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November 20, 2008

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

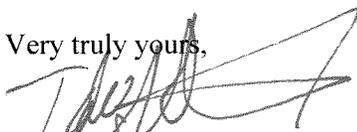
RE: In the Matter of Revision of Guidelines for Maintaining Customer Services
Establishment Of Interim Standards for Purchase of Receivables (POR) Programs;
Docket No. M-2008-2068982; **REPLY COMMENTS OF NATURAL GAS
SUPPLIERS**

Dear Secretary McNulty:

Enclosed for filing with the Commission are the original and ten (10) copies of the Reply
Comments of the Natural Gas Suppliers in the above-captioned matter.

If you have any questions, please feel free to contact me.

Very truly yours,



Todd S. Stewart

*Counsel for Dominion Retail, Inc., Interstate
Supply Inc., and Shipley Energy Co.*

TSS/bks

Enclosures

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY COMMENTS OF NATURAL GAS SUPPLIERS

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Counsel for Natural Gas Suppliers

DATED: November 20, 2008

I. Introduction

By Secretarial Letter dated October 16, 2008, the Pennsylvania Public Utility Commission (“Commission”) sought comments from interested parties on whether Natural Gas Distribution Companies (“NGDC”) should be permitted to terminate customers’ natural gas service if those customers fail to pay charges for natural gas supply purchased from Natural Gas Suppliers (“NGS”), where the NGS’s receivables have been purchased by the NGDC pursuant to a Commission-approved Purchase of Receivables (“POR”) Program. As discussed more fully in the Comments of the Natural Gas Supply parties (Dominion Retail, Inc., Interstate Gas Supply, Inc., and Shipley Energy Company, collectively “NGS Parties”) at this docket, the issue of termination arose in the context of the *Columbia Gas of Pennsylvania*¹ rate case in which the parties agreed to a settlement that contained a vastly improved POR program. As originally proposed, that POR program included the ability of the Company to terminate service when customers fail to pay for purchased receivables in the same way the Company would terminate a default service customer. The only party in that proceeding that opposed the termination provision was the Office of Consumer Advocate (“OCA”), however, all parties did agree to brief the issue. In its Final Order in the matter, the Commission concluded that POR programs provide benefits and will aid in the development of a more competitive market, but nonetheless declined to approve the lynchpin termination provision because it was contrary to a guideline set down in 1999.² The Commission decided that the more prudent course would be to solicit comments from interested parties before making determination on whether it was now

¹ *Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2008-2011621, et al. (“Columbia Rate Case”).

² *Guidelines for Maintaining Customer Services at the Same 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 Applications of Partial Payment*, Docket No. M-00991249F003, Order entered August 26, 1999 (“Guidelines Order”).

appropriate to revisit the 1999 Guidelines Order and allow for termination in Commission-approved POR Programs.

The NGS Parties believe that POR is one of the most critical components of the plan that the Commission has proposed as a means of fulfilling the purpose of the Natural Gas Choice and Competition Act³--competition that is fair and that benefits all parties. The NGS Parties urge the Commission not to expand the scope of this isolated inquiry to include other components of that plan that currently may be at issue elsewhere in the SEARCH process. Accordingly, the NGS Parties have sought to limit their comments to the issue of termination in the context of POR programs.

The NGS Parties have reviewed the comments of the other interested participants in this inquiry and are concerned by the NGDC's request to prolong the process of implementing POR programs. While the NGS Parties do understand that it may appear to be difficult to develop a POR program within a 30-45 day window that will likely exist from the time the Commission decides the termination issue until December 31, 2008, for the most part, such programs should be in the works now, and there exists a template, in the form of the Columbia Gas of Pennsylvania program, that already has met with the approval of the interested parties. The Commission has not required implementation by the end of the year, rather, has asked that such programs be *proposed*. If an NGDC is to have actual difficulty meeting that deadline, however, it certainly can ask the Commission for more time and the Commission can consider the particular facts and decide how to proceed. However, the NGS Parties do not believe that a blanket extension of time is warranted.

