

AUDITS, ENERGY,
CLEAN ENERGY &
CUSTOMER ASSISTANCE

ORDER

DOCKET NO. EA07110885

BY THE BOARD¹

BACKGROUND

¹ Commissioner Christine V. Bator recused herself on this matter due to a potential conflict of interest.

implemented by the customer's electric distribution company. In the Matter of the Voluntary Green Power Choice Program, Docket No. EO05010001 (April 13, 2005) (CPC Order).² As part of the enrollment process, the customer account number must be provided by the licensed CPM to the EDC.

In the CPC Order authorizing the program, the Board recognized the use of account numbers as a potential barrier to participation. Over time, experience with the CPC program has further demonstrated that the requirement of an account number for enrollment limited the ability to market the program. Similarly, enrollment with a TPS, and thus the furtherance of the competition intended to be fostered by EDECA, has been hindered by the requirement that a customer account number be obtained by the TPS. Current enrollment procedures for both CPMs and TPSs require that each potential customer must provide his or her own utility account number in the application for CPM or TPS services. The CPM or TPS then sends an Electronic Data Interchange (EDI) transaction to the LDC to process the order, which is done on the date of the next actual meter reading or the date of the following actual meter reading, depending upon the date the EDI transaction is sent. The customer's account number is a necessary part of this EDI transaction. However, CPMs often enroll customers at public gatherings and venues such as shopping malls and street fairs. Customers generally do not have their account numbers with them in these places and are unable to complete the application process at the point of sale. A TPS may engage in a variety of marketing strategies, including street fairs or door-to-door solicitations, but even in a customer's home the need to stop to retrieve a customer account number presents a barrier to completion of a sale. The customer must take the extra step of retrieving a recent utility bill and finding the necessary account number, or placing a call to a Customer Call center, in order to enroll with the TPS or CPM. Staff believes that the need for this extra step in order for the transaction to be completed both decreases participation and increases costs, creating a barrier to efficient customer enrollment by TPSs and CPMs and thereby impeding customer choice.

Initially, in the context of Clean Power Choice, Staff worked with EDCs, CPMs, and Rate Counsel to develop a Customer Account Number Look-up procedure; these parties first submitted comments at that time. On November 30, 2007, the Board issued a Secretary's Letter posted upon the Board and the Clean Energy Program websites, requesting comments from interested parties on a proposed customer account number look-up procedure (Proposed CAL Procedure). The Proposed CAL Procedure would require local distribution companies to provide a customer's account number to a TPS of natural gas or electricity, or to a CPM, if the TPS or CPM obtains a signed consent form from the customer for enrollment with the TPS or CPM and notifies the LDC. The Proposed CAL Procedure was described in the November 30, 2007 Secretary's Letter as follows:

Under the procedure, the customer would sign a Board-approved CPM or TPS enrollment form authorizing the release of their account number to the CPM or TPS. The customer would provide their name, address, and phone number on the form and the form would designate the CPM or TPS as the customer's agent for the sole purpose of the customer's enrollment with the CPM or TPS, and would give explicit permission to the EDC or gas public utility to access the customer's account information for enrollment purposes. The CPM or TPS would submit an electronic list of names and addresses to the LDC and the LDC would check the list against its database to "look up" and retrieve the LDC account numbers. The LDC would then return the list to the CPM or TPS with

²This program was initially known as the Voluntary Green Power Choice program. CPC Order.

account numbers for those customers whose names and addresses matched. The CPM or TPS would then enter the account number into the EDI system to enroll the customer. As a safe guard, the proposed procedure would also provide that, if a CPM or TPS enrolls a customer in error, the CPM or TPS will be required to pay full restitution of any payments made within fifteen business days of a complaint filed with and verified by Board staff. If a customer wishing to participate is not enrolled, the CPM or TPS must commit to enrolling such a customer within fifteen business days of a complaint filed with and verified by Board staff.

Based upon the initial comments received, the Board issued a second Secretary's Letter on January 30, 2008. In the second letter, the Board provided the public the opportunity to respond to the initial comments and to provide further input on the following two specific issues:

- 1 The proposed procedure was originally intended to be used at street fairs, malls, trade shows, etc. Staff requests comments regarding whether this procedure should be acceptable at all locations or if it should be limited. For example, if a TPS or CPM goes door to door seeking customer enrollment, should the customer be required to put their customer account number on an enrollment form since they should have access to it at their home, or should they be able to authorize the release of their account number by signing the Board-approved form?
2. One commenter recommended that TPSs and CPMs should be required to pay the LDC for the service of retrieving customer account numbers. The commenter recommended that the payment should equal the LDC's fully allocated cost to provide the service. Staff requests comments on this suggestion. In addition, Staff requests that the LDCs provide estimates of how much it would cost to retrieve customer account numbers considering that the customer's name, address, and phone number would be provided to the LDC electronically.

In response to the Secretary's letters of November 30, 2007 and January 30, 2008, comments were filed by the following: Department of the Public Advocate, Division of Rate Counsel (Rate Counsel); PSEG Services Corporation on behalf of Public Service Electric & Gas Company, Jersey Central Power & Light Company, Rockland Electric Company, and Atlantic City Electric Company (collectively, EDCs); a group of seven entities filing jointly (Intelligent Energy, UGI Energy Services, Inc., Econnergy Energy Company, Agway Energy Services, IDT Energy, Inc., MXenergy Inc. and the National Energy Marketers Association (NEMA) (Marketers 1); four of those seven entities filing jointly (Intelligent Energy, Agway Energy Services, Econnergy Energy Company, and NEMA) (Marketers 2); the Retail Energy Supply Association (RESA); Vista Energy Group (Vista); Consolidated Edison Solutions, Inc. (CES); Community Energy Inc. (CEI); South Jersey Gas Company (SJG); Elizabethtown Gas Company (ETG); New Jersey Natural Gas Company (NJNG); Green Faith; and Hess Corporation (Hess). Staff has reviewed the comments and based on its review recommends several modifications to the Proposed CAL Procedure. Below is a summary of the issues and concerns raised in the public comments and of Staff's recommendations in response.

