



## Memo

To: Interested Parties

From: Center for Working Families

**Re: Detailed Response to Utility Opposition: On-Bill Recovery for Green Jobs-Green NY Residential Energy Efficiency Program**

Date: June 23, 2010 [Updated 3/11/11]

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Green Jobs-Green NY passed in 2009 as a major jobs bill, some of the legislature's best work on the economy – directly creating 60,000 jobs around the state, and indirectly creating *another* 60,000 jobs. It will raise \$5 billion for capital improvements to New York homes without ever touching the state's budget – but only if we put this last piece in place: On-Bill Financing.

GJGNY is a critical program for communities of homeowners, tenants and business owners. It will make 1 million homes and businesses energy efficient, saving New Yorkers a projected \$1-2 billion on energy bills *each year*. That money can be spent to pay off mortgages, send kids to college, keep people's homes in decent condition.

Without On-Bill Financing – financing that works for homeowners of modest means – Green Jobs-Green NY will have no customers, achieve no energy savings and create no jobs.

The state's utilities have opposed this legislation, which would reduce New York homeowners' energy use by an average of 20-40%. The bare facts about utilities' opposition are these:

***On-Bill Recovery legislation will not create unnecessary costs for utilities, and will not burden customers.***

The administrative costs of On-Bill Recovery are to be paid by the Green Jobs-Green NY program, rather than by utilities or their customer base.

Utilities may indeed have to upgrade their software systems to handle energy efficiency billing at some point, although likely not for several years even as Green Jobs-Green NY gathers large numbers of customers – each utility will only see a few thousand each year out of the whole. When utilities do make system improvements, they will almost certainly pass the costs along to customers, as they do with other capital costs. *Unlike* other costs, though, On-Bill Recovery legislation requires that utilities fund the project to the greatest possible extent with grants from NYSERDA, and further minimize costs to customers by using technology already in place.

Utilities simply can't hide behind excuses about outdated software, nor complaints that keeping up with the industry is too tough – they *must* prepare to offer energy efficiency services to their

customers on a large scale. The returns on energy efficiency to customers will far outweigh the costs: they'll avoid billions of dollars in passed-along costs of building new power plants, gain access to billions in financing to upgrade their homes, and reduce their individual utility bills in perpetuity.

***On-Bill Recovery will reduce people's bills, and avoid shut-offs for nonpayment.***

With On-Bill Financing, the customer's bill doesn't go up: instead, a portion of the usual bill is redirected to pay for energy efficiency. (Even if a homeowner buys a new fuel-guzzling appliance that drives up their utility bill, the bill will still be lower than it would've been without the retrofit.) Why is this so important? Because New Yorkers pay utilities exorbitant sums for energy that we don't even use – it's wasted because our homes are inefficient. That wasted energy pollutes neighborhoods, contributes to global warming as well as siphoning precious income away from households.

***In opposition memos, utilities have portrayed themselves as consumer advocates concerned about customers paying higher bills.***

In fact, in these memos, in utilities' proposed amendments to On-Bill Financing legislation, and in communications with the Public Service Commission, utilities have asked to be exempted from bringing meaningful energy efficiency to their customers – and at the same time, even asking the state take over their *usual* risk of nonpayment for customers who participate in Green Jobs-Green New York.

By contrast, consumer groups are firmly on record supporting On-Bill Recovery as the only currently available means for making safe retrofit loans to vulnerable homeowners and communities – especially for efforts to reach such communities on a large scale. For details, see the memo entitled “Consumer Organizations Urge Safe Financing for Green Jobs Green New York (GJGNY) Energy Retrofit Program” (March 2011) from the Consumer's Union, Public Utility Law Project, Empire State Justice Center and others.

