National Fuel

Lee E. Hartz
Sr. Attorney

November 5, 2008

VIA NEXT DAY UPS
Secretary James J. McNulty
Pennsylvania Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: October 16, 2008 Secretarial Letter in: Revision of Guidelines for Maintaining Customer Services Establishment of Interim Standards for Purchase of Receivables (POR) Programs

Pa. P.U.C. Docket No.: M-2008-2068982

Dear Secretary McNulty:

As requested in the above-captioned Secretarial Letter, enclosed for filing are an original and 10 copies of the Comments of National Fuel Gas Distribution Corporation.

Electronic service is also being effectuated as requested in the Secretarial Letter.

If you should have any questions regarding this filing, please contact me anytime at (814) 871-8060. Many thanks for your assistance in this matter.

Very truly yours,

Lee E. Hartz

Enclosures

cc: (w/ encl.) ***VIA E-Mail:***
Patricia Krise Burket
Robert F. Young
Paul Diskin
Daniel Mumford

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Revision of Guidelines for Maintaining Customer Services Establishment of Interim Standards for Purchase of Receivables (POR) Programs	:	**Docket No. M-2008-2068982**
	:	**COMMENTS**
Secretarial Letter Requesting Comments Issued: October 16, 2008	:	

COMMENTS ON BEHALF OF
NATIONAL FUEL GAS DISTRIBUTION CORPORATION

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

National Fuel Gas Distribution Corporation ("Distribution" or the "Company"), a certificated natural gas distribution company providing service to approximately 213,000 customers in Northwestern and North-Central Pennsylvania, appreciates this opportunity to submit comments to the above-captioned Secretarial Letter.

I. Introduction.

On October 16, 2008, the Commission issued a Secretarial Letter at Docket No. M-2008-2068982, *Revision of Guidelines for Maintaining Customer Services Establishment of Interim Standards for Purchase of Receivables ("POR") Programs*, soliciting comments regarding the revision of guidelines[1] relating to customer services in order to implement POR programs by Natural Gas Distribution Companies ("NGDCs").

The Secretarial Letter referenced the Commission's Final Order and Action Plan entered on September 11, 2008 at Docket No. I-0004013F0002, *Investigation into the Natural*

[1] The interim guidelines were established in 1999. *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").

Gas Supply Market: Report on Stakeholders' Working Group (SEARCH) (the "SEARCH Action Plan"). The SEARCH Action Plan, among other things, authorized NGDCs to file voluntary POR programs by December 31, 2008. The Secretarial Letter recognized that the guidelines may prevent the establishment of cost effective POR programs, especially if NGDCs are precluded from terminating customers for failure to pay for natural gas supply charges and the corresponding receivable purchased by the NGDCs.

The Commission, believing that the Guidelines need to be re-examined so that NGDCs can file timely voluntary POR programs by December 31, 2008, has asked four (4) specific questions and invited parties to propose other guidelines that may be used in the operation and design of POR programs. For its response to the Secretarial Letter, Distribution submits the following remarks, as more fully described below: (1) request for an extension of the deadline to file voluntary POR programs; (2) comments to the four questions included in the Secretarial Letter; and, (3) additional guidelines to consider in the design of POR programs.

II. Request for extension of the deadline to file voluntary POR programs.

The Action Plan authorized NGDCs to file proposals for voluntary POR programs by December 31, 2008. For any NGDC that does not file such a proposal, the Action Plan provides that the NGDC should include, in its next base rate case or 1307(f) gas cost proceeding, whichever comes first, fully allocated cost of service data[2].

As the Secretarial Letter has correctly identified, there are issues that should be evaluated and addressed by the Commission so that reasonable guidance can be provided to NGDCs designing POR programs. Distribution is concerned that there is not enough time for the

[2] The Secretarial Letter states: "in the alternative, we stated that NGDCs would be required to include a [POR] program in either their next §1307(f) proceeding in 2009 or base rate case, whichever was sooner." The SEARCH Action Plan states that the fully allocated cost of service data would allow the Commission to "investigate the unbundling of natural gas procurement costs from base rates . . . [and] be able to investigate, evaluate and decide whether further unbundling of natural gas costs is warranted for that NGDC." In Distribution's opinion, filing a fully allocated cost of service study and investigating unbundling is not equivalent to filing a proposed POR program.