Summary of Comments and Staff Recommendations

Alternative to Account Look up Procedure

The EDCs suggest that Staff's recommended solution is not necessary because customers can obtain their own account number through utility call centers. However, some CPMs and

Marketers 1 assert that this call center option is cumbersome and slow, and in fact deters many potential customers.

Staff considered CPM and TPS experience to date with the use of EDC call centers to obtain customer account numbers. This experience indicates that the procedure is slow and not cost effective when marketing to a group of customers at an event. It can take up to 15 minutes for a customer to call into the EDC call center, verify their identity and obtain the customer account number to complete the enrollment form. Some customers may choose to defer the decision rather than stop to call their local utility. As further discussed below, some CPMs also submitted data showing higher enrollment rates in markets where customer account look up is available. Staff recommends the proposed customer account look-up procedure as a more efficient method which will reduce barriers to participation in the retail market.

Potential for increased program participation and enrollments based on other market experiences

TPSs and CPMs commented that provisions for account look-up would significantly improve their ability to market services, decrease customer enrollment costs, and increase participation in alternative energy programs. Marketers 1 cited provisions made in Texas, New York and Georgia for account look up services designed to “advance policies favoring retail competition, increased customer choice and ease of customer switching.” Marketers 1 also cite a New York State Public Service Commission (NYPSC) decision which orders utilities³ to file plans for providing customers with real-time access to their customer account numbers.⁴ Marketers 1 note that the NYPSC speaks of “our policies favoring retail competition, increased customer choice, and ease of customer switching.” Retail Access at p 10. EDCs, however, cite to the same decision as an example of a denial of a customer account look-up procedure because of consumer privacy concerns and the risk of increased slamming.

EDCs comment that “they are not aware of any other electric, gas or clean power market where such a proposed process exists” and suggest that in Connecticut, electric utilities only provide this type of service to CPMs as an exception. CEI submitted data from clean power choice programs in Pennsylvania, New York, Connecticut, Rhode Island and Illinois that indicate higher consumer response and participation rates in states and programs that provide account look up as opposed to those that do not. In addition, SJG indicated that it is currently providing a customer account look-up service to TPSs in New Jersey.

Staff reviewed the data on clean power choice programs in other states to evaluate the utility of an account look-up procedure in the context of competitive markets. On the basis of this review Staff believes that customer account look-up, when implemented with reasonable consumer protection measures, has shown a positive impact on customer enrollment and participation thus improving customer access and choice. With regard to the NYPSC decision, Staff notes that the petition in question sought direct access to consumer information by TPSs, which is not at issue in the Proposed CAL Procedure.

ETG commented that it supported the Proposed CAL Procedure provided that further research would not be required for records provided by a TPS or CPM that did not produce a match in an

³References to “utilities” made by commenters have been retained in referencing these comments. The Board has otherwise used the terms “EDC,” “GDC,” and “LDC” in this Order.

⁴New York Public Service Commission, Case 98-M-1343, I/M/O Retail Access Business Rules (11/7/06) (Retail Access).

LDC's database. NJNG commented that there was no assurance that the customer information provided to LDCs by TPSs and CPMs would be accurate and legible, or that a name and address would accurately reflect the actual service address in the LDC customer information system.

As described in Staff Proposal and Procedure for Utility Customer Account Number Look-Up (Attachment 1), the Proposed CAL Procedure requires that the customer provide name, address, and phone number, and that the CPM or TPS provide that information to the LDC in an Excel spreadsheet. If the LDC does not find a match in its database, the LDC would return the spreadsheet to the Clean Power Marketer or Third Party Supplier without the account number for that customer, and the CPM or TPS would have to reach out to the customer directly. Thus no further research would be required.

The need for additional consumer protections

EDCs comment that implementation of the Proposed CAL Procedure would weaken consumer protections and "be susceptible to fraudulent behavior." NJNG makes the same comment. EDCs and Rate Counsel both raised concerns about the need for consumer protection measures and strongly recommend that TPSs and CPMs should be required to obtain customer authorization in the form of a wet signature on a Board-approved enrollment and consent form before requesting an account number from the EDCs.⁵ TPSs comment that customer account number look-up can be implemented with consumer protections adequate to prevent unauthorized disclosure of information or change of supplier. Marketers 1 point to the requirement to obtain the customer's signature beforehand and to the fact that the marketer would view information only about that customer. Some TPSs, Marketers 1, and RESA recommend that additional enrollment methods such as internet and telephone be considered eligible for the service and not only wet signatures. The TPSs comment that imposing a wet signature requirement would be contrary to the objective to remove market barriers to participation and that allowing alternative means of verification is consistent with EDECA and is consistent with the Board intent to support a consumer choice.

The request by Rate Counsel and the EDCs for the use of an original signature on a Board-approved enrollment and Release Form has been incorporated in the proposed procedure, as the form requires that the customer place an original signature in ink upon it. Staff recommends that the form authorizing the release of the customer's account number to the CPM or TPS be separate from the enrollment form (see Attachment 2). Staff does not believe that allowing the use of the Proposed CAL Procedure for authorizations obtained in any other manner is advisable at this time, given consumer protection concerns and the resultant need to proceed cautiously.

Marketers 1 state that the information required to enroll a customer is the same as that required to obtain the customer's account number, and that this "will ensure the integrity and validity of the switching process."

The Proposed CAL Procedure uses a form for authorization of account number look-up which is separate from the form for enrolling in the Clean Power Choice program or with a Third Party Supplier. Although the same information may be provided on each form, Staff recommends that this separation of forms be retained in order to increase the customer's awareness of the

⁵The term "original signature" is used in this Order to denote what some commenters call a "wet signature."

process and to provide a higher degree of consumer protection through requiring a separate step in the process to release this proprietary information.

NJNG commented that the requirement that the TPS or CPM maintain the document with the customer's wet signature leaves the LDC with no supporting documentation if a customer calls to complain.

