

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Rulemaking: Natural Gas)
Distribution Company Business Practices) **Docket No. L-2017-2619223**
52 Pa. Code § 62.225)

**Comments of the
National Energy Marketers Association**

The National Energy Marketers Association (NEM)¹ hereby submits comments pursuant to the Advance Notice of Proposed Rulemaking Order (ANOPR) entered on August 31, 2017, and published in the September 16, 2017, Pennsylvania Bulletin. This proposed rulemaking pertains to Commission regulations at 52 Pa. Code § 62.225 regarding the release, assignment or transfer of capacity. The ANOPR builds upon significant work from the stakeholders over the years to improve the competitive natural gas retail market in Pennsylvania beginning with the Commission’s 2004 investigation² into the natural gas supply market and resulting 2005 Report to the General Assembly;³ the SEARCH stakeholder collaborative and Report⁴ and resulting 2008 Commission Order;⁵ a 2009 rulemaking on standard business practices and communication standards for natural gas utilities that was subsequently withdrawn;⁶ and the Commission’s 2013

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.

² Docket No. I-00040103, Order entered May 28, 2004.

³ Docket No. I-00040103, Report to the General Assembly on Competition in Pennsylvania’s Retail Natural Gas Supply Market, October 2005.

⁴ Docket No. I-00040103F002, SEARCH Report dated September 2008.

⁵ Docket No. I-00040103F002, Final Order and Action Plan, adopted September 11, 2008.

⁶ Docket No. L-2009-2069117, Proposed Rulemaking Order, adopted April 30, 2009, and Order Withdrawing Rulemaking, adopted December 1, 2011.

investigation⁷ into the natural gas supply market culminating in a 2014 Order.⁸ NEM participated and commented extensively in these investigations and resulting proceedings. NEM strongly supports and appreciates the Commission's established history of leadership in pursuing the continued development of the competitive retail gas market in the Commonwealth.

The 2014 Order tasked a workgroup "to study potential changes or standardization of the use of capacity and storage assets that could improve competition," as well as "investigating system balance, tolerances and penalties and creditworthiness requirements."⁹ The stakeholder discussions in the workgroup were used to develop the proposal in the instant matter. In the ANOPR the Commission proposes: 1) that all customers, regardless of shopping status, be charged the average system cost of capacity as a nonbypassable charge, rather than having competitive natural gas suppliers (NGSs) pay for released capacity assets; 2) that NGSs be provided with virtual access to capacity assets that the utility cannot release due to reliability or other constraints; 3) to allow daily imbalance trading between market participants at the utility level and between choice and transportation programs; and 4) to standardize the penalty mechanism during off-peak periods, to be based on local gas costs and incorporating a multiplier.

NEM's longstanding position on capacity release is that assets should follow the customer, i.e., as individual customers leave a utility's system supply for that of a competitive supplier, the customer should be assigned capacity, and it should be accomplished under the same terms and conditions as that customer would have received as a utility sales customer. Assets should be made available on an equitable and non-discriminatory basis, both in terms of allocation and utilization rights.

⁷ Docket No. I-2013-2381742, Order, adopted September 12, 2013.

⁸ Docket I-2013-2381742, Final Order, adopted December 18, 2014 ["2014 Order"].

⁹ Docket I-2013-2381742, Final Order, Page 14.

This ensures that customers have equal access to the assets for which they pay. NEM has also recommended that capacity release rules promote increased transparency in capacity allocations and streamlining and standardization of the rules in general. The Commission recognized in the 2014 Order that capacity release rules could be enhanced when it charged the workgroup “with examining the interplay among these issues to see if changes can be made to improve the competitive landscape while ensuring system reliability.”¹⁰

NEM appreciates the continued efforts of the Commission to review and improve the capacity release rules to support competitive market development. While understanding that the capacity release proposals were offered with the purpose of improving the competitive marketplace, our review was somewhat inhibited by the generalized nature of the description of certain of the proposals. NEM’s questions and comments on the proposals are set forth in greater detail below. NEM respectfully suggests that it may be beneficial to all of the stakeholders to convene a technical conference during which the details of the ANOPR can be discussed and explored.

1) Uniform Capacity Costs for All Customers

The Commission proposes that all customers should pay for the average system cost of capacity, regardless of their shopping status, instead of having the NGS pay for released capacity assets. The Commission opined this would reduce risk for utilities and NGSs and provide NGSs with the improved ability to offer innovative or lower priced services. Additionally, “[s]ystem reliability and stability is ultimately the concern of all customers and therefore, such factors like peak day should be borne by all customers fairly and equitably with no regard to shopping or non-shopping status.” [ANOPR at 9]. The Commission proposes to add language to the regulations at Section

¹⁰ 2014 Order at page 19.

62.225(a)(3) reflecting this proposal as follows: "Capacity or Pennsylvania supply costs shall be charged to all customers as a non-bypassable charge based on the average contract rate for those services."

