STATE OF MARYLAND
PUBLIC SERVICE COMMISSION

In the Matter of Retail Choice Termination	**)**	**AM 7-13-11**
Fees Under Purchase of Receivables Billing	**)**	**Item POR**

COMMENTS OF THE
NATIONAL ENERGY MARKETERS ASSOCIATION

The National Energy Marketers Association (NEM)[1] hereby submits comments pursuant to the Notice for Opportunity to Comment and Notice of Hearing dated May 31, 2011, in the above-referenced proceeding. The Commission is requesting comment on the issue of whether competitive suppliers' early termination fees (ETFs) should properly be deemed "commodity charges" and therefore within the purchase of receivables (POR) regulations and within the scope of utility consolidated billing. As explained in detail herein, NEM recommends that competitive suppliers' early termination fees should properly be deemed commodity charges for the purposes of the POR regulations. The Commission raised a series of specific questions for comment on this issue. NEM's responses are set forth below.

(1) whether an ETF should be deemed a "commodity charge;"

Yes, an ETF should be deemed a "commodity charge" for the purposes of the POR regulations. This is because but for the consumers' decision to purchase the

[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.

electricity/natural gas from the competitive marketer there would be no contractual obligation and no associated ETF. The ETF is directly linked to the commodity contracted for by the consumer. Indeed, the ETF is a function of the commodity-related risk that the marketer bears to provide the electricity/natural gas to the consumer. Suppliers make a commitment and incur costs to fix a customer's rate for an extended term. If the customer abandons their commitment to the supplier prior to the expiration of the term, that cost can at least be partially absorbed through the ETF. NEM is concerned that if ETFs are not deemed "commodity charges" for the purposes of the POR programs that it could potentially restrict marketers being able to offer fixed price products under the POR programs or only being able to do so at significantly increased prices, neither of which scenario is in the best interest of consumers.

NEM supports well-designed consumer protection rules that ensure accurate disclosure of contractual terms and conditions, including early termination fees. If those rules are established and complied with, then ETFs should properly be treated as commodity charges for purposes of POR programs. However, in the course of investigating this issue the Commission may wish to explore whether limits to ETFs in POR programs are necessary. A requirement for reasonable ETFs associated with charges billed in a POR program may be appropriate in this regard.

NEM notes that the availability of POR in and of itself can act to limit the amount of ETFs a marketer may need to charge because the credit and collection costs that the marketer would otherwise incur to collect from non-paying consumers in a non-POR environment are significantly diminished by the marketer's participation in the POR program. In other words, POR works as a de facto check on ETFs. However, if ETFs are not deemed commodity charges for POR program purposes it will require marketers to maintain a duplicate backup billing and collection system for the purpose of collecting these ETF charges. This undermines the fundamental purpose and functioning of POR programs overall and imposes an unnecessary set of costs on the competitive marketplace.

As a subject of future Commission investigation, in order to promote state energy goals associated with green energy, demand response and energy efficiency, additional value-added services that marketers provide should also be considered for inclusion within the scope of POR programs. NEM recognizes that charges for such value-added services may need to be distinguished such that non-payment of value-added services would not result in customers being disconnected by the utility.

(2) if the ETF is a "commodity" and subject to purchase by the utility, should it be reflected as a distinct charge from the electricity supply charge; and, if so, what is the cost to the utility to program its billing system to be able to bill a commodity charge separately from an ETF;

The ETF should be deemed a "commodity charge" for purposes of the POR programs and should be reflected as a distinct charge on the bill. NEM recommends this approach in order to promote price transparency to consumers and to avoid a source of potential consumer confusion. The addition of a line item on the consumer bill should be reasonable for the utilities to accomplish inasmuch as it entails a similar programming effort when the utilities add a line item to reflect a new rider tariff for their own delivery charges.

(3) if the ETF is a distinct charge, should the utility be able to terminate the service of a customer who refuses to pay the ETF;

Yes, the utility should terminate service of a consumer for nonpayment of the ETF. Nonpayment for commodity consumed and nonpayment of the commodity risk-related ETF should be treated the same. This recommendation is premised on the marketers' adherence to consumer protection standards that require accurate disclosure of contractual terms and conditions, including early termination fees. The ETF is a term of the commodity contract that the consumer signed, of which the consumer was on full notice. In conjunction with this recommendation, NEM reiterates its earlier suggestion that the Commission may find it appropriate to establish a requirement of reasonable ETF limits for the purposes of POR programs.

(4) if the customer disputes the ETF, what is the process for the dispute (for example, should the retail supplier be required to remove the charge from the bill and refund the payment for the ETF to the utility, until the matter is resolved); and

(5) if an ETF is purchased, and later waived by the retail supplier, what is the method for crediting the amount and reimbursing the utility for the amount purchased from the retail provider.

NEM is submitting a joint response to Questions 4 and 5. In treating the commodity risk-related ETF as a commodity charge, it should be subject to the same processes that are currently in use when a meter error or rebill or other related issue takes place and should be communicated and rectified under those same processes between the utility and supplier. There is no question that communications between the utility and supplier related to ETFs, as with other consumer billing issues, are critical to facilitating consumer dispute resolution.

Conclusion

For the foregoing reasons, NEM recommends that competitive suppliers' early termination fees should properly be deemed commodity charges for the purposes of the POR regulations.

Respectfully submitted,

Craig G. Goodman
President
Stacey L. Rantala
Director, Regulatory Services
National Energy Marketers Association
3333 K Street, NW, Suite 110
Washington, DC 20007
P: (202) 333-3288
F: (202) 333-3266
Email: cgoodman@energymarketers.com;
srantala@energymarketers.com

Dated: June 20, 2011.