



GreeneHurlocker
Attorneys at Law

Brian R. Greene
BGreene@GreeneHurlocker.com
Direct Dial: 804.672.4544

September 30, 2024

By Electronic Filing

The Honorable Andrew S. Johnston
Executive Secretary
Maryland Public Service Commission
6 Saint Paul Street, 16th Floor
Baltimore, Maryland 21202-6806

Re: PC 65 – RESA/NRG/CleanChoice Comments on Staff's 9/13/24 Report

Dear Secretary Johnston:

The Retail Energy Supply Association ("RESA"),¹ NRG Energy, Inc. ("NRG"), and CleanChoice Energy, Inc. ("CleanChoice") (collectively, the "Supplier Coalition"), by counsel, submit these comments in response to the Staff's Report on Parties' Recommendations Regarding Acceptance or Modification to Utility Purchase of Receivable Compliance Plans Pursuant to Order No. 91238 ("Staff's Report").

As explained below, in adopting SB 1, the General Assembly did not intend for dual billing to be a customer's only billing option, even temporarily, and the evidence throughout this proceeding is that: (1) suppliers are not able to offer dual billing for at least 12-18 months; and (2) even if suppliers could offer dual billing, customers do not want it, and it will confuse customers who will receive two energy bills for the first time ever. The Supplier Coalition continues to support:

- The continuation of POR for existing customers;
- A seamless transition for UCB for all customers, including current shopping customers and those who may elect to shop in the future; and
- A pro-rata payment posting system for UCB as recommended by Staff.

¹ 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 the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.



On August 27, 2024, the Commission issued Order No. 91303 in this proceeding regarding the transition to end residential POR, as mandated by SB 1. Without rehashing that order, the Commission on September 10, 2024, issued Order No. 91317, clarifying Order No. 91303 and holding that January 1, 2025, is not the definitive “date certain” for the elimination of residential POR. The Commission concluded that it “will issue its final decision in this matter following review of Staff’s September 13, 2024, filing,”² as directed in Order No. 91238.

On September 13, 2024, Staff filed its report in PC 65.³ Staff made at least 21 recommendations, including how to transition to post-residential-POR and how the new UCB structure should work once it is up and running. Of note, Staff recommended:

1. ... The “only non-POR retail choice mechanism utilities can implement prior to January 1, 2025, is the existing dual billing method which is used by a small number of retail suppliers.”
2. ... Staff recommends that the Commission set June 1, 2026, as the date certain by which utilities must make a full transition to a non-POR residential billing system. The proposed date would provide the utilities 20 months beginning on October 1, 2024, to complete a full transition to a non-POR UCB residential billing system.
3. It is likely that a significant, but unknown, percentage of current residential retail supply customers would be returned to Standard Offer Service (“SOS”) and gas service (default commodity service) by suppliers, if dual billing remains the sole method of providing residential retail choice and existing residential retail supply contracts cannot be billed through residential POR UCB after January 1, 2025.
4. As an interim compliance measure, Staff recommends that the Commission require that retail suppliers enroll all new or renewed residential choice contracts through dual billing on and after January 1, 2025, until a non-POR residential UCB method is implemented. Further, the Commission should require utilities to maintain existing residential POR UCB for contracts entered into on or before December 31, 2024, until a non-POR residential UCB is

² Order No. 91317 at 1.

³ Order No. 91238 (July 23, 2024).



implemented. These recommendations incorporate the proposed June 1, 2026, date for implementation of a non-POR UCB billing methodology by each utility.

10. Staff recommends that the Commission require all utilities to implement pro-rata partial payment allocation for post-POR UCB because it is the existing alternative in COMAR, was selected by Commission over the then existing pre-POR payment posting, and pro-rata treats supplier and utility charges approximately equally.⁴

On September 17, 2024, the Commission issued a Notice of Hearing and Opportunity to Comment, setting September 30, 2024, as the comment date on the Report, and set a hearing on October 2, 2024.

The Supplier Coalition appreciates the work Staff put into leading the working group, including meeting with stakeholders both as a group and separately, and preparing the Report. Additionally, the Supplier Coalition is pleased with the Commission's decision that January 1, 2024 is not the "date certain" to end all residential POR.

