NATIONAL ENERGY MARKETERS ASSOCIATION

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

Re: Board Staff's Utility Consolidated Billing/Purchase of Receivables Proposal

Dear Secretary Izzo:

The National Energy Marketers Association (NEM)[1] hereby submits comments on the Board Staff's Utility Consolidated Billing/Purchase of Receivables (UCB/POR) Proposal pursuant to the Notice of Opportunity to Comment. It is important to note that POR, as a public policy, has proven itself to be one of the lowest-cost, highest benefit public policies that can be implemented in states in which consumers are free to shop for alternative energy suppliers. However, in the New Jersey market[i] two unique public policies have been appended to POR which have rendered POR a far less effective public policy, and have actually undermined its intended public purpose. The concept of recourse and dropping customers to "dual billing" have had and will continue to undermine the enormous public interest benefits that New Jersey POR itself provides, and instead operates to the detriment of consumers (particularly low income consumers), utilities, marketers as well as the market itself. In fact, New Jersey's unique form of recourse and forced dual billing actually incent discrimination against low income and credit-challenged 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 include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.

Under Staff's Proposal, the electric utilities' receivables programs would be brought into alignment with the natural gas utilities receivables programs. Now all consumers would be forced to receive dual billing[2] when they are 120 days in arrears. The current restriction on customer eligibility for UCB would be modified to allow customers to participate that are not 90 days or more in arrears. However, given all the time, analysis and hard work that has been done by Staff and all the stakeholders herein, NEM urges that it is time that the Board eliminate both the "***recourse***" and "***drop to dual billing***" appendages that currently adhere to what would otherwise be an efficient, low-cost and otherwise a highly successful traditional POR program.[3] As has been demonstrated in many other states, traditional POR programs (without New Jersey's unique form of recourse plus forced dual billing) benefit all parties, including utilities, and save consumers as well as all other stakeholders enormous amounts of time, resources, customer confusion and dissatisfaction.[4] Forcing recourse and dual billing onto an otherwise well-functioning POR program imposes unnecessary and duplicative costs associated with maintaining multiple and duplicative sets of books as well as building and maintaining multiple and duplicative billing systems, merely to serve the exact same universe of consumers. NEM urges the Board to take this opportunity to require all utilities to offer a properly functioning traditional POR program and eliminate both the recourse and dual billing requirements that have stymied retail market participation by TPSs, harmed consumers and is totally supported in successful choice jurisdictions across the country.

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[2] The current billing mechanisms permit utilities to issue a utility consolidated bill yet drop the charges associated with supplier 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.

[3] As is working well in ten states such as, Pennsylvania, Ohio, Illinois and Maryland. And in each case, the implementation of what has become the traditional POR program has been labeled an unqualified success by all participants.

[4] It must be noted that both the recourse provision and the dual billing provisions unduly discriminates against the lowest income consumers and imposes the hardest impact on those least able to afford it. Indeed, non-recourse POR as has been implemented in ten states and was specifically implemented to ensure that all consumers could be given the benefit of competitive choices without regard to their income status or creditworthiness. Generally bad debt has been treated as recoverable by the utility and poses no extra costs or risks on them, the consumer, or the marketplace. The public benefits of the program normally pay for themselves in properly computed discount rates.

I. Staff's UCB/POR Proposal and Procedural History

The Staff proposal provides that:

- All of the electric and gas utilities would be required to offer POR and utility consolidated billing to all residential and small to mid-sized commercial customers.

- POR programs for large C&I customers would be offered at the utilities' option.

- POR would only be available for supplier commodity charges, not any additional competitive services.

- The current restriction on customer eligibility for UCB (dropped to dual billing within the past 12 months) would be modified to allow customers to participate that are not 90 days or more in arrears.

- The policy of dropping electric customers to dual billing that are 60 days in arrears would be changed to 120 days, in alignment with the current practice of the gas utilities.

- The utilities would be required to provide suppliers with monthly arrearage reports.

- Staff does not recommend any change to current discount rates or consolidated billing fees.

