

COMMONWEALTH OF PENNSYLVANIA



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OFFICE OF CONSUMER ADVOCATE

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Consumer Advocate

LEGISLATIVE
REVIEW COMMISSION

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January 28, 2000

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James J. McNulty, Secretary
PA Public Utility Commission
Room B-20, North Office Bldg.
Harrisburg, PA 17105-3265

Re: Proposed Rulemaking: Procedures to Ensure
Customer Consent to a Change of Natural
Gas Suppliers 52 Pa. Code Chapter 59
Docket No. L-00990145

Dear Secretary McNulty:

Enclosed please find for filing an original and fifteen (15) copies of the
Office of Consumer Advocate's Comments in the above-captioned proceeding.

Copies have been served upon all parties of record as shown on the
attached Certificate of Service.

Sincerely,

Tanya J. McCloskey
Senior Assistant Consumer Advocate

Enclosures

cc: All parties of record
Hon. John M. Quain, Chairman
Hon. Robert K. Bloom, Vice Chairman
Hon. Terrance Fitzpatrick, Commissioner
Hon. Nora Mead Brownell, Commissioner
Hon. Aaron Wilson, Jr., Commissioner

56564

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Proposed Rulemaking: Procedures to Ensure	:	
Customer Consent To A Change Of Natural Gas	:	Docket No. L-00990145
Suppliers 52 Pa. Code Chapter 59	:	

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

I. INTRODUCTION

On November 4, 1999, the Pennsylvania Public Utility Commission (PUC or Commission) adopted a Proposed Rulemaking Order to promulgate proposed regulations to implement and codify Section 2206(b) of the Natural Gas Choice and Competition Act. Section 2206(b) of the Act requires the establishment of procedures to ensure that natural gas suppliers do not change a customer's gas supplier without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier. 66 Pa.C.S. §2206(b). The Commission's proposed regulations were adopted following the issuance of a Tentative Order setting forth Interim Guidelines to Ensure Customer Consent to a Change of Natural Gas Suppliers and the receipt of Comments on those Interim Guidelines. As noted in the OCA's Comments to the Interim Guidelines, the Commission's rulemaking on this issue is an important link in the chain of essential consumer protections that are required for a transition to a competitive market.

On January 1, 2000, this Proposed Rulemaking Order and Final Interim Guidelines was published in the Pennsylvania Bulletin, requesting Comments in thirty days. *Pennsylvania Bulletin*, Vol. 30, No. 1 (Jan. 1, 2000). The Commission's Interim Guidelines, and this proposed rulemaking, are based on the Commission's regulations established for electric choice at 52 Pa.Code §57.171-57.179. The OCA continues to support the Commission's regulations at 52 Pa.Code §57.171-57.179 and submits that they provide a sound basis for addressing consumer concerns regarding slamming in retail natural gas choice. The OCA strongly supports the Commission's proposed regulations in this docket.

As the Commission recognized when issuing its regulations regarding electric choice, one of the best deterrents to slamming is the Commission's "zero tolerance" policy regarding slamming. The OCA strongly supports the sentiment expressed by the Commission when the regulations at 52 Pa.Code §57.171 *et seq.* were issued. Importantly, the Commission stated:

Today, we set in place the "rules of the road" by which customer's requests to switch electric generation suppliers will be processed. We have observed other industries in which unauthorized customer switching, known as "slamming," has occurred. We wish to state now, up front and for the record: this Commission will have zero tolerance for slamming by any means and in any form.

* * *

In the event slamming occurs, Commission action will be swift and hard. The Public Utility Code provides for penalties which include monetary penalties of up to \$1,000 per day, per violation, suspension of licenses and revocation of licenses. The authority permits this Commission to impose penalties of \$1,000 per day, per customer from the day the unauthorized switch occurred until the matter is corrected. We may also order suspension of licenses so as to prohibit marketing or acceptance of new customers for a period of time. And, as the ultimate penalty, this Commission has the authority to revoke a license and prohibit any sale of retail generation services in this Commonwealth.

Customer slamming is among the most serious violations of our rules and regulations. There is no grace period. There is no “transition period” as far as slamming is concerned. You can count on this Commission imposing commensurate penalties quickly and without hesitation.

