**STATE OF CONNECTICUT**

**PUBLIC UTILITIES REGULATORY AUTHORITY**

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| **PURA REVIEW OF VARIABLE RATES** | **)** | **DOCKET NO. 15-06-15** |
| **PURSUANT TO PUBLIC ACT 15-90, AN ACT** | **)** | **July 31, 2015** |
| **CONCERNING VARIABLE ELECTRIC RATES** | **)** | |

**COMMENTS OF**

**THE NATIONAL ENERGY MARKETERS ASSOCIATION**

The National Energy Marketers Association (NEM)[1] hereby submits its written comments in the above-referenced proceeding pursuant to the Authority's Notice of Request for Written Comments dated July 6, 2015, as well as the Authority's July 16, 2015, Letter Ruling granting NEM and all parties and intervenors an extension of time until July 31, 2015, to file written comments. In the original Notice the Authority asked a series of nine questions to assist in its interpretation and implementation of Public Act 15-90. The Authority's interpretation of the new law will have a significant impact on the ability of residential electric consumers to be cost-effectively served in the competitive retail electric marketplace in Connecticut. The main issue for consideration by the Authority is the definition of "variable rate" and "month to month rate" in a manner that is consistent with consumer usage and understanding of the terms, prior Authority decisions and practical considerations underlying the structure, pricing and risks of contractual agreements. As more fully explained herein, NEM recommends that the term "month to month rate" be construed as a rate that is subject to change on a monthly basis.

[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.

1. **The Act directs the Authority to: "…initiate a proceeding to develop recommendations and guidance regarding (1) what type of generation services rate structure is best suited for residential customers who allow a fixed contract with an electric supplier to expire and begin paying a month-to-month rate for generation services from such supplier; and (2) what change to the generation services rate and to the terms and conditions of such service that customers may experience after the expiration of a fixed contract when such customers begin paying a month-to-month rate."**

    a. **Comment on the best generation rate services structure that would accomplish the goals of the Act.**
    b. **Comment on the practicalities of implementing and managing such a month-to-month rate.**

The Act adds a new subdivision 4 to section 16-245o(g) of the general statutes that, as of October 1, 2015, prohibits an electric supplier from entering into a contract with a residential customer that charges, "a variable rate for electric generation services," or that automatically renews and charges a residential customer, "a variable rate for electric generation services." The Act then also explicitly recognizes in new subsection (o) of section 16-245o that residential customers served under fixed rate contracts with electric suppliers, in which the customers allow the fixed rate contracts to expire, would be served under and, "begin paying a month-to-month rate for generation services from such supplier." The legislature did not define these terms in the Act. The legislature's use of the terms "variable rate" and "month-to-month rate" must be read in a way to ascribe reasonable meaning to both terms. Plainly, the legislature intended the term "variable rate" to be interpreted differently from a "month-to-month rate," through its prohibition of the first and endorsement of the latter.

Common usage and understanding is that a "month to month rate" is subject to change on a monthly basis. To aid in customer understanding, and avoid unnecessary confusion, this common understanding of the term should be utilized. Moreover, this is interpretation is completely consistent with the Authority's prior decisions adopting regulatory definitions of

products for posting on the Rate Board. In the March 16, 2011, Decision in Docket No. 10-06-24,[2] the Authority adopted definitions of two offers under which prices could change regularly. A "variable price" was defined as a, "price that is subject to change at predefined intervals within a one month period or within one complete billing cycle (e.g., daily, weekly, or bi-weekly)." The Authority adopted a separate definition distinguishing a "monthly variable price", which it defined as a, "price that does not change for 30 days, a complete calendar month or one complete billing cycle." The Authority continued to recognize this distinction in its November 5, 2014, Decision in Docket No. 13-07-18.[3] There the Authority decided, "[u]nder Variable-Daily and Variable-Weekly plans, suppliers can adjust rates during the customer's billing cycle. Under a Variable-Monthly plan, rates can only be adjusted on the customer's On-Cycle date." NEM submits that the use of the terms "variable rate" and "month-to-month rate" in the Act is consistent with the Authority's previous regulatory interpretations of Variable and Monthly Variable plans and pricing, and these terms should continue to be interpreted in like fashion.

The interpretation of a "month to month rate" to denote the automatic renewal of a fixed contract at the original fixed price would be inconsistent with common usage and understanding of this term and prior Authority precedent. It would also impose significant potential costs and risks on residential consumers and competitive suppliers. The practice of automatic renewal provisions that incorporate a market-based, changing rate is founded on a number of practical considerations. This practice must be permitted to continue because a disproportionate reliance on fixed rate contracts has the potential to lead to serious negative consequences for consumers. Incorporation of a market-based, changing rate in automatic renewals ensures that the rate that the consumer pays is brought in to line with current market conditions. Otherwise, if a customer

[2] Docket 10-06-24, Decision dated March 16, 2011, pages 20-21.
[3] Docket No. 13-07-18, Decision dated November 5, 2014, page 9.

being served on a long-term fixed rate continues to be served at the original fixed rate by the terms of the automatic renewal, it may cause the customer to be charged a higher rate than current market conditions and market-reflective pricing would otherwise allow. This problem would only be compounded over time. Likewise, requiring suppliers to honor original fixed contract pricing terms for terms of indefinite duration imposes a significantly higher risk and cost of doing business in Connecticut. The unnecessarily increased higher risk and cost will be factored into supplier pricing to the detriment of residential consumers.

