

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

Investigation of Pennsylvania's : I-2013-2381742  
Retail Natural Gas Supply Market :

**COMMENTS OF  
THE PENNSYLVANIA UTILITY LAW PROJECT  
TO THE COMMISSION'S  
AUGUST 21, 2014 TENTATIVE ORDER**



Harry S. Geller, Esq., PA ID: 22415  
Elizabeth R. Marx, Esq., PA ID: 309014  
118 Locust Street  
Harrisburg, PA 17101  
Tel.: 717-236-9486  
Fax: 717-233-4088

**October 14, 2014**

## INTRODUCTION

By Order of September 12, 2013, The Pennsylvania Public Utility Commission initiated a formal investigation into the current status of Pennsylvania's retail natural gas market to assess whether effective competition exists and to make recommendations for improvements to ensure that a properly functioning and workable competitive retail natural gas market operates in the state. As part of the first phase of its investigation, the Commission solicited comments from interested parties and stakeholders. On August 21, 2014, the Commission issued a Tentative Order announcing specific topics and issues that the Commission intends to pursue throughout the course of its Investigation and invited further comment on issues or market enhancements that were not already discussed or identified as matters to be addressed.

The Pennsylvania Utility Law Project ("PULP") appreciates the opportunity to provide comments to the Commission regarding the TO issued August 21, 2014. PULP is a specialized statewide project of the Pennsylvania Legal Aid Network designated to assist low-income utility and energy residential consumers. For over 30 years, PULP has represented the interests of low-income Pennsylvanians in energy and utility matters through direct representation, statewide advocacy, and support and assistance to the staff and clients of local legal aid programs, non-profits and community-based agencies. PULP staff have been actively involved in the recently completed Investigation into Pennsylvania's Retail Electricity Market (otherwise referred to as RMI) at Docket No. I-2011-2237952, the technical conferences hosted by OCMO, as well as each of the work groups and sub-group discussions affecting low-income utility consumers.

The Commission was clear in directing that comments to the TO be focused on issues not already discussed in the TO or in the Order of September 12, 2014. (TO at 51). Thus, PULP's comments and recommendations are limited to raising and/or responding to those issues and

perspectives not fully explored or addressed by the Commission in the course of its Investigation.

**I. The Commission should require OCMO to engage in a comprehensive, balanced investigation to assess all aspects of low-income customer shopping to ensure that rates for this vulnerable population remain consistent with the Commission’s Universal Service requirements.**

In its TO, the Commission asserted its belief that:

participation of low-income customers in the competitive market, including those participating in CAP, is an important topic that must be addressed as part of this Investigation, as we believe this group is most in need of ensuring that its statutorily created right to shop is protected.<sup>1</sup> There is also value in allowing these customers to procure lower-cost gas supply service that the competitive market may provide if they so choose. Such elections will benefit distribution customers, as a whole. To that end, we direct OCMO to survey the NGDCs on their CAP participation in the retail natural gas market and recommend any enhancements, as needed, in order to improve those programs. (TO 44-45)

PULP submits that any investigation of low-income customer shopping intended to enable economically vulnerable households to procure lower cost, affordable gas supply requires a comprehensive and balanced investigation. It is respectfully submitted that the Commission’s proposed action consisting of a survey directed *only at NGDCs regarding only CAP customer participation* in the retail natural gas market is, by itself, inadequate to produce the comprehensive or balanced information which OCMO and the Commission needs to determine whether enhancements are required and, if so, what those enhancements may be.

First, most low-income NGDC customers do not participate in CAP. The Commission’s annual Universal Services Report has consistently shown that CAP participants comprise a small minority of the total of low-income natural gas customers in the Commonwealth. In 2012, the last year in which a report was issued, the statewide weighted CAP participation rate achieved by

---

<sup>1</sup> 66 Pa. C.S. § 2203(2).