Rulemaking Order Establishing Standards for Changing A Customer’s Electric Supplier, Docket No. L-00970121, Revised Final Rulemaking Order, Statement of the Chairman, Vice Chairman and Commissioners (APR-98-L-32)(Public Meeting of May 21, 1998). The OCA continues to urge the Commission to make equally clear for natural gas suppliers that slamming by a natural gas supplier will not be tolerated in this Commonwealth.

II. COMMENTS

A. Door-To-Door Sales

Even with the Commission’s “zero tolerance” policy, the OCA remains concerned about the door-to-door sales practices for this important utility service. The OCA is aware that some gas marketers in other states, as well as in Pennsylvania, have specialized in door-to-door sales to residential customers. The history of door-to-door sales techniques is often filled with instances of consumer fraud and unfair sales techniques. See, International Society for Krishna Consciousness v. Lee, 505 U.S. 672, 112 S.Ct. 2701, 2722, 120 L.Ed.2d 541 (1992)(Kennedy, J., concurring). As it regards slamming, a concern is raised even though a signature is usually obtained since the signature may not be from the customer of record and could even be from a minor or unrelated adult who happened to be at the home at the time of the solicitation. The Commission has addressed this concern and established a requirement that the written authorization form be limited to the sole purpose of obtaining the customer’s consent to change suppliers.

The OCA urges the Commission to remain vigilant regarding door-to-door sales. The OCA would also recommend that the written form clearly indicate that it must be signed by the customer of record or the customer's designated representative.

B. Independent Third Party Verification

In its Comments to the Tentative Order, the OCA also addressed the issue of independent third party verification when an oral authorization to change suppliers is obtained. The OCA believes that independent third party verification is an important consumer protection and a good business practice to be implemented by suppliers receiving an oral authorization to switch. The Commission determined that it would not include specific independent third party verification requirements or criteria in its regulations. The OCA appreciates the Commission's concern with requiring specific business practices or establishing regulations that may result in unduly hindering the competitive market. The OCA would note, however, that given the Commission's strong stance against slamming, natural gas suppliers and electric generation suppliers would be well served to establish business practices that provide for adequate and appropriate verification, including independent third party verification.

The OCA submits that additional specificity regarding third party verification could be included in the regulations without restricting the business judgement of the natural gas supplier. The OCA would urge the Commission, and all suppliers, to consider the following minimum criteria for the use of an independent third party verifier:

1. Completely independent of the provider that seeks to initiate service (i.e. no management, ownership, direction or control, directly or indirectly, by the service provider).

2. Operate from facilities that are physically separate from those of the provider seeking to provide service.
3. Receive no compensation or commission of any kind based upon the number of confirmed sales.

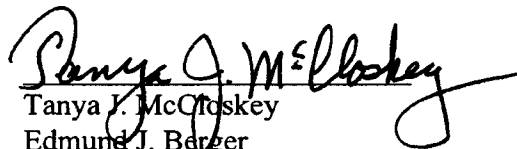
These minimal criteria are essential to assure that the third party verifier can properly and adequately perform the necessary verification. In addition, as is clear from *other* Commission regulations, the independent third party verifier should not be permitted to utilize any information or data for other commercial or marketing purposes and should be required to maintain the confidentiality of the information. A reference to this requirement may also be helpful in these regulations. See, e.g. 65 Maine Rules 407, Chapter 305, Section 4(D).

The OCA submits that some additional detail on independent third party verification in the regulations would be helpful and would provide an additional layer of protection for both consumers and suppliers. Even if the Commission determines not to include these additional details, the OCA would urge all suppliers who utilize oral authorization to switch a customer to consider, among other methods, an independent third party verification method of confirming the customer's agreement to switch suppliers that follows the principles set forth above.

III. CONCLUSION

The OCA again commends the Commission on setting forth these regulations that strike a reasonable balance between preventing unauthorized switching, while still allowing for the development of competition. As stated previously, the OCA submits that the Commission's clear policy of zero tolerance may prove to be the most effective deterrent to slamming. The OCA again urges the Commission to make clear that it will not tolerate slamming by a natural gas supplier in this Commonwealth.

Respectfully submitted,


Tanya J. McCloskey
Edmund J. Berger
Senior Assistant Consumer Advocates

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
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(717) 783-5048

Dated: January 28, 2000
56490

CERTIFICATE OF SERVICE

Re: Proposed Rulemaking: Procedure to Ensure Customer
Consent to a Change of Natural Gas Suppliers 52 Pa.
Code Chapter 59
Docket No. L-00990145

I hereby certify that I have this day served a true copy of the foregoing document, OCA's Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 28th day of January, 2000.

