



3333 K Street, NW, Suite 110
Washington, D.C. 20007
Tel: 202-333-3288
Fax: 202-333-3266

June 18, 2012

The Honorable Kristi Izzo
Secretary
State of New Jersey
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Trenton, NJ 08625-0350
Via email: kristi.izzo@bpu.state.nj.us

Re: Docket No. EX12040320 – In the Matter of the Petition of the Retail Energy Supply Association for a Rulemaking Proceeding to Establish a Rule Requiring Each Electric Distribution Company and Gas Public Utility to Make a Non-Recourse Purchase of Receivables Program Available to Each Third Party Supplier in its Territory

Dear Secretary Izzo:

The National Energy Marketers Association (NEM)¹ hereby submits its response in support of the Petition of the Retail Energy Supply Association dated April 17, 2012, requesting that the Board initiate a rulemaking proceeding on the adoption of regulations requiring the implementation of a nonrecourse Purchase of Receivables (POR) program by the electric and gas utilities to be made available to all third party suppliers. NEM supports the Board's initiation of a POR rulemaking proceeding as requested by the Petitioner pursuant to the Board's current authority under the Electric Discount and Energy Competition Act (EDECA), particularly with respect to defining the "manner and mechanics" by which "customer account services" are provided to choice consumers.

¹ 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

Alternatively, NEM submits that the Board has ample general statutory authority to protect the public interest and to protect consumers from incurring duplicative billing costs unnecessarily, and can take action to correct defects inherent in the current utility billing mechanics without a formal rulemaking. NEM submits that the Board also has specific statutory authority under EDECA as well as an ample regulatory record and approximately ten years of operational experience to support a modification of the utilities' currently defective billing mechanism to eliminate the duplication of costs and customer confusion caused by the "drop to dual billing mechanism."² The public interest in reducing unnecessary consumer confusion, lowering costs to the consumer, and supporting the availability of energy choice options also support the Board's authority to modify the currently defective POR program with a properly designed POR program.³ Given the economic conditions currently facing the State and the consumers of New Jersey, NEM would urge the Board to take action at the earliest possible time using its existing statutory authority and the ample administrative record that has accumulated on this specific defect in the utilities' current billing mechanisms.

I. Statutory and Procedural Background

The utilities existing consolidated billing programs were put in place pursuant to a settlement approved by the Board in 2001 in the Customer Account Services proceeding as part of the implementation of EDECA.⁴ "Customer account service" is defined in

include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.

² The current billing mechanisms permit utilities to issue a "consolidated utility bill" yet drop the charges associated with third party commodity that customers have consumed after either 60 or 120 days ("drop to dual billing mechanism") depending on whether it is electricity or natural gas. This current billing mechanism has been labeled "Recourse POR."

³ A properly designed POR program would not revert to dual billing, it would have a revenue neutral cost to the utility, avoid duplicative billing costs and would significantly support a more robust competitive retail energy market in the state of new Jersey. It has become known as "Non recourse POR" because the bad debt is handled in the same manner that all of the utility's bad debt has been historically treated.

⁴ Docket No. EX99090676, Order adopted February 2, 2001.

Section 48:3-51 of N.J.S.A. as “metering, billing, or such other administrative activity associated with maintaining a customer account.” Specifically, Section 48:3-54.a. of EDECA permits utilities, “to continue to offer customer account services on a regulated basis,” and requires the Board to delineate the, “the manner and mechanics by which customers are afforded the opportunity to contract with the incumbent utility or an electric power supplier for customer account services”⁵ There is an identical statutory provision with respect to customer account services for natural gas.⁶

By the terms of the settlement, utilities would provide consolidated billing services for competitive supplier customers. However, consumers would be dropped from utility consolidated billing to dual billing upon becoming sixty days in arrears. In practice, this amounts to a recourse POR program.⁷ In 2004, the Board without a rulemaking, modified the billing mechanism with respect to the gas utilities such that natural gas consumers would not be dropped to dual billing until they were 120 days in arrears.⁸

The most recent Board action on the subject of POR was the initiation of a POR and Price to Compare workgroup meeting to be led by Staff on February 8, 2011. NEM actively participated in this workgroup, up to and including the submission of comments on Staff’s POR Preliminary POR Design and Questions on May 11, 2011. There has been no subsequent activity of the POR workgroup. However, prior to the formation of the POR workgroup, NEM urged the Board to implement nonrecourse POR programs in multiple submissions to the Board in its readoption of the Energy Competition

⁵ N.J.S.A. Section 48:3-54.a.

⁶ N.J.S.A. Section 48:3-54.b.

⁷ By contrast, it should be noted that when industry stakeholders refer to well-functioning “POR programs” in other jurisdictions that those programs are nonrecourse POR programs.

⁸ Docket Nos. EX99090676 and EX94120585Y, Order adopted June 24, 2004.

