BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Retail Markets Working Group) Docket No. M-00072009

<u>Position Papers of the</u>
<u>National Energy Marketers Association</u>

The National Energy Marketers Association (NEM)[1] hereby submits its position papers on information and data access, rate and bill ready billing, purchase of receivables, referral programs, supplier tariffs, and retail choice ombudsmen pursuant to the April 15, 2008, Notice of the formation of the Retail Markets Working Group and the associated request for input. In the Commission's Final Policy Statement on Default Service and Retail Electric Markets it, "identified a number of issues where opportunities exist to enhance customer choice and facilitate the development of retail markets. Robust, effective markets are [a] vital element of any post-rate cap price mitigation strategy."[2] Those policies are the subject of the Retail Markets Working Group.

It is important to note at the outset that, for the purposes of framing the stakeholder discussions, the Commission has already found that these six policies, "if properly designed, can serve the public interest."[3] In order to promote a constructive dialogue in the working group process, stakeholder discussions should be informed by this

[1] NEM is a non-profit trade association representing wholesale and retail marketers of natural gas, electricity, as well as energy and financial 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, electronic trading exchanges and price reporting services, advanced metering, demand side management and load management firms, billing, back office, customer service and related information technology providers. NEM members are global leaders in the development of enterprise solution software for energy, advanced metering, telecom, information services, finance, risk management and the trading of commodities and financial instruments.
[2] Policy Statement at 13.
[3] Policy Statement at 14.

presumption and focused on "proper design." In other words, the discussions should not rehash previous arguments on whether the policies be implemented, but rather should concentrate on how they be implemented. Indeed, the Policy Statement notes the Commission's expectation, "that the initial guidelines will be applied to the first set of default service programs following the expiration of the generation rate caps."[4] Given that expectation, the purpose of this Working Group should be to expedite the realization of this goal.

Moreover, as suggested by the Commission in the first quoted passage from the Policy Statement above, the policies under consideration in the Working Group and market-based default service pricing are mutually reinforcing concepts. It is unlikely that marketers will be able to successfully compete to serve consumer needs in an environment of below market utility rates, notwithstanding implementation of the policies being considered here. Likewise, facing the end of protracted utility rate caps without engaging the retail marketing community through implementation of these policies would be a missed opportunity to seize upon the best source of energy price mitigation – competition. Lowering barriers to entry, through, for example, the programs to be examined by the Retail Markets Working Group, will allow retail marketers to compete in the market and provide downward pressure to bear on prices. By facilitating competitive entry and sustained opportunities for marketers to serve Pennsylvania customers through uniform, reasonable business rules and tariffs, data access, POR, referral programs and choice ombudsmen, with the corresponding implementation of market-based default service rates, the Commission will have created the requisite

[4] Policy Statement at page 2.

environment to best meet the needs of consumers, through vigorous retail energy competition.

As a final note, it bears recognizing that the Commission intended the Policy Statement to be a dynamic, changeable document. The Commission stated it would, "closely monitor the implementation of this policy statement and the associated default service regulations by Default Service Providers. The policy statement will be revised based on experience gained from future proceedings."[5] Accordingly, the Retail Markets Working Group may appropriately be tasked with examining other policies, besides the six enumerated in the Policy Statement, that have emerged as relevant to facilitating retail market development based on experiences gained in the interim since the Policy Statement was issued and in the future.

NEM appreciates the opportunity to offer these position papers and looks forward to participation in the Retail Markets Working Group going forward.

Sincerely,

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[5] Policy Statement at page 15.

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Retail Markets Working Group) Docket No. M-00072009

<u>Position Paper on Information and Data Access of the National Energy Marketers Association</u>

Summary of Position: Consumer information and data should be available to appropriate parties in a timely, accurate, low-cost and easily usable format. Utilities, suppliers, vendors and consumers should be able to exchange this vital information in the lowest-cost, most efficient manner possible.