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The Consumer Advisory Council

The Pennsylvania Public Utility Commission

COPY

January 25, 2000

Commonwealth of Pennsylvania
Public Utility Commission
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Harrisburg PA 17105-3265

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Attention: Secretary McNulty

Re: Comments on the Rulemaking Re Establishing Procedures to
Ensure Customer Consent to Change of Natural Gas Supplier
L-00990145

SECRETARY'S BUREAU

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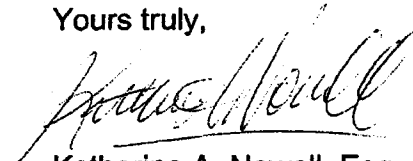
Dear Mr. McNulty:

The Consumer Advisory Council is pleased to submit the following comments on the captioned Proposed Rulemaking Order and Interim Guidelines which were adopted at the Commission's Meeting of November 4, 1999.

The Council believes that the Rule as proposed and the interim guidelines reflect the Commission's "zero tolerance" for incidents of "slamming" and protect consumers against such incidents. The Commission's discussion of the comments submitted reflect thoughtful consideration and the Commission's efforts to protect consumers without imposing excessive administrative burdens on suppliers and distribution companies.

The Council congratulates the Commission on its well balanced approach.

Yours truly,



Katherine A. Newell, Esq.
Chair



Pennsylvania Gas Association

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January 31, 2000

Mr. James J. McNulty, Secretary
Pennsylvania Public Utility Commission
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VIA HAND DELIVERY

145

Re: Docket No. L-009904: Procedures to Ensure Customer Consent to a Change of Natural Gas Suppliers

Dear Mr. McNulty:

Pursuant to the Proposed Rulemaking Order and Final Interim Guidelines ("Proposed Rulemaking") adopted by the Commission on November 4, 1999 and published in the January 1, 2000 issue of the *Pennsylvania Bulletin*, 30 Pa.B. 37 (2000), the Pennsylvania Gas Association ("PGA"), on behalf of its members, submits this letter for consideration in lieu of formal comments. Per Ordering Paragraph 3, *id.* at 42, the original and 15 copies of this letter are tendered for filing.

PGA's comments focus on a single item: Proposed Section 59.97(a). This section states, in pertinent part, that when a customer contacts an NGDC with a slamming allegation, the NGDC must (1) consider the matter a "dispute," a term of art under Chapter 56 of the Commission's regulations; and (2) investigate and respond to this "dispute" consistent with Chapter 56 requirements, *i.e.*, 52 Pa. Code §§ 56.151-.152. Proposed Section 59.97(a) has a long history. It was part of the interim anti-slaming guidelines for natural gas, as promulgated by Tentative Order adopted August 26, 1999, *Interim Guidelines to Ensure Customer Consent to a Change of Natural Gas Suppliers*, Dkt. No. M-00991249.F0006, *mimeo.*, App. A at 4. Proposed Section 59.97(a) is also identical to the anti-slaming regulations the Commission adopted as part of its implementation of the Electric Generation Customer Choice and Competition Act. *Ensuring Customer Consent to a Change of Electric Supplier (Antislaming)*, 28 Pa.B. 5770 (Nov. 21, 1998).

When the Commission considered the electric anti-slaming regulations, and again when the Commission considered the natural gas anti-slaming guidelines, PGA objected that automatic dispute status saddled utilities with compliance requirements (and associated costs) that were unfair and disproportionate given the essential fact that slamming results from actions by customers and suppliers, with utilities playing only a tangential, ministerial role. Our September 16, 1999 letter comment addressing the natural gas interim guidelines lays out an array of legal, policy and economic arguments opposing automatic dispute status, and we attach a copy of that letter so that our prior arguments may be reflected in the record.

The Proposed Rulemaking does not engage PGA's arguments on their merits, but declares, in effect, that no argument, be it rooted in law, logic, policy or economics, is sufficient to trump what can only be characterized as an overriding public interest in maintaining a "zero tolerance" slamming policy:

After careful consideration of the comments regarding [automatic dispute status], we are not convinced that it is in the public interest to alter the requirements of this guideline. Customers who contact either the NGDC or the NGS and allege slamming will have their grievances addressed by application of procedures which fully reflect the

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Commission's firm intolerance for this practice. * * * Certainly, one clarification that [NGDC] customer service representatives will need to be informed of is the standard that all slamming complaints are to be considered disputes on the initial call from the customer. We believe this is reasonable and necessary both to ensure satisfactory resolution of the customer's claim, and to ensure that complaints against affiliated suppliers are not handled differently than disputes against non affiliated suppliers.