Commission to provide such guidance so that voluntary programs can be filed by December 31, 2008. This lack of time, coupled with regulatory uncertainty concerning the standards to be applied in designing a POR program, will in all likelihood force NGDCs (even those that may be considering voluntary filings) to opt against filing a voluntary POR program.

The date for Distribution to file data supporting its next 1307(f) gas cost proceeding is January 2, 2009, and testimony and tariff leafs must be filed by February 1, 2009[3]. Because there is no assurance that the Commission can act in time to provide revised guidance on POR programs in time to prepare a December 31, 2008 filing, Distribution believes it may be forced to prepare cost of service data to include in its 1307(f) filing even if the Company were considering filing a voluntary POR program. Therefore, Distribution requests that the Commission toll both the dates for filing a voluntary POR program and submitting cost of service data until at least 120 days after issuance of its Order on the guidelines.

Distribution's request for more time is reasonable because the issuance of the Secretarial Letter is itself evidence of difficulty of filing a POR program with virtually no regulatory guidance. While the Company acknowledges that the Commission is interested in implementing the Action Plan sooner rather than later, clearly, customers would be better served by POR programs designed according to standards developed in a thorough, deliberative process, whether by a utility on its own or in a generic proceeding.

The original SEARCH Action Plan was adopted September 11, 2008 stating a voluntary POR program filing date of December 31, 2008. The original Action Plan provided 110 days for a Company to determine whether to file a voluntary POR program or to provide cost of service data in its 1307(f) or next base rate case. As explained previously, Distribution's

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[3] Docket No. L-84010; *2009 Schedule of Filing Dates for Recovery of Purchased Gas Costs* as published in the Pennsylvania Bulletin Saturday August 16, 2008.

next 1307(f) case is to be filed on February 1, 2009. For Distribution, it effectively has 110 days to determine whether it should file a voluntary POR program and an additional 31 days to provide cost of service data in its 1307(f) case. This in and of itself is an extremely tight schedule even if uncertainty and the Secretarial Letter did not exist. However, uncertainty does exist and the earliest possible time that uncertainty could be addressed is December 4, 2008 which is the earliest Commission session, and only two weeks after reply comments are to be filed. NGDCs would then only have at most 27 days to review the Order and develop a voluntary POR program consistent with any guidance provided by the Commission to eliminate the program uncertainty that currently exists. Distribution believes that such a time line is unworkable.

For these reasons, Distribution respectfully requests that NGDCs be permitted to file a voluntary POR program 120 days after an Order is issued by the Commission based on comments filed by the parties in response to the October 16, 2008 Secretarial Letter. If an NGDC does not file a voluntary POR program by that newly established date then the cost of service data requested by the Commission should be filed in its next 1307(f) case or base rate case, whichever is filed earlier.

II. Distribution's comments to the four question included in the October 16, 2008 Secretarial Letter.

Question 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?

The filing of POR programs by NGDCs should be voluntary. If NGDCs do purchase receivables from an NGS, the NGDCs should be allowed to terminate gas service of customers who do not pay for the underlying commodity. The current Guidelines, which do not allow termination of gas service in such instances, are, in Distribution's opinion, one of the reasons that few NGDCs have offered POR services for NGSs.

Allowing for the termination of customers who fail to pay commodity costs charged by NGSs that participate in a Commission approved POR program with a quid pro quo that NGSs will take all applying customers regardless of payment history may result in more voluntary POR programs offered by NGDCs. If an NGS is allowed to have its receivables purchased (at a discount) and the NGDC is allowed to terminate for non-payment of that receivable, all residential service and small commercial customers should be able to participate in choice programs.

At the heart of the issue is nondiscriminatory treatment of all customers regardless of whether they obtain their natural gas supply from a NGDC or a NGS. Treating customers without undue discrimination has been a responsibility of utilities, and should remain so even if the customer chooses to receive commodity from an NGS. Customers who continue to purchase commodity from a NGDC are treated equitably with regards to termination and this treatment should extend to customers who receive commodity from an NGS. As stated in 66 Pa. C.S.A. § 2203 (5) "The commission shall require that restructuring of the natural gas industry be implemented in a manner that does not unreasonably discriminate against one customer class for the benefits of another." A POR program with termination authority directly conforms to this intention by ensuring that NGS customers and NGDC customers are treated identically with respect to termination procedures.

