BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

<u>Supplemental Position Paper</u>
<u>of the</u>
<u>National Energy Marketers Association</u>

The National Energy Marketers Association (NEM)[1] hereby submits its Supplemental Position Paper on information and data access, rate and bill ready billing, purchase of receivables, referral programs, supplier tariffs, and retail choice ombudsmen as permitted by Staff pursuant to the Retail Market Working Group process. It was recognized that the parties' prior submissions in this docket may need to be updated to reflect current circumstances and Commission direction. We appreciate the opportunity to provide this Supplemental filing. These six issues were identified in the April 15, 2008, Notice of the formation of the Retail Markets Working Group. 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.

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[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.

Procedural Issues

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."[3] 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. As such, we have included an additional issue in these comments pertaining to cost allocation.

For the purposes of framing the stakeholder discussions, the Commission has already found that the six policies, "if properly designed, can serve the public interest."[4] In order to promote a constructive dialogue in the working group process, stakeholder discussions should be informed by this presumption and focused on "proper design." In other words, the discussions should not rehash previous arguments on <u>whether</u> the policies be implemented, but rather should concentrate on <u>how</u> 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."[5] Given that expectation, the purpose of this Working Group should be to expedite the realization of this goal.

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[3] Policy Statement at page 15.
[4] Policy Statement at 14.
[5] Policy Statement at page 2.

The Programs for Consideration Represent a Growing Trend in Retail Choice Best Practices

Since it was first ordered that this Working Group be convened, we have received additional guidance from the Commission on retail access initiatives pursuant to the gas SEARCH process. In the Commission's Final Order and Action Plan approving the gas SEARCH report, it determined that,

> consistent with the pro-competition legislative policy embodied in the Act and the information contained in the SEARCH Report, our efforts to increase effective competition in the retail natural gas market should begin now and, furthermore, should be concentrated on changing the market structure and its operation to reduce or eliminate barriers to supplier entry and participation. (Order at 5-6).

In that Order the Commission laid out an action plan,

> to reduce barriers to entry and to change the structure and operation of the retail market in order to increase competition in natural gas supply. We have selected for action the programs, practices, rules and requirements whose modification would seem to offer the greatest potential to eliminate or reduce market barriers, and thereby increase supplier participation in the marketplace. (Order at 6).

Tellingly, for the purposes of this electric Retail Market Working Group, the gas choice programs comprising the action plan endorsed by the Commission in relevant part mirror those identified for consideration here including Purchase of Receivables, creation of an Office of Competitive Market Oversight, utility rule standardization and data exchange standardization.[6]

Additionally, the six programs initially identified consideration in this Working Group

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[6] We note that the Commission declined to recommend implementation of referral programs at this time in its Order on the gas SEARCH Report, although the Commission did note the potential of such programs to "increase customer participation." We submit that inclusion of new service customers in referral programs, a concept not considered in the SEARCH process, but a concept more fully explained herein, may change the Commission's conclusion since this is a dynamic plan that is being investigated or implemented in other choice jurisdictions.

have been successfully implemented elsewhere, for the benefit of consumers. We detail some of these examples throughout this document, highlighting program details and results.

Just as this Commission is moving forward with now the NYPSC took a holistic approach to improving retail market structure and choice programs. For this reason, we make repeated reference to New York's efforts herein. The NYPSC's 2004 Retail Policy Statement tackled many of the same issues the Retail Market Working Group will examine and offers insight into the effectiveness of these programs in facilitating consumer choice.[7] The NYPSC's Retail Policy Statement adopted a Vision Statement as follows:

> The provision of safe, adequate, and reliable gas and electric service at just and reasonable prices is the primary goal. Competitive markets, where feasible, are the preferred means of promoting efficient energy services, and are well suited to deliver just and reasonable prices, while also providing customers with the benefit of greater choice, value and innovation. Regulatory involvement will be tailored to reflect the competitiveness of the market.