In regard to PGA's concern that NGDCs stand to have a significant number of registered complaints entered on their records and incur significant investigation costs, parties must recognize that we are attempting to establish a process that reflects our often stated "zero tolerance" to slamming incidences. Simply put, we do not intend to tolerate numerous slamming complaints. If PGA's concern is realized and a "significant number" of customers need to complain to the NGDC about unauthorized switches, the Commission will take immediate action. This action often requires Commission staff review of appropriate company records. Any increased costs associated with the investigation of slamming complaints or the retention of appropriate records, must be balanced against the benefit to be derived for customers. We find that any increased costs are offset by the fact that this guideline enhances the Commission's ability to find and stop inappropriate practices relating to changing suppliers.

Proposed Rulemaking, 30 Pa.B. at 40-41 (emphasis supplied).

PGA fully appreciates the Commission's intolerance for slamming. Even so, PGA must respectfully insist that in embracing this policy the Commission should not turn a blind eye to legitimate points reflecting the unchallenged (and unassailable) reality that virtually every slamming allegation arises from a dealing between a customer and a supplier. Regulatory burdens and exposures should be proportionate to the regulated entities' involvement in the underlying transaction, and invoking the "zero tolerance" policy is, with all due respect, an inadequate basis for saddling NGDCs with the heavy burden of automatic dispute status. The Commission has the authority, indeed the statutory duty, to ensure that natural gas suppliers comply with applicable provisions of Chapter 56, 66 Pa.C.S. § 2208(f). It is hard to imagine an area where Chapter 56 is more applicable to suppliers than slamming, and the Commission should exercise its Chapter 56 duties by imposing automatic dispute status where it belongs, on suppliers. To impose automatic dispute status on NGDCs is to improperly and unfairly cast them as surrogates for failed relationships between customers and suppliers.

The Proposed Rulemaking notes a regulatory interest in ensuring that slamming allegations are fully investigated. Furthering this interest, however, does not require imposing automatic dispute status on NGDCs. When a customer registers a slamming allegation with an NGDC, the NGDC should be required to handle the allegation as a "initial inquiry" under Chapter 56. Consistent with the Chapter 56 definition, the NGDC would investigate the allegation to determine whether it adequately and accurately fulfilled its duties with regard to the change of suppliers. If the NGDC failed in its duties, the allegation would assume dispute status. If the NGDC satisfied its duties, the NGDC would be required to inform the customer of the results of the investigation and refer the customer to the NGS that directed the NGDC to implement the switch. The NGDC would further be required to document its investigation and its discussions with the customer, with such documentation available for Commission inspection. Consistent with this approach, PGA advocates splitting Proposed Section 59.97(a) into two parts as follows (added language in bold):

§ 59.97 Customer dispute procedures.

(a) When a customer contacts an NGDC and alleges that the customer's NGS has been changed without consent, the NGDC contacted shall:

(1) Consider the matter a customer registered initial inquiry.

(2) Investigate and respond to the initial inquiry consistent with the definition of "initial inquiry" in § 56.2 (relating to definitions). Investigations under this subsection shall be limited to determining whether the NGDC adequately and accurately fulfilled its duties under this subpart.

(i) If, on investigation, the NGDC determines that it adequately and accurately fulfilled its duties under this subpart, the NGDC shall inform the customer of the results of the investigation and advise the customer to pursue the allegations with the NGS that, under § 56.93(a), notified the NGDC of the change of suppliers. The NGDC shall document its investigation and its response to the customer, and such documentation shall be available for inspection by the Commission.

(ii) If, on investigation, the NGDC determines that it did not adequately and accurately fulfill its duties under this subpart, the NGDC shall consider the matter a customer registered dispute and investigate and respond to the dispute consistent with the requirements in §§ 56.151 and 56.152 (relating to utility company dispute procedures).