Standards.⁹ This recommendation was made in the context of the regulatory requirement for a TPS to provide thirty days written notice of termination. NEM noted that the availability of nonrecourse POR programs would ameliorate the burden of the thirty day notice requirement.¹⁰ Although NEM also noted that nonrecourse POR programs positively affect the development of retail energy markets in other significant ways as well.¹¹ In the Board's recent April 11, 2012, readoption of the Energy Competition Standards it noted these comments and responded that,

the purchase of receivables/price to compare (POR) working group is analyzing these issues. The Board will address issues emanating from the group at a later date and will propose amendments, new rules, and/or repeals to the rules as needed based on the findings of the POR working group. Therefore the commenter's suggested changes have not been made.¹²

As explained above in the Energy Competition Standards rule readoption, the Board references acting on POR issues pending the findings of the POR working group, and yet over a year has passed since the last activity of the group. NEM urges the Board not to delay any longer in implementing fully functioning, nonrecourse POR programs. Accordingly, NEM supports the Commission's issuance of an Order, without further delay, requiring the utilities to offer a properly functioning nonrecourse POR program pursuant to the Board's authority under EDECA. Alternatively, at a very minimum, the Board could issue a rulemaking to require the statewide implementation of nonrecourse POR.

⁹ See, e.g., Comments of the National Energy Marketers Association on Readoption of Energy Competition Standards dated July 13, 2010, on pages 2-3, and July 1, 2011, on pages 6-7.

¹⁰ Id.

¹¹ For instance, utility creditworthiness requirements should reflect the fact that when the utility holds TPS receivables in a POR program, the utility faces virtually no risk of nonpayment.

¹² Docket EX11020089, Energy Competition Standards Readoption with Amendments, adopted on April 11, 2012, Response to Comments 69, 70, and 71.

II. Nonrecourse POR Programs Are Critical to Supporting Retail Market Development

NEM strongly supports the availability of nonrecourse POR programs¹³ for TPSs participating in the New Jersey retail gas and electric markets. Indeed, the availability of nonrecourse POR programs has been perhaps the most determinative factor in supporting retail market development in other jurisdictions.¹⁴ For example, the Pennsylvania Public Utility Commission, in approving a POR program for PPL stated, “it is the Commission’s judgment that a viable POR program is an essential element to the creation of a competitive market for generation in Pennsylvania.”¹⁵ NEM notes that the Pennsylvania

¹³ For the sake of clarity in this discussion, in NEM’s view a nonrecourse POR program is premised on the following constructs:

- 1) Utility consolidated billing is a prerequisite to offering a POR program.
- 2) Marketers shall not be required to use POR/consolidated billing.
- 3) The application of a POR discount rate is appropriate only when the utility has unbundled bad debt from its delivery rates. Otherwise the utility will recover bad debt expense twice – once from the consumer in the bad debt rates and once from the supplier in the POR discount rate.
- 4) The utility POR program shall use a discount rate to compensate the utility for uncollectible experience and any verified and prudently incurred incremental costs of implementing and administering the POR program.
- 5) The utility shall update the discount rate on a yearly basis based on its uncollectible experience.
- 6) The discount rate may vary by customer class if substantial cost and risk differences exist.
- 7) Utilities shall be allowed to terminate for consumers’ non-payment of marketer charges, subject to consumer protection provisions. Permitting utility termination reduces risk to the utility, permitting a concomitant reduction in the POR program discount rate. It also allows utilities to more efficiently conduct billing and collection operations because under the alternate scenario they must bear the cost of maintaining separate billing systems and procedures to accommodate two different sets of collection and termination rules.
- 8) POR significantly minimizes consumer credit ratings as an impediment in TPS customer enrollment.
- 9) The drop to dual billing construct is unnecessary and shall not exist in tandem with POR.

Consistency in POR programs across utility service territories and commodities aids in TPS entry and participation in those programs.

¹⁴ The Ohio gas utilities offer nonrecourse POR programs. The Illinois legislature required that electric utilities in the state implement POR. Connecticut and Maryland have recently adopted and Massachusetts is in the process of adopting regulations and utility implementation plans to support POR. Other states have supported or have ordered POR in their electricity and/or natural gas markets for several years, such as Consumers Energy and Detroit Edison in Michigan (for gas choice), NIPSCO in Indiana, and Kentucky. A key feature of such programs is allowing the utility to treat the purchased receivables as their own for collections and disconnection purposes.

¹⁵ Docket No. M-2009-2104271, PPL Electric Utilities Corporation Retail Markets, Opinion and Order, August 6, 2009, page 27.

PUC required PPL to offer POR at little or no discount in compensation for the utility's retention of uncollectibles in its base rates.¹⁶ The Pennsylvania PUC also endorsed the use of POR programs by its gas utilities.¹⁷ The Pennsylvania PUC determined that,

The use of POR programs can promote efficiencies, reduce costs to consumers and reduce barriers to market entry by alternative natural gas suppliers. The NGSs have long argued, and we agree, that the inclusion of billing and collection resources and costs in distribution rates provides an unfair subsidy in the provision of utility sales service and requires shopping customers to, in effect, pay twice for billing and collection. If this barrier to competition is reduced, the net result, for the benefit of consumers, is greater access to alternative supplier offers and competitive prices.

...