The NYPSC's Retail Policy Statement identified utility best practices to achieving its vision. The best practices include purchase of receivables, marketer referral programs, unbundling utility bills, improving marketer access to customer account numbers, outreach and education initiatives, and utilities designation of ESCO ombudsmen. The NYPSC also established an Office of Retail Market Development that was charged with overseeing the implementation of these best practices. The success of the implementation of the NYPSC's Retail Policy Statement is underscored by the robust

[7] NYPSC Case 00-M-0504, Competitive Opportunities Proceeding, Statement of Policy on Further Steps Toward Competition in Retail Energy Markets, issued August 25, 2004.

consumer participation and marketer participation statistics achieved in that jurisdiction. Recent retail energy choice participation statistics posted on the New York Public Service Commission (NYPSC) website plainly illustrate the progress that has been made since 2001.[8] As of February 2008, over one million customer accounts were participating in electric choice, representing 15.4% of accounts and 43.8% of load.[9] In Spring 2007, the NYPSC reported that over 100 energy marketers were eligible to do business in the State, and that in each of the six major combined utility service territories there were at least six electric and six gas marketers actively serving customers.[10] The increase in migration, particularly for mass market customers, and marketer participation over the seven-year period has been dramatic and presents compelling evidence in support of the NYPSC's efforts to foster consumer energy choice through the implementation of utility best practices such as POR and referral programs. Marketers have made a significant resource investment in the utility service territories to serve consumers with an increasingly expanding array of energy products and services. And energy competition has engendered significant price savings for New York consumers as well. The typical residential retail customer experienced a drop in total real electric price of an average of

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[8] As a point of comparison, in New York at the end of 2001 "[o]verall, 5% of customers, representing nearly 20% of load, had switched from their local utilities to retail service providers," and that specifically, "over 25% of the load in the non-residential sector, but only 5% of the residential load has switched as of that date." 2002 State Energy Plan, Section 3.4 Electricity Resource Assessment at page 3-81. At the end of 2001 about 373,000 residential and non-residential customers had switched to a competitive supplier, representing about 10.4% of the total volumes delivered to customers by LDCs. At that time, most large volume natural gas customers had already switched to a competitive supplier. "In total, about 50% of the gas consumed in New York is gas purchased from non-utility suppliers." 2002 State Energy Plan, Section 3.5 Natural Gas Assessment at page 3-154.

[9] Specifically, as of February 2008 over fourteen percent of residential electric customers, and fifty eight percent of large commercial and industrial electric customers have migrated.

[10] NYPSC Case No. 07-M-0458, Review of Retail Access Policies, issued April 24, 2007, at page 4. The U.S. Energy Information Administration reported, with respect to retail natural gas markets, "New York has by far the largest number (46) of active marketers, with customers in some parts of the State having a choice of more than 20 marketers and 50 different price offerings." U.S. Energy Information Administration, Natural Gas Residential Choice Programs, U.S. Summary 2007, available at: http://www.eia.doe.gov/oil_gas/natural_gas/restructure/state/us.html

16% between 1996 and 2004, and most commercial and industrial customers benefited from similar energy bill decreases.[11] Most of the redefinition of the New York market was accomplished through Commission, not legislative, initiatives.

The Effectiveness of the Retail Market Working Group Programs Will Be Dependent Upon, and Supportive of, Market-Based Pricing Constructs

The policies under consideration in this 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 environment to best meet the needs of consumers, through vigorous retail energy competition.

[11] New York State Department of Public Service, Staff Report on the State of Competitive Energy Markets: Progress to Date and Future Opportunities, March 2, 2006, page 2. See also Joskow, Markets for Power in the United States: An Interim Assessment, The Energy Journal 2006, page 27, Figure 6 (showing approximate 14% decrease in real residential prices from 1996-2004).