NGDCs was only 37% of confirmed low-income customers.<sup>2</sup> The 2012 report notes, as it does each year, that the participation rate weighted average would actually be much lower if it was arrived at by looking at the estimated low-income population in each service territory, as opposed to only the confirmed low-income population reported by the NGDC.<sup>3</sup> Thus, a survey focusing only on CAP customer participation would not by itself produce information that is reflective of the enhancements which may be needed to procure the benefits of lower cost, affordable gas supply to the low-income customer base.

Since most low-income customers do not participate in an NGDC CAP, and many non-participating households live on fixed incomes and are vulnerable because of advanced age, medical needs, mental limitations or lack of literacy in English, the lack of affordable energy services for these households is a significant contributor to adverse impacts on household health and safety.

The benchmark most often used by low-income advocates is the Pennsylvania Self-Sufficiency Standard published periodically by the nonprofit Pathways PA.<sup>4</sup> The Self-Sufficiency Standard is a tool developed to measure how much income a family of a certain composition in a given place needs to adequately meet their basic needs (housing/utilities, health care, transportation, child care, food, and taxes) without private or public assistance.<sup>5</sup> In other words, it measures the income needed to truly be self-sufficient. The Self-Sufficiency standard varies dramatically within Pennsylvania depending on geographic location and family size. Generally, however, the cost of meeting basic needs in Pennsylvania for a family with one parent

---

<sup>2</sup> 2012 Report at 35.

<sup>3</sup> 2012 Report at 34.

<sup>4</sup> <http://www.pathwayspa.org>

<sup>5</sup> The current version is The Self Sufficiency Standard for Pennsylvania (2012-2013) [hereinafter Self Sufficiency Standard Report] was incorporated into Pathways PA's Overlooked and Undercounted study, and is available on Pathway PA's website at <http://pathwayspa.org.mytempweb.com/wp-content/uploads/2014/01/Overlooked-and-Undercounted-2012.pdf>

and one preschool child ranges from \$27,412 to \$51,853 annually.<sup>6</sup> Compare this to the average household income of \$12,062 for NGDC CAP households in 2012<sup>7</sup> and it is not difficult to understand the economic vulnerability of these customers.

This economic vulnerability can also be seen when comparing the termination rates for residential customers as a whole with those for confirmed low-income customers. In 2012, the last year for which information is publically available, the termination rate for residential NGDC customers as a whole was 3.7%<sup>8</sup> whereas the termination rate for natural gas utilities' confirmed low-income households was 11.6%, more than 3 times as high.<sup>9</sup> Low-income customers simply have much greater difficulty maintaining service. The same picture is shown when one understands that while statewide confirmed low-income customers constitute only 11.9% of residential customers as a whole they account for 48.5% of residential customers on payment agreements.<sup>10</sup> Households existing at or below 150% of the federal poverty guideline simply lack sufficient income to pay for all of their essential needs including utilities. Given these realities, it is apparent that low-income households, not just CAP customers, are all economically vulnerable and it is respectfully submitted that the Commission examination of how best to achieve affordable lower natural gas supply rates for low-income customers requires an examination that extends beyond the minority of households within this demographic who participate in CAP.

Second, PULP respectfully submits that while a general survey of NGDC's regarding its CAP customers may result in beneficial recommendations for any enhancements, as needed, in order to improve programs, the specific data to be obtained in order for the survey to be most

---

<sup>6</sup> *Id.* at 8.

<sup>7</sup> See 2012 Universal Service Programs & Collection Performance Report at 29, available at [http://www.puc.state.pa.us/General/publications\\_reports/pdf/EDC\\_NGDC\\_UniServ\\_Rpt2012.pdf](http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2012.pdf)

<sup>8</sup> Self-Sufficiency Standard Report, *supra* note 5, at 9.

<sup>9</sup> *Id.* at 10.

<sup>10</sup> *Id.* at 7, 17.

informative should be defined. At a minimum, PULP recommends that OCMO be directed to obtain information regarding:

1. The number of CAP customers who, in each of the last three calendar years, have shopped;
2. The number of confirmed low-income customers who, in each of the last three calendar years, have shopped;
3. The number of CAP customers who shopped in each of the last three calendar years, who have paid rates above the NGDC price to compare;
4. The number of confirmed low-income customers, who have shopped in each of the last three calendar years, who have paid rates above the NGDC price to compare;
5. The number of CAP, shopping customers who have requested payment arrangements;
6. The number of confirmed low-income, shopping customers who have requested payment arrangements;
7. The number of CAP, non shopping customers who have had service terminated, in each of the last three years; and
8. The number of confirmed low-income customers, who have shopped in each of the last three calendar years who have had service terminated.

