

**STATE OF MARYLAND  
PUBLIC SERVICE COMMISSION**

**Competitive Electric Supply, COMAR 20.53 ) Administrative Docket RM17**

**COMMENTS OF THE  
NATIONAL ENERGY MARKETERS ASSOCIATION**

The National Energy Marketers Association (NEM)<sup>1</sup> hereby submits comments on the compliance plans to implement COMAR 20.53 as filed on May 21, 2009, by Baltimore Gas and Electric Company (BGE) in ML#116827, Potomac Electric Power Company (Pepco) in ML#116830, Delmarva Power and Light Company (Delmarva) in ML#116829, and Allegheny Power in ML#116824, under Rulemaking 17. Newly adopted COMAR §20.53.05.06 provides that utilities providing consolidated billing shall either purchase the receivables (POR) of participating suppliers or implement pro rata payment allocation. In all of the RM17 compliance plans, the utilities' have elected to offer POR. NEM has filed comments in this and other proceedings before this Commission noting its strong support for POR programs and their ability to facilitate the development of retail markets. Indeed, evidence from other jurisdictions supports this conclusion. NEM is pleased that the utilities have elected to implement POR programs, and we submit these comments to suggest ways to enhance the operation of the POR

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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.

programs and their expeditious implementation. We recommend the following refinements to the utilities' proposed programs:

- 1) The POR implementation deadlines for all utilities should be consistent and commence no later than the fall of 2009. In the alternative, the utilities should purchase supplier receivables that were outstanding prior to the start of their POR programs or follow Pepco's program and agree to purchase receivables outstanding at the time of the supplier's election to use utility consolidated billing. Either approach would facilitate competitive entry and market participation. In so doing, even if the POR programs did not commence until the end of 2009, it would allow suppliers to begin serving Maryland customers in the fall.
- 2) The utilities' purchase of receivables should not preclude the continuation of utility billing of non-commodity supplier charges on a consolidated bill. The EDI system currently supports adding those charges to a utility consolidated bill.
- 3) Customer dispute resolution in a POR program should be handled in accordance with existing Office of External Relations (OER) procedures.
- 4) The utilities proposed cost recovery methodology appears reasonable on the basis that all consumers benefit from the existence of choice. Cost recovery should be premised on a Commission finding that costs were prudently incurred, actively managed, and are just and reasonable.

In these comments, NEM also supports the utilities' provision of bill view access to suppliers and procedures for billing in the event of supplier default as set forth in the utility compliance plans.

An understandable question underlying the Commission's approval of the utilities' proposed POR programs is whether those programs will indeed have the effect of enhancing retail market development. We submit that the experience in other choice jurisdictions is instructive on this point. Utilities and Public Service Commissions in many jurisdictions have implemented utility purchase of receivables (POR) programs to facilitate the development of competitive retail energy markets, particularly for mass

market consumers. For instance, the New York Public Service Commission (NYPSC) identified utility purchase of receivables as a “best practice” in its 2004 Retail Policy Statement.<sup>2</sup> Recently, the NYPSC reaffirmed the importance of POR as a program, “essential to maintaining a competitive market structure.”<sup>3</sup> Indeed, the NYPSC found that POR programs coupled with utility consolidated billing, “are needed to enable ESCOs to bill and/or receive payments from customers on an equal footing with the utility service providers.”<sup>4</sup> The success of the POR implementation is underscored by the robust consumer participation and marketer participation statistics achieved in that jurisdiction. Recent retail energy choice participation statistics posted on the NYPSC website plainly illustrate the progress that has been made.<sup>5</sup> As of January 2009, 1,168,888 customer accounts were participating in electric choice, representing 17.7% of accounts and 43.4% of load.<sup>6</sup> In Spring 2007, the NYPSC reported that over 100 energy marketers were eligible to do business in the State, and that in each of the six major combined utility service territories there were at least six electric and six gas marketers actively serving customers.<sup>7</sup> The increase in migration, particularly for mass market

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<sup>2</sup> The NYPSC’s 2004 Retail Policy Statement identified utility best practices including purchase of receivables, marketer referral programs, unbundling utility bills, improving marketer access to customer account numbers, outreach and education initiatives, and utilities designation of ESCO ombudsmen. The NYPSC also established an Office of Retail Market Development that was charged with overseeing the implementation of these best practices.

<sup>3</sup> Case 07-M-0458, Order Determining Future of Retail Access Programs, issued October 27, 2008, at page 8.

<sup>4</sup> *Id.*

<sup>5</sup> As a point of comparison, in New York at the end of 2001 “[o]verall, 5% of customers, representing nearly 20% of load, had switched from their local utilities to retail service providers,” and that specifically, “over 25% of the load in the non-residential sector, but only 5% of the residential load has switched as of that date.” 2002 State Energy Plan, Section 3.4 Electricity Resource Assessment at page 3-81.