The Proposed CAL Procedure provides that the CPM or TPS be required to keep the original signatures on record and to produce them upon request.

Rate Counsel commented that representatives of TPSs and CPMs should make clear to the potential customer their affiliation with the energy provider and the requirement for verification, as well as provide consumer protection information.

The TPSs' obligation to make the requirement for independent third party verification of switching energy suppliers and any representative's affiliation with the energy provider clear to the potential customer is set out in the Board's rules prohibiting unauthorized changes of supplier, or "slamming," at N.J.A.C. 14:4-2.3 (c). The consumer protection information to be provided by a TPS is provided for at N.J.A.C. 14:4-7. As noted in responses to comments on that rule, the Board is aware that there may be a potential for slamming type problems with marketing and enrollment practices of CPMs. However, including CPMs in the anti-slamming rules would be a substantive change requiring a further rulemaking. In addition, the Board also must consider whether other provisions currently applicable to TPSs should be applied to CPMs. The Board may also determine that additional public input on this issue is necessary. Staff recommends that after considering these issues, the Board make a determination as to whether to extend the anti-slamming provisions to CPMs and consider issuing a rule proposal in this regard.

As a further response to the comments received regarding consumer protections, Staff recommends that it be directed to monitor the program for one year and review all data submitted to identify the effectiveness of the procedure, including any weakness in consumer protections. In order to assist Staff in monitoring the program, Staff recommends that LDCs be required to file quarterly reports that contain the following information, broken out by CPM or TPS:

Number of Customer Account Look-ups (CAL) requested;

Number and percentage of CAL requests that were successfully responded to by the CPM or TPS;

Number and percentage of requests not responded to due to incomplete or inaccurate information provided by the CPM or TPS;

- Number and percentage of requests not responded to due to utility error;
- Number and percentage of enrollments completed within twenty days, the twenty days running from the date the utility receives the complete and accurate form;
- Number and percentage of complaints of failure to enroll received

Staff recommends that the LDCs be required to file monthly reports, broken out by CPM or TPS, on the number and percentage of complaints of erroneous enrollment received due to account numbers that were actually released. If unauthorized use of an account number occurred, this information should be included, and whether unauthorized use is due to inaccurate information provided by CPM or TPS, or due to an inaccurate number provided by LDC.

Staff also recommends that it be directed to monitor, through the required reports from the LDCs, the history of the customers who enroll in the Clean Power Choice program or with a TPS through the Proposed CAL Procedure and include the information gathered in the CAL First Year Report.

Staff recommends that the results of its analysis be included in a report to the Board which would summarize Staff's analysis of the data from the LDCs and any recommendations which result from it (CAL First Year Report).

New Jersey Natural Gas, in consideration of potential consumer protection issues, recommends that the Board implement the customer account look up procedure on a pilot basis and limit it to residential customers only.

Staff recommends that the Proposed CAL Procedure be implemented on a pilot basis to provide Staff with the opportunity to track EDC, CPM and TPS experience and modify the procedure as appropriate. The data obtained in this way can be summarized and analyzed as needed in the CAL First Year Report. Staff also recommends that the Proposed CAL Procedure be limited to residential customers as commercial customers have ready access to their customer account numbers.

Limit CAL to the Clean Power Choice Program

LDCs requested that customer account look-up be limited to the CPC program and not be available for gas or electric commodity choice to prevent slamming. EDCs claim that this issue has never been raised by a TPS and question the merit of expanding the scope of this process to TPSs as it would weaken consumer protection. EDCs consider that the "monetary impacts of potential fraudulent behavior can be far greater if actual commodities are involved as they are in TPS sales (ie. electric or gas), than by enrollments that only involve renewable energy credits as in the CPC Program." TPSs, however, strongly support the application of CAL to energy choice and the selection of a third party supplier and consider that adequate consumer protection measures can be incorporated to protect consumers from slamming.

Consumer protection measures in the Proposed CAL Procedure are discussed above. The same requirements of a Release Form, an explicit authorization from the customer, and a limitation of the authorization to the provision of the customer account number apply to both TPSs and CPMs. Staff notes that in neither case, should the arrangement with the TPS or CPM terminate, would the customer's access to Basic Generation Service (BGS) or Basic Gas Supply Service (BGSS) be threatened. Moreover, Staff believes that considerations of fairness mandate making the service available to TPSs as well as CPMs since both classes of business would derive the same enrollment benefit from the proposed procedure. As noted above, Staff recommends that the procedure be implemented on a pilot basis for both CPMs and TPSs to minimize potential risk and to permit modification of the program based on evaluation of the data gathered during the pilot period.

EDCs recommend that TPSs and CPMs be required to indemnify and hold harmless the LDCs for any damages resulting from the provision of customer account numbers.

Staff believes that the liability issue is fact specific and not one on which it would be appropriate for the Board to assign a blanket indemnification to any party. Staff notes that it will be monitoring the number of customers enrolled in the Clean Power Choice program or with a Third Party Supplier without their consent as part of the Proposed CAL Procedure. Staff

recommends that the number of these unauthorized enrollments that are due to inaccurate information provided by the TPS or CPM and the number due to LDC error be added to the reporting requirements and be included in the CAL First Year Report.

Requirement of full restitution to customers

Marketers 1 commented that the requirement in the Proposed CAL Procedure that TPSs and CPMs be required to pay "full restitution" to customers enrolled in error should, as applied to TPSs, be interpreted to require only the difference between the TPS rate and the LDC rate rather than a full refund. Marketers 1 argued that a full refund would in effect provide the customer with the benefit of a free commodity.

