

**STATE OF CONNECTICUT**

**PUBLIC UTILITIES REGULATORY AUTHORITY**

**PURA REVIEW OF VARIABLE RATES ) DOCKET NO. 15-06-15**  
**PURSUANT TO PUBLIC ACT 15-90, AN ACT ) November 13, 2015**  
**CONCERNING VARIABLE ELECTRIC RATES )**

**WRITTEN COMMENTS OF**  
**THE NATIONAL ENERGY MARKETERS ASSOCIATION**

The National Energy Marketers Association (NEM)<sup>1</sup> hereby submits its written comments in the above-referenced proceeding pursuant to the Authority’s Notice of Request for Written Comments dated October 30, 2015. The Notice poses a series of questions directed to all stakeholders as well as questions specifically directed to licensed suppliers. The Authority is seeking comments on these questions as part of its on-going efforts to “develop recommendations and guidance” for a report to be filed with the legislature pursuant to Public Act 15-90. The Authority issued an Interim Decision in this docket on September 30, 2015, to provide, “interim guidance on the application of recent legislation banning licensed electric suppliers from offering residential contracts containing variable pricing.” NEM has filed multiple written submissions in this docket and appreciates the opportunity to provide further comments to the Authority.

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<sup>1</sup> 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.

The polar vortex of 2014 has had a lasting impact on consumers, retail marketers and policymakers. Extreme weather conditions, increased demand for natural gas, and infrastructure constraints combined to increase the wholesale price of electricity in the winter of 2014. The contributing factors to the price spikes in the wholesale electric market were beyond the control of competitive retail suppliers and the increases were of such magnitude that they were impossible for retailers to foresee or hedge against. Retail electric suppliers in turn had to pay the higher wholesale electricity prices, which price increases were reflected in the retail prices paid by consumers for variable rate products. Utility default service customers were not exempt from the effects of winter 2014 – they ultimately pay these higher prices, just not in as timely or as transparent a fashion as customers that purchased variable rate products from competitive suppliers. NEM members proactively worked with their customers to mitigate the impacts of winter 2014, through increased consumer communications, price reductions and rebates, and alternative price offerings.

In response to the polar vortex, the Connecticut legislature enacted laws that fundamentally altered the Connecticut retail electric market, including PA 14-75 and PA 15-90. The Authority opened proceedings to effectuate the terms of these laws. The combined effect of these laws, and implementing regulations, has seriously undermined the effective functioning of the competitive retail market, has created a high degree of regulatory uncertainty that continues to plague retail marketers as the “rules of the game” have been substantially modified and appear to continue to be at significant risk of change going forward, and as a result, has increased the costs of doing business in the state which ultimately leads to higher prices for customers - all to the collective detriment of Connecticut consumers. All of the restrictions on competitive product offerings, in combination with increased regulatory reporting and notice requirements associated

with the products that are still permitted to be offered, have profoundly changed the retail marketplace. Despite these challenges, retail marketers are still actively participating in the Connecticut retail market and continue to find ways to offer products to consumers that provide superior value, innovation and customer service.

NEM has repeatedly voiced its concern about eliminating variable rate products from the marketplace. While PA 15-90 bans variable rate product offerings to residential customers, it does permit month-to-month products. NEM continues to recommend that the term “month to month rate” as set forth in PA 15-90 be construed as a rate that is subject to change on a monthly basis. Restricting or entirely eliminating product offerings that provide value, harms consumers by limiting their access to options that suit their individual preferences and budgets. Depending on market conditions, monthly-adjusted rates can provide consumers with the opportunity to earn substantial savings over the utility standard service rate. Limiting the market solely to fixed price offers would eliminate the ability of consumers to take advantage of lower-priced competitive products when market conditions allow and would not be in the public interest.

NEM offers its comments on Questions 10 through 16 directed to all stakeholders as set forth below.

- 10. Propose definitions of “fixed” and “month-to-month” rates. Separately comment whether additional definitions are necessary to accommodate tiered rate structures (e.g., rate plans of four billing cycles or longer, with rates that change monthly but are memorialized by contract) or other rate plans.**

NEM submits that common usage and understanding of the term “month to month rate” is a rate that 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. NEM

recommended this interpretation in its previously filed comments. Likewise, common usage and understanding of the term “fixed rate” is a rate that utilizes a set price for a set period of time as described in the contract.