One of the reasons for energy deregulation is the interplay of companies that are flexible and nimble enough to design and price customized products that are tailored to meet customer needs. There are a host of energy functions and products that are becoming increasingly competitive in nature. By implementing choice programs that facilitate competitive entry and participation, the Commission will ensure a role for competitive providers to offer these products and thereby enhance the ability to reach related State energy goals for increased energy efficiency, demand reduction and reliance on alternative energy resources. For example, marketers have and will continue to play an instrumental role in crafting products to achieve demand response goals for consumers. Likewise, competition in energy efficiency programs should result in enhanced opportunities for consumer participation and customized offerings. Current environmental goals coupled with an energy pricing crisis is, like past crises, a "wake up" call to realize more demand reduction, efficiency and infrastructure upgrades as well as environmental impact mitigation. However, the most efficient and equitable means to accomplish these multi-purpose policy goals requires a greater reliance on both price discipline and the statewide economies of scale that marketers can bring to help the State accomplish these goals. Hundreds of better-capitalized entities competing for millions of new consumers lower the cost of capital and therefore the delivered price of energy than a few state-backed cost-plus regulated entities.

In view of the foregoing, set forth below are our recommendations on the six issue areas specifically identified for Working Group consideration as well as the additional important issue of cost allocation:

Cost Allocation: The costs of competitive supply and related competitive functions should be properly allocated, on an embedded cost basis, to permit consumers to properly evaluate marketer and utility offerings.

Consumers do not receive adequate price signals in the form of "shopping credits" for use in the competitive retail market. Proper rate unbundling is a prerequisite to sending proper price signals, to assist consumers in making educated consumption decisions, and to permit suppliers to invest risk capital to make competitive product and service offerings available to consumers. Thus, utilities should unbundle their rates on an embedded cost basis[12] by removing all costs related to commodity sales from delivery service charges and including all such commodity sales costs in the commodity price. The Commission indicated in its Final Policy Statement that it was, "open to the concept of addressing the allocation of costs between generation and distribution rates through a collaborative process," and that, "cost allocation should reflect the level of service, or lack of service, provided to default service and non-default service customers."[13]

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[12] The New York Public Service Commission determined that, "one prerequisite to fostering market development is the conduct of cost studies, the ensuing assignment of costs to the utilities' various functions and services, and the establishment of fully unbundled, cost based rates for electric and gas service." (New York Public Service Commission, Case 00-M-0504, Order Directing Expedited Consideration of Rate Unbundling, issued March 20, 2001, page 1). The Commission further found that embedded cost based rates were required. (New York Public Service Commission, Case 00-M-0504, Order Directing Filing of Embedded Cost Studies, issued November 9, 2001). *See also* NYPSC Staff "Report on the State of Competitive Energy Markets: Progress to Date and Future Opportunities," March 2, 2006, p. 4 (recommending that, "Utility bills should continue to fully and separately identify energy supply costs and energy delivery costs, to provide the level of price transparency customers need to compare offers when selecting an energy supplier.")

[13] Docket M-00072009, Final Policy Statement, at 9.

All suppliers providing electric commodity service to customers at retail, including default service providers and competitive suppliers, incur costs to do so in addition to the wholesale cost of the energy commodity. These costs include:

> transmission charges, scheduling and control area services, risk management premiums, load shape costs, commodity acquisition and portfolio management, working capital, and taxes, as well as costs for administrative and general expenses, metering, billing, collections, bad debt, information exchange, compliance with consumer protection regulations, and customer care.

These costs are incurred by competitive energy suppliers and are included in competitive energy supplier pricing. When these same costs are also included in utility pricing it results in a <u>double payment</u> of these costs by consumers. Costs that remain in utility delivery service pricing, for a service that the utility is no longer rendering is anti-competitive and anathema to proper utility cost of service regulation. Failing to unbundle these costs has a devastating effect on the competitive market, since competitive suppliers are unable to compete effectively on the basis of price with the subsidized default service option. By properly assigning costs and unbundling competitive services from monopoly services, the Commission will encourage true competition on the basis of pricing, quality of service, and provision of value-added services.