In reviewing this comment, Staff looks to the Board's regulations. The Anti-Slamming regulations provide that, when a complaint of unauthorized switching is filed, only that portion of the customer's bill which relates to the charges assessed by the alleged violator is placed in dispute. N.J.A.C. 14:4-2.7(b). Thus the refund of any difference between what would have been the customer's bill without the TPS charge and the actual charge, as well as the reversal of any charges placed on the customer's account, will comport with Board regulations and make the customer whole. Likewise, a refund of any additional payment made under the Clean Power Choice Program would make whole a customer erroneously enrolled with a CPM. By removing the profit realized from the erroneous enrollment of the customer, the requirement of a refund of any difference between the LDC rate and the TPS rate or CPC charge will act as an incentive to handle authorizations to obtain customer account numbers with great care. Should Staff's monitoring of the program indicate that a TPS or CPM has enrolled customer(s) without the customer's consent, Staff may recommend that the Board consider further actions.

Commitment to enrolling customers by CPMs and TPSs

Marketers 1 asked for a clarification of the requirement in the Proposed CAL Procedure that if an error occurs resulting in the non-enrollment of a customer, "the CPM or TPS must commit to enrolling such a customer ..." Marketers 1 request a clarification that enrollment remains contingent upon the customer's meeting utility requirements and satisfactorily completing a credit check.

Staff agrees that a TPS has the right to make a credit check before enrolling a customer. Staff recommends that the Board make enrollment by a TPS subject to meeting Board-approved utility requirements and satisfactory completion of a credit check conducted in compliance with the requirements of N.J.A.C. 14:4-.7.5.

Penalties for LDCs

Marketers 1 asked that the Board provide for a penalty for utilities in the event that a TPS provides accurate information and the utility does not produce an accurate account number.

The chances of a TPS making an error in transcribing a potential customer's handwritten authorization form are significantly greater than the chances of an LDC making a comparable error on the basis of the electronic spreadsheet which would be provided by the TPS under the Proposed CAL Procedure. Staff does not recommend setting out a penalty for LDCs at this time. However, Staff may recommend penalties in the CAL First Year Report or sooner if it appears necessary, if the data provided in the quarterly or monthly reports indicates that utility

errors are occurring more widely than now seems likely. Furthermore, the Board retains the right to monitor and take such actions as may be necessary and appropriate.

Restrict CAL to specified locations

EDCs requested that the Proposed CAL Procedure be limited to locations where account numbers were not likely available, and that the Proposed CAL Procedure not be made available for enrollment offers received in the home through door-to-door, direct-mail, telephone or internet solicitations, as the customer would presumably have access to its customer account number in the home. Marketers 2 stated that many customers do not find it easier to locate their account numbers in their homes than in other locations, since many customers do not retain their utility bills, where the customer account number is located.

Current enrollment procedures do not provide any mechanism for tracking the location at which an application is completed. Creating and tracking application location for the purpose of allowing or disallowing the Proposed Customer Account Look-up procedure could be burdensome and would increase costs. In addition, Staff agrees that some customers do not retain their utility bills, or cannot readily access them. The call center option, as discussed above, can be time-consuming for customers. Staff recommends that the Board require LDC account lookup on all authorized applications with a signed Release Form regardless of the location at which the signature was obtained. At this time, no provision has been recommended by Staff to accommodate the use of means of verification other than a signed Release Form. Staff recommends that the Board defer consideration of such alternative means until pilot data is available in the CAL First Year Report.

Suspend customer account look-up if logistical or consumer protection issues arise

EDCs recommend that Staff re-evaluate and halt the Proposed CAL Procedure if it becomes administratively burdensome or customer protection issues arise.

Staff believes that the decision whether or not to continue the pilot can best be made after the LDCs have submitted all required reports and all data gathered has been analyzed. The results of that analysis and Staff's recommendations would be contained in the CAL First Year Report.

NJNG and Hess propose that the procedure utilize the Electronic Data Interface (EDI) to minimize errors and provide maximum consumer protections. Hess, which serves commercial customers, comments that "using EDI to request and look up customer account information will make the access and enrollment process quicker and easier for all parties involved." Marketers 1 also recommend that the Board require the use of EDI. Marketers 1 recommend that the process be "streamlined" such that once the customer signs the authorization for customer account look-up, and that information is provided to the utility, the customer be enrolled, subject to the satisfaction of applicable utility rules and a credit check. EDCs object to such a process on the ground that such a procedure would require significant and costly modifications to the EDI procedure.

Staff believes that the decision whether or not to utilize EDI in the Proposed CAL Procedure or to modify the process as proposed by Marketers 1 can best be made after a one year period of using the Proposed CAL Procedure has been concluded and all data gathered during that time has been analyzed. Staff recommends that at the end of the one year period, the LDCs be required to submit reports on the feasibility and cost of utilizing or modifying the EDI system as proposed by some TPSs. Staff can assess the effectiveness and costliness of the proposed

EDI procedure on the basis of that analysis. The results of that analysis and Staff's recommendations would be contained in the CAL First Year Report.

CES suggested that the Board consider additional measures to eliminate barriers to competition, specifically the implementation of a customer referral program where the EDC informs customers of TPS supply options and provides TPSs with direct access to customer lists and usage information. Hess suggested, as an alternative to requiring the use of EDI, that the Board require a process which would allow a TPS to input a customer's name, address, and telephone number into the utility's website to obtain the account number. Hess acknowledges that such a requirement would entail requiring all utilities in the State implement EDI, and CAL in particular, in a consistent and coherent manner.

Staff does not believe that implementation of a direct access process is warranted at this time in light of the significant consumer protection issues it raises.

Vista commented that historical usage data should be available to TPSs if a customer's signature is obtained upon an authorization form. Vista further recommended that the Board contract a company separate from the LDCs for the purpose of reviewing all usage data throughout New Jersey in order to profile and identify facilities that could be candidates for substantial Demand Side Management (DSM) opportunities.

Staff believes that this issue is beyond the scope of this proceeding.

NJNG commented that should the Board approve the Proposed CAL Procedure, the implementation date should be at least 180 days in the future to accommodate the required system changes.

