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2008 APR 23 PM 3:08

Sent: Friday, April 04, 2008 11:47 AM

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Cc: Lloyd, William (DCED)

Subject: Universal Service and CAP programs, Docket No. L-00070186, OSBA Comments

Attached is a document containing the Comments in MS Word format, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding. Hard copies are being filed with the Secretary's Bureau. If you have any problem opening the document, please contact me.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Proposed Rulemaking Relating to :
Universal Service and Energy :
Conservation Reporting Requirements, :
52 Pa. Code §§54.71-54.78 (electric) : Docket No. L-00070186
§§62.1-62.8 (natural gas) and Customer :
Assistance Programs, §§76.1-76.6 :

**COMMENTS ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

Background

By Order entered December 15, 2005, at Docket No. M-00051923, the Pennsylvania Public Utility Commission (“Commission”) requested public comment on the funding of customer assistance programs (“CAP”) and cost recovery mechanisms and on other issues related to universal service and energy conservation programs.

On January 30, 2006, the Office of Small Business Advocate (“OSBA”) filed comments. In those comments, the OSBA responded to the list of specific questions which the Commission had invited parties to answer. However, the OSBA’s emphasis was on why small commercial and industrial customers (“small C&I customers”) should not be required to fund CAP and other universal service programs.

On December 18, 2006, the Commission entered its Final Investigatory Order at Docket No. M-00051923. In that Final Investigatory Order, at 26-32, the Commission reaffirmed its policy of imposing CAP and other universal service costs on only residential customers. The Commission also directed that a rulemaking proceeding be initiated to amend existing regulations regarding a variety of specified CAP and other universal service issues. *See* Final Investigatory Order, at 68-70.

By Proposed Rulemaking Order entered September 4, 2007, the Commission initiated the rulemaking proceeding at Docket No. L-00070186 which it had previously ordered at Docket No. M-00051923. Ordering Paragraph No. 5 of the Proposed Rulemaking Order invited parties to submit comments within 60 days of publication in the *Pennsylvania Bulletin*. The Proposed Rulemaking Order was published in the *Pennsylvania Bulletin* of February 9, 2008. See 38 Pa.B. 776.

The OSBA submits the following comments in response to the Commission's invitation.

Comments

With a few exceptions noted in footnote 25 of the Final Investigatory Order, the rates paid by small C&I customers are not expressly dedicated to the funding of universal service programs.¹ That policy is appropriate, and should be continued, because only residential customers are eligible for assistance through universal service programs.

The Proposed Rulemaking Order does not invite parties to reopen the debate about whether universal service costs should be allocated to small C&I customers. Rather, the proposed regulations would codify the Commission's policy that such costs are to be allocated to only residential customers. See, e.g., proposed 52 Pa. Code §§54.71, 54.73(b)(3), 54.74(a)(5), 54.74(b)(4)(iv), 62.1, 62.3(b)(3), 62.4(a)(5), 62.4(b)(4)(iv), and 76.4(1). However, in anticipation that one or more parties may oppose this codification, the OSBA reiterates its previously stated arguments in support of the Commission's existing policy. See, e.g., Comments on Behalf of the Office of Small Business Advocate, Docket No. M-00051923, at 1-8, 9-10, and 12.

¹ For purposes of these comments, "universal service" includes CAP and the other universal service programs addressed by the Commission in the proposed regulations.

Funding universal service programs through utility rates is similar to the concept of insurance: ratepayers pay “premiums” when they can afford to do so in exchange for “benefits” to help them pay their utility bills when their individual economic circumstances require. Because all residential ratepayers theoretically could need such assistance, it is logical to make all residential ratepayers contribute toward the program’s costs. However, because small C&I customers are ineligible for assistance through universal service programs, it would be discriminatory to require small C&I ratepayers to contribute to funding those programs through utility rates.

Advocates for spreading the universal service funding requirement to all customer classes generally argue that there is a “societal good” or an “economic self-interest” justification for making small C&I customers contribute to such funding. Both of those alleged “justifications” ignore the fact that small C&I customers are already subsidizing universal service programs.

First, small C&I customers help to fund universal service programs through their federal and state taxes. Specifically, federal taxes collected from small C&I customers help finance the federal Low Income Home Energy Assistance Program (“LIHEAP”). Similarly, state gross receipts tax revenue collected from small C&I customers was made available to supplement LIHEAP by the act of December 16, 2005 (P. L. 439, No. 81).

Second, unspent revenues collected for consumer education from all customers—including small C&I customers—were reallocated to fund universal service programs. *See Creation and Implementation of a Statewide Consumer Education Program for Electric Restructuring in the Commonwealth of Pennsylvania, et al.*, Docket Nos. M-00981036, M-00001326, R-00994788, R-00974008, R-00974009, R-00973954, R-00005459, and R-00973981 (Order entered December 7, 2005).

Third, on a cost-of-service basis, small C&I customer classes frequently pay rates which provide a class rate of return well above the system average. In contrast, residential customer classes commonly pay rates which provide a class rate of return well below the system average. Because small C&I customers are frequently paying more than their fair share relative to residential customers, small C&I customers are, in effect, providing funding for universal service.

WHEREFORE, for the reasons set forth above, the OSBA supports the codification of the Commission's policy assigning responsibility for funding universal service programs through utility rates solely to residential customers.

Respectfully submitted,

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Date: April 4, 2008