STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

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

PETITION

The Retail Energy Supply Association[1] ("RESA" or "Petitioner"), a diverse group of competitive third party energy suppliers ("TPSs") of retail electric and gas service, by its undersigned counsel and pursuant to the Administrative Procedure Act, N.J.S.A. §52:14B-1 *et seq.*, respectfully petitions the New Jersey Board of Public Utilities ("Board") to implement a rulemaking proceeding to adopt a rule requiring each Electric Distribution Company ("EDC") and Gas Public Utility ("GPU") in the State of New Jersey to make a program available to all TPSs in its service territory, whereby the EDC or GPU purchases all of the accounts receivable of participating TPSs ("Non-Recourse POR Program").

PROCEDURAL HISTORY

Pursuant to the Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. §48:3-49 *et seq.*, which was signed into law on February 9, 1999, the Board is required to determine the manner and mechanics by which customers may choose a TPS to provide "some

[1]RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

or all customer account services" ("CAS") of their retail electricity and gas supply, as well as the manner and mechanics by which TPSs serve their customers and provide them with these CAS. N.J.S.A. 48:3-54. CAS is defined by EDECA as "metering, billing or such other administrative activity associated with maintaining a customer account." N.J.S.A. § 48:3-51.

Shortly after the passage of EDECA, the Board established a "CAS Working Group," which included each of the EDCs and each of the GPUs, to establish how CAS should be regulated. The CAS Working Group members met numerous times between October, 1999 and February, 2000, but could not reach a consensus about the manner and mechanics of CAS, so the Board scheduled hearings and discovery to resolve the issue. After this formal proceeding was well underway, the CAS Working Group parties reached a settlement, which was memorialized by Board Order on February 2, 2001. *Re EDECA—Customer Account Services*, Docket No. EX99090676 (Feb. 2, 2011) (the "CAS Settlement"). Among other things, the CAS Settlement provided that each EDC and GPU would offer TPSs in its service territory the option of having the EDC or GPU provide TPS customers with a single bill reflecting both commodity charges from the TPS and delivery services from the EDC or GPU ("Consolidated Billing"), as well as having the EDC or GPU assume the TPS's accounts receivable for these TPS customers through a POR Program. However, the CAS Settlement also provided that, if and when any TPS customer was more than sixty (60) days delinquent in payment, then the EDC or GPU would cease providing Consolidated Billing to that customer, and the customer would receive separate bills from the TPS and EDC or GPU("Dual Billing"). Once a TPS customer was reverted to Dual Billing for being more than 60 days in arrears, the EDC or GPU would no longer assume the TPS's accounts receivable for that customer, and the customer would be required to remain on Dual Billing for a full 12-month period. Thus, the CAS Settlement effectively established a "60-Day Recourse POR Program."

Contemplating that various issues associated with CAS would need to be revisited as the competitive market matured in New Jersey, the CAS Settlement provided that it was "to continue in effect until August 1, 2003, or until a superseding Stipulation or Board Order." Accordingly, in January, 2004, the Board revisited the issues addressed in the CAS Settlement and convened a working group to issue recommendations with regard to various issues, including extension of the time period related to the EDCs' and GPUs' provision of Consolidated Billing and the 60-Day Recourse POR Program to TPSs in their service territories. By Order dated June 24, 2004,

however, the Board only updated the Consolidated Billing and POR requirements as related to certain GPUs, and not the EDCs. *In the Matter of EDECA Customer Account Services Proceeding: Consolidated Billing, Customer Data Card & Competitive Metering. Energy Consultant: Amendment to Customer Usage Information*, Docket Nos. EX99090676 and EX94120585Y (the "2004 Order"). Specifically, the 2004 Order provided that certain GPUs would make Consolidated Billing and a POR program available to TPS customers that had been in arrears for up to 120 days, rather than the previous requirement of 60 days under the CAS Settlement (the "120-Day Recourse POR Program").

After the 2004 Order became effective, the issues associated with the EDCs' and GPUs' POR programs were not formally broached again until RESA submitted comments on July 15, 2010 asking the Board to establish "a meaningful and uniform POR Program that would apply to all of the state's gas and electric utilities" as part of the proceeding on the re-adoption of the Energy Competition rules codified in N.J.A.C. § 14:4 *et seq.* ("EnComp Proceeding"), which were originally set to expire on April 11, 2011. A stakeholder meeting was convened on October 28, 2010, where it became clear that other parties to the EnComp Proceeding had widely varying ideas about the establishment and substance of a POR Program. In response to this, Board Staff decided to convene a separate Working Group to resolve POR and Price to Compare ("PTC") issues (the "POR/PTC Working Group").