Staff does not believe that the LDCs will require 180 days to implement the Proposed CAL Procedure. The Proposed CAL Procedure calls for the LDCs to process an Excel spreadsheet provided by a TPS or a CPM. The procedure does not require any changes to the Information Technology system; it works within the existing enrollment process. In addition, the procedure is limited to the residential market. There are a limited number of TPSs serving the residential market, and there are very few CPC providers serving the residential market. Staff believes that the LDCs can prepare for processing the Excel spreadsheet to be provided under the Proposed CAL Procedure within thirty days.

Implement penalties for failure to obtain consent

EDCs suggested the need for penalties to deter the unauthorized use of a customer's account number and requested that the Board implement penalties for CPM failure to obtain authorization for accounts submitted for LDC look-up.

Staff recommends that data on the possible unauthorized use of an account number be gathered as part of the pilot program and that Staff be directed to monitor the enrollment of customers via the Proposed CAL Procedure and include the data obtained as part of the CAL First Year Report. Staff may, at any time, recommend that the Board consider prohibiting a CPM or TPS from enrolling new customers, or suspending the entity's access to the Proposed CAL Procedure, if the data gathered appears to indicate unauthorized use. In addition, as noted above, the Board is aware that there may be a potential for slamming type problems with marketing and enrollment practices of CPMs. However, including CPMs in the anti-slamming rules would be a substantive change requiring a further rulemaking. In addition, the Board also

must consider whether other provisions currently applicable to TPSs should be applied to CPMs. The Board may also determine that additional public input on this issue is necessary. Staff recommends that after considering these issues, the Board make a determination as to whether to extend the anti-slamming provisions to CPMs and consider issuing a rule proposal in this regard.

Issue Draft rules for Comment

Some LDCs commented that OCE should release any draft rules for CAL for comment in a "pre-proposal" phase for LDC and other stakeholder review prior to initiating the formal rule making process.

As noted above, Staff worked with EDCs to develop a customer account look-up process in the context of the Clean Power Choice program. The Board has solicited public comment upon the Proposed CAL Procedure with a Secretary's Letter, posted upon the Board and the Clean Energy Program websites, and provided a further opportunity to respond or to supplement initial comments received in response to that letter. Staff believes that a reasonable opportunity to review and comment was provided to the public in developing the proposed procedure and recommends that further public comment await the formal rulemaking process.

LDC cost recovery for CAL

Some LDCs are concerned that the Proposed CAL Procedure could create more work and expense for them and would require them to serve as a "back office" to TPSs and CPMs by providing services that make it less expensive for them to operate. Should the Board approve the procedure, these LDCs request that their costs be eligible for cost recovery. Some TPSs comment that the costs are minimal and are justified in accordance with State policy supporting retail choice. Rate Counsel comments that non-switching customers should not be charged, through rates, for costs associated with changing suppliers.

In establishing the CPC program, the Board authorized that the reasonable, prudent and incremental expenses incurred by the LDCs in implementing the Clean Power Choice baseline program be deemed eligible for deferred accounting treatment and be recovered through the Societal Benefits Charge, subject to Board review and approval. The Board also contemplated a revision to that program regarding the implementation of a customer account number look-up service.⁶ Thus Staff believes that expenses incurred due to the Proposed CAL Procedure as it relates to CPMs may be eligible for cost recovery. However, the Proposed CAL Procedure would be available to TPSs as well as CPMs. During the development of the Proposed CAL Procedure, Staff requested additional input on this issue and asked that the LDCs provide estimates of how much it would cost to retrieve customer account numbers after the customer's name, address, and phone number were provided to the LDC electronically. The LDCs have not demonstrated that their cost to provide this service will be material enough to warrant special rate treatment or recovery at this time. However, Staff recommends that the LDCs be required to file reports with the Board after one year that will show their start up costs and ongoing costs.

One LDC recommends that the TPSs and CPMs be required to pay the LDC for the service of retrieving customer account number, such payment to equal the LDCs' fully allocated cost to provide the service. This commenter stated that it currently provides this service and charges

⁶CPC Order at 3, 7.

for it in this manner. Marketers 2 commented that allowing such a charge would amount to a de facto switching fee and thus operate to impede choice.

As noted above, no LDC has demonstrated that its cost to provide this service will be material enough to warrant special rate treatment or recovery at this time. Therefore, Staff recommends that no LDCs charge TPSs or CPMs for looking up customer account numbers. Staff recommends that the Board order any LDC that is charging TPSs and CPMs for this service cease imposing such charges within thirty days of the effective date of the Order.

DISCUSSION

N.J.S.A. 48:3-85 prohibits utility release of proprietary information to a third party, other than a government aggregator, without the customer's consent. As noted above, current procedures require that each potential TPS or CPM customer must provide his or her LDC account number in the application. Since many potential residential customers do not have ready access to their LDC account number, they are unable to complete the application process at the point of sale. The need for a customer to retrieve a recent utility bill and find the necessary account number both decreases participation and increases costs because of the difficulties inherent in this process. By allowing customers to authorize the release of their account numbers to CPMs and TPSs, the Proposed CAL Procedure will help to eliminate impediments to efficient customer enrollment by participating CPMs and TPSs. The Board notes that processes similar to the Proposed CAL Procedure are used in conjunction with Clean Power Choice in several other state jurisdictions, including Connecticut, Pennsylvania and Illinois. Consumer response rates for the program in these markets are significantly higher than the response rate in New Jersey, indicating the potential of the Proposed CAL Procedure to further increase participation in the New Jersey Clean Energy Program.

The Board must also consider its longstanding concern for consumer privacy. With regard to the TPSs, enrollment procedures have been in place for almost nine years. The requirement that a customer's consent be "written" has been removed from EDECA, and the Board's anti-slamming rules provide for alternative forms of verification such as third party verification of a telephone enrollment. N.J.S.A. 48:3-85(b); N.J.A.C. 14: 4-2.3. The Board is cognizant, however, that permitting the release of proprietary information to a TPS in the proposed manner is a new procedure. Therefore, it **FINDS** that the requirement of a signed Release Form authorizing release of a customer account number is an appropriate and necessary protection. In considering the proposal as it applies to the CPMs, the Board is mindful that the Clean Power Choice program document approved in the CPC Order provides that "...the Program will be delivered through a collaborative utility-green power marketer program" and that one EDC role and responsibility is to enable enrollment. CPC Order at Exhibit A, pp 4-5. In establishing the Clean Power Choice Program, the Board indicated its commitment to reducing barriers to renewable energy, including specifically reviewing the question of facilitating access to customer account numbers without compromising the privacy interest in such numbers.