**2. Comment on how such a month-to-month rate structure would relate to and work alongside electric suppliers' existing auto-renew contracts as referenced in Connecticut General Statutes (Conn. Gen. Stat.) §16-245o(h)(8).**

NEM's proposed interpretation of "month to month" rate structures to be defined as a rate that is subject to change on a monthly basis as explained in Response to Question 1 above is consistent with the requirements set forth in section 16-245o(h)(8).

**3. Comment on how electric supplier generation rate contracts would change to accommodate a month-to-month rate structure after the expiration of a fixed rate contract.**

Supplier contracts would not need to materially change to accommodate a month-to-month rate structure after the expiration of a fixed rate contract if the Authority adopted NEM's proposed interpretation of "month to month" rate structures to be defined as a rate that is subject to change on a monthly basis as explained in Response to Question 1.

**4. The Act adds new language, codified in Conn. Gen. Stat. §16-245o(n), that defines residential customers as those who contract "with an electric supplier for generation services at residential premises for domestic purposes only." Comment on how the prohibition on variable rates after October 1, 2015 would affect incidental residential customers (i.e., the Dean's Residence on a University Campus on a single commercial bill).**

The prohibition against electric suppliers entering "into a contract to charge a residential customer a variable rate for electric generation services," would have no impact on incidental residential customers (residential premises served under a single commercial bill). The definition of "residential customer" under PA 15-90 is expressly limited to "a customer who contracts with an electric supplier for generation services at residential premises for domestic purposes only." Incidental residential customers receive service attendant to their location or affiliation with a non-residential entity. The contract under which the incidental residential customer receives service is principally designed and entered into with a non-residential entity. The contract is negotiated and transacted with a non-residential entity with greater business sophistication and experience in contracting of this nature. The incidental residential customer's interests are protected by virtue of this relationship. Incidental residential customers were not intended to be included in the scope of customers impacted by PA 15-90, and their interests are adequately protected by virtue of their relationship with the primary non-residential entity that is contracting on their behalf.

**5. Comment on how a customer should be treated after the expiration of a fixed contract with a particular electric supplier. To comport with the Act, should contracts be written such that the customer is automatically returned to standard service? Should the contracts renew automatically under the same terms as the original fixed contract, but on a month-to-month basis? What if the customer takes no action?**

The manner in which customers are treated after the expiration of a fixed contract should not and does not need to materially change to comport with the Act. The Act explicitly recognizes the

validity of, and contemplates the case under which, customers, "allow a fixed contract with an electric supplier to expire and begin paying a month-to-month rate for generation services from such supplier." In so doing, the Act distinguishes a prohibited "contract to charge a residential customer a variable rate for electric generation services" and an automatic renewal with a residential customer under which said customer is charged "a variable rate for electric generation services" as opposed to a permissible "month-to-month rate for generation services."

PA 15-90 does not include a legislative definition of the terms "variable rate" or "month-to-month rate." In the recent Electric Marketing Standards proceeding, Docket No. 13-07-18, the Authority adopted regulatory interpretations as to what constitute variable plans and fixed plans for purposes of posting to the Rate Board. The Authority distinguished between Variable-Daily and Variable-Weekly plans that can adjust during the customer's billing cycle versus Variable-Monthly plans that can only be adjusted on the customer's on-cycle date. This distinction previously made by the Authority is the crux of the difference between the "variable rate" prohibition and the expressly permitted "month-to-month rate" in the Act. As such, the law allows a fixed contract that automatically renews at a month-to-month rate to do just that, renew at a rate that *changes* on a month-to-month basis.

The Act does not require and should not be interpreted to require contracts to be written such that a customer is automatically returned to standard service after the expiration of a fixed contract. This would run counter to consumer expectations and lead to confusion and dissatisfaction. Moreover, requiring that a customer revert to standard service would significantly increase customer acquisition and retention costs and also increase the risks associated with doing business in Connecticut. Finally, requiring a consumer to revert to standard service unfairly

perpetuates the utility commodity monopoly, which is contrary to State policy on the provision of energy choice.

The Act does not require, and should not be interpreted to require, contracts to renew automatically under the same terms as the original fixed contract, but on a month-to-month basis. If the original fixed rate contract continues on a month-to-month basis under the same terms and conditions and pricing, the customer may be paying at the original fixed rate that could be higher, perhaps substantially higher, than current market-based pricing would otherwise allow. Fixed rate contracts that automatically renew at a rate that changes on a month-to-month basis avoid that problem by imparting the element in pricing of current market conditions. If the original fixed rate contract continues on a month-to-month basis under the same terms and conditions and pricing, the supplier will also be subject to increased risk by honoring the original terms for a potentially lengthy, indefinite period.