As noted in the procedural history of Staff's Proposal, Staff and the stakeholders have been engaged in an extensive review of the utilities' current receivables programs. This has included the Staff's POR Working Group as well as in the Board's Energy Competition Standards rulemaking and a Petition for Rulemaking on POR.[5] NEM actively participated and commented in all of these venues. NEM compliments Staff for its thorough review of POR - a program that is in itself absolutely critical to retail market development, and has been the linchpin to facilitating cost-effective supplier market entry and participation in most retail choice jurisdictions. NEM appreciates that Staff's Proposal endeavors to improve upon the utilities'

[5] POR/PTC workgroup initiated on February 8, 2011; Docket EX11020089, Energy Competition Standards Readoption with Amendments; Docket No. EX12040320 - Petition for a Rulemaking Proceeding to Establish a Rule

current receivables programs by extending the period before which electric consumers will be forced to receive dual billing, by allowing consumers to participate if they are not 90 days or more in arrears, and by requiring utilities to provide timely arrearage reports to suppliers. However, we believe that the retention of the recourse and dual billing requirements is fundamentally inconsistent with a properly functioning, non-discriminatory, low-cost and otherwise highly successful POR program. Of equally significant concern, the dual billing requirement is harmful to consumers, in particular both low income and payment-challenged consumers who will disproportionately bear the added costs, discrimination and other negative consequences of being prevented from shopping for energy options that can better help them budget for their energy needs. NEM urges that the extensive record that has been formed through the efforts of Staff and the stakeholders[6] to review POR justifies a Board decision requiring that all of the utilities in the State of New Jersey adopt the highly successful, traditional POR program that does not force low income or delinquent consumers to receive two bills and basically incent the marketplace to return them to the utility, thereby redlining them and prohibiting them from shopping for more competitively priced service.

II. Hallmarks of a Functioning Nonrecourse POR Program

In NEM's view and experience in retail markets with successful energy choice programs, a properly functioning traditional POR program[7] carries certain hallmark characteristics. In a traditional POR program, participating suppliers will be charged a discount rate that compensates the utility for uncollectibles as well as prudent and verifiable incremental costs incurred by the utility in implementing and administering the POR program. However, if the utility has not unbundled bad debt from its delivery rates, the discount rate should not incorporate this element.

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.

[6] Id.

Otherwise the utility will recover bad debt expense twice – once from all consumers in the delivery rate and once from suppliers in the POR discount rate.

In a properly functioning traditional POR program, the utility is allowed to terminate for nonpayment of supplier charges, subject to compliance with applicable consumer protection provisions.[8] Giving the utility the ability to terminate for nonpayment of supplier charges is important to allow the utility to reduce its risk. It is also a powerful mechanism for incenting consumer payment. In addition, it levels the current competitive advantage enjoyed by the utility of guaranteed bad debt recovery. To be clear, under a properly functioning traditional POR program, the utility is in no different position than they are under the current system, perhaps even a better position. They have a risk of nonpayment with their captive ratepayers, and they are compensated for it through the bad debt component of delivery rates. The POR discount rate ensures that the utility is compensated for its costs and risks.[9] However, by adding on the appendages of recourse and dual billing to POR, it actually incents the marketplace to return payment-challenged as well as the most expensive consumers to serve back to the utility, creates confusion and ill will among the public, and forces the utilities and marketers to both maintain duplicate collections and bad debt billing systems. All of which add to the consumer's cost of energy. Again, the non-traditional POR program is disproportionately inuring to the detriment of those least able to afford it.

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[7] POR programs without the recourse and dual billing appendages have been proven to be extremely successful and low cost public policies for opening markets to competition.

[8] Given that these same consumers are former utility captive customers, the uncollectible experience should not vary when these consumers elect to purchase energy from a competitive supplier.

[9] While other jurisdictions have unbundled uncollectible costs from utility delivery rates, and uncollectibles therefore are a component of the POR discount rate, the New Jersey utilities bad debt remains bundled in the delivery rates. In the absence of unbundling, uncollectible expense should not be a component of the POR discount rate.

III. The Drop-to-Dual Billing Mechanism Harms Consumers and Suppliers and Should be Eliminated

The forced dual billing system is unnecessary and is not in the public interest. Moreover, it is completely unnecessary to ensure the proper functioning of a successfully proven traditional POR program.[10] By providing the utility with the right to terminate for nonpayment of supplier charges and the ability to recover its bad debt, traditional POR eliminates the need for both recourse and forced dual billing. In addition, the dual billing in and of itself creates unnecessary confusion for consumers and undermines the functioning of POR. As a general proposition illustrated by many customer surveys, consumers have been overwhelmingly shown to have a preference to receive one bill rather than two each month. Of greater concern, continuation of the dual billing system unfairly penalizes customers who become delinquent by blocking their ability to select an alternate supplier. A billing error of one penny and other minimal mistakes can cause a consumer to be unfairly dropped to dual billing and lose the benefit of the competitive energy product they shopped for and chose.

