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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Natural Gas Distribution Companies
and the Promotion of Competitive
Retail Markets

Docket No. L-2008-2069114

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

INDEPENDENT REGULATORY
COMMISSION

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I. INTRODUCTION

On March 27, 2009, the Pennsylvania Public Utility Commission (PUC or Commission) entered a Proposed Rulemaking Order (Rulemaking Order) to initiate a rulemaking proceeding to adopt regulations “governing the relationships between Natural Gas Distribution Companies (NGDCs) and the Natural Gas Suppliers (NGSs) which sell, or seek to sell natural gas to end users on the NGDC distribution systems.” Proposed Rulemaking Order, Docket No. L-2008-2069114 (Order Entered on March 27, 2009). The Commission initiated this rulemaking in response to a Commission Final Order and Action Plan which identified certain steps that the Commission should consider taking in order to help promote the development of competition in the retail markets for natural gas supply in the Commonwealth. See, Investigation into the Natural Gas Supply Market; Report on Stakeholders’ Working Group (SEARCH); Action Plan for Increasing Effective Competition in Pennsylvania’s Retail Natural Gas Supply Services Market, Docket No. I-00040103F0002 (Final Order and Action Plan Entered on September 11, 2008) (SEARCH Order). The SEARCH Order identified three areas that the Commission believed were appropriate for commencing rulemakings to adopt regulations consistent with the goal of nurturing a robust retail market for natural gas. Those three areas are: 1) NGDC issues, 2) NGS issues and 3) business practice issues. See SEARCH Order at 7. The current Rulemaking Order addresses the first of those three areas--NGDCs and their relation to the retail supply market. As such, the Rulemaking Order addresses five issues relating to NGDCs and their relation to the retail supply market: 1) Reformulation of the Price to Compare, 2) Purchase of Receivables, 3) Mandatory Capacity Assignment, 4) NGDC Costs of Competition Related Activities, and 5) Regulatory Assessments. Specifically, the Commission proposes to add

several sections to Chapter 62 (entitled "Natural Gas Supplier Choice") of Title 52 of its regulations.

The Commission initiated this rulemaking based on its conclusion that "effective competition" did not exist in the Pennsylvania retail natural gas market. Rulemaking Order at 2. See also, *Report to the General Assembly on Pennsylvania's Retail Natural Gas Supply Market* issued October 2005. After convening a stakeholder group, the Commission concluded that there were a number of steps which it could take to help promote the development of retail competition. As an initial matter, the OCA would urge great caution in proceeding to initiate efforts to remove perceived barriers to competition, particularly efforts that will come at the expense of rate stability for customers; at the expense of appropriate ratemaking principles; and at the expense of necessary consumer protections. While the OCA acknowledges that retail choice in the natural gas industry has been slow to develop, the worst result would be to take a path that is designed to encourage greater customer switching by either increasing the price or degrading the reliability of the natural gas service that is currently provided to the vast majority of residential customers by their regulated natural gas distribution companies. Based on the OCA's review of the proposed regulations, the Commission's approach could result in increased prices to consumers and a degradation of essential consumer protections.

The intent of the Natural Gas Choice Act was to provide benefits to consumers by introducing greater competitive choice to Pennsylvania. The Act provided small natural gas users with greater direct access to the competitive wholesale natural gas market, which was already available to large gas consumers, but at the same time continued the protection of regulation for those customers who wished to stay with their incumbent supplier. Even customers who do not shop though, still receive the benefit of wholesale natural gas competition

as reflected in the least cost gas purchasing practices of their distribution companies. This is a critical point in that customers already receive the benefit of wholesale competition. To the extent that a retail marketer is able to provide lower prices or other benefits, such as longer term fixed price contracts, customers in at least a few Pennsylvania service territories have switched suppliers.

While there has been some retail natural gas choice by residential customers, the vast majority of residential customers continue to purchase their commodity from their natural gas distribution company (NGDC). In Pennsylvania, based on the OCA Shopping Statistics from July, 2009, approximately 190,000, or about 7% of Pennsylvania residential natural gas customers, nearly all in Western Pennsylvania, purchase their natural gas from competitive, unregulated suppliers. The remaining 93% of residential customers are still buying their gas from their regulated natural gas distribution companies. It should come as no surprise that customers have not switched in great numbers. The NGDCs' purchasing practices are scrutinized by the Commission and are statutorily required to be least cost. The NGDC receives no profit or markup on their gas purchases. If the NGDCs have been doing their job – that is, by following a least cost gas policy under which wholesale gas costs are flowed through to customers without profit or mark up – customers have little incentive to switch to an alternative supplier. The unregulated marketers, operating in the same wholesale natural gas markets as the NGDCs, may not be able to offer service that provides significant, if any, benefits to customers that would make the customer choose to switch.

This is not a reason, however, to change the rules to make shopping more desirable by making NGDC supplier of last resort service more expensive or volatile. As succinctly stated by Vice Chairman Christy in his Statement accompanying this Rulemaking: “I

question whether it is sound public policy to make SOLR service volatile or “ugly” simply to encourage fixed price offers from competitive natural gas suppliers.” Natural Gas Distribution Companies and the Promotion of Competitive Markets, Docket No. L-2008-2069114 (March 26, 2009 Statement of Vice Chairman Tyrone J. Christy).

As the Commission considers these proposed regulations, the OCA is particularly concerned with proposed regulations that will make supplier of last resort service volatile and confusing, that will degrade essential consumer protections, or that will increase costs to consumers. The OCA’s comments will particularly focus on issues regarding the reformulation of the price to compare and the purchase of receivables programs. The OCA submits that the reformulation of the price to compare proposed in these regulations is both illegal and unsound. The proposed regulations will only serve to make the Price to Compare more volatile and confusing to customers, and will likely lead to the subsidization of shopping customers by non-shopping customers. The OCA makes several modifications to Proposed Section 62.223 on the Price to Compare to ensure that a reasonable and appropriate Price to Compare is established. As to the regulations regarding Purchase of Receivables (POR), the OCA submits that while the proposal includes many important elements of a properly designed POR program, critical consumer protections are missing from the Commission’s proposed regulations. The OCA includes proposed modifications to Proposed Section 62.224 to ensure appropriate consumer protections are included in the POR program design. The OCA also takes issue with various cost recovery components of the Commission’s proposed regulations, recommending that Proposed Sections 62.226 and 62.227 be eliminated in their entirety.

Through these Comments, the OCA will provide its position on the Commission’s proposed regulations. In Appendix A, the OCA attaches a redline version of the proposed

regulations showing how the regulations should be modified in accordance with the OCA's position.

II. COMMENTS BY INDIVIDUAL SECTION

A. Section 62.223: Price to Compare (PTC)

1. Introduction

In Section 62.223, the Commission proposes a number of significant modifications to both distribution base rates and purchased gas cost rates to create a Price to Compare (PTC) that customers can use when reviewing competitive offers from natural gas suppliers (NGSs). Under the Commission's proposal, natural gas procurement costs that are included in an NGDC's distribution base rates would be removed from the distribution rates and placed in a surcharge that is to be added to the purchased gas cost (PGC) rate to create a Price to Compare. The surcharge is referred to as the Gas Procurement Charge (GPC). A credit in an equal amount to the GPC, referred to as the Gas Procurement Reduction Rate (GPRR), is also to be applied to reduce the distribution base rates until the next distribution base rate proceeding when this adjustment is to be permanently reflected in distribution rates. The Commission also proposes that the PTC adjust on a monthly basis rather than on a quarterly basis. The purpose of the monthly adjustment according to the Commission is to reduce the lag in recognizing changing gas costs to customers. Rulemaking Order at 3.