For purposes of POR programs, the redundancy in cost situation affecting NGS customers may be prevented by requiring that the NGDC provide to the NGSs and its customers without additional charge those services that are already paid for in base rates, namely services related to bad debt and billing and collection.¹⁸

Similarly, the New York Public Service Commission identified utility purchase of receivables as a "best practice" in its Retail Policy Statement. The NYPSC found that, "A major success in the residential market . . . is the utility purchase of accounts receivable to simplify ESCO operations and reduce ESCO overheads."¹⁹ The NYPSC,

¹⁶ Id. at page 29. **In other words, so long as uncollectibles remain bundled in utility full service rates, migrating customers should not pay uncollectibles expenses twice, once as a function of the utility delivery rates and once as a function of the POR charge.** The Pennsylvania PUC's approach also recognized that the utility's risk (and commensurate need to charge a discount rate) is mitigated by its ability to terminate customers for non-payment in the POR program. Additionally, the Commission made clear that the, "discount rate reflect only actual incremental expenses incurred," by the utility and not become a utility profit center. Id.

¹⁷ Docket No. L-2008-2069114; See also Docket No. I-00040103F0002, Final Order and Action Plan, at 12.

¹⁸ Docket No. I-00040103F0002, Final Order and Action Plan, at 11-12. The Pennsylvania PUC recently reaffirmed this finding,

The Commission continues to believe that POR programs offer the best means to increase supplier participation in the retail natural gas supply market, compensate NGDCs for their risks and costs, and are in the public interest. As we stated in the *ANOFR Order*, the existence or non-existence of a POR program is an extremely important factor that an NGS will consider in deciding whether to commit to offering service in an NGDC's service territory, especially with respect to the residential/small business customer market. Docket No. L-2008-2069114, Natural Gas Distribution Companies and Promotion of Competitive Retail Markets, Final Rulemaking Order, at page 35.

¹⁹ Case 00-M-0504, Retail Policy Statement, issued August 25, 2004, at page 15.

“strongly encourage[d] that purchase of ESCO accounts receivable, especially when used with a Switch and Save approach, be considered in upcoming rate cases and during the course of current rate plans for utilities that agree to do so, because it has proven to be a model that works extremely well in jump-starting the energy market for residential and small commercial customers.”²⁰ The NYPSC subsequently reaffirmed the importance of POR as a program, “essential to maintaining a competitive market structure.”²¹ 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.”²² NEM submits that as a practical matter, the ability to service both New York and New Jersey consumers using similar billing mechanisms increases the economies of scale and reduces the costs to serve consumers in both states.

The Board has the authority under EDECA²³ to define the “manner and mechanics” by which consumers receive “customer account services” in the retail energy marketplace, including the statewide implementation of nonrecourse POR programs. Many years of TPS experience in the New Jersey market, and experience with POR in other jurisdictions, would justify such a modification of existing utility billing mechanisms. NEM respectfully requests that the Board move ahead expeditiously to ensure that nonrecourse POR programs are made available in the retail market to promote TPS supplier participation and the corresponding ability to provide increased numbers of consumers with meaningful energy choice.

²⁰ Id. at 16.

²¹ Case 07-M-0458, Order Determining Future of Retail Access Programs, issued October 27, 2008, at 8.

²² Id.

²³ N.J.S.A. Section 48:3-54.a. and Section 48:3-54.b.

Nonrecourse POR programs facilitate market development because they limit the competitive disadvantages that result from guaranteed utility bad debt cost recoveries and the exclusive ability of the utilities to collect bad debts by shutting off a captive ratepayers' energy supply. The utilities' ability to disconnect service is a strong deterrent, and they should be able to exercise this right attendant with customer non-payment of competitive commodity supply charges in a Commission-approved nonrecourse POR program. Moreover, nonrecourse POR enhances the ability of the competitive marketplace to serve credit-challenged customers. Utility implementation of POR eliminates the cost of consumer credit checks for marketers, particularly since the utility already has payment histories of customers and mechanisms in place to manage events of customers' inability to pay. POR reduces the costs to acquire and serve consumers thereby facilitating competitive entry by suppliers and increasing energy choice options available in the marketplace. POR programs also promote the efficient use of the utilities' legacy billing infrastructure that has been paid for by ratepayers in their delivery rates.

Of particular relevance with respect to the New Jersey market, POR eliminates the current drop to dual billing mechanism. Current utility practice requires that a choice consumer "drop to dual bill" from the utility consolidated bill upon becoming 60 days(electric)/120 days (natural gas) in arrears. The drop to dual billing from utility consolidated billing creates unnecessary confusion for consumers and marketers and undermines the functioning of POR. Continuation of the dual billing system unfairly penalizes some customers who become delinquent by blocking their ability to select an alternate supplier. By providing the utility with the right to terminate for nonpayment of marketer charges and the ability to recover its bad debt, nonrecourse POR eliminates the need for the drop to dual bill process.

III. Conclusion

For the foregoing reasons, NEM respectfully requests that the Board issue an Order requiring all utilities in the state to offer a nonrecourse POR billing mechanism at the earliest possible time, and/or initiate a rulemaking proceeding to implement nonrecourse POR on a statewide basis as request in the above referenced matter.

Respectfully submitted,

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