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November 5, 2008

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17102

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

Dear Secretary McNulty,

This letter provides comments from the Energy Association of Pennsylvania ("EAPA") on behalf of its natural gas distribution company ("NGDC") members[1] with respect to the October 16, 2008 Secretarial Letter regarding the revision of certain Guidelines established in 1999 as an interim measure for distribution companies during the transition to the Choice market for natural gas supply. See Guidelines Order entered August 26, 1999 at Docket No. M-00991249F003.

In particular, the Commission solicits comments on Guideline 6(a)(2), (No Termination for Failure to Pay Supply Charges)[2] which prohibits a NGDC from using the Chapter 56 termination process to address nonpayment of supply charges by a customer where the NGDC has purchased accounts receivable from a natural gas supplier ("NGS"). The Guideline specifically obligates the NGDC to treat the delinquent supply charge in the same manner as NGSs. NGSs, of course, can not terminate service; rather, failure to pay a supply charge of a NGS results in cancellation of the contract between the supplier and the customer. See Guideline 6(b). Moreover, under the Guidelines, the termination provisions of Chapter 56 are not applicable to NGSs and the NGS has no obligation to offer or to negotiate a payment agreement with a residential customer who fails to pay supply charges. See Guideline 6(c).

[1] Natural gas distribution company members of EAPA include: Columbia Gas of PA, Dominion Peoples, Equitable Gas Co., National Fuel Gas Distribution Corp., PECO Energy Co., Philadelphia Gas Works, UGI Central Penn Inc., UGI Penn Natural Gas, Inc., UGI Utilities, Inc., and Valley Energy, Inc.
[2] The Guidelines can be found at Appendix A to the Guideline Order entered Aug. 26, 1999 at Docket No. M-00991249F003. Guideline 6 is attached to these Comments at Attachment 1.

Consequently, where the NGDC has purchased the accounts receivable of a NGS and the NGS customer fails to pay the supply charge, the NGDC is prohibited[3] from terminating the service for the delinquent purchased supply account receivable. The NGS can cancel the contract and the customer would return to SOLR service. Even then, the NGDC can not terminate for the delinquent supply charge which had been purchased under a POR program. As repeatedly stated in the S.E.A.R.C.H. process, Guideline 6 is one of the major impediments to the development of POR programs in Pennsylvania inasmuch as it increases the uncollectible expense of the NGDC and provides for different treatment of customers depending on gas supply service. In fact, during the S.E.A.R.C.H. stakeholder meetings, both NGDCs and NGSs advocated to change this Guideline.

NGDCs contend that the Guidelines should be modified so as to permit termination by NGDCs pursuant to Chapter 14 of the Public Utility Code or Chapter 56 of the Commission's regulations for a customer who fails to pay a supply charge where the NGS has sold its accounts receivable to the NGDC providing distribution services to the customer.

This modification is essential in light of the Commission's Final Order and Action Plan entered September 11, 2008 at Docket No. I-00040103F0002.[4] The Commission concluded that use of POR programs could enhance competition for natural gas supply in the Choice market, promote efficiencies and reduce costs to customers. Final Order and Action Plan at p. 17. The Final Order and Action Plan contemplates the filing of proposed POR programs by each NGDC by the end of 2008 or the filing of cost of service studies with the next Section 1307(f) gas cost filing.[5] It also provides for a rulemaking to commence in 2009 to develop standardized rules for POR programs.

The Commission, however, did not determine whether POR programs will be mandated and has stated in the Final Order and Action Plan that 66 Pa.C.S. § 2205(c)(5) may preclude mandatory POR programs.[6] Final Order and Action Plan at p. 17. Further, in the instant Secretarial Letter, the Commission again emphasized that "it has not concluded that POR programs will be mandatory." Secretarial Letter at p. 2. At this point, EAPA understands that the Commission seeks voluntary plan proposals which, if implemented, will be subject to modification at some future date dependant on the outcome of an anticipated rulemaking. Implementing new POR programs, however, will require NGDCs to incur significant information and billing systems costs, as well as other likely ongoing costs for handling customer/NGS billing disputes. Requiring POR programs to be implemented on short notice

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[3] While 1999 Guidelines are not regulations and do not per se prohibit termination of customers for failure to pay the supply charge where a POR program is in place, they offer insight into how the Commission would rule if faced with a customer complaint for termination and, in effect, have discouraged development of POR programs.