The Commission's proposal to reformulate the price to compare is fundamentally flawed in several respects. The most critical problems with the Commission's proposal include the use of a monthly adjustment to the PTC, particularly without adhering to the statutory requirement that an NGDC with a monthly adjustment must also offer an annual fixed rate to its customers (66 Pa. C.S. § 1307(f)(1)(ii)); the inclusion of all procurement costs, rather than just

avoidable procurement costs, in a reconcilable surcharge that results in non-shopping customers subsidizing shopping customers; and the use of the Section 1307(f) proceeding to consider significant issues related to the GPC, the GPRR, and the net gas procurement adjustment. Each of these flaws with the Commission's approach will be discussed below.

The Commission's proposed regulations must be significantly modified to serve as an appropriate Price to Compare. Moreover, the OCA would note that the changes to the Price to Compare proposed by the Commission do not get to the heart of the problem for consumers attempting to choose an alternative natural gas supplier. As discussed below, Vice Chairman Christy identified the key concern and provided a proposal to attempt to address the issue. The OCA will discuss this proposal in Section II.A.5.

2. The Commission's Monthly Price to Compare Is Illegal. The Price to Compare Should Adjust On No More Than A Quarterly Basis (Proposed Sections 62.223(h) and (i)).

The Commission proposes to have the Price to Compare adjust on a monthly basis so as to remain more current with wholesale market prices. Proposed Sections 62.223(h) and (i). As part of this proposal, the Commission states that it will suspend and waive the requirement in 52 Pa. Code §53.64(i)(5) for the purchased gas cost rate (PGC) to be adjusted quarterly. Rulemaking Order at 5. The OCA submits that Proposed Sections 62.223(h) and (i) should not be adopted as they are unlawful as drafted. Even if these sections were lawful, the OCA submits that the Commission should not adopt volatile, monthly changes to the PTC. Rather, the Commission should retain the quarterly adjustment procedure for the PGC and the Price to Compare. The quarterly adjustment still allows the Price to Compare to remain sufficiently current and will result in less volatility for consumers in the rates that they pay.

As an initial matter, the OCA submits that the Commission's proposal for a monthly adjustment to the PTC rate, which is largely based on the PGC rate, is legally flawed as drafted. In enacting the Natural Gas Choice Act, the General Assembly specifically addressed the issue of monthly adjustments to the PGC rates. The General Assembly required that if an NGDC performed monthly adjustments, then it must *also* offer to its customers a fixed-rate option which recovers natural gas costs over a 12-month period, subject to annual reconciliation. Section 1307(f)(1)(ii) in relevant part provides:

In the event that the natural gas distribution company adjusts rates more frequently than quarterly, it shall also offer retail gas customers a fixed-rate option which recovers natural gas costs over a 12-month period, subject to annual reconciliation under paragraph (5). The commission shall, within 60 days of the effective date of this subparagraph, promulgate rules or regulations governing such adjustments and fixed-rate option, but the commission shall not prohibit such adjustments or fixed-rate option.

66 Pa.C.S. § 1307(f)(1)(ii). The Commission's proposal here, limited to only the provision of a monthly price, does not comport with these statutory requirements.

The General Assembly's interest in providing fixed rates for customers raises another fundamental concern with the Commission's approach. While the Commission intends through monthly pricing to keep the PTC current to market prices to assist in creating choice, the creation of a volatile and changing rate may, in fact, deter customers from making a choice. A volatile and changing rate makes it far more difficult for a customer to evaluate offers presented by NGSS. Volatile rates, particularly rates that dramatically increase in winter heating months, can also lead to unexpectedly large and unaffordable monthly bills for customers. The OCA would also note that there is no evidence that charging an NGDC customer a monthly rate will benefit the competitive natural gas market in any way. In the OCA's view, it is unsound public

policy to establish volatile and confusing rates that will simply drive customers to switch out of frustration.

Vice Chairman Christy, in his statement accompanying this proposed rulemaking, also raised this concern:

I am inclined to disagree with the proposed requirement to implement monthly NGDC pricing as I question whether it is sound public policy to make SOLR service volatile or “ugly” simply to encourage fixed price offers from competitive natural gas suppliers. I believe that the existing quarterly adjustment process represents a fair compromise between annual and monthly adjustments and should be retained. This allows natural gas consumers to have some period of stability in their gas costs.

Natural Gas Distribution Companies and the Promotion of Competitive Markets, Docket No. L-2008-2069114 (March 26, 2009 Statement of Vice Chairman Tyrone J. Christy)

In the OCA’s view, it was not the intent of the General Assembly to make the NGDC service volatile, confusing, or expensive; nor is it sound public policy to introduce such volatility. In fact, the General Assembly was quite clear that any movement to a monthly adjusting price required that customers must also have the option of a stable, regulated annual fixed rate option provided by the NGDC. The Commission’s proposed regulations do not adhere to the fundamental principles established by the General Assembly.

The OCA submits that the monthly adjustment of the Price to Compare must be eliminated in the regulations. The use of a quarterly adjustment mechanism as is current practice allows the Price to Compare to remain sufficiently current and up to date with changing wholesale natural gas prices. A move to monthly adjustments without the provision of an annual fixed rate option by an NGDC is in contravention of the Public Utility Code and is unsound public policy. The OCA submits that Section 62.223(h) and 62.223(i) must be modified to

provide for quarterly adjustments to the GPC and the PGC. The OCA provides the necessary modifications in Appendix A.

3. The Commission's Proposal To Move All Procurement Related Costs To A Bypassable, Reconcilable Surcharge Is Improper. (Proposed Sections 62.223(a), (b)).

In Proposed Sections 62.223(a) and (b), the Commission proposes to establish a Gas Procurement Charge (GPC) which reflects the effect of natural gas procurement costs removed from an NGDC's distribution rates and provides for the recovery of those costs through a bypassable, reconcilable surcharge. The GPC includes the procurement related costs removed from distribution rates and is to be added to the purchased gas cost rate to form the Price to Compare (PTC). As part of the PTC, the GPC will be a bypassable charge that is reconciled and adjusted annually to actual expenses incurred and actual collections received. The OCA submits that the proposal to create a PTC that includes all procurement related costs that are included in distribution rates suffers from two key flaws. First, if the Commission intends the GPC component containing the procurement costs to be a bypassable, reconcilable surcharge, then only the *avoidable*, incremental costs associated with procurement activity should be included in the surcharge mechanism. It is only avoidable costs of procurement that are "bypassed" or not incurred when a customer shops. The second flaw is that, whether the GPC contains only avoided costs or the total cost of procurement activity, allowing the GPC to reconcile to actual incurred expense improperly treats these expenses as single issue ratemaking. Procurement expenses are not volatile, large expenses or expenses that are out of the control of the utility. Procurement expenses do not warrant the special ratemaking treatment provided in the proposed regulations.

The Commission proposal to include all procurement related costs in a reconcilable surcharge mechanism will result in non-shopping customers subsidizing the Company's entire procurement function that exists to benefit all customers. The NGDC retains the supplier of last resort obligation whether there are 50,000 customers or 500,000 customers on its system. The supplier of last resort function exists for all customers, shopping and non-shopping. Customers shop for alternative supply with the understanding that if their supplier fails to deliver or goes out of business, the NGDC will meet all of their needs as the supplier of last resort. It is critical to note that when a customer shops, the NGDC does not avoid many of these procurement costs nor does the NGDC avoid the responsibility to serve the customers. It is not at all clear that if a company has 500,000 customers and 50,000 of those customers shop, that the procurement costs go down by 10%. The procurement costs and obligations continue and may decline only slightly, if at all, when some customers shop.

Arguably, the NGDC may avoid some of its procurement costs as customers shop for alternative supply. But, it is only these *avoidable* procurement costs that would be appropriate for inclusion in a bypassable Price to Compare. To include more than these avoidable procurement costs in a bypassable surcharge requires non-shopping customers to support and subsidize the essential procurement function and the responsibility of the NGDC that exists for the benefit of all customers. Vice Chairman Christy raised this point in his Statement accompanying the Proposed Rulemaking:

Also, if these costs are not avoidable and are included in the Price to Compare, then they may not be recovered by the NGDCs, potentially resulting in stranded costs. Under this scenario, consumers of the NGDCs who choose not to shop will be paying higher costs to support those customers who do choose to shop.