<sup>6</sup> Specifically, as of January 2009 over sixteen percent of residential electric customers, and nearly fifty two percent of large commercial and industrial electric customers had migrated.

<sup>7</sup> NYPSC Case No. 07-M-0458, Review of Retail Access Policies, issued April 24, 2007, at page 4. The U.S. Energy Information Administration reported, with respect to retail natural gas markets, “New York has by far the largest number (46) of active marketers, with customers in some parts of the State having a choice of more than 20 marketers and 50 different price offerings.” U.S. Energy Information

customers, and marketer participation over a brief period has been dramatic and presents compelling evidence in support of the implementation of utility best practices such as POR. Marketers have made a significant resource investment in the utility service territories to serve consumers with an increasingly expanding array of energy products and services. And energy competition has engendered price savings for New York consumers as well.<sup>8</sup>

Likewise, one of the factors underlying the robust migration of natural gas customers to choice programs in Ohio is the utilities' implementation of POR. For example, in the Dominion East Ohio service territory, the number of customers being served by alternative suppliers as of March 2009 exceeded 850,000, representing nearly 71% of customers. With well-structured POR programs in place, we hope similar results can be achieved in the Maryland market for consumers as well.

In reviewing the utilities' compliance plans, we identified the following issues that may impede POR implementation. We have suggested recommendations to resolve these issues and to allow the utilities to expeditiously implement their programs.

#### **A. The Proposed Timelines for POR Program Implementation**

NEM is concerned about the proposed timelines for implementation of POR. Specifically, BGE proposed that it would begin purchasing supplier receivables effective

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Administration, Natural Gas Residential Choice Programs, U.S. Summary 2007, available at: [http://www.eia.doe.gov/oil\\_gas/natural\\_gas/restructure/state/us.html](http://www.eia.doe.gov/oil_gas/natural_gas/restructure/state/us.html)

<sup>8</sup> The typical residential retail customer experienced a drop in total real electric price of an average of 16% between 1996 and 2004, and most commercial and industrial customers benefited from similar energy bill decreases. New York State Department of Public Service, Staff Report on the State of Competitive Energy Markets: Progress to Date and Future Opportunities, March 2, 2006, page 2. See also Joskow, Markets for

with April 2010 billings and Pepco's POR system changes would be deployed on April 1, 2010. (BGE at 2, Pepco at 2). Allegheny Power and Delmarva suggest they can implement POR on a somewhat faster timeframe, of December 15, 2009, and December 7, 2009, respectively. (Allegheny at 7, Delmarva at 2). We urge the Commission and the utilities to assign a high priority to the implementation of the POR programs for completion by the fall of 2009 in order to permit expeditious competitive market entry. The utilities have been on notice for a very long time that POR programs were a component of RM17 and COMAR 20.53. Under these circumstances, delaying implementation until next spring is not reasonable. The unique and favorable market circumstances that currently exist in Maryland justify the resources to quickly put POR in place, so as to allow marketers to serve Maryland customers with competitive options as soon as possible.

The delay in POR program implementation will be ameliorated somewhat by the willingness of Pepco, Delmarva and Allegheny to purchase receivables the supplier incurs upon its election to use the utility's consolidated billing system. (Pepco at 8, Delmarva at 8 and Allegheny at 4) By contrast, BGE states that it will not purchase receivables incurred prior to the POR program implementation date in April 2010. (BGE at 2). This will likely cause a significant delay in participation by some suppliers. In the event that BGE's POR implementation deadline cannot be shortened, we suggest that BGE purchase supplier receivables that were outstanding prior to the start of its POR program and/or follow Pepco's program and agree to purchase receivables incurred upon the supplier's use of utility consolidated billing. In so doing, if for example BGE

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Power in the United States: An Interim Assessment, The Energy Journal 2006, page 27, Figure 6 (showing

implemented POR by winter 2009, suppliers would be able to begin serving customers in the fall with the knowledge that their charges would remain on the bill and be collected.

The practice of purchasing outstanding receivables has been used in other jurisdictions where POR was implemented “mid-stream” in the choice program and allows for a smoother logistical transition of customers. For example, this was done by Niagara Mohawk<sup>9</sup> in New York and CL&P in Connecticut. Moreover, by implementing either the “purchase outstanding receivables” approach or the Pepco approach, it should allow marketers to begin participating in the market and serving BGE consumers sooner.

#### **B. “Commodity” Receivables Under the POR Programs**

The utilities have specified what receivables they propose will be purchased within their POR programs. BGE proposes to only purchase receivables for electric supply, and not energy audits, energy efficient appliances, or appliance repair. (BGE at 2). Pepco and Delmarva will only purchase receivables for electricity charges resulting from competitive power supply. (Pepco at 8, Delmarva at 7). Allegheny proposes to purchase receivables associated with supplier sales of generation and transmission services to customers within its service territory. (Allegheny at 4).