Third, it is submitted that any investigation regarding any enhancements, as needed, to improve programs involving low-income households should be expanded beyond participation only of NGDCs. PULP respectfully submits that any balanced investigation must include the ability of others, including low-income advocates and the OCA, to participate and have a

meaningful opportunity to provide input and recommendations as OCMO undertakes its survey and more detailed investigation.

**II. The Commission's directive for OCMO and the Office of Communications to address consumer education should include a specific requirement to design an education strategy directed at low income individuals participating and/or seeking to participate in the competitive natural gas market.**

In its TO, the Commission expressly required OCMO – in conjunction with the Office of Communications – to design a plan for expanded consumer education. (TO at 45-46). However, it made no mention of including specific measures designed to reach out to and educate low income customers about shopping. As explained above, and in previous comments before the Commission at this Docket, low income individuals have unique questions, considerations and concerns, such as the application of CAP and/or LIHEAP benefits for individuals receiving competitive gas supply, which must be addressed and clearly answered to ensure that low income individuals are equipped with the appropriate tools to make an informed decision regarding the competitive natural gas market, relative to their unique financial circumstances.

In recognition of the acute financial risk to low income customers and the potential financial impact to general ratepayers (either due to the reconciliation of uncollectible accounts or increased CAP program costs), it is critical that the Commission require OCMO and the Office of Communications to develop specific educational campaign focused on educating low income customers to make a more informed decision about shopping. In so ordering, PULP strongly recommends that the Commission approach the order in a manner that incorporates the same level of detailed guidance for low income educational enhancements that is provided in the TO with respect to general educational enhancements. For example, the Commission encouraged OCMO and the Office of Communications to enhance the designated website (PAGasSwitch.com) and to include benchmarking surveys; radio, television, print and online ads

and media buys; social media; educational videos; and consumer events. But, due to the ever-widening technological divide hampering many low income individuals from accessing the Internet, many of the explicit outreach activities identified in the TO are inaccessible to low income individuals. Thus, PULP recommends a separate section in the Commission's order be included to specifically charge OCMO with the task of developing an enhanced educational campaign that is specifically intended to reach low-income households and will address the unique needs of low income individuals and families.

**III. The Commission should reconsider its directive for OCMO to explore development of a supplier portal for natural gas suppliers and initiate a separate investigatory proceeding before an Administrative Law Judge to explore the efficacy and legality of the current supplier portal.**

Data security and privacy has been the unfortunate casualty of Pennsylvania's shift to a competitive electric market. In its TO, the Commission ordered OCMO to examine whether a supplier portal, as modeled in the electric market, would "be useful in the natural gas industry." (TO at 49). The Commission explained that, in the electric market, "EDSs were to develop portals with a variety of security mechanisms, including password protected, secure websites that require a supplier to submit the customer's full name, service street address and five-digit postal code." *Id.* Indeed, under current Commission policy with respect to electric supplier portals, a competitive electric supplier can easily access highly sensitive electric customer information (*including the individual's Social Security Number, interval usage data, service address, and payment history*).<sup>11</sup> To access a customer's data, an electric supplier – or their contractor – only needs to (1) self-verify that they have a letter of authorization, (2) self-verify that they were shown identification, and (3) know the customer's name and service address/zip code. Indeed, the only personalized data that a supplier must supply to gain access to a veritable gold-mine of

---

<sup>11</sup> *EDC Customer Account Number Access Mechanism for EGSs, Final Order*, M-2013-2355751 (July 16, 2013).

personal information is generic enough to be available in the white pages of a local phone book or free online directory.