Natural Gas Distribution Companies and the Promotion of Competitive Markets, Docket No. L-2008-2069114 (March 26, 2009 Statement of Vice Chairman Tyrone J. Christy). The OCA submits that attempting to achieve customer switching in a manner that results in higher costs to certain customers to subsidize essential functions is improper. Just as non-shopping customers pay for consumer choice education – even if they never shop – so too should shopping customers pay for the unavoidable costs of the SOLR function.

The second problem with the Commission's proposal relates to the single-issue reconciliation of the procurement costs to the actual procurement expense incurred by the NGDC. This fundamental problem exists whether avoidable costs or all costs are included in the GPC. If the GPC is intended to reflect an item of base rate expense, then it is improper single issue ratemaking to allow such an expense item to be reconciled through a surcharge to actual expenses. This is particularly the case when such expense is not volatile, large or outside of the control of the utility. Clearly, the procurement expenses for NGDCs do not meet the necessary criteria for special ratemaking treatment. These procurement costs are routine business expenses that NGDCs have incurred for decades. Most NGDCs purchasing departments are well-established, have little volatility in cost, and are within the control of the NGDC. Treating these costs as a single item of expense different from all other base rate expense items cannot be justified.

The OCA submits, however, that there is a means to achieve the Commission's intent without the use of a reconcilable surcharge mechanism. The OCA recommends that the GPC include the *avoidable* procurement costs of the NGDC and be structured as a bypassable surcharge under a Section 1308(a) type mechanism that is not reconcilable to actual costs incurred or to actual collections. By including only the avoidable cost, the bypassable structure

is appropriate since only bypassable, or avoidable, costs are included in the surcharge. By making the surcharge non-reconcilable, the procurement costs are treated the same as recovery of such costs in base rates. If, for example, avoidable procurement costs of \$5 million were removed from distribution rates, the GPC would be developed to provide the NGDC with the opportunity to recover \$5 million annually until its next base rate case and the GPRR would be designed to credit distribution rates for the \$5 million. In a given year the NGDC may spend more or less than the \$5 million and it may collect more or less than the \$5 million. This is, though, the same treatment that these costs now receive in base rates.

Given the complications introduced by the Commission's proposal, the OCA recommends that, rather than proceed with the GPC as proposed by the Commission, each EDC should be instructed to identify the avoidable procurement costs in its next distribution base rate case and unbundle those costs from its distribution rates. The avoidable procurement costs should then be recovered through a bypassable, non-reconcilable GPC as set forth by the OCA. The OCA includes modifications to Proposed Section 62.223 to implement this approach.

4. The Use of the Section 1307(f) Process For the Adjustments Contemplated By Section 62.223 Is Inadequate.

In Section 62.223(a), (b), and (c), the proposed regulations appear to contemplate that much of the adjustment and reconciliation of the GPC and net gas procurement adjustment (NGPA) will occur during the Section 1307(f) proceedings. By statute, these proceedings have a limited time frame for completion and the schedules are often quite short for the parties to conduct discovery and prepare testimony on the critical issues of least cost gas procurement. If the Commission pursues a GPC and NGPA that contain base rate expense items and the reconciliation of estimated expenses to actual expenses, a detailed review of expense categories,

labor charges and the like will be needed in each Section 1307(f) proceeding to ensure that the rates are just and reasonable. The Section 1307(f) process is already constrained and does not lend itself to this type of examination.

In the Rulemaking Order, the Commission suggests that at least initially, the cases be docketed separately but consolidated for litigation purposes. The OCA submits that this does not remedy the problem of the constrained time frame in the Section 1307(f) case. The Section 1307(f) schedule must proceed due to the statutory time frame. It is unlikely that bifurcating testimony would be efficient or an acceptable means to proceed to the ALJ who might be required to issue Recommended Decisions on all issues at the same time.

If the Commission intends to have a reconcilable GPC, the Section 1307(f) proceedings as currently scheduled and conducted will not provide an adequate forum to address the issues regarding these procurement related costs.

5. Alternatives to Improve Information To Customers To Assist In Making A Choice Such As Presented By Vice Chairman Christy Should Be Considered.

Vice Chairman Christy identified a fundamental problem for customers attempting to make a choice of an alternative supplier in his Statement accompanying the Proposed Rulemaking Order. Vice Chairman Christy stated:

However, I have an overriding concern regarding the entire Price to Compare concept, whether it will be adjusted monthly or quarterly. Today, when natural gas customers decide to switch to an alternative supplier, many of these customers have no idea if the offered price will continue to be more attractive than the NGDC's Price to Compare. Simply providing the currently effective Price to Compare does not allow consumers to make informed decisions when considering offers from competitive suppliers. More information is necessary, especially if natural gas customers are exposed to NGS proposals which require a long term commitment. Consumers need to be provided projected natural gas price forecasts to make informed, educated choices. I request that

commenters address whether the Commission should develop a monthly projection of natural gas prices for the ensuing twelve months based upon the best available market information. This information could be posted on our website and the Commission could require each NGDC to provide this information to its customers on a regular basis. Without this type of information being readily available, consumers will be unaware if the choice they are making today will continue to be the right choice two, four or six months down the road.

Natural gas consumers need to be informed as much as possible in order to make reasoned decisions if the competitive gas market is to succeed. In my opinion, the development of gas price forecasts will help reduce the number of cases where marketers take advantage of uninformed consumers with price offers that in reality cost consumers more than if they simply not had shopped. These gas price forecasts are readily available and should be made available to all natural gas customers.

Natural Gas Distribution Companies and the Promotion of Competitive Markets, Docket No.

L-2008-2069114 (March 26, 2009 Statement of Vice Chairman Tyrone J. Christy).

The Vice Chairman's Statement echoed the comments presented in testimony by the Consumer Advocate at the beginning of this investigation. In his testimony, the Consumer Advocate expressed the heart of the issue as follows:

I also believe that the relatively low numbers of Pennsylvania residential customers who have opted to take natural gas supply service from an alternative supplier is partly a reflection of how difficult it is for many residential customers to shop for natural gas supply service in a volatile, confusing marketplace. Customers must first make a determination of what they are paying for that portion of their natural gas supply service that is subject to competition, *i.e.*, the "price to compare." Even though the price to compare is generally available from the NGDC, or from other sources such as the OCA Shopping Guides, it is still no easy task for a typical residential customer to make a comparison of an NGS offer when the NGDC's price to compare changes on a quarterly basis. This is especially true when it can take up to 45 days or more for a switch to an alternative supplier to take place. In the interim, a quarterly update by the NGDC could turn what looked like a good deal into a bad deal before the term of the new contract

with the NGS even commences. Such situations lead to customer confusion and frustration with the retail choice process.

Investigation Into Competition in the Natural Gas Supply Market, Testimony of Irwin A. Popowsky of September 30, 2004, Docket I-00040103.

The difficulty in making a decision regarding an alternative supply offer for customers, and the potential for economic harm resulting from such decisions, can be seen from a review of the OCA's Shopping Guides. For example, in the OCA's Shopping Guide dated August 1, 2008, fixed price contracts were being offered by natural gas suppliers in the Columbia Gas service territory with prices ranging from \$1.04/ccf to \$1.66/ccf for a one year term. At that time, Columbia's price to compare was \$1.43/ccf. What looked like a good deal based on Columbia's price to compare at that time soon turned out to be something else. One year later, in August 2009, Columbia's price to compare had dropped to 30.5¢/ccf. The OCA recognizes that customers can also benefit by locking in a competitive NGS price when prices are low. The point is, though, that as Vice Chairman Christy pointed out, it is extremely difficult for an individual residential customer to make an informed choice when comparing a current NGDC price to a supplier offer that covers a different period of time.