One of the chief benefits of a properly functioning traditional POR program is to eliminate discrimination against low income and credit-challenged consumers, thereby permitting all consumers, particularly low income consumers, to benefit from shopping for better energy prices or services and for whom energy costs represent a higher overall share of income. However, New Jersey's non-traditional POR program which includes a form of recourse and forced dual billing does just the opposite. These provisions individually and collectively actually incent suppliers to return non-paying consumers back to the utility to avoid both bad debt and dual billing. This is because competitive suppliers are economically incented by these specific provisions to avoid the added costs and risks associated with credit-challenged customers. Other states competing for the private capital and job creation associated with this fast growing new retail energy services and technology industry have wisely chosen to maximize the existing utility billing and collections infrastructure, thereby allowing new investments in their states to be a more competitive use of capital.[11]

One of the major policy goals of the traditional POR program has been to allow all consumers to be served equally. However, forced dual billing requirements hurt both low income and payment-challenged consumers the most. The proposal to extend the period to 120 days before an electric consumer must receive two bills is an improvement. However, it continues to incent suppliers to return consumers to the utility to avoid the costs and risks associated with both the recource and forced dual billing requirements inherent in New Jersey's unique non-traditional POR program.

IV. Timely Arrearage Reports are Critical to Enabling Suppliers to Manage a Drop-to-Dual Billing Mechanism

If, contrary to NEM's recommendations, the Board continues to retain either the recourse or the -dual billing requirements of its current POR program, it is imperative that suppliers be provided with timely arrearage reports as suggested in Staff's Proposal. This information is necessary for suppliers to have access to account aging information for the consumers they enroll. NEM members report that that the process currently followed by PSEG for providing arrearage reports works best. PSEG provides a weekly e-mail with arrears broken out into 30-60, 61-90, 91-120, >121 day time periods.

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[10] NEM notes that NJNG does not currently use the drop-to-dual billing mechanism, and its experience is further evidence that dual billing is not necessary.

[11] Since POR programs in other jurisdictions do not include either recourse or a drop-to-dual billing, millions of dollars in duplicative billing and collection systems are not required to do business in other states. Indeed, one of

Conclusion

NEM appreciates the thorough examination of POR undertaken by Staff in forming its Proposal. NEM urges that the Board rely on the extensive record developed in multiple proceedings to adopt a traditional, successfully-proven traditional POR program without either the recourse or dual billing requirements.

Respectfully submitted,

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[i] In the New Jersey POR billing construct, utilities issue a utility consolidated bill for delivery charges and the charges associated with supplier commodity until a consumer becomes either 60 or 120 days in arrears (“drop-to-dual billing mechanism”) depending on whether it is electricity or natural gas. After this 60/120 day point, the supplier is then responsible for issuing a bill for commodity charges to the consumer if they have not returned the consumer to utility basic generation service. This, in effect, is recourse POR, because the supplier is then billing to recover any uncollected balance from the dropped consumer. This drop to dual billing mechanism is not employed in any other state utilizing a traditional, functioning POR model. Accordingly, all of the benefits of a traditional non-recourse POR program are completely subverted at that “drop to dual” billing point. The suppliers and utilities are forced to bear duplicative billing and infrastructure costs and maintain multiple sets of books and records to manage customers in both the initial 60/120 day phase of the program that looks like traditional nonrecourse POR as implemented elsewhere and then the second post-60/120 day phase of the program when consumers are either reverted to the utility or the supplier and utility are issuing each consumer a duplicate bill. This is a highly inefficient system that imposes an unnecessary and duplicative set of energy costs on consumers, particularly the low income consumers that are likely to be forced back to utility commodity service.

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the rationales of other state PUCs in approving nonrecourse POR is avoiding the huge duplicative cost of billing infrastructure that captive ratepayers have already paid for in their delivery rates.