Current policy does offer a small measure of protection for victims of a data breach by requiring EDCs to keep records of the time and date of each supplier's access. But, unfortunately, a record of the breach is of little recourse to a customer whose data is misappropriated because (1) the harm is already done and (2) the victim is unlikely to discover where the privacy breach occurred in order to make use of the records. Most often, a victim of identity theft does not know *how* his or her data was misappropriated or where a breach occurred, but rather knows only that a perpetrator used their personal data to obtain credit and/or other benefits, and that it could take years – and potentially thousands of dollars – to restore their credit to what it once was.<sup>12</sup>

Even if one can put the lack of meaningful remedial recourse aside, current policy does not provide customers with an option to proactively protect their information from being searched on the supplier portal. Indeed, while customer can affirmatively opt out of inclusion on the Eligible Customer List, *a customer cannot affirmatively opt out of inclusion on a supplier portal.*<sup>13</sup> In fact, the right of customers to affirmatively protect their information from disclosure was the primary reason driving the creation of a supplier portal. As the Commission explained, it is convinced “that a significant number of accounts are not available via the ECL” and, therefore, “we believe the percentages that are not on the ECL is significant enough to pose a barrier to shopping in public venues.”<sup>14</sup> However, the barrier identified here may have been

---

<sup>12</sup> Identity Theft Resource Center, *Financial Identity Theft: The Beginning Steps* (Factsheet 100 and 100A), <http://www.idtheftcenter.org/Fact-Sheets/fs100.html>.

<sup>13</sup> *EDC Customer Account Number Access Mechanism for EGSs, Final Order*, M-2013-2355751, at 12 (July 16, 2013); see also *Interim Guidelines for Eligible Customer Lists, Tentative Order*, M-2010-2183412 (June 19, 2014).

<sup>14</sup> *EDC Customer Account Number Access Mechanism for EGSs, Final Order*, M-2013-2355751, at 12 (July 16, 2013).

created as the result of a conscious consumer choice to protect their information from being shared with suppliers. While the Commission is correct that customers may wish to have their privacy protected by reducing the number of uninvited phone-calls or door-to-door solicitations, the assumption that those same customers will have their privacy protected by being able to enroll with a supplier at a public event is flawed. In practice, the supplier portal provides a thinly veiled loophole for suppliers to access private data of individuals who have affirmatively opted to maintain their privacy from the influx of competitive suppliers in the Pennsylvania.

In setting forth the parameters of this broad customer data access policy, the Commission has conducted a limited proceeding, which relied only on input of identified stakeholders who regularly work and practice before the Commission.<sup>15</sup> The Commission declined to conduct a more searching inquiry into the adequacy of data protection measures in a supplier portal, citing its preference to move more swiftly than other government agencies that are also tackling the issue of data privacy. The Commission explained:

We acknowledge PECO's comments about customer privacy and confidentiality being the subject of ongoing discussions at the Department of Energy and other government agencies. However, we decline to wait for the outcome of those discussions before we act because there is no indication as to the timeframe for any resolution. Also, constantly changing technologies and the new issues that arise as a result means that discussions about confidentiality and privacy are never really concluded – this is a continuing discussion as we all attempt to attain the appropriate balance of confidentiality, privacy, and other needs in a changing world. If something should occur in the future as a result of these continuing discussions at other venues that would cause us to reconsider the instant matter – we always have the ability to do so – either at our own initiative or through the request of any interested party.<sup>16</sup>

PULP respectfully submits that at the outset of this investigation into natural gas competition the Commission take this opportunity to “reconsider the instant matter” – as it previously indicated its willingness to do. One need only turn on the evening news to know that consumer privacy is

---

<sup>15</sup> *Id.* at 14.

