

**STATE OF MARYLAND
PUBLIC SERVICE COMMISSION**

**In the Matter of Retail Choice Termination)
Fees Under Purchase of Receivables Billing)**

Mail Log #131649

**RESPONSE TO REQUEST FOR REHEARING
OF THE
NATIONAL ENERGY MARKETERS ASSOCIATION**

The National Energy Marketers Association (NEM)¹ hereby submits its response in support of the Application for Rehearing filed by Washington Gas Energy Services (WGES) on August 12, 2011. This response is filed pursuant to the Commission’s Notice of Opportunity to Respond dated August 19, 2011, in the above-referenced proceeding. In its filing, WGES seeks rehearing of the Commission’s action at the July 13, 2011, Administrative Meeting in which it determined that early termination fees (ETFs) are not “supplier charges” eligible to be treated as “supplier receivables” under POR programs. This determination was to be effective as of July 22, 2011. A written Order has not yet been issued by the Commission. WGES sought rehearing of the Commission’s determination on the grounds that the July 13th action:

- Arbitrarily departs from a longstanding rule and policy that is not adequately explained and does not comply with Commission regulations;

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.

- Relies on an interpretation of a prior letter order that in effect amounts to a new rule not adopted in compliance with the due process requirements of the State Administrative Procedure Act; and
- Is otherwise not supported by substantial evidence in the record.

NEM supports WGES' rehearing application and its requested relief and believes that WGES has offered ample justification for the Commission to grant rehearing. As noted by WGES, the regulations have permitted suppliers to use ETFs in the dual billing scenario for many years. Suppliers have reasonably acted in reliance on this policy. The Commission should not now make an unsupported change in its longstanding policy. Such a change injects unjustified regulatory uncertainty into the marketplace. This is compounded by the still nascent state of the utility POR programs and burgeoning consumer and supplier mass market activity that has taken place as a result of POR. Making a change of this nature to POR programs at this stage of market development could chill supplier market entry and undermine the significant efforts of the Commission and the stakeholders to support the availability of additional energy choice options to consumers.

As NEM argued in its initial comments in this matter, an ETF should be deemed a "commodity charge" for the purposes of the POR regulations because "but for" the consumer's decision to purchase the electricity/natural gas from the competitive marketer there would be no contractual obligation and no associated ETF. The ETF is causally connected to the commodity contracted for by the consumer. And, the ETFs are directly tied to the supplier's hedging and procurement activities undertaken to serve the consumer. The supplier's ability to charge the ETF mitigates the supplier's risk and associated costs that would otherwise be charged to the consumer.

However, if suppliers are restricted in their ability to charge ETFs as a result of the Commission's July 13th action, it will directly harm competition in a number of ways. First, it will result in suppliers being able to offer fewer fixed price products in the marketplace or having to offer such products at less competitive prices – clearly this result is harmful to consumers and choice programs. In addition, by eliminating ETFs from the POR programs, it undermines one of the important purposes of POR, namely, that suppliers should not have to retain a costly duplicative billing infrastructure (particularly as in this case it would be for the limited purpose of collecting ETFs). This is an inefficient result that places unnecessary costs on market participants to create and maintain billing systems that captive customers have already paid their utility for in delivery service rates. Again, forcing unnecessary costs on market participants that ultimately result in higher energy prices is clearly harmful to consumers and choice programs.

Conclusion

For the foregoing reasons, NEM supports the request for rehearing and respectfully recommends that the Commission honor and continue to follow its longstanding policy that suppliers' early termination fees are deemed "supply charges" for the purposes of the POR regulations.

Respectfully submitted,

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