If the customer takes no action, and is automatically renewed at a rate that *changes* on a month-to-month basis, this will have occurred after the customer will have received all of the required notices from the supplier. It would not be consistent with customer expectations that they would be slammed back to utility standard service at that time. Nor would it best serve the customer's interest to be automatically renewed under the terms of the original fixed rate contract that may be priced higher than current market conditions.

It also bears noting that the Authority does not have authority to regulate the competitive rates of electric suppliers. By definition, competitive market forces in an active retail electric market act

to bring price discipline to the marketplace, ensuring that rates are just and reasonable.[4] Artificial constructs, such as price caps on competitive offerings, impose increased risks and costs on suppliers that cause unnecessary price increases for consumers. The contract should govern the terms, including price, between the customer and the electric supplier. Moreover, the customer is protected by the notice requirements the Authority has already put in place.

**6. Comment on how existing residential variable rate contracts should be sunset, if at all, in light of the October 1, 2015 ban on new residential variable rate contracts and auto-renewed residential variable rate contracts.**

Existing residential variable rate contracts as well as existing residential contracts that automatically renew at a variable rate are not included within the scope of the prohibition in PA 15-90. The Act specifically provides that, "**On and after October 1, 2015**, no electric supplier shall (A) **enter into a contract** to charge a residential customer a variable rate for electric generation services; or (B) **automatically renew or cause to be automatically renewed** a contract with a residential customer and, pursuant to such contract, charge such customer a variable rate for electric generation services." (Emphasis added). On its face, the plain language of the Act applies the prohibition only to residential contracts entered into *on and after October 1, 2015.* Contracts executed and in existence prior to that date are unaffected by the new law. This is true with respect to existing variable rate contracts and also existing contracts that have embedded within their terms the automatic renewal at a variable rate. The law should not be interpreted to abrogate existing residential variable rate contracts or existing residential contracts that automatically renew at a variable rate. It also should not be interpreted to parse the terms of

[4] See, e.g., NYPSC Case 00-M-0504, Statement of Policy on Further Steps Toward Competition in Retail Energy Markets, August 25, 2004, at page 18. The NYPSC adopted a Vision Statement for competitive retail markets including, "The provision of safe, adequate, and reliable gas and electric service at just and reasonable prices is the primary goal. **Competitive markets**, where feasible, are the preferred means of promoting efficient energy services, and **are well suited to deliver just and reasonable prices**, while also providing customers with the benefit of greater choice, value and innovation." (Emphasis added).

contracts that were validly executed prior to October 1st so as not to permit automatic renewal at a variable rate. PA 15-90 should not be construed to have a retroactive effect to impair the obligations and rights arising under contracts entered into prior to the enactment of the Act.

**7. Comment on changes that must be made by the Connecticut electric distribution companies (EDCs) in light of changes mandated by the Act.**

No response.

**8. Comment on how and when suppliers and EDCs should notify their customers about changes mandated by the Act.**

The Act itself makes no explicit reference to additional notification requirements associated with its implementation. As to customers currently taking service from a competitive supplier on an existing contract, there is no need for a notification of the changes. These customers will experience no change in service. Moreover, these grandfathered customers may experience confusion if they receive notices about product changes that do not pertain to them.

With respect to new customers taking service after October 1, 2015, the new requirements of the Act will be included and incorporated in the terms and conditions of any competitive supply contracts executed after that time. Customers consulting the Rate Board will also see the types of offerings that can then be made available in the marketplace. There are also pre-existing notice requirements for suppliers to provide to their customers. This is adequate disclosure of the changes required by the Act. It is important that the volume of notices sent to consumers not become so burdensome and overwhelming that consumers simply start to disregard and "tune out" the messages that are being sent to them.

**9. Provide any other comment or evidence that may be helpful to the Authority in its review of this matter.**

The Authority's interpretation of the terms "variable rate" and month to month rate" under PA 15-90 will directly affect the on-going viability of the competitive marketplace. To do so, an expansive view of the types of competitive product offerings and long term impacts on consumers is needed. If these terms are construed such that the market can effectively only offer fixed rate products it would unnecessarily expose consumers to being potentially locked in to long term rates that become out of line with current market conditions. Interpreting "month to month rate" to mean a rate that changes monthly will permit suppliers to offer consumers prices for automatic renewals that are market-reflective.

**Conclusion**

NEM appreciates this opportunity to offer comments on the Authority's implementation of Public Act 15-90 and interpretation of the terms "variable rate" and "month to month rate" in a manner that best serves consumers.

Sincerely,

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## CERTIFICATION

I hereby certify that a copy of the foregoing Comments of the National Energy Marketers Association has been served on all parties on the service list, via email or first class mail, on this 31st day of July, 2015.

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Stacey Rantala