While NEM appreciates the stated purpose of the proposal to create "immediate and potentially lasting benefits for competition," some associated issues remain unclear. In general, the proposal does not address whether the uniform capacity charge mechanism will include a change in the underlying capacity release program. If the uniform capacity charge mechanism is not accompanied by a commensurate change in which assets are released to NGSs and which assets are retained by the utilities so that NGSs receive an allocation more closely approximating a true "slice of the pie" than they currently receive, it is not clear that the competitive suppliers will indeed be better off under the proposal.

It is also unclear how the uniform capacity charge would be expressed on the customer bill. Capacity costs should be transparently communicated to consumers so that they know what they are paying for on the bill. Relatedly, it raises the issue of ensuring that capacity costs are properly allocated and unbundled from utility delivery rates and included in the charge.

Finally, the proposal suggests that the uniform capacity charge would be beneficial in eliminating the need for NGSs to pay for capacity up front or recover a certain dollar amount to break even. There is a concern that through the implementation of a uniform capacity charge under which suppliers are relegated to competing solely on commodity that it may become more challenging to compete with the utility monopoly, not less so. In other words, suppliers may have a reduced resulting ability to "out compete" the utility.

NEM submits that increased detail about the uniform capacity charge and its implementation would be beneficial in understanding and addressing these potential issues. NEM suggests that a technical workshop be convened to include experience gained from Peoples Gas' current use of a uniform capacity charge.

2) Capacity Assignment from All Assets – Virtual Access to Assets

With respect to which capacity assets are released to NGSs, the Commission proposes to require the use of virtual access to assets that the utility cannot otherwise offer due to reliability or other restrictions. Current Commission regulations at Section 62.225(a)(2) require that, "capacity assets must follow the customers for which the NGDC has procured the capacity, subject only to the NGDC's valid system reliability and FERC constraints." The Commission proposes to add language to that section of the regulations as follows: "When release must be restricted due to reliability or other constraints, an NGDC shall develop a mechanism that provides proxy or virtual access to the assets." NEM agrees with the intent of the proposal, namely to address the inequitable and restricted access to capacity assets by NGSs that creates a barrier to competition.

While the intended purpose of the proposal to provide competitive suppliers with virtual access to reliability assets is meritorious, NEM suggests that increased detail and transparency is needed associated with what is or will be deemed a "reliability asset" by the utility. Utilities should not be permitted to hide behind the cloak of the term "reliability asset" to unduly restrict supplier access to assets. Utility justification of that designation and transparent communication to suppliers is needed. NEM also recommends that more information about how virtual pooling will work under the proposal be provided to stakeholders.

3) Imbalance Trading

The Commission proposes that daily imbalance trading between market participants at the utility level and between choice and transportation programs be implemented to provide NGSs with the improved ability to avoid penalties. The regulations are proposed to be revised to include a new Section 62.225(a)(5) to implement daily imbalance trading as follows:

An NGDC shall provide the opportunity for imbalance trading on the day the imbalance occurred. Capacity may be traded between market participants provided that either:

- 1) The trade improves the position of both parties.
- 2) The trade improves the position of one party and is agreed to by the second party but does not negatively impact the second party's imbalance.

Imbalance trading is a source of flexibility for suppliers that affords them with a means to minimize the costs to deliver natural gas to consumers. NEM supports the imbalance trading proposal on that basis. Moreover, by implementing a standardized approach in the Commission's regulations as is proposed, it provides competitive suppliers with a more definitive basis upon which to do business across utilities, thereby providing greater certainty of the costs of participating in the retail natural gas market. NEM also agrees that communication of real-time information is critical to the successful functioning of daily imbalance trading.

4) Penalty Structure During Non-Peak Times

The Commission proposed to standardize the penalty mechanism applicable during off-peak periods. Under the proposal, utilities would establish penalties based on local gas costs and incorporate a multiplier, expressed as, for example, a standard percentage or a market-based formula. The Commission proposes the following language to reflect the proposals on penalties:

"Penalties during system off-peak periods must correspond to market conditions.

1) An NGDC shall use the system average cost of gas as the reference point for market based penalties. If an NGDC takes service from a local hub, it may use the local hub as a reference point for market based penalties.

2) The lowest penalty must be set at the market price."

NEM agrees with the Commission that penalties should be market-based. Additionally, penalties should be focused on deterring actual problems and not be unnecessarily punitive. In this regard, in establishing a standard mechanism for off-peak penalties, it is important to note that there is plenty of capacity during off-peak periods. Thus, the off-peak penalties should properly be designed so the "punishment fits the crime." The use of a multiplier in computing a penalty should be limited to a reasonable percentage, reflective of the off-peak period.

Conclusion

NEM appreciates this opportunity to offer its comments on the proposed modifications to the Commission's capacity release regulations and looks forward to future opportunities to participate in the discussion of these issues.

Sincerely,

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