The Proposed CAL Procedure requires that the CPM or TPS obtain signed authorization from the customer in order to obtain the customer's account number from the LDC. Further, use of the Proposed CAL Procedure is limited to the context of signing up a customer for the CPC program or with the TPS in question. These requirements are consistent with the Board's policy of protecting consumer privacy. In addition, the Board notes that its anti-slamming rules provide for penalties in the event that a Third Party Supplier initiates a change in supplier without the consent of the customer. N.J.A.C. 14:2-8. As noted above, the Board is aware that there may also be a potential for slamming type problems with marketing and enrollment practices of

CPMs. However, including CPMs in the anti-slamming rules would be a substantive change requiring a further rulemaking. In addition, the Board also must consider whether other provisions currently applicable to TPSs should be applied to CPMs. The Board may also determine that additional public input on this issue is necessary. After considering these issues, the Board will make a determination as to whether to extend the anti-slamming provisions to CPMs and consider issuing a rule proposal in this regard. Further, the Board may monitor enrollment activity under the proposed CAL Procedure and take such action as determined to be appropriate with regard to TPSs and CPMs who violate the CAL procedures adopted by this Order, including but not limited to the revocation of the license of a TPM or CPM.

The Proposed CAL Procedure provides that if a customer is enrolled in error, CPMs or TPSs will be required to pay full restitution of any payments made and to reverse any charges on the customer's bill within fifteen business days of a complaint filed with and verified by the OCE call center or BPU Customer Assistance. If, by contrast, a customer wishing to participate is not enrolled, the CPMs and TPSs must commit to enrolling such a customer within fifteen business days of a complaint filed with and verified by the OCE call center, provided applicable utility rules are satisfied and the customer has satisfied a credit check conducted in compliance with the requirements of N.J.A.C. 14:4-7.5. The Board believes that these provisions of the Proposed CAL Procedure will help to protect customers against unauthorized switching and against TPSs or CPMs gaining access to their account numbers for purposes other than authorized enrollment.

The Board has considered the request by some of the LDCs that they be permitted to charge the TPSs and CPMs for providing customer account numbers through the Customer Account Look-up procedure, as well as Staff's recommendations with regard to these comments. The Board has reviewed the estimated costs of complying with the Customer Account Look-up procedure that were provided by the LDCs. At this time, the Board does not believe that the LDCs have demonstrated that the cost of compliance will be material enough to warrant special rate treatment or recovery. Also, since customers are presently able to contact the LDCs to obtain their account numbers free of charge and customers are simply authorizing a TPS or CPM to obtain this information for them, the Board does not believe that it would be appropriate to charge the CPMs or TPSs for this service at this time. However, it would be helpful to monitor the cost of this program. Therefore the LDCs will be required to track the cost of providing the Customer Account Lookup service during the first year of implementation of this program and to file that information with the Board.

Staff has recommended that the Proposed CAL Procedure be implemented initially as a pilot for residential customers, and that LDCs be required to submit data on various aspects of the procedure during a one-year period, including the number of errors resulting from TPS, CPM, or LDC error, and any instances of unauthorized use of the authorizations granted by customers. Staff has also proposed that it submit a CAL First Year Report summarizing this data and any recommendations from Staff regarding the effectiveness of the procedure and possible modifications. The Board concurs that gathering the data identified by Staff and providing the Board with Staff's analysis of that data, as well as Staff recommendations, is a necessary part of this process.

FINDINGS AND CONCLUSIONS

After review of the record, stakeholders' comments, and Staff's recommendations, the Board **FINDS** that there has been adequate notice and opportunity for comment upon the Proposed CAL Procedure. The Board further **FINDS** that the current procedure for signing up a customer

for Clean Power Choice or for the services of a Third Party Supplier may be improved by the creation of a Pilot CAL Procedure. The Board **FINDS** that allowing residential customers to authorize the release of their account numbers to CPMs and TPSs will help to eliminate barriers to efficient customer enrollment by both CPMs and TPSs. The Board also **FINDS** that the Customer Account Look-up Procedure requirement that the CPM or TPS obtain a signed Release Form from the customer in order to obtain the customer's account number from the LDC incorporates provisions which assist in achieving a measure of consumer protection. Therefore, the Board **AUTHORIZES** the implementation of a Pilot CAL Procedure as set forth in Attachment 1 to this Order.

The Board **HEREBY DIRECTS** Staff to work with the Clean Power Marketers, the Third Party Suppliers, and the Local Distribution Companies to implement the Pilot CAL Procedure.

The Board **DIRECTS** CPMs and TPSs to secure and maintain a Customer Account Number Release Form signed by the customer and authorizing the CPM or TPS to obtain the customer's account number on their behalf from the utility solely for the purpose of customer enrollment. The Board **HEREBY APPROVES** the use of the Clean Power Choice Release Form attached to this Order as Attachment 2 for this purpose and **DIRECTS** Staff to work with the LDCs and the TPSs to develop an authorization form for the Energy Choice program consistent with this Order. The Board **DIRECTS** the CPM or TPS to submit the name, address, and telephone number from customers that have signed the Customer Account Number Release Form to the appropriate LDC within ten days of signature on a standardized electronic spreadsheet. The Board further **DIRECTS** the TPSs and CPMs to make the signed Customer Account Number Release Form available to the utility or to Staff upon request. The Board **DIRECTS** the LDCs, upon receipt of the spreadsheet, to look up the customer account number(s), enter the account number(s) on the spreadsheet, and e-mail the spreadsheet to the CPM or TPS within ten business days. In the event that an LDC is unable to locate a customer account number(s) on the basis of the information provided by the CPM or TPS, the LDC shall return the spreadsheet without the account number(s) and the CPM or TPS shall follow up with the customer to ensure that accurate information is obtained or that the customer provides his or her number directly to the LDC⁷.