The first POR/PTC Working Group meeting was held on February 8, 2011 and included representatives from RESA, each of the EDCs, each of the GPUs, and the Division of Rate Counsel ("Rate Counsel"). At this meeting RESA distributed a "Strawman Proposal," which asked the POR/PTC Working Group Members to consider requiring each EDC and GPU to establish a "Non-Recourse POR Program," whereby the EDC or GPU must offer to provide a POR Program to TPSs no matter how long any TPS customer is in default of payment, as well as offer to provide Consolidated Billing to TPS customers until such time that the EDC or GPU would be authorized to disconnect them under existing rules regulating utility service termination of customers. In the Strawman Proposal, RESA proposed that the appropriate discount rate for such a Non-Recourse POR Program should be set at zero to reflect that fact that electric and gas utility uncollectible and billing infrastructure costs are recovered through base rates or the Societal Benefits Charge.[2]

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[2] *See RESA Straw Man Proposal for POR in New Jersey*, attached hereto as **Exhibit A.**

Following this first meeting, RESA and other POR/PTC Working Group members submitted written responses to questions raised by Board Staff regarding how the 60-Day Recourse POR program should be updated. In response to these submissions, on April 25, 2011, Board Staff issued a "Preliminary POR Design," proposal and "POR Design Questions" (collectively, the "POR Design Documents"), and once again solicited feedback from POR/PTC Working Group Members on these POR Design Documents. Along with comments and responses to the Staff's POR Design Documents, RESA submitted a "Compromise Position,"[3] which addressed some of the concerns raised by Rate Counsel, the EDCs and the GPUs throughout the proceeding. Specifically, RESA's Compromise Position proposed that, while the EDCS and GPUs be required to offer TPSs a "Non-Recourse POR Program" no matter how long a customer was in arrears, RESA would now support the inclusion of a discount rate or other fee structure within this Non-Recourse POR Program to allow for the recovery of uncollectible costs, billing costs and incremental administrative or program costs related to the program.

Following RESA's submission of this Compromise Position, as well as the comments of other parties to Staff's POR Design Documents in May, 2011, Board staff indicated that the next step in resolving whether and how to re-design the 60-Day Recourse POR Program was for the Board to begin a formal proceeding. Board Staff also requested that RESA members meet with Rate Counsel outside of the POR/PTC Working Group process to address its concerns with a Non-Recourse POR Program. Accordingly, RESA engaged in several meetings with and submitted correspondence detailing its position on a Non-Recourse POR Program to Rate Counsel.

Despite RESA's active participation in the POR/PTC Working Group Process, numerous formal and informal written submissions to the Board, meetings with Rate Counsel at Board Staff's request, and repeated requests for the Board to formally address implementation of a Non-Recourse POR Program within the past eighteen months, the Board has not taken any formal action to date with regard to implementing a proceeding to re-design the 60-Day Recourse POR Program. In addition, no additional POR/PTC Working Group meetings have been scheduled, nor has Board Staff issued any other documents regarding how it plans to address updating the 60-Day Recourse POR Program.

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[3] *See RESA New Jersey Purchase of Receivables Program,* attached hereto as **Exhibit B.**

LEGAL ARGUMENT

This Petition is submitted pursuant to N.J.S.A. 52-14B-4(f), which provides that:

> An interested person may petition an agency to adopt a new rule, or amend or repeal any existing rule. Each agency shall prescribe by rule the form for the petition and the procedure for the submission, consideration and disposition of the petition. The petition shall state clearly and concisely:
>
> (1) The substance or nature of the rule-making which is requested;
>
> (2) The reasons for the request and the petitioner's interest in the request;
>
> (3) References to the authority of the agency to take the requested action.
>
> The petitioner may provide the text of the proposed new rule, amended rule or repealed rule.
>
> Within 60 days following receipt of any such petition, the agency shall either; (i) deny the petition, giving a written statement of its reasons; (ii) grant the petition and initiate a rule-making proceeding within 90 days of granting the petition; or (iii) refer the matter for further deliberations which shall be concluded within 90 days of referring the matter for further deliberations. Upon conclusion of such further deliberations, the agency shall either deny the petition and provide a written statement of its reasons or grant the petition and initiate a rule-making proceeding within 90 days. Upon the receipt of the petition, the agency shall file a notice stating the name of the petitioner and the nature of the request with the Office of Administrative Law for publication in the New Jersey Register. Notice of formal agency action on such petition shall also be filed with the Office of Administrative Law for publication in the Register.

