

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND**

**In the Matter of the Commission's  
Investigation of Investor-Owned Electric  
Companies' Standard Offer Service for  
Residential and Small Commercial  
Customers in Maryland**

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**Case No. 9117**

**PETITION TO INTERVENE OUT OF TIME AND RESPONSE  
OF THE NATIONAL ENERGY MARKETERS ASSOCIATION**

The National Energy Marketers Association ("NEM") hereby leaves to intervene out of time in the above-captioned proceeding in order to respond to CPV Maryland LLC's ("CPV") July 6, 2009 Motion. In support of this pleading, NEM states the following:

1. On July 6, 2009, CPV filed a motion requesting that the Commission issue an order requiring one or more of the Maryland investor-owned utilities to enter into long-term contracts for the sale of power from CPV's proposed generating facility ("Motion"). Specifically, CPV requested that the Commission require one or more of the investor-owned utilities in Maryland to enter into long-term, 20-year power purchase agreements with CPV. On July 14, 2009, the Commission issued a Notice of CPV filing and requested responses to the Motion by August 11, 2009.

**I. PETITION TO INTERVENE**

2. NEM's membership includes leading wholesale and retail energy suppliers and major energy consumers, as well as independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges, demand side and load management firms, direct marketing organizations, 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.

3. NEM requests that the following individuals be added to the official service list in this proceeding and receive all pleadings, communications, documents and correspondence concerning this case:

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4. NEM, as a representative of a regionally diverse group of providers of energy and energy-related services, has an interest in the implementation of rates, tariffs, operating procedures, standards of conduct, rules, and policies that will ensure the development and maintenance of an efficient, reliable and price competitive electric market in Maryland. NEM's

membership, which includes electric marketers and providers of energy-related services and technologies, is serving and intends to serve customers in the Maryland electric market, including residential, commercial, and industrial customer segments. The ability of NEM's members to participate in a competitive retail electric market in Maryland will be affected by the outcome of this proceeding.

5. NEM, as a participant in restructuring proceedings nationwide, will be able to bring a broad perspective to the deliberative process. NEM's participation in this proceeding should aid the Commission by enhancing the quality of the record to be developed here. NEM can lend a unique perspective to this proceeding because its membership represents a diverse cross-section of market participants.

6. Even if other trade associations or individual marketers are intervened in this matter, NEM's interests and position are significant and unique given its industry diversity, its members' interest in serving commercial, industrial, and residential customers, its participation in restructuring in Maryland and other multiple jurisdictions on similar issues, and the substantial business interests of its members in the development of a viable electric market in Maryland.

7. NEM and its members have a direct interest in this proceeding. As discussed in detail below, NEM and its members are significantly concerned about the potential negative impact on retail choice of the Commission requiring 20-year long-term power purchase contracts to be entered into by Maryland's investor-owned utilities. In particular, NEM and its members are concerned that such long-term power purchase agreements will have a significantly detrimental impact on the development of the retail electric markets in Maryland. As such, the interests of NEM and its members in this proceeding cannot be adequately represented or protected by any

other party hereto. No other party can adequately represent NEM's interests, particularly since the July 6, 2009 motion by CPV could have a material impact on NEM and its members.

8. Section 3-106 of the PUC Article provides that an entity shall be granted leave to intervene in a Commission proceeding if the parties to the proceeding do not adequately represent the entity's interests. Granting NEM's petition to intervene in light of CPV's recently filed motion is appropriate and will not cause undue delay or unjustly prejudice any existing party because NEM is willing to accept the record as it already exists. Under all these circumstances, NEM submits that good cause exists to grant it leave to intervene out of time in this proceeding.

## **II. RESPONSE**

9. In its Motion, CPV is requesting that the Commission require one or more Maryland investor-owned utilities to enter into long-term contracts with CPV for all of the capacity and energy from a proposed CPV generating facility. In the alternative, CPV requests that the Commission itself negotiate a contract with CPV on behalf of an investor-owned utility. NEM is strongly concerned about the significant negative impact on retail choice of the long-term, twenty-year investor-owned utility contracting suggested by CPV's Motion. NEM urges the Commission to reject CPV's Motion.

10. NEM is very concerned that the long-term, twenty-year contracting suggested by CPV would represent a huge step backward. CPV is attempting to get through regulation what it was unable to accomplish competitively, thus shifting all the risks of its proposed generation project from investors to Maryland's consumers. The restructuring of the natural gas and electricity industries was initiated in large part because the historical cost-of-service approach to energy

supply and demand facilitated a steady increase in the costs for energy to the ultimate consumer, even in times of declining natural gas wellhead prices. Past experience with the historical cost-of-service approach to energy supply facilitated a steady increase in consumers' energy rates because of generation construction cost overruns and inefficient operation of plants. It was recognized that regulated rates are a poor proxy for the efficiencies, innovations and potential price savings yielded by competitive markets. Competitive market participants are in the best position to control supply-related risks, and they do so without the requisite guaranteed return of and return on utility investments, all risks which CPV is proposing to be borne by captive ratepayers.

11. NEM submits that the use of scarce utility capital, credit and resources is sorely needed for new distribution and transmission investments, and such investments will increase the long-term reliability of the Maryland energy market. Moreover, NEM submits that mandating ratepayers to blindly fund twenty year supply contracts without regard to other competitively available supply or demand reduction options will inevitably lead to higher costs, and ultimately lead to less supply and fewer demand-side investments. If investor-owned utilities are forced into making long-term generation investments rather than or in addition to needed infrastructure investments, they should do so via competitive bidding to achieve the "best price" for Maryland consumers. Reliance on a competitive bidding process can also address the Commission's desire to structure the SOS process to achieve the best price for customers, minimize price increases, and still encourage retail energy competition.