Underpinning a robust competitive market design is the proper allocation of costs between delivery functions and competitive (and potentially competitive) commodity-related functions. Embedded cost-based utility rate unbundling is critical to the further development of the competitive retail electric market because it provides consumers with accurate price signals with regard to the full retail cost of providing 24 hour/7 day no notice service.[14] Also, in the absence of fully unbundled rates, migrating consumers unfairly and improperly bear the expense of commodity-related functions that remain hidden in delivery charges. All of the commodity-related costs that a default service provider will incur on behalf of default service customers in the provision of electricity supply should be reflected in the price to compare.

<u>Purchase of Receivables</u>: 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 is to the benefit of all consumers is and should be considered a best practice, particularly so long as uncollectibles remain in utility delivery rates.

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. This Commission recently endorsed the use of POR programs by the gas utilities. The gas utilities are to either file a voluntary POR program by March 31, 2009, or file fully allocated cost of service data in its next section 1307(f) gas cost proceeding.[15] This Commission determined that,

> The use of POR programs can promote efficiencies, reduce costs to consumers and reduce barriers to market entry by alternative natural gas suppliers. The NGSs have long argued, and we agree, that the inclusion of billing and collection resources and costs in distribution rates provides an unfair subsidy in the provision of utility sales service and requires

[14] The NYPSC has determined that, "one prerequisite to fostering market development is the conduct of cost studies, the ensuing assignment of costs to the utilities' various functions and services, and the establishment of fully unbundled, cost-based rates for electric and gas service." Case 00-M-0504, Order Directing Expedited Consideration of Rate Unbundling, issued March 20, 2001, page 1. The NYPSC described the process as follows, "The purpose of the Unbundling Track is to study and allocate utility costs between competitive and non-competitive functions and to establish cost-based competitive rates that would afford customers accurate price signals as they choose among the providers of services in the competitive market." Case 00-M-0504, Statement of Policy on Unbundling and Order Directing Tariff Filings, issued August 25, 2004, page 2.

[15] Docket No. I-00040103F0002, Final Order and Action Plan, at 12.

> shopping customers to, in effect, pay twice for billing and collection. If this barrier to competition is reduce, the net result, for the benefit of consumers, is greater access to alternative supplier offers and competitive prices.
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> . . .
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> For purposes of POR programs, the redundancy in cost situation affecting NGS customers may be prevented by requiring that the NGDC provide to the NGSs and its customers without additional charge those services that are already paid for in base rates, namely services related to bad debt and billing and collection.[16]

Attendant with the gas utilities implementation of POR, the specific issue of utility termination of customers for nonpayment of receivables arose during the gas SEARCH process and in the most recent Columbia Gas of Pennsylvania ("Columbia") rate case, *Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2008-2011621, *et al*. The Commission rendered a decision in the Columbia case finding that, "POR programs that treat utility-supply and NGS-supply customers equally regarding termination rights remove barriers to the development of competition."[17] However, the Commission determined that "past precedent" consisting of a 1999 Order on Customer Service Guidelines[18] prevented it from approving Columbia's termination of customers for nonpayment of receivables in a POR program at this time. The Commission opened a rulemaking docket to consider this issue more fully, and recently issued a decision to modify the Customer Service Guidelines to explicitly grant the

[16] Docket No. I-00040103F0002, Final Order and Action Plan, at 11-12.
[17] Docket No. R-2008-2011621, *et al*., Opinion and Order, entered October 28, 2008, at 13.
[18] *Tentative Order Re: Guidelines for Maintaining Customer Services at the Same Level of Quality pursuant to 66 Pa. C.S. § 2206(a), Assuring Conformance with 52 Pa. Code Chapter 56 pursuant to 66 Pa. C.S. § 2207(b), § 2208(e) and (f), and Addressing the Application of Partial Payments*; Docket No. M-00991249F0003 (Order Entered August 26, 1999)("Guidelines Order").

utilities with the right of termination in this context.[19]

We do not believe the Customer Service Guidelines were a barrier to prevent utility termination for consumer non-payment in POR programs, and we support its use subject to the conditions that the Commission approves the POR program, and the program requires equal treatment of competitive supplier and utility customers. Permitting utility termination reduces risk to the utility, permitting a concomitant reduction in the POR program discount rate. It also allows utilities to more efficiently conduct billing and collection operations because under the alternate scenario they must bear the cost of maintaining separate billing systems and procedures to accommodate two different sets of collection and termination rules.