Pursuant to these statutory requirements and in support of its Petition, RESA submits the following information.

I. Substance of Rulemaking Requested

RESA is requesting that the Board adopt a new rule that requires each EDC and GPU to make available Consolidated Billing to all TPSs in its service territory for all customers until such time that the EDC or GPU would be authorized to disconnect these customers for non-

payment pursuant to existing rules and regulations pertaining to utility service termination. In addition, this rule should require each EDC and GPU to purchase all of the accounts receivable of each TPS for which the EDC and GPU provide Consolidated Billing services through a Non-Recourse POR Program, which includes an appropriate discount rate as determined and approved by the Board specific to the customer class. RESA proposes that the rule be codified as a new sub-chapter of the EnComp rules at N.J.A.C. §14:4, and contain the following text:

§14:4-8.1 Scope

(a) This subchapter is intended to set forth the manner, mechanics and standards for competitive customer account services, as required by the Electric Discount and Energy Competition Act, P.L. 1999, c. 23, section 37, N.J.S.A. 48:3-86 et seq.

(b) This subchapter applies to electric distribution companies (EDCs), gas public utilities (GPUs) and third-party suppliers (TPSs), as these terms are defined in N.J.A.C. 14:4-1.2.

§14:4-8.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions that apply to this subchapter can be found at N.J.A.C. 14:3-1.1 and in N.J.A.C. 14:4-1.2.

"Budget Billing" means an equal payment arrangement between a customer and an EDC or GPU, whereby the customer makes equal monthly payments for provision of all electricity or gas services over an annual period.

"Consolidated Billing Services" means the practice whereby an EDC or GPU issues a single bill and collects payment from a TPS customer for both the TPS's Retail Electricity Supply or Retail Gas Supply charges to that customer and the EDC's or GPU's delivery charges to that customer.

"Customer Class" means either: 1) one of the following customer classes of Retail Electricity Supply: residential customers, non-residential BGS-FP customers or BGS-CIEP customers; or 2) one of the following customer classes of Retail Gas Supply: residential customers, commercial customers or industrial customers.

"Discount Rate" means the amount deducted in advance from the payments to a TPS provided by an EDC or GPU for purchase of that TPS's Accounts Receivable.

"Electronic Database Interchange" or "EDI" means the structured electronic transmission of data between an EDC and TPS or a GPU and TPS.

"Historic Uncollectible Accounts Cost Level" means the actual amount of money owed by TPS customers but not received by an EDC or GPU for the preceding twelve (12) months.

"Implementation Cost" means the one-time initial administration cost to an EDC or GPU of implementing the POR Program required in this section, including, but not limited to, information technology upgrades and billing system modifications.

"Purchase of Receivables Program" or "POR Program" means an EDC or GPU purchases a TPS's Accounts Receivable.

"Retail Electricity Supply" means the product provided to customers by an electric TPS, including generation, transmission, renewable energy attributes, and related services.

"Retail Gas Supply" means the product provided to customers by a TPS of gas.

"TPS Accounts Receivable" means charges owed by customers to a TPS for provision of Retail Electricity Supply or Retail Gas Supply.

"Uncollectible Cost Component" means any incremental generation or commodity-related uncollectible costs incurred by an EDC or GPU as a result of its POR Program.

§14:4-8.3 EDC and GPU Requirement to Offer Consolidated Billing Services.

(a) Each EDC and GPU must make available Consolidated Billing Services to each TPS within the EDC' or GPU's service territory until such time that it is authorized to disconnect the customer under existing rules and regulations regarding utility service termination or until such time as the TPS notifies the EDC or GPU in writing that it no longer wishes to use the EDC's or GPU's Consolidated Billing Services.
(b) Each EDC and GPU must make Consolidated Billing Services available to all Customer Classes, regardless of the size or rate schedule of a Customer Class.
(c) Each EDC and GPU must provide Budget Billing to TPS Customers under the same terms and conditions that it provides Budget Billing to its own customers.
(d) Nothing in this provision shall be construed as requiring any TPS to use an EDC's or GPU's Consolidated Billing Services or to prevent a TPS from providing its own separate bills to customers.

§14:4-8.4 EDC and GPU Requirement to Implement a Purchase of Receivables Program.

(a) Each EDC and GPU must purchase all of the TPS Accounts Receivable for all TPSs to which it provides Consolidated Billing Services, through a POR Program established in accordance with this section.