(a.1) When a customer contacts an NGS and alleges that the customer's NGS has been changed without consent, the [company] NGS contacted shall:

(1) Consider the matter a customer registered dispute

(2) Investigate and respond to the dispute consistent with the requirements in §§ 56.151 and 56.152 (relating to utility company dispute procedures).

The Proposed Rulemaking further states that automatic dispute status is justified "to ensure that complaints against affiliated suppliers are not handled differently than disputes against non affiliated suppliers." PGA has responded to this argument on several occasions, the last being in its letter comment on the interim anti-slamming guidelines for natural gas choice:

The relationship between NGDCs and their marketing affiliates is being explored in depth by the Commission's Standards of Conduct Working Group, and it is the subject of extensive guidelines which the Commission released for public comment the same day it adopted its Tentative Order in this docket. The standards of conduct proceedings, not to mention the Public Utility Code's prohibitions against undue discrimination, are more than sufficient to address marketing affiliate issues, and bringing these issues into the antislamming discussion significantly increases the potential for redundancy and inconsistency.

See Appendix A at page 4 (internal citation omitted). In the months since PGA wrote this passage, the Commission issued binding interim standards of conduct which comprehensively address NGDCs'

Mr. James J. McNulty, Secretary
Docket No. L-00990145
January 31, 2000
Page 4

dealings with their affiliated NGSS, *Binding Interim Standards of Conduct*, Dkt. No. M-00991249.F0004, (entered Nov. 22, 1999). Particularly now that the binding interim standards are in place, marketing affiliate issues provide absolutely no foundation for imposing automatic dispute status.

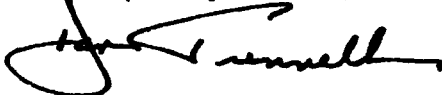
Finally, the Proposed Rulemaking incorrectly suggests that in seeking relief from automatic dispute status PGA is hoping to provide NGDCs a competitive advantage relative to electric distribution companies:

We also disagree with the PGA's contention that it is not important to maintain "a competitive balance between electric and gas service." Some suppliers will offer both gas and electric supply to customers. It would be counterproductive to our goal of developing competitive gas and electric markets to impose substantively different rules for essentially the same activity.

30 Pa.B. at 41. Throughout its participation in the Commission's anti-slamming dockets, whether electric or natural gas, PGA has consistently maintained that both fixed utility groups should be on equal footing. See, e.g., Appendix A at pages 4-5. Our argument has been that equal footing should be obtained by freeing the electric utilities from automatic dispute status, not by saddling natural gas utilities with the same burden.

PGA appreciates this opportunity to comment, and urges the Commission to consider the points detailed above as it continues its deliberations.

Respectfully submitted,



Daniel R. Tunnell
President

DRT:hew



Pennsylvania Gas Association

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September 16, 1999

Mr. James J. McNulty, Secretary
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Harrisburg, Pa 17105-3265

VIA HAND DELIVERY

Re: Docket No. M-00991249.F0006: Interim Guidelines to Ensure Customer Consent to a Change of Natural Gas Suppliers

Dear Mr. McNulty:

Pursuant to the Tentative Order adopted by the Commission on August 26, 1999, the Pennsylvania Gas Association ("PGA"), on behalf of its members, submits this letter for consideration in lieu of formal comments. Per Ordering Paragraph 2, the original and 15 copies of this letter are tendered for filing, and copies of this letter are being provided to the Bureau of Consumer Services and the Law Bureau via hand delivery to the individuals identified below. PGA comments are in three parts, addressing: (1) the notice a natural gas supplier ("NGS") must provide to a natural gas distribution company ("NGDC") when a customer advises an NGS of a desire to change suppliers; (2) the proposed customer dispute procedures; and (3) Commissioner Bloom's request for comments regarding third-party verification.

Content of NGS Notification to NGDC

Under the heading "Customer Contacts with Natural Gas Suppliers," Proposed Guideline (a)(1) states that when contact between a customer and an NGS results in the customer selecting a new supplier, the NGS must notify the customer's NGDC of the customer's selection. By its terms, the NGS would not even have to provide the NGDC with any form of customer identification. Clearly such identification is necessary both to place the change into effect and to provide NGDCs with a tool that might prevent slamming before it occurs. Moreover, customer identification should not be difficult for an NGS to obtain. (In fact, it is hard to imagine how a customer and NGS could be conducting an informed discussion about supplier choice without this information being exchanged.)