A POR program with the right to terminate by itself may not produce competitive benefits or stimulate competition in Pennsylvania. However, POR programs will provide a customer of an NGS with the same termination protections as those customers who receive commodity from NGDCs without the need to "regulate" NGSs. PORs will also provide NGSs with the ability to take all customers - and not just the most credit-worthy customers - by fixing the NGS' risk of non-payment. This one benefit should at least encourage NGSs to participate in competition in Pennsylvania. Whether this reduction in risk results in reduced prices to the customer is, of course, up to the NGSs.

Question 2: Should the Guidelines be modified to remove this regulatory uncertainty?

Yes, the Guidelines should be modified if the Commission believes that a workable POR program should be implemented. As stated in the Commission's decision in the recent Columbia rate case which considered termination in the context of a POR program, the Guidelines are a hurdle to implementing a POR program with termination rights. As stated above, Distribution observes that the only way to ensure that a POR program is fair to **all** customers is to authorize POR termination rights. That said, special care would need to be taken to ensure that the Guidelines include that only the NGDC retains the right of termination to fully protect the customer under the Commission's regulations. By keeping the ability to terminate with the NGDC, the uncertainty to make NGSs comply with Commission regulations regarding terminations is removed.

In addition, a NGDC that renders bills for an NGS must be permitted to require that its billing service, if offered, includes POR. A POR program cannot work if an NGS provides the billing for some customers but not for others since an NGS would have the opportunity to cherry-pick good paying customers for NGS billing and require NGDCs to purchase the receivables of poorer paying customers. Those NGSs that choose to bill their own customers should not have the opportunity to participate in the POR program. The guidelines need to be modified to include this restriction.

It is the NGS' choice to participate in a POR program. A clear benefit to them is the purchase of the majority of their receivable. A clear benefit to the customer is the ability to shop with termination protections.

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

One of the key benefits to a POR program with termination rights is the application of the customer protections as provided for in the Commission's regulations. By allowing the regulated entity to continue to be the only entity pursuing termination under the POR program, the customer has the same protections whether buying commodity from the NGDC or NGS.

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

As stated above, in order to implement a POR program with ability to terminate the NGDC must bill for both the delivery and the commodity. Section 2205(c)(1) allows the retail gas customer to choose to receive separate bill from its natural gas supplier for natural gas supply service. However, this Section does not prohibit the Commission from requiring customers that choose consolidated billing to participate in a POR program. Furthermore, Section 2205(c)(5) states that "no natural gas distribution company shall be required to forward payment to entities providing services to customers....before the natural gas distribution company has received payment for those services from customers." would need to be amended if a POR program with termination capabilities is instituted. By purchasing the receivable, the NGDC is forwarding payment to the NGS before the customer payment is received by the NGDC. If termination rights are not allowed in POR programs, §2205 (c)(5) as written would be applicable, and NGDCs would not be required to forward any payment to NGSs until payment is received from the customer.

III. Additional guidelines to consider in the design of POR programs.

Distribution has had a POR program, with termination rights, in its New York jurisdiction for several years. Using this knowledge, Distribution provides the following considerations regarding implementation of POR programs.

(1) NGDCs will incur costs to implement a POR program. The extent of these costs are likely to vary depending on each NGDC's customer information system. NGDCs should be permitted to defer for future rate recovery all costs incurred to modify their systems to accommodate a POR program for NGSs.

(2) POR should remain voluntary for NGDCs. Just as a customer should have the right to participate in competition, the NGDC should have the right to not participate in the POR program.

(3) POR programs should be available to residential and small commercial groups only. Distribution's largest customers have not purchased commodity from Distribution since the late 1980's and it is apparent that a POR program is not needed to enhance participation in that segment. The majority of uncollectible expense is generated from residential and small commercial accounts. The risk of this expense increases if there is no termination capability. The residential and small commercial market has also been the last area to embrace competition. The reasons behind this could be many but the lack of supplier participation would certainly be a significant reason. By reducing the risk of residential uncollectibles, NGSs should be encouraged to participate in competition.

IV. Conclusion.

National Fuel Gas Distribution Corporation appreciates the opportunity to provide comment to the Secretarial Letter and looks forward to working with the Commissioners and their staff to make a viable competitive market.

Respectfully submitted,

Dated: November 5, 2008

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