Standardized information protocols for access to retail electric customer information and data should be implemented statewide at the earliest possible date. These information protocols should be consistent, low cost, Internet-based, flexible, widely-accepted, ubiquitous and standardized to allow competitive suppliers of all sizes to offer energy and related products, services, information and technologies at the lowest price to consumers throughout Pennsylvania. Of course, due attention must be given to preserving consumer privacy in the process. Members report that access to this data in the Penn Power and Duquesne service territories is currently provided under reasonable terms and conditions and may be a useful starting point for standardization efforts.

Standardized information protocols will facilitate consumer and supplier access to accurate, reliable, real-time energy consumption information thereby permitting consumers and/or new technologies to reduce demand during peak times. Likewise, it will permit energy service providers to lower the costs and risks of managing supply and demand. It will also lower the cost of developing systems capable of handling transactions across multiple utility service territories, rather than unnecessarily duplicating spending and resources to develop and implement back office and billing systems for each utility service area throughout Pennsylvania.

In sum, utility-wide implementation of consistent, low cost, flexible, easily accessible and standardized sets of information protocols will lower energy costs and permit statewide economies of scale to be achieved.

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BEFORE THE
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Retail Markets Working Group) **Docket No. M-00072009**

Position Paper on Rate and Bill Ready Billing
of the National Energy Marketers Association

Summary of Position: In a competitive marketplace, consumers should be permitted a choice of billing options (marketer consolidated, utility consolidated, dual bill). The availability of rate and bill ready billing will enhance the availability of consumer billing options from their supplier of choice.

The availability of both rate and bill ready billing will facilitate competitive entry and maximize the ability of multiple marketers to successfully make competitive offerings consistent with their individual business plans. Utility billing systems should accommodate charges for marketer commodity pricing as well as other value-added components that the marketer can offer.

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<u>Position Paper on Purchase of Receivables</u>
<u>of the National Energy Marketers Association</u>

Summary of Position: As long as a utility remains in the competitive commodity market, the efficient use of its legacy billing infrastructure through the implementation of a purchase of receivables program to the benefit of all consumers is and should be considered a best practice.

Utilities and Public Service Commissions in many jurisdictions have implemented utility purchase of receivables (POR) programs to facilitate the development of competitive retail energy markets, particularly for mass market consumers.[6] For instance, the NYPSC 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." One of the factors underlying the robust migration of natural gas customers to choice programs in Ohio is the utilities' implementation of POR. More recently, the Illinois legislature required that electric utilities in the state implement POR.[7]

When utilities offer to purchase receivables, this one rule change has a significant impact on the cost to serve consumers that may otherwise be uneconomic to serve in a

[6] The best practice of utility purchase of receivables is in use in other jurisdictions including Consumers Energy and Detroit Edison in Michigan (for gas choice), PSEG, SJG and NJNG in New Jersey and NIPSCO in Indiana. The practice is currently being examined by the Maryland Public Service Commission.

[7] 220 ILCS 5/16-118(c) provides that:

> An electric utility with more than 100,000 customers shall file a tariff pursuant to Article IX of this Act that provides alternative retail electric suppliers, and electric utilities other than the electric utility in whose service area the retail customers are located, with the option to have the electric utility purchase their receivables for power and energy service provided to residential retail customers and non-residential retail customers with a non-coincident peak demand of less than 400 kilowatts.

competitive marketplace. Yet, the implementation of a POR program should have virtually no additional cost to the utility or the consumer. Importantly, allowing a utility to maximize the use of its legacy billing system avoids significant duplication of infrastructure costs.

POR programs facilitate market development because they limit the competitive disadvantages that result from guaranteed utility bad debt cost recoveries and the ability, often the exclusive ability, to collect bad debts by shutting off a captive ratepayers' energy supply. It is rarely noted that a marketer cannot reclaim its commodity in the event of a payment default. Utility assets are always there to use another day.

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. Moreover, POR enhances the ability of the competitive marketplace to serve credit-challenged customers.