Accordingly, Guideline (a)(1) should be modified to read as follows (new language underlined): "Notify the natural gas distribution company of the customer's NGS selection and provide such customer identification data as required by the natural gas distribution company or established by Commission order by the end of the next business day following the customer contact."

Customer Dispute Procedures

As noted at page 2 of the Tentative Order, the proposed interim guidelines are identical to the anti-slamming regulations the Commission adopted as part of its implementation of the Electric Generation Customer Choice and Competition Act. *Ensuring Customer Consent to a Change of Electric Supplier (Antislamming)*, 28 Pa.B. 5770 (Nov. 21, 1998)[hereinafter "Electric Slamming Regulations"]. On November 10, 1997, PGA filed a letter comment in the electric anti-slamming docket (No. L-00970121) objecting that the proposed sections governing Customer Dispute Procedures, 52 Pa. Code § 57.177, and Record Maintenance, 52 Pa. Code § 57.179, saddled utilities with compliance requirements (and associated costs) that were unfair and disproportionate given the essential fact that slamming results from actions by customers and suppliers, with utilities playing only a tangential, ministerial role. With all due respect, the Revised Final Rulemaking Order promulgating the Electric Slamming Regulations did not adequately address PGA's concerns, nor did it address similar concerns expressed by the

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Pennsylvania Electric Association ("PEA"). As it objected to the proposed Electric Slamming Regulations, and continues to urge their repeal, PGA objects to their proposed application to natural gas.

Under "Customer Dispute Procedures," Proposed Guideline (a) would require NGDCs to classify each slamming complaint as a "customer registered dispute," a regulatory term of art which, in effect, would require NGDCs to investigate and address slamming allegations in accordance with the costly and detailed standards appearing in Chapter 56. If Guideline (a) were adopted as proposed, NGDCs stand to have a significant number of registered disputes entered on their records, and to incur significant investigation costs, even where the NGDC does little more than change the name of the supplier on the customer's bill.

PGA therefore objects to the references to "customer disputes" appearing throughout the proposed section on "Customer Complaint Procedures," and PGA particularly objects to Proposed Guideline (a), because they reflect an erroneous and unfair policy, and because they conflict with existing Commission regulations. Taken as a whole, the guidelines require NGDCs to perform a very specific and limited set of functions: referring customer inquiries to NGSs; mailing confirmation letters; and, unless the customer objects within a set period, placing the customer's requested change into effect. Most importantly, NGDCs are not charged with second-guessing customer decisions or policing what transpires between customers and suppliers.

The Customer Dispute Procedures section of the proposed guidelines needs substantial revision to reflect the NGDCs' limited role in handling changes of suppliers. Specifically, when a customer lodges a slamming allegation with an NGDC, the NGDC should not have to automatically classify the matter as a dispute. Rather, the NGDC should be afforded an opportunity to ascertain that it fulfilled its duties under the guidelines. Provided the NGDC met its obligations, it should be required to inform the customer and suggest the customer contact the NGS. The customer's call to the NGDC would not be classified as a dispute (although it may certainly lead to a dispute between the customer and one or more NGSs) and the NGDC would be relieved of the any further obligations.

Separately, but no less significantly, Proposed Guideline (a) would require an NGDC to classify a customer's slamming allegation as a dispute as soon as that allegation is voiced, without even an opportunity for the utility to investigate the allegation and respond informally. To this extent, Proposed Guideline (a) runs directly counter to the Chapter 56 definitions of "dispute" and "initial inquiry," two provisions which were incorporated into the Commission's regulations only a year ago. *Standards and Billing Practices for Residential Utility Service*, 28 Pa.B. 3379, 3381 (Jul. 22, 1998) (redefining "dispute" to exclude cases where a customer consents to the utility "review[ing] pertinent records or other information and call[ing] back the [customer] with a response to the inquiry."). PGA's proposed revisions to the Customer Dispute Procedures section would avoid conflict with the Chapter 56 definitions, and thus avoid what might otherwise be a protracted, thorny debate over the legal status of interim guidelines relative to existing regulations under the Commonwealth Documents Law and the Regulatory Review Act.

When PGA and PEA raised similar points in the electric docket, the Commission agreed that Chapter 56 argued against automatic dispute status, but claimed that Guideline (a) was justified by the unprecedented sweep of customer choice, by a need to safeguard against anticompetitive conduct, and by the unsubstantiated possibility that utilities might be involved in activities beyond ministerial tasks.