In addition, the Board **FINDS** that the Pilot CAL Procedure should be available regardless of the location in which the authorization is obtained and **DIRECTS** the LDCs to provide the Customer Account Lookup service in accordance with the Pilot CAL Procedure without regard to where the authorization was obtained.

If a customer is enrolled in error, the CPM or TPS that enrolled the customer is **DIRECTED** to pay full restitution of any amounts billed to the customer by the TPS or CPM which exceed the cost of BGS or BGSS within fifteen business days of a complaint filed with and verified by the OCE or BPU Division of Customer Assistance. The CPM or TPS is further **DIRECTED** to reverse any unauthorized charges which appear on the customer's bill. If a customer wishing to participate is not enrolled after completing the Customer Account Number Release Form and signing up with the CPM or TPS, the CPM or TPS which failed to enroll the customer is **DIRECTED** to enroll the customer within fifteen business days of a complaint filed with and verified by the OCE or BPU Division of Customer Assistance, provided that applicable utility rules are satisfied and that the customer has satisfied a credit check conducted in compliance with the requirements of N.J.A.C. 14:4-7.5.

⁷A telephone number match is not necessary but may be useful in the event uncertainty exists following name and address check.

The Board is aware that there may be a potential for slamming type problems with the marketing and enrollment practices of CPMs. However, as noted above, including CPMs in the anti-slamming rules would be a substantive change requiring a further rulemaking and the Board must consider whether other provisions currently applicable to TPSs should be applied to CPMs. After considering these issues, the Board will make a determination as to whether to extend the anti-slamming provisions to CPMs and consider issuing a rule proposal in this regard. The Board may monitor enrollment activity under the proposed CAL Procedure and take such action as determined to be appropriate with regard to TPSs and CPMs who violate the CAL procedures adopted by this Order, including but not limited to the revocation of the license of a TPM or CPM.

The Board **HEREBY ORDERS** that the LDCs shall not charge the TPSs or CPMs for looking up customer account numbers. All LDCs that presently charge TPSs or CPMs for this service are **DIRECTED** to stop charging for this service by no later than 30 days from the effective date of this Order. The Board **DIRECTS** the LDCs to track the cost of providing the Customer Account Lookup service during the first year of implementation of this program, that year to begin upon the implementation of the Pilot CAL Procedure, thirty days after the effective date of this Order. The Board further **DIRECTS** LDCs to file that information with the Board within 45 days of the end of the one year period.

The Board **HEREBY ORDERS** that, 30 days from the effective date of this Order, and in accordance with the procedures set forth above and further detailed in Attachment 2, the LDCs will provide the customer account number when presented with an electronic list of the authorizations given by the customers to the CPM or TPS to obtain the customer's account number for the sole purpose of enrolling the customer in the Clean Power Choice program. The Board **FURTHER ORDERS** that after a Release Form has been developed for the Energy Choice program by Staff with the LDCs and TPSs pursuant to the directive above, the LDCs will also provide the customer account number to the TPS when presented with that form.

To enable monitoring of the implementation of the procedure hereby approved, the Board **ORDERS** the LDCs to submit quarterly reports with the Board. These reports shall include the following information, broken out by CPM or TPS and provided quarterly: the number of customer account numbers requested by the CPM or TPS; the number and percentage of requests successfully responded to by the LDCs; the number and percentage of requests not responded to due to incomplete or inaccurate information provided by the CPM or TPS; the number and percentage of requests which are not responded to due to utility error; and the number and percentage of complaints received regarding failure to enroll upon request by the CPM or TPS. The LDCs are **FURTHER ORDERED** to submit monthly reports on the number and percentage of complaints received due to erroneous enrollment, including the number and percentage of unauthorized use of a customer account number and identify the TPS(s) or CPM(s) involved. These reports shall identify the reason for the erroneous enrollment and indicate whether the CPM or TPS was responsible or whether the LDC was responsible.

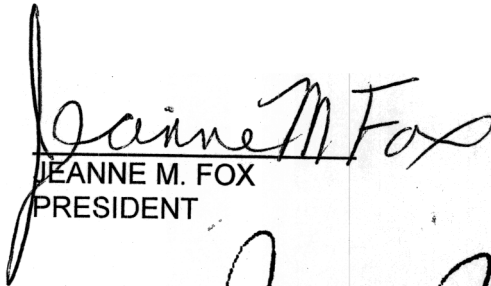
The Pilot CAL Procedure is a one-year pilot program, but it will not terminate automatically at the end of the one year period. The Board **DIRECTS** Staff to monitor the implementation of this pilot program. The Board further **DIRECTS** Staff to provide a CAL First Year Report to the Board on the status of the pilot following receipt of the last quarterly reports furnished by the LDCs during the one year period and receipt of the LDCs' reports on the costs of implementing the program. Staff's report shall include a presentation of the data gathered on unauthorized registration of customers by CPMs and TPSs as well as the number due to inaccurate

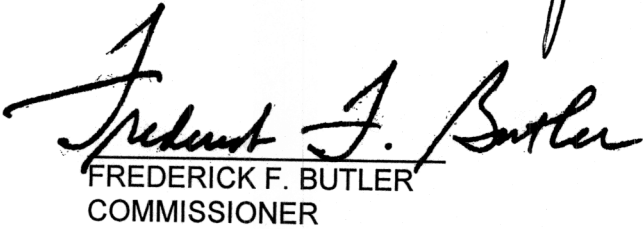
information provided by a CPM or TPS and the number due to LDC error. Staff shall also propose such modifications as may appear necessary and appropriate. The Board also **DIRECTS** Staff to report to the Board prior to the close of the one year period to monitor the history of customers enrolled via the Proposed CAL Procedure and include in the CAL First Year Report any concerns or problems regarding the CAL procedure and any concerns or problems regarding implementation by particular CPMs, TPSs, or LDCs.