It is evident from information available in other states that customers can have a difficult time making a choice of an offer that provides them with benefits from retail choice. The Illinois Citizens Utility Board (CUB) provides an analysis of plans offered by unregulated gas companies to determine if the offers have saved (or are saving) money for customers.¹ This analysis, called the "Gas Market Monitor", has been continually updated since 2003 and

¹ The Illinois Citizens Utility Board (CUB) was created by the legislature in Illinois in 1983 as a nonprofit and nonpartisan organization. Its mission is to represent the interests of residential utility customers across the state.

provides a snapshot of how several hundred plans have fared in that time.² The Gas Market Monitor was last updated on July 10, 2009. In looking at the results of the combined unregulated gas company plans between 2003 and July 10, 2009, the Gas Market Monitor indicates that 91% of the plans would have lost (or are presently losing) customers money as compared to the plans of their regulated gas companies. Further, of the 14 unregulated gas companies offering plans in Illinois during this time period, 11 of the Companies offered no plans which would have yielded savings to customers. Additionally, when analyzing the average result per unregulated gas company plan, the largest savings amount totaled \$26.02, while the largest loss amount totaled \$964.87.³

When the customer is equipped with only a short term Price to Compare as the basis for a choice, yet must consider long term contracts or other types of service, there is little basis for the customer to make an informed choice. The information provided also suggests that there is little basis to conclude that the customer will realize benefits from a choice made with such limited information.

Vice Chairman Christy offers a proposal that the Commission provide projected natural gas price forecasts to customers so that they can make more informed, educated choices. The OCA agrees that, without such information, customers face a difficult choice. Yet, forecasts of natural gas prices can be unreliable even if performed by the best forecasters. The OCA

² The Gas Monitor can be found by following this website link:
<http://www.citizensutilityboard.org/GasMarketMonitor.php>.

³ The Ohio Commission maintains an "Apples to Apples" chart on its website that provides comparisons of current offers by natural gas suppliers. On August 18, 2009, the chart indicated that of the 18 offers available to Columbia Gas of Ohio customers, only 2 were lower than the Columbia rate. In addition, a recent series of articles in the Columbia Dispatch on retail natural gas choice in Ohio found that a review of 10 years of data from the Public Utility Commission of Ohio showed that in large measure, the Columbia Gas of Ohio regulated rate has been the least expensive option most of the time. These articles can be found at:
http://www.dispatch.com/live/content/business/stories/2009/05/03/apples_sidebar.ART_ART_05-03-09_D1_T4DNJ2L.html?sid=101.

submits that another type of information that might be utilized would be the actual NYMEX futures contract prices for a specific time period, such as a 12-month strip. Such prices are based on actual market information, rather than just forecasts. While not a full solution, having such information available to customers when comparing price offers may be an improvement.

In the OCA's view, customers require clear information and presentation of the price to compare on the bill and clear information as to the term of the NGDC rate that forms the price to compare. What customers do not need is volatile supplier of last resort charges and a series of surcharges that make comparison shopping cumbersome and unwieldy.

6. Conclusion

The OCA submits that several aspects of the reformulation of the Price to Compare proposed by the Commission should be rejected. The reformulation of the price to compare does not address the key issue for consumers trying to make a choice, that is, the availability of adequate and useful information to guide their decision. Rather, the reformulation of the price to compare relies on short term, volatile pricing which will further confuse and frustrate customers and increased costs to non-shopping customers. The OCA strongly urges that the price to compare be reformulated in accordance with the recommendations contained in these comments.

B. Section 62.224: Purchase of receivables programs

In the Proposed Rulemaking Order, the Commission states that it is establishing rules for Purchase of Receivables (POR) programs based on the NGS view that such programs can promote efficiencies, reduce costs to consumers and reduce barriers to entry. Rulemaking Order at 5-6. Through the regulations, the Commission sets forth various rules for such programs. While the OCA does not object to POR programs *per se*, the OCA does object to

POR programs that fail to provide appropriate consumer protections and that increase costs that must be borne by consumers. The value of POR programs in bringing NGSs into the residential markets has not been clearly established, but the changes to billing systems and increases in uncollectible expense could be significant. The OCA submits that the implementation of POR programs should be voluntary and necessary protections must be put in place for consumers.

The OCA has filed extensive comments and briefs in several proceedings regarding the necessary elements of a POR program to protect ratepayers and adhere to the requirements of the Public Utility Code. From the OCA's review of the Commission's proposed regulations, several of these essential elements are included in the proposed recommendations. The OCA's recommended elements of a properly structured POR program, and the corresponding proposed regulation or lack of regulation, are as follows:

- The NGDC should only be permitted to purchase receivables for commodity service. The NGS must certify that the charges do not include any other products or service. **(Proposed Section 62.224(a)(2))**
- The NGDC should purchase the receivables at a reasonable discount that allows for the recovery of the initial, and on-going, incremental operating and administrative costs associated with the program. **(Proposed Section 62.224(a)(3))**
- The NGDC should purchase the receivables at a discount that allows for the recovery of the incremental NGS uncollectible expenses associated with the program. **(Not Included)**
- The NGDC should be permitted to conduct its normal collection activities for these customers, including termination of service for nonpayment pursuant to Chapter 14 of the Public Utility Code and Chapter 56 of the Commission regulations. **(Proposed Section 62.224(b)(1), (2), (3), and (4))**
- The "right" to terminate must be limited to that portion of the NGS receivables that are equal to or less than the amount the customer would have been billed for commodity service if the customer had received SOLR service from the NGDC during the non-payment period. In other words, the amount due stated on any termination notice issued by the NGDC must be no higher than the amount that would have been due to the NGDC for SOLR service. **(Not Included)**

- With regard to a customer's right to reconnection of service: if terminated for nonpayment, the customer may be reconnected upon paying the lesser of (a) the sum of unpaid distribution charges (plus any applicable reconnection fees or deposits) and the amount billed for NGS commodity service (or a payment arrangement required by applicable law); or (b) the sum of the unpaid distribution charges (plus any applicable reconnection fees or deposits) and the amount the customer would have been billed for commodity service if the customer had received default or POLR supply from the EDC during the non-payment period (or a payment arrangement required by applicable law). **(Not Included)**
- As a condition of the program, the NGS is required to agree not to reject a new customer based on credit-related issues. As a result, the NGS is not permitted to seek a separate security deposit. **(Not Included)**
- The NGDC is not permitted to recover retroactively from distribution ratepayers any difference between the discounts applied to NGS receivables and uncollected amounts resulting from the purchase of these receivables. **(Proposed Section 62.224(a)(9) allows for such recovery rather than prohibits such recovery)**
- The NGDC must agree to inform all customers affected by this policy change by separate bill insert that specifically describes this change in policy for termination of service. **(Proposed Section 62.224(b)(5))**
- The enrollment letter issued by the NGDC must be changed to inform customers of this change in policy at the time of selection of the NGS. **(Proposed Section 62.224(b)(6))**

These parameters are included in the POR program implemented by Pa.P.U.C. v. Duquesne Light Co., Docket No. R-00061346 (Order entered December 1, 2006) and as can be seen, have been captured, in part, in the Commission's proposed regulations.

The OCA submits, however, that the proposed regulations fail to include essential consumer protections enumerated above that must accompany any POR program implemented in Pennsylvania. In addition, the regulations include provisions that could result in an increase in costs to consumers from the implementation of such programs. The OCA also questions the Commission's direction provided in the Rulemaking Order that an NGDC purchase the receivables of an NGS that is using dual billing, *i.e.*, that the NGDC purchase receivables

associated with a bill sent by the NGS to the customer. Rulemaking Order at 6. Such a proposal turns the NGDC into a collection agent for bills that it does not render and may never even see. The OCA discusses these missing elements below and proposes modifications to the proposed regulation in Appendix A to incorporate these necessary protections.

1. Essential Consumer Protections Re: Termination and Reconnection

Of key concern to the OCA is allowing the NGDC to terminate essential utility service for failing to pay unregulated charges from an NGS, especially unregulated charges that exceed the level of the regulated supplier of last resort charges. The Public Utility Code and its accompanying regulations are clear that termination of an essential service, such as electric or gas service should only occur if a customer does not pay Commission-approved rates that have been found to be just and reasonable. See 66 Pa. C.S. §§ 1301, 1406; 52 Pa. Code Chapter 56.