(b) EDCs and GPUs are entitled to apply a Discount Rate to their purchase of a TPS Accounts Receivable. The Discount Rate shall be expressed as a certain percentage of a TPS Accounts Receivable and shall include the following two components:

1. Implementation Cost Component, which shall be reset to zero (0) once the EDC or GPU has fully recovered its initial Implementation Costs; and
2. Uncollectible Cost Component, which shall be separate for each Customer Class and shall be updated by an EDC or GPU based on its Historic Uncollectible Accounts Cost Level no more frequently than once every twelve months after receiving Board approval of the updated Uncollectible Cost Component.

(c) Each EDC and GPU must make its POR Program available to all TPS Customer Classes, regardless of size or rate schedule of a Customer Class.

(d) Each EDC and GPU shall calculate a separate Discount Rate for each Customer Class and shall be entitled to update each Discount Rate no more frequently than once every twelve (12) months in a tariff sheet presented to the Board and subject to Board review and approval. In deciding whether to approve a particular Discount Rate, the Board shall consider the accuracy and reasonableness of the Implementation Cost Component and the Uncollectible Cost Component presented by the EDC or GPU. The EDC or GPU shall be entitled to implement an updated Discount Rate not less than thirty (30) days after Board approval of the new Discount Rate.

(e) Nothing in this subchapter shall be construed as requiring any TPSs to participate in an EDC's or GPU's POR program and a TPS may opt-out of an EDC's or GPU's POR Program at any time by providing written notice to the EDC or GPU.

§14:4-8.5 EDC's and GPU's Right to Terminate Electricity or Gas Service for Non-Payment.

(a) An EDC or GPU may terminate electricity or gas service for any TPS customer to which it provides Consolidated Billing Services, subject to all existing rules and regulations, including those set forth at N.J.A.C. §14:3 *et seq.*, related to service termination by an EDC or GPU.

§14:4-8.6 Payment and Billing.

(a) Each EDC and GPU shall remit monthly payment, less the Discount Rate, to each TPS that uses the EDC's or GPU's Consolidated Billing Services for all Retail Electricity Services or Retail Gas Services provided to that TPS's customers, regardless of the EDC's or GPU's actual collection rate with regard to that TPS.

(b) For TPS customers using Budget Billing, an EDC or GPU shall be required to remit monthly payment to the TPS for the actual cost of the Retail Electricity Supply or Retail Gas Supply provided to the customer.

(c) Payment by an EDC or GPU under this section shall be remitted to each TPS electronically.

(d) Payment by an EDC or GPU under this section shall be made no later than twenty-five (25) days after that EDC or GPU issues a consolidated bill to a residential customer, and no later than twenty (20) days after the EDC or GPU issues a Consolidated Bill to a non-residential customer.

(e) An EDC or GPU shall complete an Electronic Data Interchange transaction for each payment made under this section, which shall include the total charges billed to TPS customers, the cash amount equal to the Discount Rate for those TPS Customers and the net amount of the EDC's or GPU's payment to the TPS.

§14:4-8.7 Program Implementation through Electronic Data Interchange

(a) Each EDC and GPU shall implement Electronic Data Interchange protocols for the implementation and ongoing administration of its Consolidated Billing Services and POR Programs.

(b) The EDI protocols required by this section shall be based on regional standards adopted by other jurisdictions that require electric and gas utilities to provide Consolidated Billing Services and to purchase a TPS's Accounts Receivable.

II. Rationale for the Request and the Petitioner's Interest in the Request

As detailed above in the Procedural History, members of RESA have made every effort to convince Board staff to develop a rule requiring EDCs and GPUs to implement a Non-Recourse POR Program. Among other advocacy efforts in the past eighteen months, RESA has submitted formal comments to the Board in regard to the re-adoption of the EnComp rules, has actively participated in the POR/PTC Working Group, and has provided ample information to Board Staff and responded to all questions and requests for follow-up information on how a Non-Recourse POR Program should be implemented. In addition, at the request of Board staff, RESA members have engaged in several meetings with Rate Counsel. Although at the conclusion of the POR/PTC Working Group process in March, 2011, Board Staff indicated that the next step in resolving whether and how to design a Non-Recourse POR program was to implement a formal proceeding, no such formal proceeding has been scheduled to date. Thus, RESA is asking the Board to institute a formal rulemaking proceeding through this Petition.