NEM is concerned with the suggestion that additional regulatory definitions are required to accommodate tiered rate structures or other continuously evolving competitive rate plans. The adoption of restrictive regulatory definitions constrains and deters the very innovation that competitive markets are intended to deliver. Retail marketers that have designed tiered rate structures and other offerings have done so in response to the current regulatory construct. They have developed products that satisfy customer preferences and that are fully compliant with applicable laws and regulations. NEM urges the Authority not to adopt additional proscriptive rules that explicitly or effectively prohibit retail marketers from designing new product offerings. The appropriate focus for tiered rate structure products, as is true with respect to any product, should be on the existing requirement that retail marketers adequately disclose the terms and conditions of their product offerings to their customers.

- 11. If the Legislature permits residential month-to-month rates, should such rates be allowed:**
- **only at the end of an initial fixed price term (i.e., after four complete billing cycles);**
  - **as a stand alone product that customers may choose from the outset of their contract period (subject to an initial three bill cycle cap)?**
  - **or some combination of these options?**

NEM supports the Legislature permitting residential month-to-month rates as the basis of stand-alone products, at the end of an initial fixed price term, and in other combination as consumers may find to be of value. Restricting consumers to exclusively purchasing fixed rate products runs a significant risk that they could be locked in to high prices during a declining market. Of course, the availability of fixed rate products in the marketplace is a necessity for those

customers that value price stability and price certainty. However, in the absence of month-to-month rate products, consumers would be foreclosed from potentially capturing the savings of lower prices in a declining market. Consumers are not protected by an outright month-to-month rate product prohibition. To the contrary, such a prohibition denies consumers with a means of achieving significant savings on their energy bills. Indeed, as market conditions change, and the relative value of fixed versus variable rate products change, consumers will be dissatisfied if they cannot avail themselves of variable rate products when doing so would allow them to lower their energy bills. Consumer protections are most appropriately and effectively premised on disclosure of product terms and conditions so consumers are educated and aware of the attendant benefits and risks of the different product offerings available in the marketplace.

- 12. If the Legislature chooses to permit residential month-to-month rates, should such rates be capped? If not, explain why. If so, provide guidelines that would govern the cap. For example, should a cap be:**
- **applied as a percentage above the initial rate charged during the initial three bill cycle capped rate;**
  - **applied as a percentage above the initial rate charged during a fixed term contract;**
  - **applied as a percentage above the Standard Service rate;**
  - **applied in some other manner; or**
  - **limited to one or more billing cycles under each of these scenarios?**

If the Legislature permits residential month-to-month rates, those rates should not be capped. 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.<sup>2</sup> Artificial constructs,

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<sup>2</sup> 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).

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 retail electric marketer. In general, if the contract for the month-to-month rate product includes wording to the effect that it is a market-based product that is subject to change on a monthly basis and not subject to a ceiling, that disclosure should be sufficient. Moreover, the Authority previously adopted a notice requirement applicable to 25% rate increases.

**13. What recommendations and regulatory action(s) should be taken to address two new developments in the residential choice market: enrollment fees and “tiered” rates (e.g., a residential product set at 8 cents/kWh for four billing cycles then ten cents/kWh for the next four billing cycles, as memorialized in contract terms at enrollment)?**

As discussed in our response to Question 10, we urge the Authority to refrain from adopting additional regulatory restrictions and compliance burdens to be applicable to newly emerging competitive products that are developed and offered in response to consumer preferences. Given the impact of PA 15-90 on the scope of currently permissible residential product offerings, retail marketers have had to develop new products that satisfy the market rules and restrictions and still provide consumers with value and innovation. Tiered rate structures are simply a logical outgrowth of the legal and regulatory restrictions of doing business in Connecticut. Tiered rate structures and enrollment fees, like other product terms and conditions, must be disclosed to the consumer to ensure the consumer understands the nature and benefit of the product contracted for.

