

PENNSYLVANIA UTILITY LAW PROJECT

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**TO: Pennsylvania Public Utility Commission On-Bill Financing Working Group
("OBFWG")**

From: Pennsylvania Utility Law Project ("PULP")

Date: March 1, 2013

RE: Discussion Topic: PARTIAL PAYMENTS AND TERMINATION: How would partial payments and termination be handled (important to consider issues such as those that would pertain to a commercial master-metered multifamily unit where termination of electric services to the building due to non-payment by the building owner would adversely affect tenants of said building)?

Background

The Pennsylvania Utility Law Project ("PULP") is the statewide project of the Pennsylvania Legal Aid Network of civil legal aid programs designated to represent low-income residential consumers in utility and energy matters.

PULP has earlier provided to OBFWG staff a list of questions which we believe need to be addressed as the OBFWG investigates the feasibility of, and legal impediments to, implementation of On-Bill Financing in Pennsylvania. Those questions are attached below for the benefit of the full workgroup.

In addition, we have submitted the following link from the National Consumer Law Center which details many of PULP's concerns regarding the implementation of on-bill financing in Pennsylvania: <http://www.nclc.org/issues/on-bill-financing.html> .

As a result of these concerns, PULP strongly supports the OBFWG consensus expressed at the November 16, 2012 and January 16, 2013 meetings **that On-Bill financing is not appropriate for residential utility consumers in Pennsylvania.** For the purpose of this memo, PULP is responding to one of the questions addressed in the list of questions posed at the January 16, 2013 meeting and subsequent e-mail communication because termination of electric service to a commercial master-metered multifamily unit building, as a result of partial payment, non-payment, or for any reason whatever would have an adverse affect on the low-income residential tenants of that building.

Discussion

One of the applicable hooks designed to incentivize lenders to participate in on-bill repayment programs is the ability to terminate utility service of the contracting party in the event of default. This was expressed at the November 16, 2012 and January 16, 2013 OBFWG meetings by nearly all parties interested in supporting OBF.

This memo is intended to provide feedback in outline form regarding some of the sections of 52 Pa Code Chapter 56. *Standards and Billing Practices for Residential Utility Service* and *Subchapter B, The Discontinuance of Service to Leased Premises Act*, found at 66 Pa.C.S.A. §§1521 *et seq.* which appear to be applicable.

52 Pa Code Chapter 56. Standards and Billing Practices for Residential Utility Service (“Chapter 56”) may be applicable, even though it is a commercial master-metered multifamily unit, if an occupant or tenant may have their utility service affected by the actions of the building owner as a result of OBF.

1. A tenant or occupant in a commercial master-metered multifamily unit may not be responsible for or suffer negative consequences as a result of partial payment or non-payment by the building owner of non-basic services such as OBF. See § 56.83.(3) Unauthorized termination of service.
2. A tenant or occupant in a commercial master-metered multifamily unit may not be terminated if medical or other emergency reasons apply to any tenant or occupant in the multifamily unit. See *Tenant Action Group v. Pennsylvania Public Utility Commission*, 514 A.2d 1003 (Pa. Cmwlth. 1986) and *Jackson v. Pennsylvania Public Utility Commission*, 522 A.2d 1187 (Pa. Cmwlth. 1987); appeal denied 536 A.2d 1335 (Pa. 1987).
3. A tenant or occupant in a commercial master-metered multifamily unit may not be terminated during December 1 through March 31. See § 56.100. Winter termination procedures. (f) *Landlord ratepayer accounts*. During the period of December 1 through March 31, a public utility may not terminate service to premises when the account is in the name of a landlord ratepayer as defined in 66 Pa.C.S. § 1521 (relating to definitions) except for the grounds in § 56.98 (f)
4. A public utility may be limited in its ability to discontinue service to any tenant or occupant in a commercial master-metered multifamily unit. See § 56.72. (C) [This section does not apply when the customer is a landlord ratepayer. See 66 Pa.C.S. § § 1521—1533 (relating to discontinuance of service to leased premises).]

5. A public utility may be subject to follow the procedures regarding customer or occupant contact prior to termination of any tenant or occupant in a commercial master-metered multifamily unit. See § 56.97.
6. A public utility may be required to distinctly separate the charges for basic and non-basic services such as for OBF service to any tenant or occupant in a commercial master-metered multifamily unit. See 56.13
7. A public utility may be required to follow the requirements relating to application of partial payments to any tenant or occupant in a commercial master-metered multifamily unit. See 56.23

Subchapter B, The Discontinuance of Service to Leased Premises Act, found at 66 Pa.C.S.A. §§1521 et seq. would apply in all circumstances in which tenants may be subject to loss of service as a result of landlord default.

Of particular note is that this statute is intended to be liberally construed for the benefit of innocent tenants, who through no fault of their own, may be subject to loss of utility service as a result of landlord default. See *Tenant Action Group v. Pennsylvania Public Utility Commission*, 514 A.2d 1003 (Pa. Cmwlth. 1986).

As a result of the requirements and protections afforded by the Discontinuance of Service to Leased Premises Act, termination of service for failing to pay non-basic services such as on-bill financing may be a questionable sanction. The ability of a party to rely on termination of service as an incentive for payment of OBF may therefore be of dubious validity in a single meter multifamily building. An example of some of the provisions requiring compliance are: Section 1523 (the need for notice to the tenants); section 1524 (Requirements to identify tenants); section 1527 (Right of tenants to continued service); section 1529 (Waiver of the rights of tenants prohibited); and, section 1531 (Retaliation by the property owner prohibited.)

This list of issues/concerns was prepared for the benefit of OBFWG and is not intended to be an in depth legal analysis or an exhaustive identification of all sections or issues.

List of Issues Previously submitted concerning any OBF/OBR programs

a. Legal/Regulatory Issues

- i. Regulations do not allow termination of service for non-payment of OBF charges.
 1. 52 Pa. Code § 56.83(3)
- ii. What form of notice should be given to customers undertaking OBF – Truth in Lending, full disclosure, easily understood terms, etc.?
- iii. What, if any, state and federal laws regarding disclosure must be met.
- iv. Who is responsible for this disclosure?
- v. How should new customers (for example, customers purchasing a home that has on-bill financed items purchased by the previous owners) be informed of the existence of the EE items, their obligation to pay, how payment is made, etc.?
- vi. Would “second-generation” customers need the same disclosure that the initial customers were afforded when making the decision to pursue OBF.
- vii. What if the savings that were originally estimated for the EE equipment are not realized, e.g. the customer is paying per the agreement but is not realizing the savings?
- viii. Are there any privacy/confidentiality issues involved if the utility examines utility payment history to determine eligibility?
- ix. Will the repayment obligation run with the meter or with the customer?
 - x. Would there be a creditworthiness requirement?
- xi. What happens to the repayment obligation if, due to fire, flood, etc., the property is destroyed?
- xii. If a customer fails to pay the OBF, would the utility or the 3rd party financier be authorized to seek a lien on the premises?
- xiii. What role will PUC have in authorizing this?
- xiv. How, if at all, would OBF affect a low income customers’ eligibility for LIHEAP, LIURP, and other services?

b. Sources of Funding

- i. Ratepayer?
- ii. Governmental/Bond
- iii. Third party?
- iv. Funds should not diminish already existing pools of funding for Wx. OBF funds should not come from utilities Act 129 money, LIURP money, DOE Wx money or any other existing source. Must be “new” money.
- v. If a third party provides funding and the customer defaults would the utility have to adhere to FDCPA for collection?