

COMMONWEALTH OF PENNSYLVANIA



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November 20, 2008

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Dear Secretary McNulty:

Enclosed are an original and fifteen (15) copies of the Reply Comments of the
Office of Consumer Advocate, in the above-referenced proceeding.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Tanya J. McCloskey".

Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044

Enclosure

cc: Patricia Krise Burket, LAW – via e-mail only
Robert F. Young, LAW – via e-mail only
Paul Diskin, FUS – via e-mail only
Daniel Mumford, BCS – via e-mail only

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

On October 16, 2008, the Pennsylvania Public Utility Commission (PUC or Commission) issued a Secretarial Letter soliciting comments to the Commission regarding the revision of the Guidelines¹ relating to maintaining customer service pursuant to Section 2206(a) of the Public Utility Code in order to implement Purchase of Receivables (POR) programs by Natural Gas Distribution Companies (NGDCs). The Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA) and several NGDCs and Natural Gas Suppliers (NGSs) filed Comments in response to the Secretarial Letter.

The NGDCs and NGSs argued in favor of a revision to the Guidelines to allow for termination of essential natural gas service for nonpayment of unregulated purchased receivables. The OCA submits these Reply Comments in further support of its position that the Commission should maintain its existing Guidelines and continue voluntary POR programs in existence today that do not rely on termination of essential utility service for collection of unregulated charges. Natural gas service is an essential service, and the loss thereof can pose a significant health and safety risk to the terminated customer and the public. Termination is an extraordinary measure, and allowing termination of essential natural gas service for nonpayment of unregulated charges (which can be higher than regulated supply charges for the same period) could unreasonably place the health, welfare and safety of customers and the public at risk. Furthermore, termination of essential natural gas service for nonpayment of unregulated purchased receivables is not contemplated by, or in accord with, Chapter 22 of the Public Utility Code or Commission regulations. Allowing termination of essential utility service based on

¹ See 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-00991249F003 (Order entered Aug. 26, 1999) (Guidelines).

unregulated charges that the Commission has not found to be just and reasonable is inconsistent with the fundamental underpinning of the Public Utility Code that regulated utilities may only demand rates that are just and reasonable from their customers. 66 Pa.C.S. § 1301.

As stated in the OCA's Comments in this matter, if the Commission intends to pursue a POR program that would allow for the termination of essential utility service based on unregulated charges, the following consumer protections must be in place to try to meet the requirements of the Public Utility Code and to protect ratepayers and the public. Any program must include the following protections:²

- The NGDC should only be permitted to purchase receivables for commodity service. The NGS must certify that the charges do not include any other products or service.
- The NGDC would be permitted to conduct its normal collection activities for these customers, including termination of service for nonpayment pursuant to Chapter 14 of the Public Utility Code and Chapter 56 of the Commission regulations. The "right" to terminate, however, must be limited to that portion of the NGS receivables that are equal to or less than the amount the customer would have been billed for commodity service if the customer had received SOLR service from the NGDC during the non-payment period. In other words, the amount due stated on any termination notice issued by the NGDC must be no higher than the amount that would have been due to the NGDC for regulated SOLR service at rates that were found to be just and reasonable.

² Pa.P.U.C. v. Duquesne Light Co., Docket No. R-00061346 (Order entered Dec. 1, 2006).

- The NGDC should purchase the receivables at a discount that allows for the recovery by the NGDC of the incremental NGS uncollectible expenses and recovery of the initial, and on-going, operating and administrative costs associated with the program.
- As a condition of the program, the NGS is required to agree not to reject a new customer based on credit-related issues. As a result, the NGS is not permitted to seek a separate security deposit.
- The NGDC is not permitted to recover retroactively from distribution ratepayers any difference between the discounts applied to NGS receivables and uncollected amounts resulting from the purchase of these receivables.
- The NGDC must agree to inform all customers affected by this policy change by separate bill insert that specifically describes this change in policy for termination of service.
- The enrollment letter issued by the NGDC must be changed to inform customers of this change in policy at the time of selection of the NGS.
- With regard to a customer's right to reconnection of service: if terminated for nonpayment, the customer may be reconnected upon paying the lesser of (a) the sum of unpaid distribution charges (plus any applicable reconnection fees or deposits) and the amount billed for NGS commodity service (or a payment arrangement required by applicable law); or (b) the sum of the unpaid distribution charges (plus any applicable reconnection fees or deposits) and the amount the customer would have been billed for commodity service if the customer had

received default or POLR supply from the EDC during the non-payment period (or a payment arrangement required by applicable law).

The OCA submits that the Commission should not change its Guidelines or eliminate consumer protections that are fundamental to essential, regulated utility service. A POR program that allows termination of essential utility service based on unregulated charges would do just that. The OCA has offered an alternative that would at least provide some consumer protections if the Commission continues to pursue this course.

II. REPLY COMMENTS

A. The NGSs Fail To Address The Fundamental Legal Issue Regarding Termination And Consumer Protections In Their Comments.

In their Comments, the NGSs state that they do not believe that there is any current statutory impediment to the Commission approving a POR program that permits termination of essential utility service for nonpayment of unregulated purchased receivables. See e.g., Comments, NEMA at 5, 6; Comments, Shipley at 7.