The establishment of a rule related to Consolidated Billing and POR is long overdue. Although the CAS Order and the 2004 Order instituted some requirements regarding the manner and mechanics of the EDCs' and GPUs' Consolidated Billing and POR Programs, neither provides the necessary precision and clarity for such complex issues as would be provided by a

formal rule. For example, the actual terms of each Consolidated Billing and POR Program are embedded in each EDC's and GPU's lengthy set of attachments, which is confusing and makes them difficult to understand and find. Moreover, a rulemaking proceeding, unlike a Board order, informs the public about the rules before they take effect and gives a wider audience the opportunity to comment on them and provide additional information to the Board.

In addition to these procedural inferiorities, the CAS Order and 2004 Order are substantively out-dated and do not reflect the current state of the competitive market in which a Non-Recourse POR Program is necessary. The existing 60-Day Recourse POR Program (or, in the case of certain GPUs, the 120-Day Recourse POR Program) unnecessarily harms customers in several ways. First, it denies some customers access to competitive options currently available in the New Jersey electricity market. Second, it creates a negative experience and perception for customers just learning about competitive electricity markets. Third, it dampens further development of the competitive market by reducing the number of suppliers that are willing to participate in the market, especially for residential and small commercial customers. PSE&G's POR program for electric customers serves as an excellent example to illustrate the harms described above.

Under its current Consolidated Billing structure, PSE&G sends payment of all undisputed charges to the TPS by the fifth day from the due date on the bill. If a customer makes full payments in a timely manner, the system works and there are no problems. However, when a customer is in arrears for 60 days, PSE&G "drops" the customer from Consolidated Billing to Dual Billing. The amount of arrears does not matter. For example, if a customer has a bill for $68.01, and mistakenly sends in a check for $68.00, the customer is in arrears. If the same customer, the following month, receives a bill for $68.02, and issues a check to PSE&G for $68.00, that customer is dropped to Dual Billing. PSE&G treats that customer as delinquent for the entire 60 days, removes that customer from Consolidated Billing and then prohibits that customer from utilizing Consolidated Billing for one year. Most TPSs who serve residential and smaller commercial customers depend on utilizing Consolidated Billing. For these customer segments, Dual Billing is not feasible and is largely cost prohibitive for TPSs. Thus, with no ability to Dual Bill customers who are removed from Consolidated Billing, many TPSs are forced to drop customers back to BGS or BGGS – an outcome that neither the customer nor the TPS wants.

Even more troubling, the process of dropping a customer to Dual Billing and subsequently dropping them back to BGS or BGGS creates significant confusion for customers who have made the choice to switch to a TPS for service, have signed contracts with TPSs, and have the expectation that they will receive a single bill for commodity charges and delivery service. The current 60-Day electric and 120-Day gas Recourse POR Programs essentially set up customers to be whipsawed between BGS or BGGS and competitive supply and necessarily create a very negative experience for customers who have taken steps to participate in the competitive market – an outcome that is harmful to all market participants.

From a policy perspective, a level playing field is necessary to ensure the benefits of competition reach all New Jersey customers. The current Recourse POR Programs treat TPS receivables differently (i.e., as less important) than utility receivables, which significantly harms customers, disadvantages TPSs, and creates a clear preference for BGS or BGGS service. The EDCs and GPUs have the ability to disconnect customers for non-payment. In contrast, a TPS's recourse is limited: a supplier can seek to collect its receivables, possibly through a collections agency, which results in tarnishing a customer's credit rating (a weak motivator for customers who already suffer from bad credit), or a TPS can drop the customer back to BGS or BGGS service. In either case, the TPS is at a high risk of never being paid. Moreover, customers learn very quickly that, unlike utility charges, the penalty for non-payment of a TPS charge is virtually non-existent.

The ultimate result of the present system is that those customers who are in the greatest need of the currently available energy cost savings may be denied the ability to take advantage of those savings. TPSs are being forced to credit screen customers prior to signing them up for service and they will, and are, denying service to poor credit quality customers who stand to benefit the most from the lower rates currently offered by TPSs. Moreover, TPSs are incurring substantial—and often even prohibitive—costs in screening these customers, which discourages them from competing in the residential marketplace and further exacerbates lack of choice for the neediest electric and gas customers.

RESA's proposed fix is a rule requiring all of the EDCs and GPUs to implement a Non-Recourse POR program that is fair to customers, TPSs, EDCs and GPUs alike. Specifically, RESA is proposing to drop the 60-day and 120-day rules in favor of a permanent Non-Recourse POR Program that both eliminates the whipsawing of customers between Consolidated Billing,

Dual Billing, and back to BGS or BGGS, and employs a discount rate based on the TPSs' bad debt and other incremental costs associated with the EDCs' or GPUs' provision of Consolidated Billing and collections services. The Discount Rate essentially compensates the utility for the cost of providing billing and collection services on behalf of TPSs. Rather than being paid 100 cents on the dollar for their receivables, TPSs will be paid something less.

