

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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IRWINA. POPOWSKY
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October 26, 2012

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

RE: Interim Guidelines For Natural Gas Distribution
Company Eligible Customer Lists
Docket No. M-2012-2324075

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Comments in the above-captioned proceeding.

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

Sincerely,

A handwritten signature in cursive script that reads "Candis A. Tunilo".

Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. # 89891

Enclosures

cc: Lawrence F. Barth, Law Bureau
*162214

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Interim Guidelines For Natural Gas : Docket No. M-2012-2324075
Distribution Company Eligible Customer :
Lists :

COMMENTS
OF THE OFFICE OF CONSUMER ADVOCATE

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Dated: October 26, 2012

I. INTRODUCTION

On September 27, 2012, the Public Utility Commission (Commission) issued a Tentative Order seeking comments on the Commission's proposed interim guidelines for Eligible Customer Lists (ECLs) maintained by Natural Gas Distribution Companies (NGDCs) in the above-captioned docket. Natural Gas Suppliers (NGSs) in the NGDCs' service territories would have access to the ECLs. In the Tentative Order, the Commission directed NGDCs to maintain an ECL containing the following personal customer information: (1) customer account number; (2) customer name; (3) service address; (4) billing address; (5) tariff rate class and schedule; (6) rate subclass/rate subcode (if available); (7) meter read cycle; (8) supplier of last resort (SOLR)/shopping status; (9) monthly consumption (each of 12 months); and (10) monthly peak demand (each of 12 months) (if available). See Tentative Order at App. A. Of these ten data items, customers may restrict the release of all their account information or just their historical usage data. Tentative Order at 3. Further, the Commission directed that customers' telephone numbers shall not be maintained on ECLs and cautioned NGSs that they are subject to the provisions of the state and federal "do not call" laws. Tentative Order at 3-4. Additionally, the Commission reminded NGSs of their obligation to safeguard the confidentiality of customer information. Tentative Order at 3. The Commission also established guidelines for NGDCs to solicit their customers regarding the release of their account information on its initial ECL and the frequency of future solicitations of customers. Tentative Order at 4-5. NGDCs may seek recovery of solicitation expenses in future base rate cases. Tentative Order at 5.

The OCA submits that establishing uniformity for all NGDCs in the information maintained on ECLs and in the procedures for protecting that information will benefit NGDCs, NGSs and customers throughout the Commonwealth. The OCA submits, however, that the

concern for personal privacy of customer information is critical when it involves a utility service, such as natural gas service. Customers have no choice but to sign up for natural gas service when they move into domiciles with furnaces and appliances fueled by natural gas and provide certain private information to their monopoly NGDC in establishing service. Given this situation, a customer's fundamental right to the privacy and confidentiality of their information must be maintained. As such, the OCA supports the Commission's recognition of the importance of the privacy of customer information by directing NGDCs to allow customers the opportunity to restrict the release of all of their information or just their historical usage information.

Further, the OCA supports the Commission's determination to limit customer information on the ECL to only that information necessary for NGS marketing efforts for a customer class. This procedure will help maintain a reasonable balance between customers' rights to privacy of their personal information and the goal of fostering natural gas competition. The OCA submits that customers should be permitted to initially restrict the release of their information on the ECL by returning a form in the mail, calling a toll free number or through the NGDC's website pursuant to 52 Pa. Code § 62.78(b). The OCA supports the Commission's requirement that NGSs safeguard customers' information maintained on ECLs and the Commission's prohibition on the release of customers' telephone numbers on ECLs. Additionally, the OCA submits that customers should be provided with education on the ECL in order to better provide them with a meaningful opportunity to restrict or not restrict their information on the ECL.

II. COMMENTS

A. Customers Must Be Provided With A Meaningful Opportunity To Restrict The Release of Their Personal Information.

1. Introduction

In the Tentative Order, the Commission suggests that NGDCs use an “opt-out” process to allow customers to restrict the release of all of their personal data or just their historical data on an ECL. Tentative Order at 4. The Commission states that NGDCs permit customers to make this initial choice by returning a form by mail to the NGDC. Id. NGDCs are also to notify customers of their withholding options through new customer welcome packages and through periodic announcements in customer bill inserts, e-mail, or a separate announcement included in customers’ paper bills or electronic notification, if available. Id. The welcome package for new customers and periodic announcements to all customers must provide guidance on how to make their withholding selection through a NGDC-provided form, e-mails, written letter, toll free numbers or the NGDC’s website. Tentative Order at 4-5. NGDCs that have not solicited their customers within the past 12 months prior to the final order at this docket must solicit their customers within 90 days of such final order. Tentative Order at 4. NGDCs that have solicited their customers within the past 12 months prior to such final order must solicit their customers again not later than one year after the prior solicitation. Id. Further, NGDCs must develop new lists and require their customers to make their opt-out selection once every three years thereafter. Id. Customers that have previously opted out will need to opt out again during these triennial list updates as proposed by the Commission. Id.