A review of all the comments submitted so far reveals an interesting dichotomy of opinion on the central issue. While both NGDCs and NGSs appear to favor the ability to treat all

³ *Natural Gas Choice and Competition Act*, 66 Pa.C.S. § 2201, *et seq.* ("Choice Act").

customers the same, the only party that appears to oppose that similar treatment, as proposed in the *Columbia* case, continues to be the OCA. The OCA's legal argument—that a restriction on termination in the POR context can be extracted from the Public Utility Code and/or the Commission's regulations—is simply incorrect. To the contrary, the legal citations relied on by the OCA do not address POR and do not prohibit termination for purchased NGS receivables for natural gas supply service. The OCA's policy argument appears to be premised on the notion that in some instances NGS charges may exceed what a customer otherwise would have paid the NGDC, *had the customer chosen to purchase default service from the NGDC*. The obvious point that the OCA's position overlooks is that NGS customers choose to take service from NGSs and choose the pricing options provided by that service, much like a customer now may choose to remain on default service. If the customer has made that choice in accordance with approved procedures and accepted the responsibility to pay for the service, why should the Commission interfere in that choice? In short, the benefits of treating all customers the same and of giving all customers the benefit of their bargain, whether it be with an NGDC or NGS, far outweigh the interests of those relatively few customers who choose to exploit an obvious loophole that allows them to accumulate arrearages for NGS service that neither the NGS nor the NGDC have any real hope of collecting.

II. Response to OCA Comments

The OCA's arguments against termination are: 1) that the Natural Gas Choice and Competition Act prohibits it; 2) that the Commission's Regulations at Chapter 56 prohibit it; and 3) that NGS prices may sometimes appear to be higher than NGDC default service rates and so, even if termination is permitted, NGDCs should not be allowed to collect more than what a customer would have paid for default service, if the customer had actually subscribed to default

service. However, all of these arguments flow from the same central premise that because NGDC default service rates are “regulated” and NGS rates are not, NGS bills are not entitled to the same treatment as NGDC bills.⁴ This premise is not only irrelevant; it is fundamentally flawed on many levels. The OCA’s arguments are unavailing. As a matter of law, termination for non-payment of purchased receivables is not prohibited and as a matter of policy, it should be promoted.

A. The Contention That Natural Gas Supply Service From An NGDC Is “Regulated” While The Same Service Provided By An NGS Is Not Is Irrelevant.

Customers are not assigned to take natural gas supply service from an NGS or NGDC against their will. Rather, customers choose a provider, just like they do for almost everything else they buy. And just like everything else, customers base those choices on reasons that are particular to them. Most importantly however, customers expect to live with their choices. If a customer chooses to buy his or her natural gas from an NGS, the customer does so because he or she perceives some value in that transaction that does not exist in purchasing from the NGDC. The fact that one rate is subject to after-the-fact prudence review and true-up by the PUC through the §1307(f) process and the other is disciplined by the market may or may not make a difference to the customer, but the critical fact is that the customer makes the choice. For the OCA to suggest that the customer’s contractual choice should be ignored does justice to no one. Customers and suppliers are deprived of the benefit and concomitant responsibilities of their bargain, creating more costs for NGDCs, NGSs, and other customers.

⁴ As a related argument, the OCA points out that natural gas supply service is an essential human needs service, and that termination is a severe remedy. This argument overlooks the obvious fact that most customers continue to take service from an NGDC and continue to be exposed to such termination. Apparently, the General Assembly did not share the OCA’s view when it recently modified the Public Utility Code in this regard, 66 Pa.C.S. § 1401, *et seq.*, and left intact the NGDC’s ability to terminate service for non-payment.

Moreover, as a factual matter, it may be true that NGS posted prices may have been higher than default service rates in certain months and the opposite also was true, but the OCA presented no evidence as to what rates customers actually paid and whether customers were in fact saving money by taking service from NGSs. It would be an insult to customers, and simply wrong to assume that customers would take service from an NGS if the NGS's price were higher over the term of contract, if price were the customer's primary consideration, as the OCA suggests it is. As the record of the Columbia case shows, NGS offerings may appear at an isolated point in time to be higher, but in general, over the life of the contract, save customers money. For the OCA to suggest that it would be unfair to customers to terminate their service for failing to pay their natural gas supply charges ignores the fact that the customer will have failed to pay for something for which they agreed to pay. The OCA position also fails to consider that, in most cases, the customer received a benefit from that contract relative to default service. Simply put, the "regulated" or "unregulated" nature of the rate and the charges based on that rate is irrelevant. Rather, the customer's bargain is what should be considered.