The Supplier Coalition's primary concern relates to the Report's recommendation that, beginning January 1, 2025, suppliers with new or renewed residential supply contracts must utilize dual billing until a non-POR residential UCB method is implemented. As the Supplier Coalition has explained and as referenced in the Report, **no retail suppliers have indicated that they can provide dual billing at scale for at least 12-18 months**. This is approximately the same amount of time as Staff's proposed interim period. Even assuming that suppliers can make offers consistent with SB1 after January 1, 2025, suppliers will not be able to solicit new customers, or keep current customers upon renewal, unless there is a UCB option because suppliers will be unable to bill their customers.⁵

Notably, nothing in SB1 contemplates dual billing for residential customers or a temporary or permanent halt to UCB. This makes sense because the purpose of this provision on SB1 was to transition to non-POR, not to eliminate UCB and require dual billing which has not been developed and which residential customers do not want. In this regard, the Supplier Coalition agrees with the Commission that dual billing is not the

⁴ Staff Report at 3-4.

⁵ Staff acknowledges on page 15 of the Report that, "implementation of dual billing as the sole option for existing, new, and renewed residential contracts will likely lead to large scale drops by suppliers to default electric and gas commodity service."



preferred option.⁶ Moreover, the Retail Energy Advancement League (“REAL”) filed a letter on behalf of nearly 800 Maryland residential customers who signed a petition urging the Commission to retain UCB and not force customers to receive separate bills for distribution and supply service.

The Supplier Coalition supports Staff’s recommendation that the Commission direct utilities to develop a revised UCB system but also encourages the Commission to continue the present form of UCB until a revised system is operational. Implementing dual billing, even on an interim basis, will result in Staff finding number 3 where a significant number of renewing residential customers will be returned to utility service simply because suppliers are unable to bill and collect payment from customers. That is not the result that the General Assembly intended, nor is it good for customers. There is a fundamental problem with a retail energy market where suppliers are not given a reasonable opportunity to solicit new customers and, upon renewal, cannot continue to serve a customer solely because there is no way for the supplier to bill them.⁷

Additionally, the Supplier Coalition supports Staff’s recommendation to require utilities to implement pro-rata partial payment allocations for post-POR UCB. The Commission has approved the use of pro-rata twice: once when it adopted the current COMARs and again when it approved rules for supplier consolidated billing in RM 70. In each instance, the Commission selected the pro-rata payment posting over the payment posting system that is proposed, once again, in this proceeding. There is no viable reason for the Commission to deviate from its prior decisions. As Staff indicates, a pro-rata system treats supplier and utility charges approximately equally.

In sum, the Supplier Coalition requests that the Commission allow all residential customers – including those who sign up on/after January 1, 2025, to continue to receive UCB with POR until the utilities have a new non-POR system in place. SB 1 contemplated that POR would be phased out, but it did not contemplate that dual billing would be required as the sole billing option on either a permanent or temporary basis. Sections 7-510(h) and 7-604.2(f) authorize the Commission to implement, by regulation or order, the transition to post-residential-POR. The Commission has not required dual billing for residential customers in 25 years of customer choice. Extending POR as requested would

⁶ In Order No. 91303 at p. 9, the Commission held it was “concerned that the utilization of dual billing is a regression of a positive market for customers or retail choice providers and thus is not a preferred option.”

⁷ WGL’s recommendation re: “compliance” reporting of how many customers get dropped or switched to dual billing is unnecessary. Again, SB 1 does not require dual billing. Even requiring it on an interim basis is going to be administratively burdensome for all stakeholders (suppliers, utilities, and the PSC).



be a “reasoned elaboration” that is consistent with how the Commission has treated billing methodologies over time.⁸

Extending UCB with POR for all residential customers until June 1, 2026 or until the utilities develop new non-POR systems is a reasonable extension of the timeline to effectuate the intent of SB 1. Alternatively, the Supplier Coalition requests that the Commission allow customers who renew with their current supplier from January 1, 2025 through June 1, 2026 to remain on UCB with POR so that their experience is not disrupted.

Sincerely,

/s/ Brian R. Greene

Brian R. Greene

c: Lloyd J. Spivak, Esq. (via e-mail / Lloyd.Spivak@maryland.gov)
Ruthie Herman, Esq (via email / Ruthie.Herman1@maryland.gov)
David Hoppock (via e-mail / David.Hoppock@maryland.gov)

⁸ See, e.g., *Maryland Dept. of the Env. v. County Comm’rs of Carroll Cnty.*, 465 Md. 169, 203-04 (2019)(citing *Baltimore Gas & Elec. Co. v. Public Service Comm’n*, 305 Md. 145, 161 (1986)).