The NGSs overlook the fact that the fundamental tenet of the Public Utility Code and the consumer protections that follow therefrom, are inconsistent with allowing termination for nonpayment of unregulated purchased receivables. The basic tenet, found in Section 1301 of the Public Utility Code states, in relevant part:

Every rate made, demanded, or received by any public utility, or by any two of more public utilities jointly, shall be just and reasonable, and in conformity with the regulations or orders of the commission.

66 Pa. C.S. § 1301. For an NGDC to demand a rate for an unregulated supplier that has not been found to be just and reasonable, or exceeds rate levels the Commission has found to be just and reasonable, cannot be reconciled with Section 1301.

Furthermore, Section 509 of the Public Utility Code demonstrates the General Assembly's intent that customers not be subjected to termination for nonpayment of unregulated charges. Specifically, Section 509 states:

It is unlawful for any public utility engaged in the manufacture, sale, or lease of any appliance or equipment offered by such public utility for sale to the public to:

(1) Discontinue service to any consumer for failure of such consumer to pay the whole, or any installment, of the purchase price, or rental, of any appliance or equipment sold to such consumer.

66 Pa.C.S. § 509(1). Section 56.83 similarly prohibits termination for non-regulated charges and specifically states:

...nonpayment, in whole or in part, for leased or purchased merchandise, appliances or special services including but not limited to merchandise and appliance installation fees, rental and repair costs, of meter testing fees or special construction charges and of other nonrecurring charges that are not essential to delivery or metering of service, except as provided in this chapter.

52 Pa. Code § 56.83(3). The General Assembly preserved these essential consumer protections when it enacted Chapter 22 of the Public Utility Code by stating, in relevant part:

Customer service and consumer protections and policies for retail gas customers, shall, at a minimum, be maintained at the same level of quality under retail competition as in existence on the effective date of this chapter.

66 Pa. C.S. § 2206(a).

No NGDC or NGS addressed the fact that unregulated NGS receivables are charges that have not been found to be just and reasonable by the Commission and can contain charges other than commodity charges due to NGSs bundling their services (such as gas furnace maintenance contracts, weatherization service or even credit card payments) in order to attract Choice customers. These services and merchandise are not subject to just and reasonable review by the

Commission. Consequently, allowing termination for nonpayment of unregulated purchased receivables would be contrary to the Public Utility Code and Commission regulations.

B. There Is No Need To Allow Termination For Failure To Pay Unregulated Charges In Order To Level The Playing Field Between NGDCs And NGSs.

NGDCs and NGSs assert in their Comments that termination for unpaid receivables pursuant to Chapter 14 of the Public Utility Code, 66 Pa.C.S. § 1401 *et seq.*, and Chapter 56 of the Commission’s regulations, 52 Pa. Code Ch. 56, should be permitted in order to prevent discrimination between NGSs and NGDCs. Specifically, the NGSs state that the Commission must “level the playing field” between NGDCs and NGSs. See Comments, Dominion Peoples at 2-3.³

This argument ignores the fact that NGDCs do not compete with NGSs. NGDCs provide a regulated supply service that must be available to customers by statute, and the Commission must approve the prices charged by NGDCs based on specific findings of justness and reasonableness. Further, NGDC prices are subject to the Commission’s least cost procurement requirement. While the NGDC price may set the price that customers will use to evaluate the offers they receive for products from an NGS, this is fundamentally different from competing against the NGSs. An NGS competes against other NGSs based on the products, services and prices that it can offer. An NGS does not have a public service obligation, can select the customers that it will serve, can offer the services that it wishes to sell to customers, and can end contracts with customers based on the terms of the contract. Thus, the NGSs’ claim that the “playing field” between NGDCs and NGSs must be leveled is without merit.

³ See also Comments, Dominion Retail, Inc., Interstate Gas Supply, Inc., and Shipley Energy Company at 4; Comments, Agway Energy Services, LLC, Gateway Energy Services Corporation, Interstate Gas Supply, Inc., Shipley Energy Company, Vectren Retail, LLC and the National Energy Marketers Association (“NEMA”) at 4; Comments, National Fuel Gas Distribution Corporation (“NFGD”) at 5.

The NGDCs' and NGSs' reasoning implies that NGS receivables should be privy to all of the benefits of the Public Utility Code with regard to termination policies and procedures, yet NGSs should continue to be exempt from the Public Utility Code's requirements of Commission approved rates. Such argument cannot withstand scrutiny.

The OCA, however, has offered an alternative proposal in its Comments that would allow termination for unpaid purchased receivables but only for charges that do not exceed the level found to be just and reasonable by the Commission. The OCA's proposal is set out in Section I of these Reply Comments and in Section III of its Comments of November 5, 2008.

C. There Is No Evidence That A POR Program That Allows Termination For Failure To Pay Unregulated Receivables Will Enhance Competition.