***In addition to law, the demands of external stakeholders – BPI, the Public Service Commission and institutional lenders – will ensure the appropriateness of GJGNY retrofits and the establishment of workable rules for On-Bill Financing .***

- ✧ **NYSERDA requires contractors to be accredited by the Building Performance Institute, and NYSERDA doubles up on BPI's standards, review and enforcement.**
- ✧ **The Building Performance Institute** has long been New York's baseline for retrofit standards, and is now being adopted as the national-level programming standard. BPI imposes strong technical, business and safety requirements on its accredited contractors. BPI requires, for instance, that retrofits deal with a whole building, measure costs and savings according to research-based standards, and provide remediation of technical problems. BPI reviews contractors' work and provides some enforcement, independent of NYSERDA's oversight of contractors, of the technical quality and contractor business practices.

- ▲ NYSERDA's enactment of On-Bill Financing is also governed by natural **market rules**: in order to raise capital for a large-scale retrofit program, the Retrofit Fund must be a safe bet for investors, so that it can attract big investments and avoid paying high interest rates to investors. One of investors' main concerns is that retrofits will keep generating savings, which means that:
  - ▲ retrofits will have to be limited to fixed measures that can't be carried away from the house (so, retrofits are to building systems rather than movable appliances);
  - ▲ meter-holders who undertake a repayment obligation will have to have physical control of the premises (so, owners rather than renters);
  - ▲ property owners may be prohibited from ripping out the retrofitted measures before they're paid for;
  - ▲ disclosure of the repayment obligation to a successor meter-holder, and written adoption of the obligation, will be required.
  
- ▲ The **NYS Public Service Commission** will approve tariffs (which are drafted and submitted by utilities) that set the terms of utility participation; define costs and cost recovery; and add detail and refinement to On-Bill Financing rules.

*Utilities' opposition to On-Bill Financing doesn't stand up to scrutiny.*

But communities have stood up to utilities, demanding that they drop their opposition. We must pass On-Bill Financing so that lower- and moderate-income customers finally have access to energy efficiency – and can *buy energy efficiency on the same terms on which they buy energy*.

### **Answers to Specific Utility Concerns (based on 2010 memos from NYS utilities)**

- 1. This bill will result in more customer disconnects, because it requires utilities to disconnect customers for non-payment of ... retrofit financing charges, even if the customer has paid all of their utility charges.**
  - ▲ Shut-offs will actually be less frequent among retrofit customers. Retrofit repayments won't be more than the average savings a customer sees on the bill carrying the repayment charge. For example, customers who are paying off a retrofit on their gas bill will see the same gas bill as before, but a part of the bill will pay for energy efficiency. But in most cases, that customer will also see a lower electric bill – and they'll pocket those savings right away.
  - ▲ After retrofit charges are repaid, customers will see a marked decrease in utility bills. The legislation sets a maximum payback period of 15 years. That's a typical repayment period based on current NYSERDA project data from Assisted Home Performance with Energy Star. (APHwES performs retrofits that most closely match GJGNY standards.)
  - ▲ Consumer advocacy groups support proposed On-Bill Recovery language specifically because it provides protections against increased risks of shut-off. The provision that repayment amounts must match monthly savings (on an annually-levelized basis) was crafted to satisfy this concern. As a result, On-Bill Recovery is now strongly supported by consumer groups including the Consumer's Union, the Public Utility Law Project,

Empire State Justice Center and others.

- ⤴ There's no chance that customers will default just on their retrofit charge, and that utilities will have to terminate their service for that reason. Under the law, the retrofit charge will be a fully-integrated part of the utility bill: customers could no more choose to skip it than they could choose to skip paying their transmission charge. If a customer only pays part of their bill, part of the loss will go to the utility, and part to the Retrofit Fund. By contrast, if the customer had not been retrofitted, the utility would experience the *entire* underpayment as a loss.

**2. This bill will raise costs for consumers, because it will increase utilities' uncollectible revenues.**

- ⤴ Utilities will not be faced with more uncollectibles. For customers who pay back all of their savings each month, utilities' risk of non-payment will be exactly the same as before. When customers bills go down, either because they're not using all their savings to pay back the loan or because they've finished paying, utilities' risk of non-payment will be reduced, because the bill will be more affordable.