Looking to other jurisdictions, the Illinois legislature recently required that electric utilities in the state implement POR.[20] Connecticut, Massachusetts, and Maryland have all recently adopted or are in the process of adopting regulations to support POR. Other states have supported or have ordered POR in their electricity and/or natural gas markets for several years, such as Consumers Energy and Detroit Edison in Michigan (for gas choice), PSEG, SJG and NJNG in New Jersey, NIPSCO in Indiana, Kentucky and Ohio. A key feature of such programs is allowing the utility to treat the purchased receivables as their own for collections and disconnection purposes.

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[19] See Docket No. M-2008-2068982, Motion of Vice Chairman Christy, of December 4, 2008, and Commission Press Release, "PUC Seeks Comments on Rule Changes, Revised a Consumer Protection Guideline to Increase Competition in Retail Natural Gas Market," dated December 4, 2008.

[20] 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.

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."[21] The NYPSC, "strongly encourage[d] that purchase of ESCO accounts receivable, especially when used with a Switch and Save approach, be considered in upcoming rate cases and during the course of current rate plans for utilities that agree to do so, because it has proven to be a model that works extremely well in jump-starting the energy market for residential and small commercial customers."[22] Recently, the NYPSC reaffirmed the importance of POR as a program, "essential to maintaining a competitive market structure."[23] Indeed, the NYPSC found that POR programs coupled with utility consolidated billing, "are needed to enable ESCOs to bill and/or receive payments from customers on an equal footing with the utility service providers."[24] Migration statistics from New York discussed above illustrate the impact of the best practices identified in the Retail Policy Statement.

One of the factors underlying the robust migration of natural gas customers to choice programs in Ohio is the utilities' implementation of POR. For example, in the Dominion East Ohio service territory, the number of customers who were being served by an alternative supplier in 2005 was approximately 600,000 customers; with no alternative supplier serving the low income customer group. By contrast, the number of customers currently being served by alternative suppliers exceeds 820,000. Importantly, in 2005,

[21] Case 00-M-0504, Retail Policy Statement, issued August 25, 2004, at page 15.
[22] Id. at 16.
[23] Case 07-M-0458, Order Determining Future of Retail Access Programs, issued October 27, 2008, at page 8.
[24] Id.

the Public Utilities Commission of Ohio revised the rules to permit disconnection of customers for non-payment of receivables purchased from alternative gas suppliers in order to permit parity between choice and sales customers on this issue.[25]

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 competitive marketplace. POR provides consumers with greater access to competitive offerings because it significantly minimizes consumer credit ratings as an impediment in customer enrollment.

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, costs that have already been paid by ratepayers. In not requiring marketers to develop duplicative systems and processes it promotes efficiencies, reduce costs to consumers, and reduces barriers to entry.

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. The utilities' ability to disconnect service is a strong deterrent, and they should be able to exercise this right attendant with customer non-payment in a Commission-approved POR program.

[25] Docket No. 04-1631-GA-UNC.

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.

