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NEM Seeks Elimination of 30-Day Notice Requirement for Contract Termination in N.J.

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Absent non-recourse Purchase of Receivables, the New Jersey BPU should not require competitive suppliers to provide a customer with 30 days written notice of termination, the National Energy Marketers Association told the New Jersey BPU (EX11020089).

Currently, the energy competition rules under N.J.A.C. 14:4 require 30 days written notice to the electric or gas customer prior to termination of a contract due to non-payment. The Board has proposed maintaining this provision unchanged in a re-adoption of the rules.

Absent non-recourse POR, "NEM submits that this requirement is onerous for marketers to comply with, particularly in the case where the marketer seeks to terminate the customer for nonpayment."

"By the terms of this Section, the marketer will have to retain the non-paying customer for an additional month, likely without payment for that period as well. It should constitute adequate notice from the marketer if the enrollment materials clearly state that service will be discontinued for nonpayment without requiring an additional month of exposure on the part of the marketer. Moreover, when TPS [third party supply] service ends, the consumer reverts back to utility service, and so there is no need for an additional layer of consumer protection," NEM noted.

The "burden" of the 30 day written notice requirement could be eliminated by the statewide availability of non-recourse POR programs, NEM added.

NEM also sought to eliminate the capacity-based credit requirement imposed on suppliers as duplicative and unnecessary. There are four different credit requirements faced by New Jersey third party electric suppliers: a bond required by the BPU for licensing; applicable PJM requirements; a requirement for supplier-consolidated billing, if elected; and finally, a capacity-based credit obligation.

"NEM is specifically concerned about the utility credit requirement based on capacity obligation. It requires \$9,000 of collateral per MW of residential and \$6,000 per MW of commercial capacity obligation. It may start at \$15,000 or so for a TPS at market entry, but would grow to about \$450,000 to \$600,000 for a group of 20,000 to 25,000 residential equivalent customers. NEM submits that there is no financial basis for this utility capacity obligation requirement," NEM said.

"An event of TPS default does not pose a financial risk to a utility in any way. In fact, under utility consolidated billing the utility is in always in possession of TPS receivables. The parties at risk in the event of a TPS default are only PJM (electricity supplied not paid) and the State of NJ (SUT [sale and use tax] billed by the TPS and not yet remitted to the state)," NEM said, noting that the PJM collateral and the BPU bond cover these obligations, respectively.

"It is illogical for a party (the utility) to demand collateral from another party (the marketer) who can never owe them money. The electricity marketers who entered the state in 1999 when the market opened had sufficient balance sheet strength or affiliate backing to absorb this unsubstantiated credit requirement without difficulty. Today, under improved market conditions there is a renewed opportunity to bring the price, service and technology benefits of retail competition to consumers in New Jersey, but this opportunity may be lost because the utilities are requiring suppliers to secure unnecessary credit or post unnecessary cash. Accordingly, NEM requests that the Board require the utilities to eliminate the \$9,000 and \$6,000 per MW credit requirement in the interest of competition and choice for consumers," NEM recommended.

NEM also sought an examination of credit required from gas marketers by utilities for pipeline capacity, and argued that assets should follow the customer.

The proposed rules to be re-adopted would modify the enrollment verification requirements such that third party verification would not be required for telephonic enrollments. However, the BPU proposes that, regardless of whether a TPV is used, the supplier shall record and retain the entirety of the marketing solicitation to the customer.

"NEM opposes the requirement that the entire marketing portion of the call be taped. A requirement for suppliers to tape all calls, all the time would be extremely expensive to

comply with coupled with the burden and expense of retaining these voluminous records for six months ... [R]equiring suppliers to tape the entire marketing call significantly undermines the cost effectiveness of telephonic enrollment as a means to acquire customers."

The BPU also proposed shortening the rescission period from 14 to 7 calendar days, which NEM supports.

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