A Non-Recourse POR program benefits customers, the utilities, and TPSs. Customers benefit from a Non-Recourse POR Program through the avoidance of confusion stemming from a drop to Dual Billing and the removal of a barrier to increased choice of energy products.[4] The EDCs and GPUs benefit from a Non-Recourse POR Program by being made whole through a discount rate mechanism that compensates them for any uncollectibles associated with TPS customers and the Consolidated Billing Services they provide. In addition, EDCs and GPUs benefit from the reduction of administrative oversight of initiating and monitor customer drops associated with the 60 and 120 days arrearage trigger. The TPSs benefit from a Non-Recourse POR program by not having to price substantial risk into their products to account for interference with their contracts caused by the 60 and 120 days arrearage trigger. In addition, a Non-Recourse POR Program eliminates the need for TPSs to screen customers for credit eligibility, allowing customers with poor credit and repayment histories to switch to a TPS and potentially save on their electricity and gas costs. These customers are most in need of a means to lower their bills, and a Non-Recourse POR program allows TPSs to market to and service customers who would otherwise fail credit eligibility screenings. RESA's proposed Non-Recourse POR program, with an appropriate discount rate, therefore addresses the problem of the current POR programs in a manner that benefits customers, utilities, and TPSs without creating additional costs for New Jersey ratepayers.

III. Authority of the Agency to Take the Requested Action.

The Board has authority to implement a rulemaking proceeding establishing a Non-Recourse POR Program pursuant to Section 6 of EDECA, N.J.S.A. §48:3-54, which requires the Board to determine the manner and mechanics by which customers may choose a TPS for some

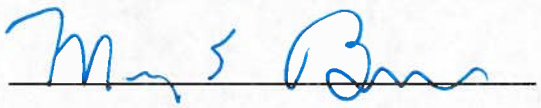
[4] In states where well designed, non-recourse POR Programs have been established, there has been an increase in new market entrance, resulting in a commensurate rise of competitive supply offers and related products and services, as well as an increase in consumer shopping activity. Examples of these markets include Connecticut, Delaware, New York, Illinois, Maryland and Pennsylvania.

or all CAS. Indeed, the Board has invoked this authority before in approving the CAS Settlement, which imposed the 60-Day Recourse POR program, as well as in the 2004 Order, which imposed the 120-Day Recourse POR Program for certain GPUS.

V. CONCLUSION

For the reasons stated above, Petitioner respectfully submits that the Board should approve this Petition for a rulemaking proceeding to establish a rule requiring each electric distribution company and gas public utility to make a Non-Recourse Purchase of Receivables Program available to each third party supplier in its territory.

Respectfully submitted,

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Dated: April 17, 2012

Exhibit 1

RESA[1] STRAW MAN PROPOSAL FOR POR IN NEW JERSEY

I. What is a Purchase of Receivables ("POR") program?

A Purchase of Receivables ("POR") program is a regulatory program coupled with utility consolidated billing, under which the local utility reimburses non-utility suppliers of energy commodity for their customer charges and assumes responsibility for the collection of the charges for commodity service from the non-utility supplier's customers. In the event that a customer of a competitive supplier does not pay charges owed for commodity service provided by the customer's supplier, the local utility has the same recourse it has where the utility is the provider of BGS commodity service to the customer, i.e., late fees and disconnection of service.

II. Why is POR an important feature of the New Jersey competitive retail market?

POR is an important tool to facilitate retail competition, particularly for those suppliers who choose to serve mass-market customers. In New Jersey, retail suppliers are at a competitive disadvantage compared to BGS service, in terms of uncollectible costs. Under New Jersey's current rules, only utilities can terminate electricity service to a customer that fails to pay its electricity supply charges. Because service termination is an effective collection tool, BGS service provided by the utilities has a competitive advantage over retail supply.

POR also helps mitigate the anticompetitive effects of improperly allocated uncollectible account expenses. Currently BGS supply prices do not reflect BGS-related uncollectible costs; however the electric distribution company is currently provided the unique opportunity to recover all uncollectible account expenses associated with the provision of BGS service in its non-bypassable distribution rates that all customers are required to pay. This cross-subsidization creates an unfair competitive advantage for BGS service because retail supplier offers must reflect this cost. Absent a properly structured POR mechanism to mitigate uncollectible account expenses for retail suppliers, these suppliers must account for the risk of uncollectibles in their offers. Therefore, a customer who shops is forced to pay for uncollectible account expenses twice—once to the utility through non-bypassable distribution rates for BGS-

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related uncollectible costs, and again to its retail supplier as part of their competitive supply price.

