

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Revision of Guidelines for Maintaining :
Customer Services, Establishment of Interim : **Docket No. M-2008-2068982**
Standards for Purchase of Receivables (POR):
Programs :

**Comments of Agway Energy Services, LLC, Gateway Energy Services Corporation,
Interstate Gas Supply, Inc., Shipley Energy Company, Vectren Retail, LLC
and the National Energy Marketers Association**

Agway Energy Services, LLC, Gateway Energy Services Corporation, Interstate Gas Supply, Inc., Shipley Energy Company, Vectren Retail, LLC and the National Energy Marketers Association (NEM) hereby submit initial comments in support of providing utilities with the ability to terminate customers for the non-payment of receivables as part of a Purchase of Receivables (POR) program. These comments are submitted pursuant to the October 16, 2008, Secretarial Letter issued in the above-referenced docket. The Secretarial Letter enumerated four specific questions for comment as follows:

1. Should an NGDC be allowed to terminate customers for the failure to pay receivables purchased by an NGS pursuant to a Commission-approved POR program?
2. Should the *Guidelines* be modified to remove this regulatory uncertainty?
3. Are there other related consumer protection issues that need to be addressed as a result of any changes to utility termination rights?
4. Are any statutory amendments necessary for this type of POR program to be implemented?

In addition to these four questions, the Commission invited proposals on “other guidelines that may be used in the design and operation of POR programs.”

The specific issue of utility termination of customers for nonpayment of receivables in POR programs arose 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 recently rendered a decision in this case finding that, “POR programs that treat utility-supply and NGS-supply customers equally regarding termination rights remove barriers to the development of competition.” (Docket No. R-2008-2011621, *et al.*, Opinion and Order, entered October 28, 2008, at 13). However, the Commission determined that “past precedent” consisting of a 1999 Order on Customer Service Guidelines¹ prevented it from approving Columbia’s termination of customers for nonpayment of receivables in a POR program at this time. The Secretarial Letter in the instant case was issued to receive comment on the impact of this outstanding 1999 Order.

It bears mentioning at the outset that numerous other jurisdictions have recognized the value of POR for competitive market development.² For example, the NY Public Service Commission identified utility purchase of receivables as a “best practice” in its Retail Policy Statement issued in August 2004. The Commission found that, “A major success in the residential market . . . is the utility purchase of accounts receivable to simplify ESCO operations and reduce ESCO overheads.” (Case 00-M-0504, Retail Policy Statement, issued August 25, 2004, at page 15). 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

¹ *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”).

² More recently, the Illinois legislature required that electric utilities in the state implement POR. POR is in use in other jurisdictions including Consumers Energy and Detroit Edison in Michigan (for gas choice); PSEG, SJG and NJNG in New Jersey; and NIPSCO in Indiana.

extremely well in jump-starting the energy market for residential and small commercial customers.” (Id. at 16). Within the past month the NYPSC reaffirmed the importance of POR as a program, “essential to maintaining a competitive market structure.” (Case 07-M-0458, Order Determining Future of Retail Access Programs, issued October 27, 2008, at page 8). 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.” (Id.). Migration statistics from New York illustrate the impact of the best practices identified in the Retail Policy Statement. From September 2004 when the Retail Policy Statement was issued to August 2008, there has been an approximate 84% increase in total gas customer accounts migrated³ and an 85% increase in residential gas customer accounts migrated.⁴

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 Columbia Gas of Ohio service territory, the number of customers who were being served by an alternative supplier in 2005 was approximately 475,000 customers; with no alternative supplier serving the low income customer group. By contrast, the number of customers currently being served by alternative suppliers exceeds 626,000. Importantly, in 2005, 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. Docket No. 04-1631-GA-UNC.

³ In September 2004, 362,000 total gas customer accounts had migrated and in August 2008 that increased to 667,000.

⁴ In September 2004, 303,000 residential gas customer accounts migrated and in August 2008 that increased to 561,000.

POR can have a significant impact on marketers' cost to serve consumers who may otherwise be uneconomic to service in a competitive marketplace; and, with virtually no additional cost to the utility or the consumer. Importantly, allowing a utility to maximize the use of its legacy billing system avoids imposing a significant duplication of infrastructure costs on the nascent marketplace. POR enhances the ability of the competitive marketplace to serve credit-challenged customers. It is rarely noted that a marketer cannot reclaim its commodity in the event of a payment default. Utility assets are always there to use another day.

1. Should an NGDC be allowed to terminate customers for the failure to pay receivables purchased by an NGS pursuant to a Commission-approved POR program?

Yes, subject to the conditions that the Commission approves the POR program, and the program requires equal treatment of competitive supplier and utility customers. By permitting utility termination in this context it provides consumers with the certainty of a single, consistent rule, rather than the confusion created by multiple entities collecting for the same delinquency. It also more equitably treats competitive suppliers, by placing their receivables on an even footing with the utility.

Just as important, and as borne out by the record in the Columbia case, permitting utility termination reduces risk to the utility, permitting a concomitant reduction in the POR program discount rate. In fact, because of the reduction in risk, Columbia proposed to reduce its discount rate from 5% to 2.25% (and ultimately 1.86% after Columbia's recovery of implementation expenses) if it were permitted to disconnect service for non-payment. Permitting utilities to terminate for nonpayment will also allow them 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.

2. Should the *Guidelines* be modified to remove this regulatory uncertainty?

We do not believe that the Customer Service Guidelines Order issued in 1999 constrains the Commission from permitting utilities to terminate for non-payment of receivables. The Order was issued at a time when the market was in its relative infancy and reflects concerns held in a prior time and that are not reflective of the market conditions realized today. Notwithstanding this opinion, the Commission may wish to revise the Guidelines to remove any regulatory uncertainty that may otherwise impede the utilities from expeditiously implementing POR programs.

3. Are there other related consumer protection issues that need to be addressed as a result of any changes to utility termination rights?

Consumers are adequately protected under the Commission's relevant regulations, 52 Pa. Code §§ 56.01, *et seq.*, and Chapter 14 of the Public Utility Code, 66 Pa. C.S. § 1401, *et seq.* Indeed, by permitting utilities to terminate customers for non-payment in the POR context, consumers are afforded the same protections that have been adjudged to be sufficient for utility full service customers. This presupposes of course that the Commission makes it clear that such equivalence is required. There is no need to provide any additional protection to customers.

4. Are any statutory amendments necessary for this type of POR program to be implemented?

No. With respect to voluntary POR programs, no statutory change would be necessary to allow utilities to treat all customers the same. In fact, one could argue that the Natural Gas Choice and Competition Act already requires such equivalent treatment.⁵ We are not aware of any provision in the Public Utility Code, including Chapter 14, 66 Pa. C.S. § 1401, *et seq.*, that would require modification so as to allow equivalent treatment in termination.

5. Other POR Program Guidelines

The SEARCH Report and the underlying collaborative process vetted the considerations underlying the implementation of effective POR programs. These POR program guidelines, as identified pursuant to the SEARCH process, should form the basis for the utilities expeditious implementation of such programs.

Conclusion

We appreciate this opportunity to comment on an issue that bears directly on structuring optimal POR programs: utility termination for customer non-payment. We look forward to continuing to work with all stakeholders to ensure that POR programs are offered in a manner that adequately protects consumers while serving the interests of customers, utilities and marketers in a competitive marketplace.

⁵ See *e.g.*, 66 Pa. C.S. § 2203(4)(requires that Natural Gas Distribution Service be provided on equivalent terms); and, 66 Pa. C.S. § 2203(3)(requires that consumer protections be maintained at present levels).

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