PEA and its members take the position that [automatic dispute status] would result in many more instances of a "customer dispute" than are realistic and lead to a wasteful expenditure of resources. PEA argues that should the customer service representative of either an EDC or an EGS be successful in resolving a customer's

concern in the context of an initial inquiry, the matter should not be considered a dispute. This position is consistent with the current Chapter 56. However, we believe, at least through the initial phase of customer choice, that the requirements we have set forth are needed if the standard set forth in the act is to be attained. First, it is unlikely that service representatives will be able to satisfy customers on the initial call because an investigation involving a retrieval of records and contracts with a third party (the EDC or EGS) will be necessary.

Second, permitting an EDC to attempt to satisfy customer inquiries to avoid disputes creates the possibility of the EDC systematically showing favoritism to its affiliated supplier. This could occur because complaints against affiliates could be handled differently than those filed against nonaffiliates. That is, representatives could be instructed to "give away the store" during the initial contact to satisfy customers calling to complain about the affiliate. Thus, there would be few, if any, documented disputes filed against the affiliated supplier. On the other hand, these same service representatives could be instructed to treat complaints against nonaffiliated suppliers as disputes. We believe setting the standard that all slamming complaints be considered disputes to be both reasonable and necessary.

The PGA argues that the EDCs' duties are largely ministerial tasks necessary to affect a change of the EGS. The association argues that "before one burdens utilities with new requirements inspired by Chapter 56, one should remember that slamming arises out of dealings between suppliers and customers." This argument fails to convince us for two reasons. First, it is conceivable that the company responsible for a slam is an EDC. Second, the statute directs us to produce regulations to ensure that an EDC does not change an EGS without the customer's consent. We view the EDC involvement as more than simply ministerial tasks. Finally, while we are directing the EDCs and EGSs to use the Chapter 56 dispute procedure to investigate and respond to slamming regulations, these regulations are inspired by the act, not Chapter 56. We have chosen Chapter 56 procedures because the EDCs have years of experience with these regulations that should prove to be beneficial in limiting the training needs of service representatives.

Electric Slamming Regulations, 28 Pa.B. at 5774-75. PGA has examined each aspect of the quoted response, and finds that none of the points justified imposing automatic dispute status in the electric regulations, and that none of them justifies imposing automatic dispute status in this docket.

After conceding that the utilities' position is consistent with Chapter 56, the Electric Slamming Regulations Rulemaking Order states that automatic dispute status is efficient because it is unlikely a utility will be able to satisfy a customer's slamming complaint on the initial call. This argument is flawed for two reasons. First, it presumes (and requires) a level of responsiveness beyond that required under the Commission's own regulations. Specifically, under the Chapter 56 definition of "initial inquiry," a customer complaint is not a dispute if the utility investigates the matter and calls the customer back with a satisfactory answer. Second, the argument fails to recognize that in the context of an NGDC acting solely in its distribution capacity, a slamming complaint is fully investigated once the NGDC verifies that it received notification from an NGS, sent the appropriate confirmation letter to the customer, and waited the appropriate period to effect the requested change of suppliers. It is certainly conceivable that these steps could be completed during an initial inquiry, particularly as now defined to include a research-and-call-back period.

The Commission further justifies automatic dispute status as appropriate "at least through the initial phase of customer choice." It is unclear whether novelty was being cited as an independent basis for

automatic dispute status, but even if one reads the Revised Final Rulemaking Order this way, customer choice—even customer choice at the residential level—is certainly not novel for natural gas.

The next argument is that automatic dispute status provides a safeguard against potential NGDC favoritism toward their marketing affiliates. The relationship between NGDCs and their marketing affiliates is being explored in depth by the Commission's Standards of Conduct Working Group, and it is the subject of extensive guidelines which the Commission released for public comment the same day it adopted its Tentative Order in this docket. *Proposed Binding Interim Standards of Conduct Pursuant to 66 Pa.C.S. § 2209(a)*, Docket No. M-00991249.F0004 (entered Aug. 27, 1999). The standards of conduct proceedings, not to mention the Public Utility Code's prohibitions against undue discrimination, are more than sufficient to address marketing affiliate issues, and bringing these issues into the antislamming discussion significantly increases the potential for redundancy and inconsistency.