III. Problems with the existing structure

The existing POR programs in New Jersey are not effective at creating a true, level playing field between retail suppliers and BGS service. This is because the current programs only require the utilities to purchase retail supplier receivables up until the point where a customer reaches 60 days in arrears for electricity commodity service, and 120 days in arrears for natural gas commodity service. After this point, the account is reverted to dual billing and the retail supplier assumes all risk of non-payment while the utility continues to collect uncollectible costs. As discussed above, since only the utility can terminate electricity service to a customer that fails to pay its electricity supply charges, the retail supplier is at a competitive disadvantage in terms of uncollectible costs. This fact is a primary deterrent in preventing retail suppliers who wish to use a POR program from participating in the current POR program in New Jersey.

Also, the current "60-day revert to dual billing" rule is not being properly implemented by some utilities. In some cases customers are being reverted to dual billing for retroactive periods which presents additional financial harm for suppliers.

IV. Proposals for POR improvements

- POR should be without recourse. The current "revert to dual billing" rule should be eliminated. The utility should purchase the accounts receivables for customers served under the utility consolidated billing option. The utility should pay the retail supplier regardless of whether the utility receives payment from the customer.

- For those suppliers who choose to use POR once the utility purchases the supplier's receivables, the utility should be free to pursue current collection practices for the purchased supplier charges, including service disconnection for non-payment. This ensures that overall uncollectible accounts expense is minimized for the benefit of POR customers by lowering the amount reflected in distribution rates.

- POR should be available to all customer segments, including residential, commercial and industrial customers.

- RESA supports the full and complete unbundling of generation related uncollectible account expense and other billing and customer care costs from distribution rates. Where unbundling has occurred, it is appropriate for the utility to charge suppliers using POR a discount rate to recover experienced, prudently incurred incremental uncollectible costs resulting from the POR program. RESA urges the Board to continue to take measures toward achieving this desired end-state, and emphasizes that other solutions discussed herein related to mitigating the unfair advantage currently placed on suppliers should be considered as this transition steps towards full unbundling.

- Until such unbundling occurs, however, suppliers utilizing POR should not be charged a discount rate. Without full unbundling, imposing a discount rate on suppliers using POR would force customers to pay for uncollectible costs twice: once to the utility through their non-bypassable distribution rates, and again to the supplier who would factor into its prices an amount to reflect the cost of the discount rate. It should be noted however, that a POR program cannot alleviate the unfair competitive advantage for customers not utilizing POR (i.e. those served through dual billing). Only full unbundling can rectify this competitive disparity.

- Any actual, incremental implementation costs to develop POR should be recovered only from those suppliers utilizing utility consolidated billing.

Exhibit 2

RESA New Jersey Purchase of Receivables Proposal

The Retail Energy Supply Association ("RESA"), a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than regulated utility structures, respectfully offers the following proposal for an improved, competitively-neutral Purchase of Receivables ("POR") program in New Jersey.[1]

RESA is offering this proposal as a compromise to its opening position on POR. As discussed in RESA's comments and during the Working Group meetings, the current POR structure in New Jersey is administratively complex, places TPSs at a competitive disadvantage to Basic Generation Service ("BGS") in terms of uncollectible account expenses, and does not provide customers with the full benefits of a competitive retail market. The issues associated with electric utilities' POR have not been broached since EDECA was passed in 1999, and the energy market in New Jersey has changed considerably in the past decade. In 2004, the POR program structure for gas utilities was revisited and provided positive changes for natural gas supply service. In the Board Order associated with that matter, it was noted that under the Board approved Customer Account Services ("CAS") Stipulations of Settlement, "all issues in the Stipulations are to be subject to reconsideration." The CAS Stipulations were approved by various Board Orders in Docket No. EX99090676.[2] The Settlement clearly contemplated that various issues associated with a competitive energy market would need to be revisited as the market matured in the State.

Since the adoption of the CAS Settlement, the retail electric market has developed in many restructured states, including Pennsylvania, New York, and Maryland. These neighboring states have adopted a viable, non-recourse POR billing structure as a key component of their retail market designs. RESA believes that it is time for New Jersey to revisit the CAS settlement with regards to the retail electric market, and looks forward to implementing a meaningful POR program to further advance retail choice for New Jersey energy consumers and to ensure that the State remains competitive with other surrounding states in this rapidly growing industry.