As discussed below, the OCA does not object to the use of an opt-out procedure for customers to restrict any or all of their information on the ECL. The OCA, however, submits that NGDCs should provide initial and ongoing education to customers about the ECL in order to

provide customers with a meaningful opportunity to determine whether to include their information on the ECL. Additionally, the OCA submits that, pursuant to 52 Pa. Code § 62.78(b), customers should be permitted to initially restrict the release of their information on the ECL by returning a form in the mail, calling a toll free number or through the NGDC's website. Further, customers' initial preferences regarding opting out of the ECL should be maintained unless they choose to change their preferences rather than requiring customers to repeatedly opt out whenever solicited by their NGDCs regarding the ECL.

2. Customers Should Be Provided With A Meaningful Opportunity To Determine Whether To Restrict Their Information On The ECL.

The OCA does not object to the use of an opt-out process as a means of providing the customer the opportunity to restrict any and all of his or her information on an ECL so long as it is made clear to customers that they may restrict the release of all information and so long as the opportunity to restrict that information is meaningful and allows for an informed decision by the customer. To that end, the OCA recommends that the Commission adopt the following additional procedures in its final order:

- When each NGDC sends a notice to customers regarding the Eligible Customer List, the mailing should be conspicuously marked that it contains important information regarding privacy. The notice should include a postcard with check-off boxes for "Do Not Release Any Information" and "Do Not Release Historical Usage" (if this information is permitted on the ECL). Customers should be instructed to return the postcard within a certain number of days, or directed to a website or toll free phone number where the same restriction options can be accomplished.

- The notice must clearly inform the customer about the information contained on the ECL, the use of the ECL, the dissemination of information on the ECL, and the potential benefits of the ECL to customers. The notice must also contain clear instructions as to how to complete the opt-out process and what will occur if the customer does nothing.
- Each NGDC should be directed to maintain an on-going process that allows the customer to change preferences regarding the release of information on the ECL at any time. The on-going process should allow customers to change preferences through both a website process (if available to the NGDC) and through a telephone contact with a customer service representative.
- During the year, each NGDC should include education and information about the ECL and the methods to change preferences regarding the ECL, through either bill inserts or bill messages.

As the OCA has noted, customers must be provided a meaningful opportunity to make their preference regarding their personal information known. Critical to these procedures, however, are two key concepts. First, customers must be fully educated about the Eligible Customer List and the information to be included on the list. Second, the procedures must be easy to implement for the customer.

For a customer to make an informed decision about whether to restrict the release of information on the ECL, the customer must have sufficient information and understanding about the ECL and about the information that is to be contained on the ECL. The OCA submits that at each opportunity for customers to determine their preference regarding the release of information through the ECL, customers should be provided information that explains what the ECL is, what

information is to be included on the ECL, what the more detailed information represents, how the information is to be used by NGSs, how the information is to be safeguarded by NGSs, how widely the information will be disseminated, and the potential benefits to the customer of having their information included on the ECL. For the periodic education throughout the year, reminder material can be developed that need not be as extensive as the solicitation mailing.¹ The reminder material, though, should provide information about the ECL and the methods for a customer to change preferences regarding the ECL. The OCA suggests that the Commission and the interested parties work together to develop this basic educational package that can be used by each NGDC so that the same educational information is being presented throughout the Commonwealth.

It is also important that the methods to notify the NGDC of the customer's preference are simple for the customer to implement. In the Tentative Order, the Commission states that NGDCs permit their customers to make their initial choice regarding the ECL by returning a form by mail. See Tentative Order at 4. Section 62.78(b) of the Commission's regulations requires that NGDCs permit customers to restrict their information by returning a signed form, or by oral or electronic communication. See 52 Pa. Code § 62.78(b). The OCA submits that, pursuant to Section 62.78(b) of the Commission's regulations, NGDCs should permit customers to make their initial choice regarding including their information on the ECL by returning a form by mail, calling a toll free number or through the NGDC's website. The use of a postcard along with a toll free telephone number and a website method to identify or change one's preference should provide customers several methods to choose from. For almost all customers, one of these methods should be capable of easy implementation. As such, the Commission's final order

¹ For new customers, each NGDC may wish to include in the Welcome Package the annual education material on the ECL, the postcard, and the information on the other methods to restrict the release of information.

in this matter should permit customers to make their initial choice regarding including their information on the ECL by returning a form by mail, calling a toll free number or through the NGDC's website.