<sup>16</sup> *Id.*

of critical importance, and has garnered a significant amount of increased attention in the past year (since the creation of the electric supplier portal) in the wake of massive data and privacy breaches involving the federal government, major banking institutions, and popular retailers. But the energy and utility sectors have also experienced massive data breaches, even if they have managed to evade the public eye. Such breaches have sparked agencies nationwide to review the applicable policies and initiate investigations and proceedings to address weak protocols, regulations, and statutory privacy protections.<sup>17</sup>

The particular risks associated with the supplier portal, including internal misuse of information systems and web application attacks, account for a substantial portion of data breaches in the utility and private industry sectors. According to a recent report on data security from Verizon – in conjunction with 50 organizations around the world – 19% of data breaches between 2004 and 2013 resulted from insider and privilege misuse.<sup>18</sup> That is, *one in every five data breaches is attributable to misuse of the information system by an individual at the breached company, either as an employee, subcontractor, or partner.*<sup>19</sup> And, in 2013 alone, web application attacks, accounted for 35% of all data breaches. This statistic is particularly alarming because the supplier portal is, by its very nature, a web application.

In the wake of increased media attention to data and privacy breaches, we have seen a flurry of federal and state policymaking and proposed legislation, and industry leaders have emerged with plans to heighten privacy and data policies in response to clear consumer demand. Given this heightened attention and awareness to the issue – both by the government, industry,

---

<sup>17</sup> A slew of legislation is currently working its way through Congress with bipartisan support. *See, e.g., Data Security and Breach Notification Act*, Toomey (R-PA); *Personal Data Privacy and Security Act*, Leahy (D-T); *Data Security Act*, Carper (D-DE) and Blunt (R-MO); *Data Security and Breach Notification Act*, Rockefeller (D-WV); And, agencies such as the FTC and the DOE have ramped up efforts to address privacy through the commission of targeted reports and regulatory policymaking. *See, e.g., Tom Risen, FTC Wants Consumer Data Protection: Agency Report Cites Poor Transparency on Consumer Data Monitoring*, US NEWS (May 27, 2014).

<sup>18</sup> VERIZON ENTERPRISE SOLUTIONS, 2014 DATA BREACH INVESTIGATIONS REPORT, at Exec. Summ. 3-5 (2014).

<sup>19</sup> *Id.*

and society at large – it behooves the Commission to take this opportunity to engage in a more structured and sweeping approach to the development of a comprehensive protocol for the exchange of account information, informed by a broader range of experts privacy and technology fields. Failure to seriously address legitimate privacy concerns of the consumer will only serve to undermine consumer confidence in and the ultimate success of the competitive market. Thus, before ordering OCMO to go forward with incorporation of a supplier portal in the gas context modeled on the current electric market supplier portal, PULP urges the Commission to first examine its current policy in an official proceeding before an ALJ to determine whether it is in strict conformance with confidentiality and data privacy laws and regulation, and to review whether the current policy is consistent with similarly sensitive information exchanged in other industries.

## **CONCLUSION**

PULP thanks the Commission for the opportunity to submit these comments and recommends that the Commission:

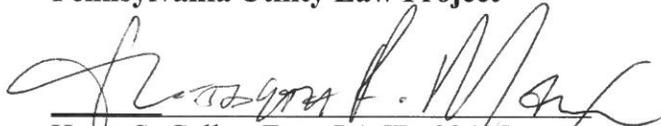
- (1) Conduct a comprehensive and balanced investigation of how to enable economically vulnerable households procure lower cost, affordable gas supply.
- (2) Include a specific educational enhancement program designed to address the unique financial considerations and questions of low income individuals and families seeking to participate in the competitive natural gas market.
- (3) Reconsider the order for OCMO to explore a customer data portal for natural gas suppliers, and order a full investigation and proceeding before an

Administrative Law Judge to first review the efficacy and legality of the current electric supplier portal policy.

PULP remains ready to work collaboratively with the Commission and other interested parties to ensure that a healthy competitive market exists within Pennsylvania in which low-income customers are protected and provided service at rates they can afford and in a manner that is safe, reliable, and stable.

Respectfully Submitted,

**Pennsylvania Utility Law Project**



Harry S. Geller, Esq., PA ID: 22445

Elizabeth R. Marx, Esq., PA ID: 309014

118 Locust Street

Harrisburg, PA 17101

Tel.: 717-236-9486

Fax: 717-233-4088

[pulp@palegalaid.net](mailto:pulp@palegalaid.net)

October 14, 2014