<u>Customer Referral Programs</u>: 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.[26] The migration rate maintained in O&R has been

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[26] NYPSC Case 07-M-0458, Order Determining Future of Retail Access Programs, issued October 27, 2008; NYPSC, 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

in the range of 30+%. 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."[27] In its recent review of referral programs, the NYPSC found that,

> While residential and other small commercial customers have been increasingly attracted to the retail market, ample opportunity exists to increase ESCO penetration into the market. The ESCO Referral Program is one tool for encouraging residential and small commercial customers to try the retail market, by reducing the risks they perceive and thereby overcoming the inertia that induces them to remain with the distribution utility. In addition, these customers traditionally rely on the utility to learn about choosing a service provider, and the referral programs perform that function.[28]

We also point out that the NYPSC is currently considering a proposal by ConEd[29] to expand its existing referral program to include new service customers.[30] Informing new service customers about their commodity options at the point of service initiation could significantly and positively shift the current paradigm, whereby the utility is the presumptive commodity supplier, and marketers must expend significant amounts to overcome customer migration inertia inherent with that presumption. As such, designing

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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.

[27] NYPSC Case 00-M-0504, Retail Policy Statement, page 17.

[28] NYPSC Case 07-M-0458, Order Determining Future of Retail Access Programs, issued October 27, 2008, at pages 12-13.

[29] NYPSC Case 07-E-0523.

[30] In April 2006 when the Commission first approved ConEd's referral program for implementation, its electric migration rate was 242,317 customer accounts (7.7%) and its gas migration rate was 90,271 customer accounts (8.4%).[30] Recent Commission migration statistics for early 2008 show notable growth in that amount to nearly 650,000 accounts. Of those, over 85,000 accounts participated in PowerMove.

a referral program to include new service customers could assist a great deal in leveling the playing field.

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.[31] Stakeholders are actively participating in a workshop to shape the dimensions of the POR programs for Ameren and ComEd. Ameren, this fall, filed tariffs with the Illinois Commerce Commission for their specific POR program with utility consolidated billing. Referral programs have also been required in Connecticut[32] and Massachusetts[33] as well.

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).

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[31] Illinois Retail Electric Competition Act of 2006, 220 ILCS 5/20-130(e).

[32] See Connecticut HB7432, An Act Concerning Electricity and Energy Efficiency of 2007.
[33] See Massachusetts Green Communities Act of 2008.

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.

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

This Commission recently ordered the formation of an Office of Competitive Market Oversight pursuant to the gas SEARCH process. The Commission concluded, "It is in the public interest to establish an independent unit within the Commission to oversee the development and functioning of the competitive retail natural gas supply market."[34] We strongly support the Commission's determination. The concept has also been considered and implemented in other jurisdictions, 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."[35] Other notable examples include the Texas Public Utilities Commission's electric Retail Market Oversight office, the New Jersey Board of Public Utilities' Bureau of Market Development and System Reliability, and the Michigan Public Service Commission's Competitive Energy Division.

The New York Public Service Commission's 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.[36] The NYPSC's Office of Retail Market Development was charged with, "helping to create a level playing field for all

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[34] Docket No. I-00040103F0002, Final Order and Action Plan, adopted September 11, 2008, at page 9.
[35] Illinois Retail Electric Competition Act, 220 ILCS 5/20-110.
[36] The NYPSC's Office of Retail Market Development currently exists under the Office of Industry and Government Relations.

market participants and ensuring that consumers have information needed to make informed choices when choosing an energy supplier."[37] 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.[38]

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

[37] NYPSC Staff Report on the State of Competitive Energy Markets: Progress to Date and Future Opportunities, March 2, 2006 at page 31.
[38] Id.

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

Attendant with the institution of a Choice ombudsman at the Commission, and in support of the role the ombudsman would play vis a vis marketers and consumers, we respectfully suggest that the Commission position information about energy choice more prominently on the PUC Website. This is a no, or relatively low, cost means of supporting choice, by providing stakeholders with an easy to locate and centralized repository of information.

<u>Information and Data Access</u>: 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 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.