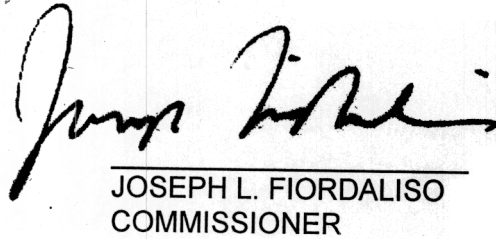
Finally, the Board **DIRECTS** that this procedure, as a prospective change broadly applicable to the LDCs, TPSs and CPMs, shall be incorporated in rules following the end of the one-year period and the Board's consideration of the reports presented at that time.

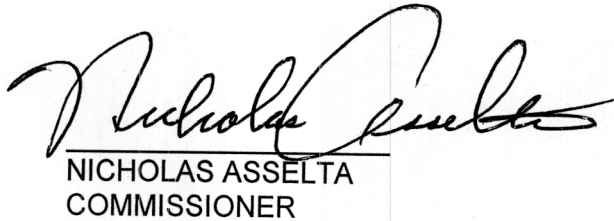
DATED: 8/19/08

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER

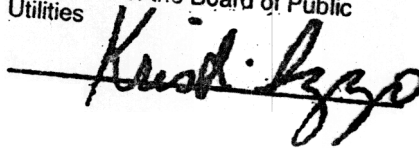

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



ATTACHMENT 1

April 8, 2008

Staff Proposal and Procedure for Utility Customer Account Number Look-Up

1. Clean Power Marketers (CPMs) and Third Party Suppliers (TPSs) will be required to secure and maintain a BPU approved enrollment form and a separate BPU approved Customer Account Number Look-up Authorization Release Form (Release Form), signed by the customer and authorizing the CPM or TPS to obtain the customer's account number on their behalf from the utility for the sole purpose of enrolling in the program. All fields on this Release Form that are not listed as optional, including name, address, and phone number, must be filled out completely. The CPM or TPS must produce this form upon request by the Board, the LDC, or the customer.
2. The signed Release Form must be made available to the utility, Board Staff, Rate Counsel, or the customer who signed the authorization upon request. Sample language for the Release Form can be found in Attachment 2 to this Order.
3. The CPM or TPS will compile all the consumer data and create a standardized Excel spreadsheet that must include the customer's provided name, address and phone number. When a CPM or TPS requests account numbers for multiple customers, their information should be provided on a single spreadsheet.
4. The CPM or TPS shall e-mail the spreadsheet to a designated contact at the utility within 10 business days of receiving signed authorization from the customer.
5. The utility contact person shall look-up the customer account numbers, enter the appropriate account numbers into the spreadsheet, and email the spreadsheet with the account numbers included back to the CPM or TPS within 10 business days.
6. CPMs and TPSs enter the customer information into their Customer Service Database, which then generates an EDI enrollment to the utility per the existing process.
7. If the utility cannot find a match based on the customer's information, the utility returns the spreadsheet to the Clean Power Marketers or Third Party Suppliers without the account number for that customer, and the CPM or TPS reaches out to the customer to obtain their correct information. In the alternative, the customer may elect to provide their account number directly.
8. The customer account look-up procedure shall be used for customers on residential tariffs only. Non-residential tariff customers will still be required to supply their account numbers in order to enroll with a TPS or CPM.

9. The proposed procedure will be available for a Release Form obtained at any location, including the customer's home, provided the TPS or CPM obtains the customer's consent via original signature to look up the customer's account number for the purpose of enrolling in the program.
10. The customer account look-up procedure will be implemented as a pilot procedure until the Board decides otherwise. EDCs, CPMs, and TPSs are required to file reports as detailed below on the new procedure. Staff will monitor this new procedure throughout the pilot period based on reports filed and will review comments filed at the end of the one-year period. If warranted, the Board may modify or eliminate this new procedure if unforeseen problems arise that warrant early modification or elimination.
11. In order to assist Staff in monitoring this program the LDCs will be required to file quarterly reports, broken out by CPM or TPS, that contain the following information:
 1. Number of customer account numbers requested by the CPM or TPS
 2. number and percentage of requests successfully responded to by the CPM or TPS
 3. number and percentage of requests not responded to due to incomplete or inaccurate information provided by the CPM or TPS
 4. number and percentage of requests not responded to due to utility error
 5. number and percentage of complains received regarding failure to enroll upon request by the CPM or TPS

The LDCs will be required to file monthly reports, broken out by CPM or TPS that contain the following information:

number and percentage of complaints received due to erroneous enrollment, including the number and percentage of incidents of unauthorized use of a customer account number, and the reason for the erroneous enrollment identified, including whether the CPM or TPS or the LDC was responsible.

12. The LDCs will be required to file reports at the end of the year showing:
 - a. start up and ongoing costs
 - b. the feasibility and cost of utilizing or modifying the EDI system as proposed by some TPSs
13. Staff will monitor the history of the customers enrolled through this procedure.

ATTACHMENT 2
CPC Account Number Lookup Authorization Release Form

	Yes, please look up my utility customer account number on my behalf so that I can enroll in CleanPower Choice.
THE FOLLOWING INFORMATION IS REQUIRED FOR PROCESSING: Name: _____ Mailing Address: _____ _____ Telephone Number: _____ Signature: _____ By signing this card, I give permission to the CleanPower Supplier I have selected above to look up my electric utility account number for the purpose of enrolling me in the New Jersey CleanPower Choice Program. ◀ Email (optional): _____	
Shortly after we receive your authorization form and enrollment form indicating your CleanPower supplier selection, you will receive a welcome package with terms and conditions.  New Jersey CleanPower ChoiceProgram™ So many reasons. A clean and simple energy solution.	