The appropriate remuneration to the utility offering a POR program can be the subject of different approaches:

1- Application of zero discount rate, reflective of the circumstance that utilities currently recover bad debt in their delivery rates;

2- Application of a discount rate reflecting the utility's bad debt experience subject to periodic review and adjustment and the concomitant delivery rate unbundling of the associated credit, collection and billing functions; and

3- Application of a bad debt tracker.

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Retail Markets Working Group) **Docket No. M-00072009**

Position Paper on Customer Referral Programs
of the National Energy Marketers Association

Summary of Position: Customer referral programs, more accurately denominated marketer referral programs, constitute a retail access best practice and should be implemented by the utilities on a continued basis as a low risk option through which consumers can learn about and participate in energy choice. Marketer referral programs provide benefit to all customers by informing them of competitive alternatives and stimulating the development and expansion of the competitive market.

The prototypical model of a marketer referral program was first implemented in New York by Orange and Rockland under the moniker of Switch and Save, and it is now required for other utilities in the state.[8] It is noteworthy that the NYPSC directed that, "purchase of ESCO [marketer] accounts receivable, especially when used with a Switch and Save approach, be considered in upcoming rates 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."[9] The concept of using marketer referral programs to facilitate retail market development is growing. For instance, the Illinois legislature recently required the consideration of referral programs for electric customers.[10]

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[8] New York Public Service Commission, Case 05-M-0858, Order Adopting ESCO Referral Program Guidelines and Approving an ESCO Referral Program Subject to Modifications, issued December 22, 2005; Order Adopting Orange and Rockland Utilities, Inc.'s Plan for an ESCO Referral Program, issued April 19, 2006; Order Adopting Consolidated Edison Company of New York, Inc.'s Plan for an ESCO Referral Program, issued April 19, 2006; Order Adopting Niagara Mohawk Power Corporation's Plan for an ESCO Referral Program, issued April 19, 2006.
[9] NYPSC Case 00-M-0504, Retail Policy Statement, page 17.
[10] Illinois Retail Electric Competition Act of 2006, 220 ILCS 5/20-130(e).

Principles for consideration in design of a marketer referral program include:

1- The effectiveness of the marketer referral program is enhanced by the simultaneous availability of utility Purchase Of Receivables.

2- The concept of marketer referral programs should apply at the point of customer service initiation (new movers).

3- Consumer enrollments in referral programs should be offered through routine, non-emergency customer inquiries to the utility call center, utility website and bill mailer inserts. Call center operations should accommodate off-hours and weekend inquiries.

4- Customers that wish to participate in the referral program but that do not express a preference for a particular marketer should be randomly assigned to one.

5- Participating marketers should have the option of serving only selected customer classes.

6- Participating marketers should have the option of offering consumers multiple billing options (marketer consolidated, utility consolidated, dual bill).

7- Utility support and engagement is critical to the success of a marketer referral program. Existing ratepayer assets (e.g., utility call center, service center, envelope) should be leveraged to support marketer referral programs.

8- Participating marketers should have meaningful input into the design of program materials and program implementation.

9- As a transition mechanism, marketer referral programs will provide value until a significant majority of customers are participating in energy choice.

As a practical example, marketers participating in the O&R program offer enrolling customers a seven percent introductory discount from the utility commodity rate for a period of two billing cycles. Customers are enrolled in the program when they contact Orange and Rockland directly about it or they can be referred to the program after having been informed about it by the utility's customer representative from an inbound call transaction (i.e., new service call, bill inquiry, etc.). O&R has promoted the program through advertising, bill inserts, and special events. Customers can request a specific marketer or be assigned to marketers on a random basis. The customer also has the option to return to utility service at any time. O&R purchases the receivables of marketers participating in this program. The residential migration rate in O&R exceeds thirty percent. The program provides benefits for all involved – consumers benefit from an introductory discount and risk free introduction to choice; marketers benefit from reduced customer acquisition costs and reduced bad debt exposure; and the utility benefits from a streamlined program that is inexpensive to implement and facilitates the migration process.