One recommendation for consideration by this subgroup would be adoption of a procedure by which marketers are given access to customer account numbers, with customer consent, to facilitate enrollment. Marketers are effectively prohibited from marketing to and aggregating customers in a meaningful way and achieving economies of scale in enrollment because of the requirement that marketers obtain the customer account number directly from the customer. Customers generally do not know their utility account number and often find it difficult to locate a utility bill in a timely manner when discussing service options with a marketer. This can often lead to a difficult and frustrating attempt for consumers to try and exercise their right to select providers. This also drives up the cost of customer acquisition. If consumers are to be able to truly participate in retail choice, then marketer offerings must become as ubiquitous as telecom offerings and available in locations as convenient as "energy fairs" and/or local shopping malls. A customer account look up procedure can permit this to occur while at the same time lowering customer acquisition costs and permitting marketers to pass those cost savings onto consumers in the form of lower commodity costs. The New Jersey Board of Public Utilities recently approved the use of customer account look up procedure. Likewise, in Texas competitive suppliers can obtain customer account numbers from ERCOT through a secure process. Similarly, the New York Public Service Commission recently approved a process for customers to be provided with real-time remote access to their utility account number, "to advance our policies favoring retail competition, increased customer choice, and ease of customer switching."[39] Additionally, in Georgia

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[39] New York Public Service Commission, Case 98-M-1343 - In the Matter of Retail Access Business Rules, Order issued November 7, 2006 at page 10. The NYPSC recognized that,

> that ESCO marketing and enrollment efforts at venues where large groups of potential customers pass and congregate are impeded by virtue of the fact that customers typically do not have their distribution utility customer account number readily at hand. This unnecessarily impedes ESCOs from employing an otherwise cost-effective and widely used marketing practice. We also find that promoting such marketing practices is consistent with our policies favoring informed customer choice. This marketing approach

suppliers are essentially given access to the utility's database via the secure ENERACT system and are able to search for account numbers, customer names, address history and other data through various means.

We also note that the Electronic Data Exchange Working Group has been continually working on data exchange standardization issues. However, Chairman Cawley recently noted that work remained to be done, for example, to improve timeliness of access to customer usage data to support retail choice, energy efficiency and demand response programs.[40]

<u>Rate and Bill Ready Billing</u>: 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 at each EDC will facilitate competitive entry and maximize the ability of multiple marketers to successfully make competitive offerings consistent with their individual business plans. Uniform utility billing systems should accommodate charges for marketer commodity pricing as well as other value-added components that the marketer can offer.

<u>Supplier Tariffs</u>: 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

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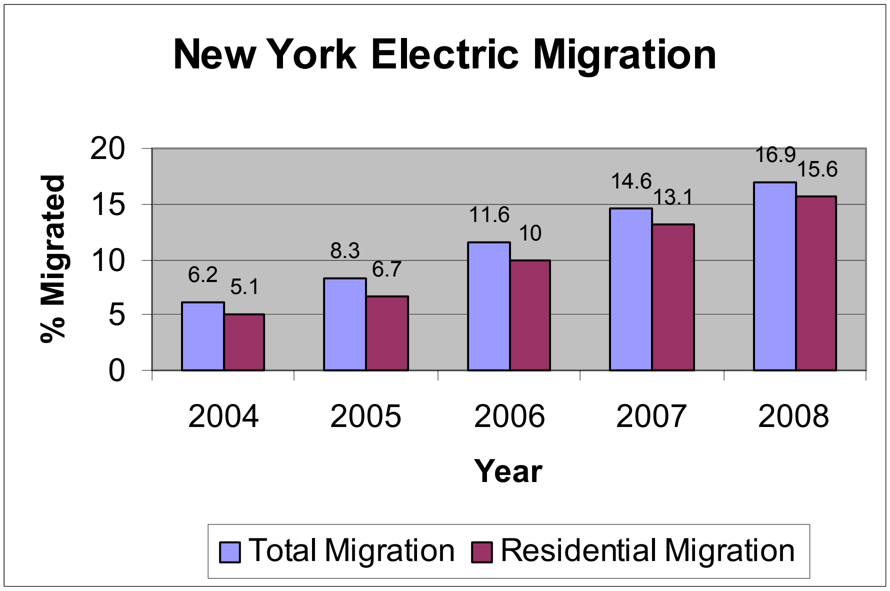
would offer customers additional choice when educating themselves about services offered by competitive energy providers. Id. at 9.