B. Neither The Choice Act Nor The Commission's Regulations Prohibit Termination Of Service For Failure To Pay Charges For Natural Gas Supply Service, Regardless Of The Provider.

Natural Gas Supply service is defined in the Choice Act as a single service that can be provided either by a NGDC or a NGS. 66 Pa. C.S. § 2202. The service is fungible, that is, it is basically the same service no matter what entity provides it. NGSs that provide Natural Gas Supply service are subject to Chapter 56 and other Commission regulation. *See*, 52 Pa. Code § 56.1, *et seq.* and 52 Pa. Code § 62.71, *et seq.* In fact, the NGDCs and NGSs purchase their gas in the same wholesale markets and transport that gas through the same interstate pipeline system. The most significant difference between the two services is that service from the NGDC is

subject to after-the-fact review and true-up through the 66 Pa.C.S. § 1307(f) process, while NGS rates must compete in the retail market. Natural Gas Supply Service from an NGS is not a non-basic service, and it is not an appliance sales service; it is, for all purposes pertinent to this discussion, the same essential gas service provided by the NGDC and is entitled to the same treatment.

It may be true that certain statutory or regulatory provisions prohibit termination of service for failure to pay charges for non-basic items such as appliances (66 Pa. C.S. § 509(1)) or other merchandise (52 Pa. Code § 56.83), but those provisions are limited to their own terms and those terms do not include natural gas supply service. Moreover, the regulation relied upon by the OCA, the ALJs, and the Commission when implementing the guidelines has no realistic bearing on the issue whatsoever. Simply put, 52 Pa. Code § 56.99 does not prohibit the use of termination as a collection device. Rather, it prohibits the use of *threats* of termination as a collection device, if the utility does not actually intend to terminate service. If a customer does not pay, a utility may warn them and then terminate service according to the regulations. To suggest that a utility might violate this section as a reason for not allowing termination is unwarranted—there is no evidence to support such a position. The OCA’s statement is an intentional misread of the provision.

Moreover, to suggest that by allowing NGDCs to terminate for non-payment of purchased receivables, customer service will not be maintained at the same level as it existed before CHOICE is similarly unfounded. Before the enactment of Chapter 22, NGDCs had the ability to terminate for non-payment, i.e., there has been no change. One could easily argue that this very provision requires that all customers be susceptible to termination for non-payment.

Finally, the OCA cites to 66 Pa. C.S. § 2208(e) for the proposition that allowing termination for non-payment of purchased receivables would violate a basic premise of Chapter 22. Such a conclusion is wholly unsupported based upon a read of the entire section, which permits the Commission to *forbear* from regulating NGSs—except for Chapter 56. The fact that the NGS are expressly permitted to terminate contracts for non-payment has no bearing on whether the NGDC may do so when it purchases a receivable that goes unpaid. If there were such a clear connection in this provision to termination, one could more easily conclude that the provision would allow for termination by the NGDC—by proxy—for non-payment.

In short, there is no statutory or regulatory reason to conclude that termination for non-payment of purchased receivables is not permitted or should not be permitted.

C. The OCA’s “Protections” Will Make POR Unworkable.

The OCA has suggested that certain protections that it proposed in its comments can make POR acceptable. These conditions may appear to be reasonable, and in fact, it is possible that NGSs would not object to some of them if offered individually. However, two of them in particular appear to be deal-breakers, largely because they eliminate the efficiency of POR programs from an NGDC perspective: 1) the prohibition against terminating for more money than the customer would have paid had the customer chosen default service; and 2) the prohibition against demanding, as a condition of reconnection, that a customer pay more than what the customer would have paid had the customer chosen default service. The short answer in opposition to these conditions is that the customer chose an NGS and agreed to pay what the NGS charged. It is alarming that the OCA insists on altering that basic bargain and it is telling that the OCA is not advocating the converse—that NGDCs not be able to collect from customers the money that customers would have saved if the customer would have taken service from an