Given that each utility proposes to purchase supplier receivables only for electricity supply service, it is important that the utilities retain their current practice that is enabled by EDI processes of allowing non-commodity charges to be placed on the utility consolidated bills. The latter charges would include charges for supplier energy audits,

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approximate 14% decrease in real residential prices from 1996-2004).

demand response services, energy efficiency services, and competitively-provided advanced metering, competitive services that will contribute to the Empower Maryland goals. NEM recognizes that utility billing systems may need to be modified to distinguish commodity charges that are subject to POR from non-commodity charges that are not subject to POR. NEM understands that this distinction is necessary to avoid the possibility of customers being disconnected by the utility for non-payment of non-commodity service. Utilities should identify the costs necessary to modify their billing systems and recover those costs in reasonable fees from suppliers that bill for non-commodity charges. As is the case now, fees are set out in the utility's billing service agreements with participating suppliers.

### **C. Customer Dispute Process**

The utilities outlined a proposed process for withholding supplier payments in the event of a customer dispute. (BGE at 2, Pepco at 8, Delmarva at 8 and Allegheny at 5). The customer would initiate the process with the utility, and the utility would withhold payment until it received notice from the customer that the dispute was resolved. NEM believes that this proposed process is problematic, and is susceptible to abuse. First, it inappropriately interjects the utility into the process as a contract administrator for the marketer. Customer dispute resolution should be handled under the terms of the contract between the customer and the marketer. The utility should not be withholding POR remittances in a non-recourse environment, and in no way be in a position to override the terms and conditions set forth in the agreement between the supplier and consumer. We

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<sup>9</sup> New York Public Service Commission Cases 05-M-0333, 99-G-0336, and 98-M-1343, Order Clarifying and Adopting Joint Proposal on Competitive Opportunities, dated April 20, 2006.

believe that the proper outlet for customer dispute resolution continues to be the use of existing Office of External Relations (OER) procedures. NEM members report that currently in New York and Ohio, customer disputes under POR programs are resolved in accordance with the terms of the supplier's contract with a customer and through Commission resolution processes.

Second, the proposed customer dispute resolution process is constructed in a manner that appears likely to be subject to potential customer abuse and gaming. The customer could solely initiate the withholding of the POR payment by the utility and the utility could continue that withholding until the customer notifies the utility of dispute resolution. As such, the marketer (that stands in the best position to expeditiously resolve a dispute) is removed from the process. Again, this argues in favor of resolving customer disputes in a POR regime to the contract between the parties in the first instance and then to existing OER procedures.

#### **D. Cost Recovery for POR Program Implementation Costs**

All of the utilities propose to recover POR program implementation costs through a distribution surcharge/rider that would be applied to all customers. (BGE at 4-5, Pepco at 3-4, Delmarva at 2, and Allegheny at 7). The utilities do not propose to charge a discount rate to participating suppliers as a result. With respect to the utilities' proposed cost recovery methodology, NEM believes that it is appropriate on the basis that the availability of choice benefits all consumers, even those that do not select a competitive provider, and therefore the surcharge should be applied to all customers. It is tantamount that POR be implemented in a competitively neutral fashion. This is subject, of course,

to the utilities' implementation costs being prudently incurred and actively managed, and just and reasonable.

To implement POR, each utility proposes to remove uncollectible expenses attributable to its standard offer service as a component of the standard offer service price as approved in Case No. 8908 and to collect all uncollectible expenses associated with supplier receivables and with standard offer service receivables through the new surcharge. With monitoring and compliance reviews that will insure that double collection does not occur, NEM supports the utility proposals.

#### **E. Other Implementation Proposals**

To implement the bill view provision of COMAR 20.53.05.03, BGE and Allegheny Power<sup>10</sup> propose an effective date of June 17, 2009, while Delmarva proposes an effective date of August 31, 2009. Pepco indicates that except for a modification to provide suppliers with access to thirteen months of usage, it already complies with the bill view provision so that an effective date of June 17, 2009, can be implied from its proposal. The different implementation dates for bill view are not significant, and NEM supports the utility proposals.

To implement procedures for billing in the event of a supplier default (COMAR 20.53.03.05) and for the cancellation of supplier service (COMAR 20.53.06.06 and 20.53.07.10), BGE and Allegheny Power propose June 17, 2009, while Delmarva proposes August 31, 2009. Pepco does not specify an implementation date for these

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<sup>10</sup> Allegheny Power currently offers its customers a free electronic bill presentment and payment service through a third party called "PowerPay" on its web site.

procedures but implicitly would accept June 17, 2009. The different implementation dates for these procedures are not significant, and NEM supports the utility proposals.

## **Conclusion**

NEM appreciates the opportunity to comment on the utilities' compliance plans and supports the implementation of well-structured POR programs to facilitate marketer entry and participation and increase the availability of competitive offerings in the State.

Respectfully submitted,

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