14. **Comment on whether the following is an allowed fixed offer, variable, month-to-month or a hybrid product: a contract for nine billing cycles includes a fixed rate for the first four billing cycles and then continues for an additional term in which the rates are fixed in advance at different monthly values.**

**Example: nine-month contract, first four cycles will be billed at \$0.10/kWh, then continue at fixed rates that change each cycle as below:**

Billing Cycle	Rate/kWh
5	\$0.11
6	\$0.12
7	\$0.09
8	\$0.08
9	\$0.13

The example as described is in compliance with current legal and regulatory requirements. The tiered rate structure provides what is, in effect, a series of fixed rates that are contracted for and set in advance. As per the example, the consumer is apprised of all of the rates at the time of contracting and as such there is no potential for unexpected rate variation. The consumer is shielded from market volatility risks associated with variable rates. Likewise, the retail marketer is able to optimize the price being offered to the customer throughout the duration of the contract to account for seasonal market changes and the retailer marketer's commodity procurement strategy and portfolio. We urge the Authority not to impose additional restrictive regulatory definitions and requirements that deter market innovation.

15. **Comment on the publicly available resources that allow residential and small/medium business consumers to track market conditions. How can the resources be improved to facilitate consumer choice, awareness and understanding of the supplier market?**

The primary publicly available resource that allows mass market consumers to track market conditions is the Authority's Rate Board. This is supplemented through customer notices provided by retail suppliers and the more static information that can be gleaned from utility bills.

It is a prerequisite to informed shopping that consumers have an awareness of and understanding of the competitive retail market. That being said, requiring mass market consumers to analyze complicated financial data would not be meaningful. Clearly, there is a balance to be struck in making resources available that educate consumers about the nature and variety of competitive product offerings, applicable consumer protections, and the pricing fluctuations that can be expected in a competitive market. Consumers make purchasing decisions based on these factors for numerous other products. However, only since retail electric options have been introduced in competition with the historical utility monopoly pricing regime has a consumer had an incentive to acquire a deeper understanding of energy market fundamentals. The federal Energy Information Administration publishes energy pricing data that could be made available, for example, in a seven-day forecast format, and published on the Authority’s website and local news publications to provide consumers with more energy pricing data.

- 16. Some suppliers maintain that month-to-month rates allow market flexibility, and facilitate timely pass through of lower rates that follow market trends. Refer to the August 11, 2015, ISO Newswire article titled: "Wholesale electricity prices and demand in New England, July 2015."**

**The article states, in part, that “another month of low natural gas prices brought July’s average power price to the third lowest monthly level in 12 years” the lowest since March 2003 (link provided below) and provided the following monthly average New England wholesale prices:**

<b>2015</b>	<b>Price/MWh</b>
<b>April</b>	<b>\$25.88</b>
<b>May</b>	<b>\$26.12</b>
<b>June</b>	<b>\$19.61</b>
<b>July</b>	<b>\$25.40</b>

**Comment on how electric suppliers adjust rates in response to month-to-month changing market conditions, and provide supporting evidence. For example, identify the number of residential and business customers that were served under variable rates in the months of April, May, June and July 2015 and rates that were**



**assessed to demonstrate how variable rates changed in response to market conditions.**

**<http://isonewswire.com/updates/2015/8/11/wholesale-electricity-prices-and-demand-in-new-england-july.htm>**

NEM submits that short-term pricing experience is not properly indicative of overall retail market conditions. This is particularly true in view of the high degree of regulatory uncertainty associated with the introduction and passage of legislation to ban variable rates as occurred during the dates in the Authority's example and the distortions that have been imposed on the market as a result of the variable pricing ban. A long-term perspective of supplier product pricing would be far more informative.

As a matter of sound business judgment, as wholesale prices rise and fall, the retail marketer's primary task is to retain satisfied customers. Even though a consumer has a variable rate contract, it is not required that the rate will vary. The variable rate allows the retail marketer the flexibility to manage its business during changing market conditions, to manage risk and control costs. Retail marketers want to encourage consumer satisfaction and customer retention over the long-term. To do so, they endeavor to control consumers' exposure to price volatility and offer stability in pricing, including in variable rate products. It is not a sustainable business model to abuse variable pricing, and subject consumers to erratic price swings up and down.

The aberrant wholesale market conditions observed during the 2014 polar vortex, were just that – atypical, highly unusual and unforeseeable by retail marketers. The entire structure and functioning of the Connecticut retail market should not be undermined based on this uncharacteristic event.

## **Conclusion**

NEM appreciates this opportunity to offer additional comments on issues associated with Public Act 15-90.

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 13th day of November, 2015.

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Stacey Rantala