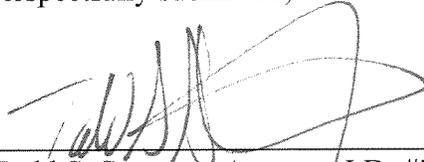
NGS and did not. It also is true that such conditions remove one of the primary benefits of POR programs—the ability of NGDCs to treat all customers the same. Such requirements would require NGDCs to put in place a system, or more likely, more personnel, to calculate what those charges would have been—not an easy task with variable pricing, reconciliation, and true-ups. Such requirements would, accordingly, and by their very nature, require two billing and collection systems and would perpetuate the loophole that now allows customers to refuse to pay NGS charges and escape any meaningful attempt at collection.

Finally, contrary to the supposition in the OCA’s comments, there is indeed evidence to support the efficacy of POR programs in expanding competition. Such evidence also was discussed in the *Columbia* base rate case and in the Comments of the NGS Parties. For the convenience of the Commission, the NGS Parties have attached hereto an Appendix that provides a summary of those facts. (“Appendix A”). The evidence shows that the implementation of purchase of receivables programs in the neighboring states of Ohio and New York have led to migration rates that far exceed those in Pennsylvania.

In short, the evidence makes clear that POR programs provide benefits to customers, NGSs, and NGDCs. Moreover, there is no legal reason, based either in the Commission’s Regulations or the Public Utility Code, that the Commission cannot allow termination for non-payment of purchased receivables, the OCA’s arguments to the contrary notwithstanding.

Accordingly, the NGS Parties renew their request that the Guidelines Order be appropriately modified.

Respectfully submitted,



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Counsel for Natural Gas Suppliers

Dated: November 20, 2008

A Comparison of Natural Gas Choice Markets			
	Ohio	Pennsylvania	New York
Migration ¹	1,405,662 ²	154,292 ³	569,046 ⁴
% of Eligible Customers Migrated	49.0%	5.9%	15.1%
Number of NGS Suppliers	32	15 ⁵	63
Purchase of Receivables Program	Yes	No	Yes ⁶
Disconnect Allowed for non-payment of NGS Charges	Yes ⁷	No	Yes ⁸
Consumer Education Programs Offered	Yes ⁹	No	Yes ¹⁰

¹ Number of residential customers served by NGSs.

² Per the Public Utilities Commission of Ohio as of June, 2008; excludes low income customers served by ESCOs. In 1998 the first pilot programs began, and in 2002, through House Bill 9 (HB9), Ohio codified its state policy in support of development of retail natural gas competition.

³ Per the Pennsylvania Office of Consumer Advocates as of October 1, 2008.

⁴ Per New York State Public Service Commission as of August 2008. In Case 00-M-0504, Order Instituting Proceeding (issued March 21, 2000) to address the future of the competitive natural gas and electricity markets and the role of the regulated utilities in such markets.

⁵ This is an estimate based on information from the PA PUC website which may not be up-to-date and reflects suppliers who are licensed but not necessarily providing any services.

⁶ Recommended for Implementation by the NYPSC and Adopted by all Major NGDCs Offering Choice Programs - NYPSC *Statement of Policy on Further Steps Toward Competition in Retail Energy Markets* (Case 00-M-0504) issued August 25, 2004.

⁷ NGDCs can disconnect service for non-payment of non-disputed NGS charge under the same rules as those that govern the utility disconnection process.

⁸ Not only can NGDCs disconnect under a POR program for non-payment of NGS charges, but NY rules also allow for NGDCs to disconnect for non-payment of NGS charges when billed by the NGS.

⁹ Ohio has conducted a coordinated educational program wherein the NGDCs, PUC, Consumer Counsel, and NGSs work collaboratively to provide consumers with accurate, relevant information about the Choice Program.

¹⁰ Most major NGDCs have ongoing consumer educational programs utilizing various vehicles of media.