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[1]RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant Energy Northeast LLC and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

[2]New Jersey Natural Gas Co., December 6, 2000; Public Service Electric & Gas Co., Jersey Central Power and Light Co., and Atlantic City Electric Co., December 22, 2000; Rockland Electric Co., May 9, 2001; and Elizabethtown Gas Co., May 6, 2002.

RESA's Compromise Position

It is RESA's position that the appropriate discount rate for POR in New Jersey should be set at zero, to reflect the fact that electric utility uncollectible and billing infrastructure costs are recovered either through base rates or the Societal Benefits Charge ("SBC").[3] However, in the interest of compromise, RESA is willing to accept a POR structure that contemplates the inclusion of a discount rate or other fee structure to allow for the recovery of uncollectible costs, billing costs, and incremental administrative or program development costs related to POR.

RESA supports a compromise on its opening position regarding a zero discount rate provided the POR programs in New Jersey are revised as follows:

- The POR program should be non-recourse. Utilities should not drop any TPS customers to dual billing under any scenario for any days in arrears.
- The POR program should be available to all customer classes.
- Only TPSs who utilize utility consolidated billing ("UCB") should be subject to POR related fees or discount rates.

RESA can accept a reasonable POR discount rate, or other fee structure, that includes the following components:

Uncollectible Expense Component

This component would allow the EDCs to collect uncollectible accounts expenses through a discount rate that is set for each customer class, provided that the discount rate does not place a disproportionate burden of uncollectible costs on shopping customers utilizing the POR program. The uncollectible cost component must be set on a customer class basis, because the historically experienced uncollectible costs vary significantly between the residential and non-residential rate classes.

Program Development and Operational Cost Component

This component would allow the EDCs to collect the actual incremental administrative or program development costs from TPSs utilizing POR through a discount rate or other fee structure. These costs would be determined by calculating incremental costs associated with implementation and administration of the POR program, amortized over a set period of time. Any one-time program development

[3]Societal Benefits Charges can be found on the following tariff sheets for each respective electric utility: For ACE, see Section IV, sheet 58 (pursuant to Docket No. ER10060436); for JCP&L, see Part III, sheet 4; for PSE&G, see sheets 57-59; for RECO, see leaf 56.

costs should be zeroed out once these costs are fully collected through the discount rate or fee.

In states where well designed, non-recourse POR programs have been established, these markets have demonstrated an increase in new market entrants, resulting in a commensurate rise of competitive supply offers and related products and services, as well as an increase in consumer shopping activity. Examples of these markets include Connecticut, Delaware, New York, Illinois, Maryland, and Pennsylvania. Massachusetts is currently working towards implementing a non-recourse POR program, and there are indications that the District of Columbia is also looking to adopt a non-recourse POR program. The design elements of these programs vary. The following discount rates[4] approved in other jurisdictions are listed for reference purposes:

MARYLAND

Allegheny Power

- Residential: 1.1306%
- Type I (0 to 25 kW): 0.1090%
- Type II (25 kW to 600 kW): 0.0372%
- Hourly Customers (over 600 kW): 0.0127%

Baltimore Gas & Electric

- Residential: 0.6249%
- Type I (0 to 25 kW): 0.3674%
- Type II (25 kW to 600 kW): 0.2173%
- Hourly Customers (over 600 kW): 0.0507%

Pepco

- Residential: 1.1438%
- Type I (0 to 25 kW): 0.4330%
- Type II (25 kW to 600 kW): 0.39093%
- Hourly Customers (over 600 kW): 0.0016%

[4] RESA supports a discount rate that is individual to each customer class. The discount rates for Connecticut and New York are not class specific, but are presented to provide information and further examples of appropriate discount rates.

PENNSYLVANIA

PECO

- Residential: 0.2%
- Small and Medium C&I (up to 500 kW): 0.2%
- Large C&I: 0.2%

*Note: These discount rates reflect implementation costs only. Uncollectible costs are not included because they are recovered through base rates.

PPL

- Residential: 1.85%
- Commercial: 0.15%

*Note: The administrative cost component is 0.05% for both rate classes.

NEW YORK

Orange and Rockland

- All Customer Classes: 1.392%

Rochester Gas & Electric

- All Customer Classes: 0.91%

Central Hudson Gas & Electric

- All Customer Classes: 1.38%

CONNECTICUT

CL&P

- All Customer Classes: 0.92%

UI

- All Customer Classes: 1.18%