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Position Paper on Supplier Tariffs
of the National Energy Marketers Association

Summary of Position: The adoption of uniform supplier tariffs supports competitive suppliers ability to enter multiple utility service territories on a low cost, efficient basis.

If market participants are forced to divert scarce resources to customize billing, back-office, and customer care facilities, and to develop specialized knowledge of different information systems and business rules in each service territory and jurisdiction, it drives energy prices higher. Uniformity of these business rules and processes permit competitive marketers to enter more utility service territories on a cost effective basis, achieve economies of scale in their operations, reduce their operating costs, and ultimately, focus more resources on better serving current and future customers. NEM members report that there is a fair amount of consistency amongst the approaches taken by the electric utilities in their supplier tariffs. An examination of the extent to which further consistency and standardization can be achieved would be beneficial.

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Retail Markets Working Group) **Docket No. M-00072009**

Position Paper on Retail Choice Ombudsmen of the National Energy Marketers Association

Summary of Position: A retail choice ombudsman should be instituted at each utility and at the Commission as an integral element of facilitating retail market development.

The New York Public Service Commission's groundbreaking decision to institute an Office of Retail Market Development was pivotal in accelerating that jurisdiction's recent success in choice program advancement and consumer migration.[11] The NYPSC's Office of Retail Market Development was charged with, "helping to create a level playing field for all market participants and ensuring that consumers have information needed to make informed choices when choosing an energy supplier."[12] Its responsibilities included:

- The ESCO [marketer] eligibility process;
- Utility migration reporting (including green power);
- The Power to Choose Web site and other competition related web content;
- Uniform Business Practices (UBP);
- Electronic data interchange (EDI) standards;
- Evaluation of utility retail access programs;
- Addressing disputes between ESCOs [marketers] and utilities; and
- Removal/reduction of barriers to entry into New York retail markets.[13]

[11] The NYPSC's Office of Retail Market Development was prematurely disbanded in early 2007, coinciding with a new state Administration. Members report that the NYPSC is considering reinstating some of these functions.
[12] NYPSC Staff Report on the State of Competitive Energy Markets: Progress to Date and Future Opportunities, March 2, 2006 at page 31.
[13] Id.

The concept has since been considered and implemented in other jurisdictions,[14] most recently in Illinois. In Illinois, the Office of Retail Market Development is required to, "monitor existing competitive conditions in Illinois, identify barriers to retail competition for all customer classes, and actively explore and propose to the Commission and to the General Assembly solutions to overcome identified barriers."[15]

In essence, the Commission ombudsman should be a competitive market advocate. As such the Commission should be a main interface for competitive suppliers' inquiries regarding retail choice and should field concerns about choice program policies. The Commission ombudsman may also be responsible for monitoring the status of competition and providing periodic reports to the Commission about what has been achieved and offering recommendations for next steps as may be warranted. Overall, the Commission ombudsman should be a consistent presence sending a clear signal to competitive suppliers, and the consumers they serve, of the Commission's commitment to competitive markets. The Commission ombudsman should be charged with oversight of utility implementation of the issues examined by this retail market working group.

Likewise, the designation of utility ombudsmen should facilitate a more expeditious resolution to supplier inquiries, questions and concerns. For a marketer doing business in multiple service territories and in multiple states, the ability to identify a "point person" at a utility to discuss an issue, and to be able to do so on a consistent basis, is quite

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[14] The Texas Public Utilities Commission has since created an electric Retail Market Oversight office. The New Jersey Board of Public Utilities has a Bureau of Market Development and System Reliability, and the Michigan Public Service Commission has a Competitive Energy Division.

[15] Illinois Retail Electric Competition Act, 220 ILCS 5/20-110.

valuable. In turn, the institution of utility ombudsmen should improve the quality of interactions between these stakeholders.

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