**3. This bill inappropriately uses the monopoly status of utilities ...as a way to collect debts for state authorities.**

- ⤴ Incorporating the retrofit repayment on the utility bill critically puts energy efficiency charges under the auspices of the Home Energy Fair Practices Act. The rationale for placing the charge on the utility bill is not to make utilities collect debts, but to ensure utility customers' access to energy efficiency on the same (reasonable, protected) terms as they access energy. HEFPA protections allow consumers to secure and safely repay the costs of efficiency.
- ⤴ The Public Service Commission has been charged with creating energy efficiency in New York State, and must ensure that it reaches New Yorkers on an equitable basis. Utilities rejected the idea of financing residential energy efficiency themselves, and System Benefits Charge collections are not sufficient to provide the needed level of efficiency. Utilities have profited enormously from New York's inefficiency and high energy costs, and must now contribute to energy solutions.
- ⤴ Utility bills have historically been used to collect unrelated charges – New Yorkers used to be able to buy a sofa and pay for it in installments on their electric bill. Utility consumer advocates demanded reform of those irresponsible practices, and now only energy-related charges can appear on utility bills. Energy efficiency is critical NYS energy infrastructure. Utilities have a right and natural role in providing it, under the auspices of the Public Service Commission.

**4. Other means for collecting such financing charges already exist.**

- ⤴ In fact, *no* other energy efficiency financing is currently available to households above 60% AMI (about \$33-38K outside NYC) whose credit scores, incomes or home values are too low to access traditional loans (but who meet other reasonable criteria for creditworthiness, like strong history of utility bill repayment.)

**5. Customers may have difficulty paying utility bills that include loan repayments.**

- ⤴ Loan repayments will not increase customers' bills, and in most cases will lower bills immediately. See #1, above.

- 6. The savings projections depend on assumptions of historic premises' use of energy, delivery rates and commodity costs and may not be fully realized if any of these... are incorrect.**
  - ⤴ Assumptions about energy savings are based on over a decade of NYSERDA program experience, and the law requires that they be recalibrated biannually based on real energy-saving outcomes.
  - ⤴ NYSERDA's current practice is to assess cost savings based on current statewide utility prices. On-Bill Recovery legislation directs NYSERDA to use more local calculations and to examine a building's utility bill history. It also directs NYSERDA to educate customers about how behavioral changes can cancel out savings. Unless utility costs go down precipitously – which is extremely unlikely – savings projections will meet standards for accuracy.
  - ⤴ The law requires NYSERDA to take customer complaints and remediate problems, to ensure that retrofits work as they're supposed to. In addition to legal mandates, BPI rules (which govern NYSERDA's practice) require investigation and resolution of customer complaints about retrofits in a timely manner. Current program experience shows that complaints typically cluster around a few contractors who are either supported to improve or dropped from the program; and that unresolved complaints are very rare.
  
- 7. Successor customers' liability for remaining repayment installments is problematic. Utilities may not legally be entitled to enforce liability for repayment on a customer. The new customer will not have been vetted by the same standards as the first customer.**
  - ⤴ The latest version of legislation creates an Enforcement Mortgage, securing the obligation to pay from one homeowner to the next, and securing NYSERDA's right to collect through the mechanism of the utility bill. Utilities will not be required to perform any enforcement functions beyond their existing billing practices. Tariffs and NYSERDA underwriting policies can provide additional security for this requirement, as utilities, the Public Service Commission, NYSERDA and investors deem important.
  
- 8. Successor customers in rental premises may be unable to take on responsibility for the loan... but may have already entered a lease.**
  - ⤴ Financing is only available to owners of the property and the meter account to which repayment is billed. No renters will be able to accept financing, and no renters will be responsible for repayments.
  