Section 1301 of the Public Utility Code sets forth the fundamental principle as follows:

Every rate made, demanded, or received by any public utility, or by any two of more public utilities jointly, shall be just and reasonable, and in conformity with the regulations or orders of the commission.

66 Pa. C.S. § 1301. Clearly, unregulated NGS charges have not been found by the Commission to be just and reasonable.

The Pennsylvania General Assembly sought to continue the consumer protections outlined in the Public Utility Code and Chapter 56 of the Commission's regulations in the introduction of competition in the electric and natural gas industries. Specifically, the statute states:

- (a) Quality. – A natural gas distribution company shall be responsible for customer service functions consistent with the orders and regulations of the commission, including, but not limited to, meter reading, installation, testing and maintenance and emergency response for all customers, and complaint

resolution and collections related to the service provided by the natural gas distribution company. Customer service and consumer protections and policies for retail gas customers, shall, at a minimum, be maintained at the same level of quality under retail competition as in existence on the effective date of this chapter.

66 Pa. C.S. § 2206(a) (emphasis added). Prior to retail choice, customers could not be terminated based on charges that had not been found by the Commission to be just and reasonable.

The OCA would also note that Chapter 22 was clear that NGDCs were not to be required to pay NGSs when they have not been paid by the customer. Section 2205(c)(5) states:

No natural gas distribution company shall be required to forward payment to entities providing services to customers and on whose behalf the natural gas distribution company is billing those customers before the natural gas distribution company has received payment for those services from customers.

66 Pa.C.S. §2205(c)(5).⁴

Chapter 22 of the Public Utility Code, though, specifically contemplated the situation where a customer may not fully pay its unregulated NGS charges and thus the NGS does not receive full payment under the contract. The General Assembly provided the remedy for such an occurrence as the cancellation of the NGS contract pursuant to the terms of the contract. Upon cancellation, the customer has a *right* to receive service from the supplier of last resort (SOLR). Section 2208(e) describes the NGS's ability to cancel its contract with a customer without affecting that customer's ability to receive service from the SOLR:

⁴ In an earlier proceeding, the Commission distinguished this section arguing that it did not apply when the NGDC purchases the accounts receivable and becomes the new creditor of the customer account. Establishment of Interim Guidelines for Purchase of Receivables Programs, Docket No. M-2008-2068982 and I-0004103F002 (Order entered December 19, 2008 at 4-5). This distinction, however, may not be as clear as the Commission appears to view it. Section 2205(c)(5) protects not only the NGDC from forwarding payments that it does not receive but also serves to protect ratepayers from supporting obligations owed to unregulated companies. Even in a voluntary POR, the impact of this section must be fully accounted for in the program. As discussed below, the OCA submits that the Commission's proposed regulations have not accounted for the Section 2205(c)(5) mandates.

(e) FORM OF REGULATION OF NATURAL GAS SUPPLIERS... Subject to the provisions of section 2207 (relating to obligation to serve), nothing in this section shall preclude a natural gas supplier, upon appropriate and reasonable notice to the retail gas customer, supplier of last resort and the natural gas distribution company, from canceling its contract with any customer for legal cause, subject to the customer's right to have continued service from the supplier of last resort.

66 Pa. C.S. § 2208(e) (emphasis added).

The proposed regulations, however, allow a customer to be terminated by an NGDC from essential supplier of last resort natural gas service for failure to pay unregulated NGS charges. The OCA submits that such a proposal is particularly inappropriate when the unregulated NGS charges are higher than the regulated NGDC charges that have been found to be just and reasonable for the applicable period. The OCA would note that its concern here is not hypothetical. A review of the information from Illinois, Ohio and Pennsylvania cited in Section II.A.5 above shows that NGSs have, for substantial periods of time, charged higher gas prices than those in effect for the regulated supply service. Under a program that allows termination for non-payment of NGS receivables, customers could have been terminated for charges that were higher than regulated charges without the ability to return to the regulated supplier of last resort. The loss of essential natural gas service can pose a significant health and safety risk to the customer and the public. Allowing termination for higher priced service could unreasonably place the health, welfare and safety of customers and the public at risk.

In the OCA's view, a POR program could be developed that does not compromise essential consumer protections that were to be maintained in a retail choice environment. 66 Pa.C.S. § 2206(a). In fact, such a program is in existence in Duquesne Light Company's service territory and it is in existence in New York—the POR program that the NGSs often point to as the example. It is critical to understand that the New York program does not result in

termination based solely on amounts that exceed the regulated supply service offering of its NGDCs and, if termination occurs for other amounts, it requires reconnection when the customer pays an amount equal to the regulated supply service charge. Uncollected amounts above the regulated charges are borne by the NGS. In other words, the NGDC does not remit payment to the NGS for uncollected amounts above the regulated charges that it does not collect, a process known as “partial recourse.”

The New York program is based on the New York statute entitled the Home Energy Fair Practices Act (HEPFA) and the Billing Services Agreement (BSA) executed by the NGS and the NGDC. The OCA is attaching two Billing Services Agreements for the Commission’s review as Appendix B and Appendix C. HEPFA, in relevant part, provides as follows:

5.(d) Such suspension shall end . . . upon the receipt of payments by or on behalf of the customer to the terminating utility such that the amount paid by such customer to the terminating utility plus the amount previously paid the terminating utility plus any other charges paid to the utility providing distribution service during the period when such customer’s arrears accrued is equal to or greater than the amount such customer would have paid if the entire utility service had been obtained from the utility providing distribution services during such period.

HEPFA, Section 32(5)(d)(emphasis added).

The following excerpt from the Billing Services Agreement of Central Hudson Gas and Electric shows how any receivables for amounts above the regulated rate are handled in New York:

E. If any customer pays an amount that is less than the amount due for natural gas and/or electricity supply provided by [the NGS] but is sufficient to end the suspension of service to that customer pursuant to [HEPFA] 32(5)(d), [the NGS] shall deduct the difference between the payment received and the full amount owed from the next schedule payment by Central Hudson to the [NGS].

Appendix B (Central Hudson Electric and Gas BSA), p. 7, Section E. See also, Appendix C (Orange & Rockland BSA), p. 10, Section D.

As can be seen, the New York model, which has been touted by NGSs as strongly supporting the development of a retail market, contains the essential consumer protection advocated by the OCA here.

The OCA submits that the proposed regulations must be modified to include these important consumer protections. The OCA has modified Proposed Section 62.224(a)(6) to reflect the need for these critical consumer protections and has added a Proposed Section 62.224(a)(7)..

2. An NGDC Implementing A POR Should Not Be Permitted To Charge Increased Uncollectible Expense To Ratepayers.

The Commission also proposes that the higher uncollectible expense that may result from such a program be recovered from ratepayers through higher charges for uncollectible expense. Proposed Section 62.224(a)(9). While the Commission also requires sharing of any lower uncollectible expense if the rates charged by NGSs are lower, as the information provided in Section II.A.5 of these Comments shows, the offers by NGSs are often higher than the prices a customer would pay to their NGDC. In essence, the Commission makes the ratepayers the guarantors of the business risk of an NGS.

The OCA questions how the Commission can require ratepayers to bear the incremental uncollectible expense of unregulated natural gas suppliers, especially for charges that exceed the rates charged by the NGS. Chapter 22 is clear that an NGDC does not have to remit any payment to an NGS until it is received from the customer. As noted above, Section 2205(c)(5) states:

No natural gas distribution company shall be required to forward payment to entities providing services to customers and on whose behalf the natural gas distribution company is billing those customers before the natural gas distribution company has received payment for those services from customers.