**A. Long-Term Investor-Owned Utility Contracting Is Not the Appropriate Solution to the Issues Raised by CPV**

12. CPV's Motion does not satisfy the relevant statutory requirements that require competitively bid supplies.<sup>1</sup> CPV's proposal provides no opportunity for a competitive RFP process to allow the Commission to determine if there are alternative supply or demand reduction options available at a lower cost to consumers. Additionally, CPV fails to provide the costs associated with its proposed plant. Given these circumstances alone, the Commission cannot possibly make a determination that this proposal represents the "best price" to Maryland consumers.

13. The underlying premise of CPV's Motion is the assumption that long-term investor-owned utility contracting is a prerequisite to getting new capacity resources financed and built. The truth is, competitive market pricing signals for both the supply of and reduction of demand for energy is the best way to determine when new generation is needed. This also begs the question of whether there is a far more complex set of issues that are determinative of whether new generation gets built and whether addressing these other issues would create the framework necessary for competitive entities to bring new capacity resources into the State without requiring investor-owned utilities to enter into long-term contracts. NEM submits that the answer to this question is yes. There are a host of issues that influence whether generation capacity gets built. These include, amongst others: a) inadequate market-based pricing signals; b) the uncertainty created by proposals such as this; c) lack of settled national policy on

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<sup>1</sup> Section 7-510(c)(4)(ii) of the PUC Article provides that the Commission "shall" require IOUs to utilize a competitive process, and "may" require investor-owned utilities to utilize bilateral contracts, to attain an SOS price "that is designed to obtain the best price for residential and small commercial customers in light of market conditions at the time of procurement and the need to protect these customers from excessive price increases."

environmental standards; d) lack of long-term firm transmission rights; and e) expectations of the financial community.

**C. Long-Term Investor-Owned Utility Contracting is Inconsistent with State and Federal Policies in Favor of Demand Response**

14. Another persuasive reason to reject CPV's proposal is the dampening impact on the development of demand response resources. Long-term investor-owned utility contracting is inconsistent with sending market-based pricing signals necessary to support both alternative sources of new supplies as well as consumer demand response. The federal government in the Energy Policy Act of 2005 and this Commission have both recognized the importance of demand response for empowering consumers. The federal Energy Policy Act of 2005 ("EPAAct") sets forth a national policy in support of demand response. It provides that,

It is the policy of the United States that time-based pricing and other forms of demand response, whereby electricity customers are provided with electricity price signals and the ability to benefit by responding to them, shall be encouraged, the deployment of such technology and devices that enable electricity customers to participate in such pricing and demand response systems shall be facilitated, and unnecessary barriers to demand response participation in energy, capacity and ancillary service markets shall be eliminated.<sup>2</sup>

In support of this national policy, EPAAct requires electric utilities to offer "time-based rate schedules" and supporting "time-based meters."<sup>3</sup>

15. However, it must be noted that, consumers should not be expected to reduce demand in response to long-term, non-time-differentiated, averaged rates that provide no incentive or reward for such behavior. If the Commission were to require investor-owned utilities to enter into long-term contracts for generating capacity, it would be doing so at the "cost" of

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<sup>2</sup> Energy Policy Act of 2005, Section 1252(f).

<sup>3</sup> Energy Policy Act of 2005, Section 1252(a).

blunting/restricting the exact price responsive demand behavior that could offset the perceived need for generation investments. The federal Department of Energy (“DOE”) succinctly stated that, “[r]etail electricity prices that are linked to contemporaneous supply costs or prices are one of the principal mechanisms for accomplishing demand response.”<sup>4</sup> Conversely, “[f]at, average-cost retail rates that do not reflect the actual costs to supply power lead to inefficient capital investment in new generation, transmission and distribution infrastructure and higher electric bills for customers.”<sup>5</sup>

**D. Long-Term Investor-Owned Utility Contracting for Generation Resources Would Add Additional Layers of Unnecessary Costs and Complexities to the Retail Marketplace**

16. At the inception of deregulation, a contentious issue was utility recovery of stranded costs for base rate plants that were built for the benefit of all ratepayers. Stranded generation costs that were reasonably incurred and prudently mitigated should arguably have been spread to all customers on that basis. However, long-term investor-owned utility contracting at the current stage of market development would interpose a new layer of both unknown and unnecessary costs and complexities onto the retail energy marketplace. For instance, current migrated customers would not benefit from new utility plants and should not be required to pay for them. This layer of regulatory cost and risk is completely avoidable through the reliance on market-based solutions for the State’s capacity needs.

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<sup>4</sup> U.S. Department of Energy, Benefits of Demand Response and Recommendations, February 2006, at 52.

<sup>5</sup> U.S. Department of Energy, Benefits of Demand Response and Recommendations, February 2006, at v.

### **III. CONCLUSION**

17. WHEREFORE, for the foregoing reasons, NEM urges the Commission to: (1) permit NEM to intervene in this proceeding with the full rights of a party; and (2) permit competitive market forces, rather than regulatory intervention, to identify and meet the need for new generation investments in Maryland. Such investments can be encouraged without the costs and risks of new regulations or investor-owned utility mandates and without stifling the development of the competitive retail energy market.

Respectfully submitted,

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August 11, 2009

Attorney for  
The National Energy Marketers Association

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11<sup>th</sup> day of August 2009, a copy of the foregoing document has been served by mail, first class, postage prepaid, upon all parties listed on the official service list in this proceeding.

Dated at Washington, D.C. this 11<sup>th</sup> day of August 2009.

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