

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

<b>In the Matter of Energy Service Company</b>	)	
<b>Price Reporting Requirements</b>	)	<b>Case 06-M-0647</b>
<b>In the Matter of Retail Access Business Rules</b>	)	<b>Case 98-M-1343</b>

**COMMENTS OF THE NATIONAL ENERGY MARKETERS ASSOCIATION**

The National Energy Marketers Association (NEM)<sup>1</sup> hereby submits comments on the Petition filed by the Retail Energy Supply Association [hereinafter "Petition"] dated March 25, 2011, in the above-referenced proceedings and pursuant to the May 11, 2011, New York State Register. The Petition argues that the current electric utility monthly price reporting is "confusing, inaccurate and misleading." (Petition at 1). It suggests that the Power to Choose website only display electric residential pricing available from marketers, without any utility pricing. (Id.). It further suggests that, "at a minimum, it would behoove the Commission that those electric utilities who do not forecast a price for the beginning of the month but calculate the charges after the billing cycle is completed, should not post any prices on the web site." (Petition at 4). NEM supports the relief requested in the Petition. NEM would additionally suggest the removal of the electric utility pricing information should be accompanied in the interim by a utility pricing disclaimer on the Power to Choose website that discloses to consumers that electric

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<sup>1</sup> 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.

prices fluctuate on a daily basis and that prices can be extremely volatile, particularly in peak seasons. In the long term, NEM recommends that a stakeholder collaborative be formed for the purpose of studying how electric utility pricing can be disclosed to consumers in a more accurate, transparent and timely fashion.

The Petition clearly demonstrates that there are multiple problems with electric utility price reporting on the Power to Choose website – the types and quality of pricing information reported by the utilities varies widely; the information does not bear a relation to current market conditions or pricing; and some utilities do not post any information at all. That being the case, not only is it extremely difficult for consumers to evaluate and compare the utility price to competitive offerings in the marketplace, the information presented can mislead consumers, cause them to draw false conclusions about the utility price and discourage them from considering otherwise beneficial competitive options. Under these circumstances, removing the electric utilities' prices from the Power to Choose website is a reasonable short-term solution to prevent consumers from being misinformed.

However, the Petition and the electric utilities current presentation of pricing information on the Power to Choose website underscores a larger systemic problem. While removing utility pricing from the Power to Choose site may ameliorate the current situation of consumers being provided with inaccurate utility pricing information, NEM submits that improved utility pricing transparency and accuracy should be the greater overall long-term goal. Utility default service rates to mass market consumers should be monthly-adjusted market-based rates and reflect the full costs of providing 24/7 no-notice last resort service. All commodity-related costs the utility incurs should be reflected in its

default service rate. This utility rate information should be made available to consumers on a timely basis (i.e., coincident with the timeframe in which they can evaluate competitive offers) and made available in a central location. The Power to Choose website is an excellent place for this information to reside. However, consumers should not have to consult additional utility tariff postings to derive the full default service rate that they are being charged. The utility rate with all applicable adjustments should be made conveniently and transparently available to consumers.

Indeed, after the Commission issued its decision requiring price reporting by competitive marketers, it noted the corresponding requirement that, “[a]s discussed in the Retail Market Policy Statement, some degree of utility commodity price transparency is necessary if competitive retail commodity markets are to function properly. Customers and market participants must be able to obtain the price information necessary for making intelligent price comparisons.”<sup>2</sup> The Commission established utility hedging reporting requirements to improve the transparency of utility rates.<sup>3</sup> However, the Commission decided that, “Additional steps to achieve more improvements to comparability, and to devise Web site comparison tools, are left to other proceedings.”<sup>4</sup>

NEM recommends that the time is now to achieve more improvements to comparability and utility price transparency. The first step is to remove the current electric utility

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<sup>2</sup> CASE 06-M-1017 - Proceeding on Motion of the Commission as to Policies, Practices and Procedures For Utility Commodity Supply Service to Residential and Small Commercial and Industrial Customers, ORDER INSTITUTING PROCEEDING AND NOTICE SOLICITING COMMENTS, Issued and Effective August 28, 2006, at page 5, citing Retail Policy Market Statement, pp. 35-36.

<sup>3</sup> CASE 06-M-1017 – Proceeding on Motion of the Commission as to the Policies, Practices and Procedures For Utility Commodity Supply Service to Residential and Small Commercial and Industrial Customers, ORDER REQUIRING DEVELOPMENT OF UTILITY-SPECIFIC GUIDELINES FOR ELECTRIC COMMODITY SUPPLY PORTFOLIOS AND INSTITUTING A PHASE II TO ADDRESS LONGER-TERM ISSUES, Issued and Effective April 19, 2007.

<sup>4</sup> Id. at 28.

pricing information from the Power to Choose website accompanied by a utility pricing disclaimer on the Power to Choose website that discloses to consumers that electric prices fluctuate on a daily basis and that prices can be extremely volatile, particularly in peak seasons. Then, in furtherance of the long-term goal of improved utility price transparency and accuracy, NEM suggests that a stakeholder collaborative be formed for the purpose of studying and recommending to the Commission enhancements that can be made to utility pricing presentation in the future.

In NEM's view, the basic information an educated consumer needs to know includes their usage and their current applicable utility rate. The current applicable utility rate should be conveyed in a transparent manner that:

- 1) is fully unbundled on an embedded cost basis,
- 2) discloses whether and how utility hedging is reflected,
- 3) discloses how frequently the utility rate is subject to change,
- 4) discloses that the utility rate is subject to adjustment for true-ups, and
- 5) discloses what current rate adjustments are in effect.

Without these disclosures pertaining to utility rates being made available to consumers, the value of the price reporting undertaken by marketers is diminished in value inasmuch as a proper baseline construct for comparison will be lacking.

Consumers need to understand that energy commodity is volatile and that market prices can change frequently. The purpose of competitive marketer reporting and utility price posting should be to inform the public of the range of actual purchase prices that are

reasonably recent. A properly worded disclaimer can and should safeguard against confusion. It is critical that consumers understand that they do not currently have access to fully unbundled utility prices making true price-to-price comparisons very difficult or impossible. The failure to fully and properly unbundle means that consumers are paying hidden cross-subsidies in their delivery rates of what should properly be accounted for as commodity rates. In addition, if no-notice default service costs are not fully unbundled from delivery service rates, then the utility is still permitted to profit from rendering default commodity service rather than it being a direct pass through of those costs. It is critical to ensure that no-notice last resort utility commodity service is accurately priced and consumers have real apples-to-apples price comparisons in the marketplace until the utilities exit from the merchant function.

## **Conclusion**

NEM supports the relief requested in the Petition that the electric utility pricing be removed from the Power to Choose website. NEM recommends that the removal of the electric utility pricing information be accompanied in the interim by a utility pricing disclaimer on the Power to Choose website that discloses to consumers that electric prices fluctuate on a daily basis and that prices can be extremely volatile, particularly in peak seasons. As a long term goal, NEM recommends that a stakeholder collaborative be

formed for the purpose of studying how electric utility pricing can be disclosed to consumers in a more accurate, transparent and timely fashion.

Sincerely,

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Dated: June 27, 2011.