With specific regard to PGA's arguments in the electric proceeding, the Electric Slamming Regulations Rulemaking Order takes issue with our characterization of utility duties under the antislamming requirements as ministerial tasks. Specifically, it is claimed (1) that the utility may be responsible for a slam, and (2) that the utility's involvement is not ministerial *per se*, since the restructuring statute prohibits the utility from changing a customer's supplier without the customer's consent. On point (1), it is possible, of course, that even ministerial tasks can be performed in error, and that is why PGA does not dispute the need for a utility to investigate its performance whenever a slamming complaint is lodged. But the need to review does not make the utility's tasks any less ministerial. As to point (2), a *per se* approach elevates form over substance. The essential elements of the process by which customers select an NGS, and the resulting potential for slamming, occur between a customer and an NGS. There is no statutory provision that alters this fundamental tenet of customer choice. Therefore, automatic dispute status is inappropriate.

The final argument advanced for automatic dispute status is that Chapter 56 procedures should be applied because Chapter 56 procedures are familiar to utilities. In other words, "Utilities have borne the burden of Chapter 56 for years, and they should be rewarded for their endurance by exposing even more transactions to Chapter 56 requirements." In our view, this line of reasoning typifies the traditional view of utility as social service provider, a role which must be rethought as the Commission moves forward with implementing retail natural gas competition. The slamming regulations are just one example of the need to properly assess the respective responsibilities of utility, supplier, and customer, and to impose accountability accordingly. PGA's modifications to the Customer Dispute Procedures section matches responsibility and accountability as redefined in the restructured environment. We therefore strongly urge their adoption both in this docket and as a guide to the Commission's deliberations in any related proceedings.

PGA anticipates that some might try to support automatic dispute status by claiming a need to maintain competitive balance between electric and natural gas service. The essential logic of this position is: "These provisions were imposed on electric utilities. The Commission should keep electric and natural gas utilities on an equal footing wherever possible. Therefore, the same provisions should be imposed on natural gas utilities." PGA urges the Commission to reject this argument. The natural gas utilities did not ask for these provisions to be placed on their electric counterparts. In fact, PGA argued against them. In stating that the electric slamming regulations were appropriate "through the initial phase of customer choice" the Commission indicated a willingness to reconsider their application. PGA urges the Commission to do so. It is far better for the Commission to lift the burden from electric utilities than to impose them on natural gas utilities solely for the sake of keeping everyone on an equal footing.

Mr. James J. McNulty, Secretary
Docket No. M-00991249.F0006
September 16, 1999
Page 5

Commissioner Bloom's Request for Comments Regarding Third-Party Verification

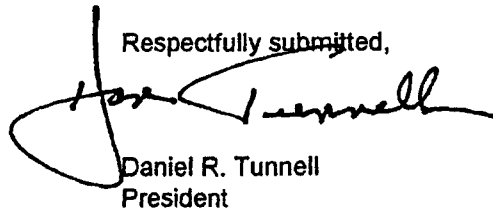
In his statement accompanying the Tentative Order, Commissioner Bloom asked parties to comment "on the issue of using an independent third party to verify both written and orally authorized customer supplier selections." In particular, Commissioner Bloom invited parties to discuss how such a verification process would be structured, operated, staffed, and funded.

PGA would reemphasize that slamming arises from dealings between suppliers and customers, with NGDCs performing only those few, essential but ministerial tasks necessary to place supplier selections into effect. NGDCs have not been asked to police supplier selections, and NGDCs are not interested in serving this function or paying a third party to do so. If there is to be a verification process, it should be funded entirely by the suppliers. PGA objects to any system of third-party verification which NGDCs would fund directly through payments to a private provider or indirectly through increased regulatory assessments underwriting a verification function within the Commission.

In summary, PGA agrees that appropriate guidelines are required in order to discourage the act of slamming natural gas customers. We feel, however, that traditional regulatory approaches to marketplace activities may not be warranted. To develop competitive markets, responsibility and accountability must be vested in the proper parties. Additionally, it is fair to all concerned.

PGA appreciates this opportunity to comment, and urges the Commission to consider the points detailed above as it continues its deliberations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. R. Tunnell", is written over a horizontal line. The signature is stylized with a large loop at the end.

Daniel R. Tunnell
President

cc: Dan Mumford, PUC Bureau of Consumer Services (VIA HAND DELIVERY)
Terrence J. Buda, PUC Law Bureau (VIA HAND DELIVERY)