Additionally, customers will need to be fully educated to make an informed decision as to whether they wish to exercise their right to restrict the release of information on the ECL. Customers will also need simple and easily implemented methods to express their preference and to change their preference if circumstances warrant. The OCA has proposed procedures here that attempt to meet these two goals.

3. Customers' Opt Out Selections Should Be Maintained Unless The Customer Chooses To Change That Preference.

With regard to the triennial solicitations of customers to indicate their preferences regarding including their information on the ECL, the Commission stated that customers that have previously opted out will need to opt out again. See Tentative Order at 4. The OCA submits that customers may find this procedure confusing and unsatisfactory, which could have a detrimental effect on the development of natural gas competition in the Commonwealth. Generally, such opt-out procedures used by other industries, such as credit card and banking institutions, maintain a customer's preferences unless and until the customer changes his or her preferences. Likewise, natural gas customers that choose to opt out of including their personal information on the ECL should have their preferences maintained unless and until they change them. The OCA submits that NGDCs should provide periodic information to customers about the ECL and its benefits so that customers can change their preferences in order to have their information included on the ECL rather than having to repeatedly opt out.

4. Conclusion

With these procedures, and with appropriate education, customers will have a better understanding of the Eligible Customer List and can make a more informed decision about whether to have information included on this list. The OCA submits that both the triennial solicitation process described in the Tentative Order and the on-going process the OCA described above are necessary to ensure customer privacy. Customers' circumstances may change over time, yet the ECL will continue to be available to NGSs and will be updated on a periodic basis by the NGDCs. Information that a customer may not have chosen to restrict at one time under one set of circumstances may require a different choice under new circumstances. Similarly, after more experience with the retail market, a customer that previously restricted information may want to change that preference so that they can receive additional offers. This on-going process, and the on-going education, will allow customers to adapt to the ECL.

B. NGSs Should Be Held Fully Accountable For Maintaining The Privacy Of Customers' Information On The ECL.

In the Tentative Order, the Commission stated that NGSs are obligated to safeguard the confidentiality of customer information obtained from the ECL. Tentative Order at 3. As the retail competition in natural gas grows in the Commonwealth, the dissemination of customer information obtained from the ECL will also expand. As more NGSs are licensed by the Commission, information on the ECL may be disseminated beyond the licensed NGSs to agents and contractors that are performing marketing services for the NGSs. This could potentially include door-to-door marketers. The further and further this information is disseminated, the greater the chances for security breaches, misuse of data, or the improper release of data.

The OCA strongly recommends that the Commission take this opportunity to make it clear that any NGS that receives information from the ECL is fully accountable for any security

breach, improper release of data, or any misuse of data by any of its staff, agents or contractors – no matter how far down the line. As it has done with regard to its Marketing Guidelines, the Commission should take this opportunity to notify NGSs of a zero tolerance policy for any breach of security, improper release of information, or any misuse of information by a NGS, its staff, its agents, or its contractors that the NGS provides this information to. The Commission should make clear that such violations of privacy will result in the revocation of the NGS's license just as the Commission has made clear that violations of the Marketing Guidelines will be met with such enforcement. See Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers, Docket M-2010-2185981, *slip op.* at 7 (November 5, 2010).

III. CONCLUSION

The OCA appreciates the opportunity to comment on the Commission's Interim Guidelines for Natural Gas Distribution Company Eligible Customer Lists. The OCA urges the Commission to provide all customers with the meaningful opportunity to restrict the release of all information that is properly included on the Eligible Customer List, as recommended by the OCA. The OCA does not object to the use of an opt-out process to accomplish this restriction but submits that customers should be provided full and ongoing education, provided an easy method to implement their initial choice of whether to include their personal information on the ECL, and provided an on-going opportunity to change their preference. Additionally, the OCA strongly urges the Commission to make it clear to NGSs that they will be held fully accountable for maintaining the confidentiality of customers' information on the ECL and the proper use of such information.

Respectfully Submitted,



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