

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**Reply Comments of  
Agway Energy Services, LLC, Mxenergy, Vectren Retail, LLC  
and the National Energy Marketers Association**

Agway Energy Services, LLC, Mxenergy, Vectren Retail, LLC and the National Energy Marketers Association (NEM) hereby submit these reply comments as permitted by the October 16, 2008, Secretarial Letter issued in the above-referenced docket. At the outset, we note that the majority of stakeholders submitting initial comments, including marketers and utilities, supported the concept of utility termination for customer non-payment in the context of Purchase of Receivables (POR) programs. We therefore submit these limited reply comments to respond to Office of Consumer Advocate's (OCA's) comments in opposition to utility termination in the POR program context, and we explain why OCA's arguments in opposition are unfounded. Additionally, we submit these comments to respond to the request of the utilities and the Energy Association of Pennsylvania (EAPA) to delay submission of POR program plans. We urge the Commission to reject the utilities request for delay, and we suggest that the utilities should submit their POR plans subject to and contingent on the Commission's resolution of the instant case to enable them to meet the December POR program filing deadline.

**I. The OCA's Arguments in Opposition Are Unfounded**

OCA's argument in opposition to utility termination for customer non-payment pursuant to a POR program is premised upon two concepts: 1) that marketer rates have not been

determined to be just and reasonable; and 2) that termination in this context would effect a diminution of consumer rights. OCA's argument in a nutshell is that,

Allowing termination of essential utility service for commodity charges that are neither regulated by the Commission nor found to be just and reasonable, or for NGS charges that may include bundles of other products and services (such as gas furnace maintenance contracts, weatherization service or even credit card payments), would impermissibly reduce the consumer protections built into the Public Utility Code and would disrupt the basic framework that allowed retail natural gas choice to be introduced in Pennsylvania. (OCA Initial Comments at page 7).

Let us first address OCA's claim regarding the justness and reasonableness of marketer rates. Contrary to OCA's assertion, it is axiomatic that a competitive market (in the absence of structural defect) would produce competitive rates for commodity and associated energy products and services that are, by definition, just and reasonable. Indeed, the New York Public Service Commission has a "long standing policy" recognizing that, "the best way to ensure just and reasonable rates for commodity and customer services is to establish conditions for fully competitive commodity and customer services markets."<sup>1</sup> By adopting the measures included in the SEARCH report, amongst them POR, the Commission is enhancing the competitiveness of the market, and thereby ensuring that marketer rates are just and reasonable. Accordingly, we submit that OCA's first issue has been addressed.

---

<sup>1</sup> NYPSC Case 04-E-0572, Order Adopting Three Year Rate Plan, issued March 24, 2005, at page 49. The NYPSC additionally found that, "Each full service customer that chooses to change to retail access service is essentially deciding that the package of commodity rates, customer services, and other benefits it can receive from an ESCO [marketer] now are collectively preferable to those it would receive if it continued to be a full service customer of ConEdison [the utility]. Moreover, each customer making that choice retains the right to change to another ESCO or to revert to full service. Given this context and the efforts recommended to help ensure customers have the information they need to choose intelligently, there is no reason why the rates ESCOs charge must or should be determined by us to be just and reasonable." Id. at 48-49.

OCA's second issue is its contention that customers subject to utility termination for non-payment in a POR program would be subjected to a diminution of consumer protection rights. We submit that OCA is off the mark on this issue as well. Simply stated, customers in POR programs would enjoy the same consumer protections as utility full service customers. The Commission has adjudged those measures for full service customers to be adequate to protect the public interest. Moreover, because competitive markets are per se intended to create just and reasonable rates as discussed above, the increased layers of protections that OCA complains are warranted, are in fact unnecessary.

## **II. The Utilities Request to Delay Submission of POR Plans Should Be Rejected**

The utilities and EAPA suggest that the Commission should suspend the December 31, 2008, deadline for filing POR plans and the alternative requirement to submit unbundled cost of service studies with their next PGC filings. The utilities' request for delay hinges on the uncertainty that they argue is created by the 1999 Customer Service Guidelines and the pendency of the instant proceeding. Accordingly, they argue they should not have to bear the IT expenses of developing POR plans when unsettled POR program issues remain. We urge the Commission not to accept this delay tactic.

As an initial matter, we question whether and to what extent the utilities will incur IT expenses associated with simply submitting POR plans. It seems unlikely that the utilities would build POR IT systems without a final Commission Order approving POR program design and implementation. By simply submitting the POR plan, IT expenses would not yet have been incurred or only on a minimal basis. Moreover, the utilities' POR plans could specifically identify issues for which further Commission guidance is

needed, and therefore areas of uncertainty need not delay the filing process. We recommend, in order to address the utilities stated concern over the impact of the 1999 Customer Service Guidelines, the utilities should submit their POR plans subject to and contingent on the Commission's resolution of the instant case which would enable the utilities to still meet the December POR program filing deadline.

### **III. Conclusion**

We appreciate this opportunity to submit further comments in support of utility termination for customer non-payment in POR programs.

Respectfully submitted,

Terence X. McInerney  
Director of Sales  
Agway Energy Services  
Suburban Propane  
Natural Gas and Electricity  
(315) 385-4454  
[Tmcinerney@suburbanpropane.com](mailto:Tmcinerney@suburbanpropane.com)

Mark Pitonzo  
Director of Business Development  
Agway/Suburban Energy Services  
315.385.4464 Phone  
315.385.4458 Fax  
[mpitonzo@suburbanpropane.com](mailto:mpitonzo@suburbanpropane.com)

Craig G. Goodman  
President  
Stacey L. Rantala  
Director, Regulatory Services  
National Energy Marketers Association  
3333 K Street, NW, Suite 110  
Washington, DC 20007  
Tel: (202) 333-3288  
Fax: (202) 333-3266  
Email: [cgoodman@energymarketers.com](mailto:cgoodman@energymarketers.com);  
[srantala@energymarketers.com](mailto:srantala@energymarketers.com)

Robert Blake  
VP Elec. Operations & Regulatory Affairs  
MXenergy  
10010 Junction Dr, Suite 104S  
Annapolis Junction, MD 20701  
Phone: (240) 456-0505 ext. 5513  
Mobile: (410) 707-5588  
Fax: (240) 456-0510  
[rblake@mxenergy.com](mailto:rblake@mxenergy.com)

Greg Collins, President  
Vectren Retail, LLC  
One Vectren Square  
3<sup>rd</sup> Floor  
Evansville, IN 47708

Dated: November 19, 2008.