288
Email: cgoodman@energymarketers.com

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