66 Pa.C.S. § 2205(c)(5). While at first blush, Section 2205(c)(5) appears to protect the NGDC, Section 2205(c)(5) also provides an important protection for ratepayers. Section 2205(c)(5) protects ratepayers from having to bear the cost of uncollectible expense associated with unregulated supply charges by ensuring that the NGDC does not have to make payments to the NGS before receiving payment from the customer. If an NGDC offers a POR program, the increased uncollectible expense that it incurs should not be borne by ratepayers as that would circumvent the protection inherent in Section 2205(c)(5). This is particularly the case for increased uncollectible expense incurred between base rate cases.

The OCA recommends that Proposed Section 62.224(a)(9) be removed from the regulations and has shown this removal in Appendix A.

3. A POR Program Should Only Be Implemented For Consolidated Billing.

In its Order, the Commission states that it will not require NGSs participating in the POR program to use NGDC consolidated billing. Order at 6. The regulations are not clear on this point. The OCA submits that a POR program should only be implemented for NGSs that use consolidated billing.

The argument for a POR program is that it is more efficient for the billing agent to conduct the collection activities associated with the bill that it is providing. To require an NGDC to collect payment for bills that it does not render simply turns the NGDC into a collection agent for an NGS. The NGDC should not be required to collect payment for bills that it does not render and may not even see. Many of these accounts could be for large users who have

provided security to the NGS and been billed separately for years. The OCA submits that it is unlikely that small users will receive anything but a consolidated bill, so opening the door to a broader POR is wasteful of resources and unsound public policy. The OCA has modified Section 62.224(a)(1) to make clear that POR programs only apply to consolidated billing.

4. NGSs Participating In A POR Program Should Be Required To Accept All Customers Without Credit Check Or Additional Security Deposits.

If a POR program is to be implemented, and the risk of uncollectible expense is removed from the NGS, the OCA submits that NGSs should be obligated to accept all customers that request their service and should not require any security deposit from these customers. The POR program removes all risk of non-payment from the NGS, meaning that the NGS will have reduced costs for such things as credit screening, obtaining and monitoring security deposits, and pursuing collection activities. With these benefits, ratepayers should be provided the assurance that NGSs with valid offers will serve them. As a *quid pro quo* for such programs, the OCA submits that there must be a requirement in the regulations directing the NGS to accept customers without further security requirements or credit screening. The OCA has added subsection 62.224(a)(11) to incorporate this requirement. See, Appendix A.

5. Conclusion

As noted throughout this section, the OCA has several modifications to the Commission's proposed Section 62.224 to bring the program into conformity with the essential consumer protections required by the Public Utility Code. These modifications are set forth in Appendix A and address program design and customer care in relation to NGDC purchase of receivables programs. The OCA urges that these modifications be adopted.

C. Section 62.225: Release, assignment or transfer of capacity.

In its proposed Section 62.225, the Commission addresses an NGDC's ability to release, assign or transfer firm storage or transportation capacity to NGSs or large commercial or industrial customers on its system. The provisions of the Proposed Section 62.225 are presently included in the Public Utility Code at 66 Pa.C.S. §2204(d). The OCA has not identified any different impact on the rates of PGC customers from these provisions when compared to Section 2204(d). As such, the OCA has no objection and does not propose any modifications to Section 62.225.

D. Section 62.226: Natural gas distribution company costs of competition-related activities

In Proposed Section 62.226, the Commission proposes a mechanism for the NGDC to recover the costs incurred in connection with implementation of any changes designed to promote the development of effective competition in the retail market. Rulemaking Order at 7. The Commission proposes the use of a non-bypassable surcharge that would be paid by all customers, shopping and non-shopping, and would not be considered in the calculation of the Price to Compare. Id. The mechanism is to be established as part of an NGDC's next annual filing pursuant to 1307(f).

The OCA submits that recovery of some of these costs through a surcharge on ratepayers cannot be supported. Many of the costs associated with these initiatives are related to modifications in billing systems to provide a Price to Compare for the comparison of NGS offers or to implement the POR programs. It is the OCA's understanding of the Proposed Regulations on POR that the incremental POR-related expenses are to be recovered from the NGSs through the POR discount. As to the other billing system costs, Section 2205(c)(3) of the Public Utility

Code contemplated such costs and provided for their recovery from NGSS. Section 2205(c)(3) provides:

Incremental costs related to billing services designed, implemented and rendered by the natural gas distribution company, at its election, on behalf of a natural gas supplier or other entity may be recovered through fees charged by the natural gas distribution company to the natural gas supplier or other entity. Either party may request that the commission consider the appropriate level of the fee. ... The commission shall either permit the fee to continue as set or shall establish an alternative mechanism to permit full recovery of unrecovered just and reasonable costs from the supplier or the supplier's customers. Nothing in this section shall permit the recovery of such costs from natural gas supply service customers of the natural gas distribution company.

66 Pa.C.S. § 2205(c)(3). To the extent that the costs that an NGDC would include for recovery is a billing services cost, the OCA submits that such costs would not be recoverable from ratepayers.

Moreover, at this time, there is no indication as to whether the costs associated with implementing these changes are large and volatile, thus warranting recovery through a surcharge mechanism. The OCA would also note that ratepayers have already absorbed costs related to the transition to retail choice and consumer education costs related to retail choice. Despite these costs and efforts, and despite the fact the NGDC rates in Pennsylvania have reflected wholesale market price in their rates for decades, little retail choice has developed. It seems particularly inappropriate to require ratepayers to pay even more costs associated with untested initiatives.

The OCA recommends that Proposed Section 62.226 be removed in its entirety. The OCA agrees, however, that if any cost recovery from ratepayers is to be permitted, that costs should be recovered from all ratepayers, shopping and non-shopping, on a non-bypassable basis.

The OCA would again note, however, that the Section 1307(f) proceeding is not the appropriate proceeding for consideration of any such costs.

E. Section 62.227: Regulatory Assessments

In Section 62.227, the Commission proposes that:

As part of its next annual filing pursuant to 66 Pa. C.S. § 1307(f), a NGDC shall include a proposed tariff rider to establish a nonbypassable reconcilable surcharge filed within the requirements of 66 Pa. C.S. § 1307 designed to recover the NGDC regulatory assessment payments made pursuant to 66 Pa. C.S. § 510 (relating to assessment for regulatory expenses upon public utilities).

Proposed Section 62.227. The OCA submits that this proposed section must be deleted in its entirety. An NGDC's regulatory assessment has absolutely no bearing on natural gas competition. NGSs are exempt from paying these assessments, so it is not part of the NGS costs. IOGA v. Pennsylvania Public Utility Commission, 2002 Pa. Commw. Lexis 405. Removal of these costs from NGDC base rates to a surcharge cannot possibly impact an NGS's market activities. There is simply no basis for such a change in this rulemaking or otherwise.

Further, the OCA submits that the regulatory assessment is not a large or volatile expense that would require special ratemaking treatment. Regulatory assessments are normal, recurring operating expenses that are appropriately recovered through an NGDC's base rate revenues. There is no legal or policy justification for singling out this one minor cost item for separate surcharge treatment. Consequently, as set forth in Appendix A, the OCA submits that this entire Section should be eliminated.

III. CONCLUSION

The OCA appreciates the opportunity to comment on the Commission's proposed regulations. As set forth herein, the OCA submits that the Commission's proposed regulations are in need of substantial modifications to conform with the law, sound ratemaking principles and sound public policy. The OCA urges the Commission to adopt the modifications proposed by the OCA in these Comments.

Respectfully Submitted,



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Dated: August 25, 2009
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Natural Gas Distribution Companies :
and the Promotion of Competitive : Docket No. L-2008-2069114
Retail Markets :

APPENDIX A TO THE
COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

**OCA Proposed Changes
to
Annex A**

§ 62.221. Purpose. To foster a competitive retail marketplace for natural gas service to residential and small commercial customers, it is essential that consumers be able to compare the price of gas purchased from their incumbent NGDCs with that offered for sale by NGSs. This subchapter sets forth a number of regulatory changes which will provide a more level playing field between NGDCs and NGSs and, therefore, promote competition for natural gas supplies.