- 9. A financing charge might deter prospective buyers of the property.**
  - ⤴ A retrofit provided on the terms required by Green Jobs-Green NY improves the quality and performance of a building without increasing costs, and ultimately provides a large annual cost-savings. If well-described, such cost-effective improvements should be a selling point.
  
- 10. This bill may result in higher costs for all customers. This bill would impose costs on all customers, not just those who participate in the program.**
  - ⤴ Energy efficiency vastly reduces the costs that utilities pass on to customers. Saving energy avoids not just the purchase cost of the power, but also the costs of transmitting energy, and future billions in cost to build new power plants.
  - ⤴ Utilities make investments in their systems all the time, and happily pass on the cost to

customers. In this case, NYSERDA will at least partially offset utilities' costs, and the legislation instructs utilities to use existing systems wherever possible.

- ⤴ Utilities' minimal administrative costs for billing can be assigned through the tariff to NYSERDA; NYSERDA has anticipated these costs as part of the cost of the financing mechanism.

**11. This bill will place utilities in the position of terminating service for non-payment of charges that have nothing to do with the provision of electric and gas service.**

- ⤴ On-Bill Financing will not require utilities to perform any terminations that would not have occurred without On-Bill Financing. See #1, above.
- ⤴ Providing utility customers with access to energy efficiency is the appropriate purview of the Public Service Commission and utilities. See #3, above.

**12. This bill will place utilities in a position in which they are serving as agents of NYSERDA and debt collectors, without any protection for utilities performing these services.**

- ⤴ At the request of National Grid, which helped draft the sample tariff on which the legislative draft is based, the legislation expressly exempts utilities from *any* responsibilities other than collecting bills in their usual manner. The bill says that a utility's role as collector shall not limit their discretion on Deferred Payment Arrangements, termination of service, or anything else.

**13. A pilot program should be pursued to see if the program is feasible.**

- ⤴ On-Bill Financing has been successfully piloted by utilities around the country, including National Grid, which already has a history of relevant pilot projects in New York State. Successes are also now well-charted in Alabama, California, Massachusetts, Oregon, Kansas, Kentucky and elsewhere – all programs that cover substantial but individual utility service areas, rather than entire states.
- ⤴ In the draft New York legislation, the Public Service Commission is required to review the program before many customers join, and shut it down if it finds the program is harming stakeholders.
- ⤴ Since pilots have already been done, and major safety valves are written into the law, there is no need for yet another pilot.

**14. The legislature should have the EEPS working group investigate these avenues before proceeding.**

- ⤴ This legislation is based on findings of just such a workgroup, staffed primarily by utilities and the Public Service Commission: the On-Bill Financing Workgroup of the Energy Efficiency Portfolio Standard proceeding, dated December 2008. It is time to act.

**15. The number of customers in arrears statewide is close to one million, and to add to this potential burden during these difficult economic times does not appear wise.**

- ⤴ Customers with persistent arrears will not be eligible for On-Bill Financing. The criteria for this financing include a reliable history of bill payment. Also, GJGNY will be targeted at customers above 60% AMI. In that sector of customers, arrears are much lower.
- ⤴ Retrofits will reduce bills for customers or keep them level – not add to economic burdens. See #1. While savings will fluctuate from heating months to non-heating months

(meaning that summer bills may go up slightly) vulnerable customers will see the greatest bill reductions in winter – which is when they would typically sink into arrears.

**16. Only when programs currently underway are deemed successful should they be considered for expansion... In neither the current small business program nor the residential program is there termination for non-payment of energy efficiency projects.**

- ⤴ The current programs in NYS, even if expanded, would not provide financing for lower- and moderate-income homeowners – that financing is only made possible by applying HEFPA protections to energy efficiency bills.
- ⤴ On-Bill Financing has, in fact, been successfully piloted in utility territories across the country. See #13 for some examples.