BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

	*	
COMAR 20.59	*	**Administrative Docket RM 35**
Competitive Gas Supply	*	
	*	

COMMENTS OF THE OFFICE OF PEOPLE'S COUNSEL REGARDING PROPOSED REGULATIONS, COMAR 20.59

The Office of People's Counsel (OPC or People's Counsel) submits these comments regarding the proposed gas supplier consumer protection regulations developed under Rulemaking 35, as published by the Public Service Commission(Commission or PSC) in the Maryland Register in Volume 36, Issue 14 on July 6, 2009. For the reasons discussed below, OPC respectfully recommends that the Commission reject the proposed regulations.

I. Introduction

The proposed gas consumer protection regulations are intended to mirror the regulations developed for consumer protections for electric suppliers that were adopted by the Commission under RM 17. Differences between the sets of regulations are attributable to operational differences between the electric and gas industries. As with the electric regulations, the Commission proposes to allow the purchase of receivables and pro rata sharing of payments under consolidated billing for suppliers with utilities. Additionally, the Commission proposes to allow utilities to treat the purchased gas supplier receivables as debt to be converted into utility charges under COMAR 20.59.06.03(B) and COMAR 20.59.07.03(B), which permits the utility to immediately begin termination processes for customers behind in their payments to gas suppliers.

Finally, the Supplier Contracts – Telephone Contracts provision has been proposed under COMAR 20.59.07.08(B)(4), which exempts the supplier from a signed contracts requirement, if there are prior business dealings between the customer and the supplier or affiliated business of the supplier.

The Office of People's Counsel respectfully asks the Commission to reject the purchase of receivables, residential Customer Protection – Termination and Supplier Contracts – Telephone Contracts as harmful and anti-consumer.

II. Procedural Background

An open rulemaking session was held on March 10, 2009 by the Commission to consider Staff's revision of proposed RM 35. A special session of the RM 35 Working Group was held, based upon the Commission's concern that the regulations should have application to all classes of gas consumers, including large commercial and industrial customers.

On April 3, 2009, Staff filed revised RM 35 regulations, incorporating the changes discussed at the special Working Group session, and concluding that the proposed gas supplier consumer protection regulations should not apply to interruptible or daily-metered gas customers because these customers have long-standing commercial practices with utilities, governed in substantial scope and detail by contractual language between the parties. The Working Group committed to continued consideration of the need for regulations for the interruptible and daily-metered customers.

On April 14, 2009 the Commission issued notice of a Rulemaking Session on May 19, 2009, pursuant to its directions to Staff Counsel at the March 10, 2009 Rulemaking Session. A procedural schedule was established for comments to be filed by

May 1, 2009 and reply comments to be filed by May 11, 2009. Staff Counsel, Pivotal Utility Holdings, Inc. d/b/a Elkton Gas, Columbia Gas of Maryland, Inc., and OPC filed comments on May 1, 2009. Staff counsel filed reply comments and an issues list on May 11, 2009. IGS Energy filed comments on the electric utility compliance filings for COMAR 20.53 and for the proposed regulations for COMAR 20.59 on June 19, 2009. The proposed revised gas supplier consumer protection regulations were published by the Commission in the Maryland Register Volume 36, Issue 14 on July 6, 2009, pp.1014 - 1019.

III. Comments

OPC has filed Comments and Reply Comments. See Mail Log Nos. ML# 112653, ML# 112873, ML# 114566, and ML# 116484. OPC will not repeat the points discussed in its filed comments here, but rather, adopts and incorporates all previous comments filed in Rulemakings 17 and 35, as if repeated herein.

A. The conversion of contractual debt to regulated utility charges for purposes of termination of utility service for non-payment of supplier gas charges has not been demonstrated to be within the statutory authority of the Commission to "protect consumers" under PUC Art. § 7-604.

The proposed regulations provide for utilities to choose between two alternatives with regard to consolidated billings of supplier gas charges. The first, pro rata distribution of partial payments, was a change from the existing payment posting priorities, which gave preference to the utility charges over supplier charges. The changed payment posting priorities are arguably within the scope of the Commission's authority under the Public Utility Companies Article ("PUC") § 5-101 of the Annotated Code of Maryland, as the preferences were originally established by the Commission based upon the utility's sole right to terminate service for non-payment of charges. The change to pro rata posting of payments addresses a perceived obstacle to retail market competition and levels the playing field for competitive suppliers. The electric suppliers consumer regulations were the result of an extensive grant of enumerated authority to the Commission by the legislature under PUC § 7-501 *et seq*. The particular sections opposed by OPC in these comments are mirrored in OPC's expressed opposition in the counter-part electric supplier consumer protections, which have been used as a model for these proposed gas supplier consumer protection regulations.

The other option provided in the proposed regulations, purchase of receivables, also is something that is a practice between sophisticated business entities in non-regulated commercial transactions, established in both contract[1] and commercial law[2]. The acquisition of business debt by another entity provides liquidity to the seller, while the purchaser often obtains the debt at a discount reflective of the risk assumed from the efforts that may or may not be financially beneficial to it in given instances. In that transaction, the "buyer" assumes the risk that it may not be able to fully collect all the debt it has purchased. The buyer may use reasonable and lawful debt collection practices. However, the buyer of the debt typically cannot assert the ability to terminate an <u>essential</u>, <u>regulated</u> service (such as gas service) to collect the debt.

With the proposed regulations, Commission has embarked on a path whereby by regulatory pronouncement it is transforming supplier contract debt into regulated utility current charges, and subjecting consumers to the threat of termination in order to collect the debt utilities have purchased. Such an approach is contrary to PUC Art. § 7-604's

---

[1] Restatement 2nd of the Law Contracts, Chapter 10, Performance and Non-Performance, Chapter 16, Remedies.
[2] Annotated Code of Maryland, Commercial Law Article, Title 9 Secured Transactions.

express demand that consumer protection regulations for gas suppliers “protect consumers.”

Respectfully submitted,

Paula Carmody
People’s Counsel

Theresa Czarski
Deputy People’s Counsel

____

Peter Saar
Assistant People’s Counsel

Office of People’s Counsel
6 St. Paul St., Suite 2102
Baltimore, Maryland 21202
410-767-8150

August 5, 2009