§ 62.222. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Act -- The Natural Gas Choice and Competition Act (66 Pa.C.S. §§ 2201 -- 2212).

GPC -- *Gas procurement charge* -- A mechanism by which the effect of natural gas procurement costs removed from an NGDC's base rates are recovered.

GPRR -- *Gas procurement reduction rate* -- An equal offsetting credit to the GPC, billed to all residential and small commercial customers.

NGDC -- *Natural gas distribution company* -- As defined in § 2202 of the act (relating to definitions).

NGPA -- *Net gas procurement adjustment* -- A tariff rider designed to create a rate neutral adjustment to currently existing base rates and the PGC rate to develop a reasonable PTC by shifting SOLR costs related to procurement from the base rate cost of distribution to the PTC.

NGS -- *Natural gas supplier* -- As defined in § 2202 of the act.

Natural gas supply service -- The provision of natural gas to end users as defined at 52 Pa. Code § 62.72 (relating to customer information disclosure).

PGC -- *Purchase gas cost* -- Natural gas costs which are collected, with adjustments, by NGDCs from their customers pursuant to 66 Pa. C.S. § 1307(f) (relating to recovery natural gas costs).

POR -- *Purchase of receivables* -- Program by which an NGDC purchases the accounts receivable of NGSs.

PTC -- *Price to compare* -- A line item that appears on a retail customer's monthly bill for SOLR service. The PTC is equal to the sum of all unbundled natural gas costs and natural gas procurement costs-related charges to a default service customer for that month of service.

SOLR -- Supplier of last resort -- A supplier approved by the Commission under section 2207(a) of the act (relating to obligation to serve) to provide natural gas supply services to customers:

- (i) Who contracted for natural gas that was not delivered.
- (ii) Who did not select an alternative NGS.
- (iii) Who are not eligible to obtain competitive natural gas supply.
- (iv) Who return to the supplier of last resort after having obtained competitive natural gas supply.

Small business customer -- As defined at 52 Pa. Code § 62.72.

§ 62.223. Price to compare.

- (a) A NGDC shall establish a GPC. The GPC shall be added to the cost of supply rate developed under 66 Pa. C.S. §1307(f) (relating to recovery of natural gas costs) to create a comparable PTC. ~~The GPC shall be adjusted and reconciled annually in conjunction with the 1307(f) process to become effective with new PGC rates.~~
- (b) A NGDC shall remove all its avoidable natural gas procurement costs from its base rates as part of its next filing under 66 Pa. C.S. § 1308(d) (relating to general rate increases). The avoidable expenses shall be recovered through a separate GPC surcharge. The NGDC shall include a proposed tariff rider to establish a GPC within the requirements of 66 Pa. C.S. §~~1307~~1308(a). ~~(relating to sliding scale of rates; adjustments).~~
- (c) A NGDC, in its next ~~purchased gas cost base rate~~ filing under 66 Pa. C.S. § ~~1307(f)~~1308(d), shall may submit a proposed tariff rider to establish a NGPA within the requirements of 66 Pa. C.S. §~~1307~~1308(a).
- (d) The NGPA shall be designed to create a rate neutral adjustment to currently existing base rates and the PGC rate to develop a reasonable PTC by shifting avoidable SOLR costs related to procurement from the base rate cost of distribution to the PTC.
- (e) The proposed NGPA tariff rider shall establish a GPC on a per MCF/DTH basis to be applied to customers' bills receiving SOLR service for the recovery of avoidable gas procurement costs currently recovered through base rates, and a GPRR on a per MCF/DTH basis, as an equal offsetting credit to the GPC, billed to all residential and small commercial customers.
- (f) The GPC and NGPA riders shall identify:

- (1) How the surcharge will be calculated.
- (2) Which costs will be recovered through the surcharge by:
 - (i) Customer class and cost category
 - (ii) FERC account number including the specific sub-accounts used to recover eligible procurement costs.
- (g) The NGPA rider shall remain in effect until establishment of new base rates and a PGC rider following a base rate proceeding under 66 Pa. C.S. § 1308(d).
- (h) The GPC shall ~~be adjusted monthly~~ remain in effect until rates are established in an NGDC's subsequent base rate proceeding.
- (i) The GPC shall be subject to audit.
- (j) A NGDC shall adjust its PGC ~~monthly~~ quarterly.

§ 62.224. Purchase of receivables programs.

(a) Program design.

- (1) A NGDC may purchase accounts receivable from licensed NGSs which operate on the NGDC system and ~~who wish to sell the receivables.~~ participate in NGDC consolidated billing.
- (2) A NGDC may purchase receivables associated with natural gas supply service charges and may not purchase other receivables that may be incurred by NGSs. The NGS shall certify that charges do not include receivables for any other products or services.
- (3) A NGDC may voluntarily purchase NGS accounts receivable at a discount to recover incremental costs associated with POR program development, implementation and administration.
- (4) When a NGDC chooses to purchase accounts receivable at a discount, it shall negotiate the discount rate with the NGS on its distribution system.
 - (i) It shall give fair notice to the NGSs of the time and place of negotiation.
 - (ii) It shall apply the same discount rate to all accounts receivable it purchases on its system.
 - (iii) It shall renegotiate the discount rate not less than once every 5 years.

- (5) POR programs shall include only receivables on residential and small business customer accounts.
- (6) When a NGDC purchases accounts receivable from a NGS through a Commission-approved POR program and the accounts receivable are comprised only of charges for basic natural gas supply, the NGDC may terminate service to customers for failure to pay NGS supply charges that are no higher than what the customer would have been billed for commodity service by the supplier of last resort during the non-payment period.
- ~~(7) A customer shall be reconnected upon paying the lesser of the sum of the unpaid distribution charges (plus any applicable reconnection fees or deposits) and the amount billed for NGS commodity service (or a payment arrangement required by applicable law); or (b) the sum of the unpaid distribution charges and the amount the customer would have been billed for commodity service if the customer had received supplier of last resort service during the non-payment period.~~
- (6) (8) To ensure that a NGDC's affiliated suppliers do not receive an advantage over non-affiliated suppliers, a POR program must be designed and implemented in accordance with 52 Pa. Code §§ 62.141 - § 62.142. (relating to standards of conduct).
- (7) (9) A NGDC POR program shall be included in a supplier coordination tariff, as defined by Commission rules, regulations and orders, and approved by the Commission prior to implementation.
- ~~(8) A NGDC may include the difference between its cost of the purchased receivables and the amounts it has actually collected as part of its uncollectible expense in its next base rate case when it agrees to share with its customers the losses or gains associated with POR program collections.~~
- (10) The NGDC shall track its POR program purchases and collections.
- (11) An NGS will accept all customers with no additional credit checks or security deposit.

(b) Customer care.

- (1) A NGS shall follow Commission regulations relating to customer service including Chapter 56 (relating to standards and billing standards), §§ 62.71-62.80 (relating to customer information disclosure), and § 62.114 (relating to standards of conduct and disclosure for licensees).
- (2) A NGS shall respond to customer complaints regarding rate disputes in not more than 30 days consistent with Chapter 56 § 141 (relating to dispute procedures), §

151 (relating to general rule) and Chapter 62 § 79 (relating to complaint handling process) of the Commission regulations.

- (3) A NGDC shall follow Chapter 14 of the Public Utility Code (relating to responsible utility customer protection), ~~and~~ Chapter 56 of Commission regulations and Chapter 62.224(6) when terminating service to a customer for failure to pay NGS natural gas supply charges purchased under the POR program in accordance with Chapter 62 § 62.224(6).
 - (4) Reconnection of service to NGS customers following termination must be made in accordance with provisions of Chapter 14 of the Code, ~~and~~ applicable Chapter 56 provisions and Chapter 62 § 62.224(7).
 - (5) A NGDC shall agree to inform all customers that service may be terminated for failure to pay NGS supply charges by a separate bill insert that specifically describes the policy for termination of service.
 - (6) An enrollment letter issued by a NGDC at the time of selection of the NGS shall inform customers that service may be terminated for failure to pay NGS supply charges.
- (c) ***Satisfaction of the security requirements for licensing.*** A NGS's accounts receivable may be used to satisfy in full or in part the security required for licensing as a natural gas supplier.