[40] Docket M-00960890F0015, Statement of Chairman Cawley, December 4, 2008.

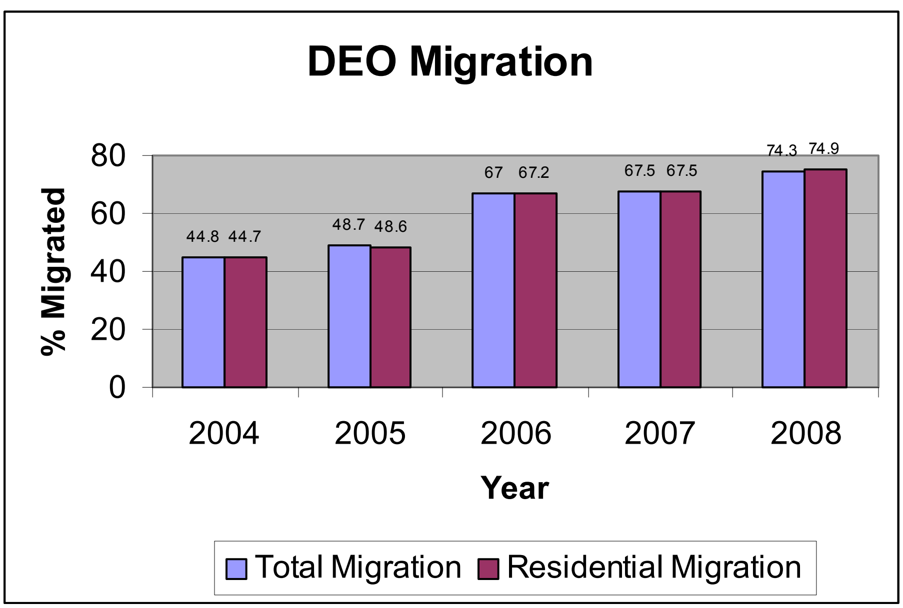
information systems and business rules in each service territory and jurisdiction, it drives energy prices higher, and in some is a disincentive for some marketers to enter a specific state retail market. Uniformity of these business rules and processes permit competitive marketers to enter more utility 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.

Conclusion

The Commission has a significant opportunity to facilitate the development of the retail electric market by implementing the issues identified for the Retail Market Working Group, in conjunction with a move toward improved market-based pricing for consumers. The benefits of these programs, in particular POR, referral programs, standardized business rules and processes, unbundled utility rates, and a Retail Choice Ombudsman, are not speculative. Indeed, they have been proven in the multiple jurisdictions that have adopted them as consumers increasingly exercise their right to choose an alternative supplier. Many of the examples from other jurisdictions have been detailed herein. The specific examples of retail choice programs in New York and Ohio, in particular the mature choice program in DEO, have been widely heralded as jurisdictions that have largely "gotten it right." The migration rates achieved in these programs are illustrated below.



In New York, perhaps the definitive moment was the Commission's adoption of its Retail Policy Statement in 2004 and the utilities subsequent implementation of the best practices (POR, referral programs, etc.) in the ensuing years.[41] This is revealed in the chart with steadily increasing migration results, and putting it into perspective, 16.9% migration equates to over 1.1 million customers in that jurisdiction.



[41] See supra note 7 and related discussion.

Likewise, DEO has a long-standing POR program and has embarked on a measured transition out of the gas merchant function coupled with consumer exposure to market-based pricing signals. The 74.3% migration rate translates into over 820,000 customers currently being served by a competitive supplier in the DEO service territory in Ohio alone.

With this information in hand, we believe the consumers of Pennsylvania would be well-served through the implementation of the programs being reviewed by this Working Group. We look forward to working with the stakeholders to achieve this goal.

Sincerely,

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