[4] The Final Order and Action Plan entered by the Commission on September 11, 2008 was subsequently reissued as corrected on October 3. All references in these comments are to the corrected version which did make substantive changes to the original Order.

[5] In the alternative, the Final Order and Action Plan requires a NGDC to file "fully allocated cost of service data" in its next § 1307(f) gas cost proceeding or base rate case whichever comes first. See Order at p. 12. The Commission would use such data to investigate the unbundling of natural gas procurement costs from base rates. Id. This requirement is contrasted with the requirement referenced at Footnote 1 of the October 16, 2008 Secretarial Letter which states that if a POR proposal is not filed by December 31, 2008, the NGDC would be required to include a "program" (not cost of service data) in the next § 1307(f) gas cost proceeding in 2009 or base rate case, whichever comes first. NGDCs seek clarification of these two seemingly contradictory requirements in the event the NGDC chooses not to file a POR proposal by December 31, 2008.

[6] EAPA and its member NGDCs contend that the law does not allow for mandated POR programs. Voluntary programs between NGDCs and NGSs are possible and, indeed are being encouraged by the Commission. If the Commission seeks to mandate POR programs through the proposed rulemaking, legislative changes will be necessary.

followed by changes potentially required by a subsequent rulemaking would likely require the incurrence of even larger costs.

EAPA respectfully suggests that the rapid adoption of POR programs may be a hindrance to increased competition if proposed programs are "approved" and then need to be modified in the future depending on the outcome of a rulemaking. EAPA and its member NGDCs accordingly believe that what is necessitated at this point is a direct and orderly process whereby the Commission first modifies the Guideline to allow for termination, second, initiates a rulemaking where POR program parameters are determined and finally, seeks voluntary proposals from NGDCs. EAPA asks the Commission to (a) resolve first the issue of whether a NGDC can terminate a customer for failure to pay a supply charge where the NGDC has purchased the receivable of the NGS, (b) proceed with its proposed POR rulemaking and (c) suspend the December 31, 2008 deadline for submitting voluntary POR proposals and the alternative requirement that cost of service studies be submitted with the next PGC filings until the POR rulemaking is concluded..

Sincerely,

Donna M. J. Clark

Donna M. J. Clark
Vice President and General Counsel

CC: James H. Cawley, Chairman (w/ enclosure via hand-delivery)
Tyrone J. Christy, Vice Chairman (w/ enclosure via hand-delivery)
Robert F. Powelson, Commissioner (w/ enclosure via hand-delivery)
Kim Pizzingrilli, Commissioner (w/ enclosure via hand-delivery)
Wayne E. Gardner, Commissioner (w/ enclosure via hand-delivery)
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Robert F. Young, Deputy Chief Counsel (electronic enclosure)
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6. Termination of Service/Payment Agreements.

a. No Termination for Failure to Pay Supply Charges.

1. Although Section 2208(e) permits a NGS, upon appropriate and reasonable notice to customers, to cancel contracts for legal cause, a customer may not be disconnected from the NGDC distribution system unless the customer failed to meet their obligations to the NGDC or supplier of last resort (SOLR), and after the NGDC or SOLR follows the Chapter 56 termination provisions. Except for threatening termination of residential service, NGSs are free to pursue available, appropriate collection remedies to collect delinquent balances.

2. If a NGDC purchases accounts receivable from a NGS, the NGDC may not use the Chapter 56 termination process to address the nonpayment of these supply charges. Rather, the NGDC is obligated to treat the delinquent supply charges in the same manner as NGSs. Only when a customer is receiving supply from an alternative SOLR may a NGDC utilize the Chapter 56 termination process to address the nonpayment of supply charges.

b. Delinquent Notices to Customers. Any written notices sent to customers regarding a failure to pay for gas supply services shall clearly inform the customers that the failure to pay will result in cancellation of the contract, rather than termination of service. These notices shall comply with the Commission's Policy Statement on Plain Language Guidelines, 52 Pa. Code §69.251.

c. Obligation to Negotiate Payment Agreements. The termination provisions of Chapter 56, including the obligation set forth in 52 Pa. Code §56.97(b) of a NGDC to attempt to enter into a payment agreement with a customer, are not applicable to NGSs. The NGDC or SOLR, however, continues to have the obligation to adhere to the Chapter 56 termination provisions for non-payment, including the duty to attempt to negotiate a payment agreement.