NGSs assert in their Comments that allowing termination pursuant to Chapter 14 of the Public Utility Code, 66 Pa.C.S. § 1401 *et seq.*, and Chapter 56 of the Commission's regulations, 52 Pa. Code Ch. 56, for unpaid receivables will "undoubtedly" enhance competition in Pennsylvania. See e.g., Comments, Dominion Retail, Inc., Interstate Gas Supply, Inc., and Shipley Energy Company (collectively "Shipley") at 4.

Shipley points to the purported success of POR programs in Ohio and New York as evidence that allowing termination for unpaid receivables in Pennsylvania will enhance competition. See Comments, Shipley at 5-6.⁴ Shipley fails to recognize, however, that this Commission has approved a POR program that allows termination for nonpayment of purchased receivables subject to certain consumer protections. See Pa. P.U.C. v. Duquesne Light Co., Docket No. R-00061346 (Order entered Dec. 1, 2006). Duquesne Light's POR program allows, *inter alia*, termination for nonpayment of purchased receivables but limited to an amount equal to or less than the amount the customer would have been billed for service if the customer had

⁴ See also Comments, NEMA at 2-3.

received generation supply default service from Duquesne Light during the nonpayment period. Id. Duquesne Light's POR program was implemented in January 2008. Utilizing Shipley's assertion that allowing termination for nonpayment of purchased receivables will increase customer shopping, one would naturally conclude that the number of marketers would increase in Duquesne Light's service territory as well as the number of Choice customers. Yet, that has not occurred. No new marketers have entered Duquesne Light's service territory. Furthermore, while the percentage of residential Choice customers increased from 17.31% in January 2007 to 19.9% in October 2007, when there was no POR program in place, the percentage decreased from 22.5% in January 2008 to 21.3% in October 2008, after the aforementioned POR program had been in place. These statistics merely illustrate the normal fluctuation in shopping that occurs for a multitude of reasons.

Clearly, an NGS must take other factors into consideration in determining to enter a market. These factors include, *inter alia*, market conditions, the ability of NGSs to obtain cash and credit in order to expand into the market, and the wholesale price of product. Clearly, the NGDCs' and NGSs' claims that permitting termination for nonpayment of purchased receivables is the answer for enhancing competition in Pennsylvania lacks support.

D. The OCA Concurs With The NGDCs That More Time Should Be Devoted To The Issue Of Voluntary POR Programs.

Several NGDCs assert in their Comments that the Secretarial Letter upon which the Comments and these Reply Comments are premised and the Commission's SEARCH Order⁵ will create confusion and apprehension to offerings of voluntary POR programs if not timed appropriately. See e.g., Comments, PECO Energy Company at 2-3; Comments, Dominion

⁵ Investigation into the Natural Gas Supply Market: Report on Stakeholders' Working Group (SEARCH); Action Plan for Increasing Effective Competition in Pennsylvania's Retail Natural Gas Supply Services Market, Docket No. I-00040103F002 (Order entered Sept. 11, 2008 and Revised Order entered Oct. 3, 2008) ("SEARCH Order").

Peoples at 2, Comments, Energy Association of Pennsylvania at 2-3; Comments, NFGD at 2-4. The Commission's SEARCH Order imposes a December 31, 2008, filing deadline, which requires NGDCs to file with the Commission for approval a voluntary POR program, or in the alternative, if an NGDC does not make such filing by December 31, 2008, it must then include a fully allocated cost of service study in its next filing pursuant to 66 Pa.C.S. § 1307(f) or its next base rate case, whichever occurs first. See SEARCH Order at 12-13. In the SEARCH Order, the Commission also directs its staff to initiate a rulemaking process in order to develop rules governing POR programs. SEARCH Order at 35.

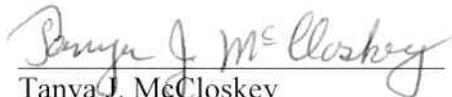
Attempting to implement a voluntary POR program in timely compliance with the SEARCH Order while waiting for the Commission's determination with regard to whether it will revise its Guidelines to allow termination for nonpayment of unregulated purchased receivables could result in unnecessary and avoidable costs to NGDCs and ratepayers. An NGDC will not know how to expend its resources to set up a billing system when it does not know the rules of the road. If it guesses wrong, valuable dollars will be lost.

Certainly, it is in the customers' best interests to avoid wasted expenses because NGDCs will likely attempt to collect the expenses from customers through rates. Therefore, the OCA concurs with the NGDCs' request that the Commission adjust the timing of the SEARCH Order in that the Commission first determine whether it will modify its Guidelines, and if so, undertake the rulemaking required in the SEARCH Order and then, consider individual NGDC POR program filings.

III. CONCLUSION

The Comments submitted by the NGDCs and NGSs in this matter do not set forth any compelling reasons to warrant revisions to the Guidelines that would be inconsistent with essential consumer protections. Accordingly, the OCA submits that the Commission should maintain its existing Guidelines, which comply with the mandates of the Public Utility Code and Commission regulations, and continue the voluntary POR programs in existence today that do not rely on termination of service for unregulated charges. Alternatively, if the Commission approves such a program, it should contain the consumer protections contained in the alternative POR proposal set forth in Section I of these Reply Comments and Section III of the OCA's Comments dated November 5, 2008.

Respectfully Submitted,



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