§ 62.225. Release, assignment or transfer of capacity.

- (a) A NGDC holding contracts for firm storage or transportation capacity, including gas supply contracts with Pennsylvania producers, or a city natural gas distribution operation, may release, assign or transfer the capacity or Pennsylvania supply, in whole or in part, associated with those contracts to licensed NGSs or large commercial or industrial customers on its system.
 - (1) A release, assignment or transfer shall be made on a nondiscriminatory basis.
 - (2) A release, assignment or transfer shall be at the applicable contract rate for capacity or Pennsylvania supply and shall be subject to applicable contractual arrangements and tariffs.
 - (3) The amount released, assigned or transferred shall be sufficient to serve the level of the customers' requirements for which the NGDC has procured the capacity determined in accordance with the NGDC's tariff or procedures approved in its restructuring proceedings.

~~§ 62.226. — Natural gas distribution company costs of competition related activities.~~

- ~~(a) As part of its next annual filing pursuant to 66 Pa. C.S. § 1307(f), a NGDC may include a proposed tariff rider to establish a nonbypassable reconcilable surcharge filed within the requirements of 66 Pa. C.S. § 1307 designed to recover the reasonable and prudently incurred costs of implementing and promoting natural gas competition within the Commonwealth.~~
- ~~(b) The surcharge shall be calculated annually and adjusted to account for past over or under collections in conjunction with the 1307(f) process to become effective with new PGC rates.~~
- ~~(c) The surcharge shall be recovered on a per unit basis on each unit of commodity which is sold or transported over its distribution system without regard to the customer class of the end user.~~
- ~~(d) Before instituting the surcharge, a NGDC shall remove the amounts attributable to promoting retail competition from its base rates. This may be done through a 66 Pa. C.S. § 1308 (relating to voluntary changes in rates) rate case filed not less than 5 years after first seeking recovery through a 66 Pa. C.S. § 1307 nonbypassable mechanism.~~
- ~~(e) Until a NGDC which seeks a nonbypassable recovery of its costs of promoting retail competition files a base rate case under 66 Pa. C.S. § 1308(d), the NGDC shall eliminate the effect of recovery of these costs in base rates though the filing of a credit to its base rates equal to the amount in base rates. This may be established through the filing of a fully allocated cost of service study and a proposed tariff rider in the NGDC's proceeding under 66 Pa. C.S. § 1307(f) to establish a revenue neutral adjustment clause to credit base rates for the costs associated with promoting retail competition that are currently reflected in base rates and to recover fully those costs through a nonbypassable reconcilable surcharge. The credit and surcharge shall be adjusted not less than annually through the 66 Pa. C.S. § 1307(f) process.~~
- ~~(f) The revenue neutral adjustment clause rider shall remain in effect until establishment of new base rates under 66 Pa. C.S. § 1308(d) which include a fully allocated cost of service study to remove these costs from base rates.~~
- ~~(g) The surcharge shall be subject to audit.~~

~~§ 62.227. — Regulatory assessments.~~

- ~~(a) As part of its next annual filing pursuant to 66 Pa. C.S. § 1307(f), a NGDC shall include a proposed tariff rider to establish a nonbypassable reconcilable surcharge filed within the requirements of 66 Pa. C.S. § 1307 designed to recover the NGDC regulatory assessment payments made pursuant to 66 Pa. C.S. § 510 (relating to assessment for regulatory expenses upon public utilities).~~

~~(b) The surcharge shall be calculated annually and shall include costs associated with regulatory assessments for the Public Utility Commission at 66 Pa. C.S. § 510, the Office of Consumer Advocate at 71 P.S. § 309.4.1 (relating to assessment upon public utilities, disposition, appropriation and disbursement of such assessments), and the Office of Small Business Advocate at 73 P.S. § 399.46 (relating to assessment upon public utilities, disposition, appropriation and disbursement of such assessments). The NGDC shall include in its annual filing:~~

~~(1) Copies of its most recent annual bills for the Commission for each assessment.~~

~~(2) Copies of adjusted bills or refunds received since its prior filing.~~

~~(3) Proof of payment of each bill.~~

~~(c) The surcharge shall be recovered on a per unit basis on each unit of commodity which is sold or transported over its distribution system without regard to the customer class of the end user.~~

~~(d) The surcharge shall be adjusted annually to account for past over- or under-collections in conjunction with the 1307(f) process to become effective with new PGC rates.~~

~~(e) Before instituting the surcharge, a NGDC shall remove the amounts attributable to the regulatory assessments from its base rates. This may be done through a 66 Pa. C.S. § 1308 rate case filed not less than 5 years after first seeking recovery through a 66 Pa. C.S. § 1307 nonbypassable mechanism.~~

~~(f) Until a NGDC which seeks a nonbypassable recovery of its regulatory assessments files a base rate case under 66 Pa. C.S. § 1308(d), the NGDC shall eliminate the effect of recovery of assessment payments in base rates through the filing of a credit to its base rates equal to the amount of assessment costs in base rates. This may be established through a fully allocated cost of service study and a proposed tariff rider in the NGDC's next proceeding under 66 Pa. C.S. § 1307(f) to establish a revenue neutral adjustment clause to credit base rates for the assessment costs reflected in rates and to recover fully those assessment costs through a nonbypassable reconcilable surcharge. The credit and surcharge shall be adjusted not less than annually through the 66 Pa. C.S. § 1307(f) process.~~

~~(g) The revenue neutral adjustment clause rider shall remain in effect until establishment of new base rates under 66 Pa. C.S. § 1308(d) which include a fully allocated cost of service study to remove these costs from base rates.~~

~~(h) The surcharge shall be subject to audit.~~

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Natural Gas Distribution Companies :
and the Promotion of Competitive : Docket No. L-2008-2069114
Retail Markets :

APPENDIX B TO THE
COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

CENTRAL HUDSON GAS & ELECTRIC CORP.
CONSOLIDATED BILL
BILLING SERVICES AGREEMENT

This Agreement sets forth the terms and conditions under which Central Hudson will provide rate ready billing service to and purchase accounts receivable from energy services companies for the energy services companies' charges to retail customers for natural gas and/or electricity supply.

This Agreement shall be effective as of _____, 200__, (the "Effective Date") by and between Central Hudson Gas & Electric Corporation ("Central Hudson"), having its principal place of business at 284 South Avenue, Poughkeepsie N.Y. 12601, and _____, a _____ corporation having its principal place of business at _____, (the "ESCO"). Central Hudson and the ESCO are individually referred to herein as a "Party" and collectively as the "Parties".

WITNESSETH

Whereas, pursuant to rules, regulations and orders of the New York State Public Service Commission (the "PSC"), Central Hudson has implemented a retail access program by which Central Hudson's natural gas and electric retail customers may purchase natural gas and/or electricity supply from a supplier other than Central Hudson; and

Whereas, any customer purchasing natural gas and/or electricity supply from a supplier other than Central Hudson must purchase delivery service from Central Hudson for that commodity; and

Whereas, the ESCO is engaged in the business of selling natural gas and/or electricity supply to retail customers of Central Hudson pursuant to Central Hudson's retail access program; and

Whereas, the ESCO and Central Hudson desire to establish the terms and conditions respecting the billing of the ESCO's natural gas and/or electricity supply customers for such supply and for the delivery service charges of Central Hudson in a consolidated manner by Central Hudson ("Consolidated Billing").

NOW, THEREFORE, in consideration of the mutual representations, warranties and agreements contained herein, and intending to be legally bound hereby Central Hudson and the ESCO agree as follows:

I. TERM

This Agreement shall commence as of the Effective Date, and shall remain in effect until terminated in accordance with the terms contained herein.

II. REPRESENTATION, WARRANTY AND COVENANT OF THE ESCO

The ESCO hereby represents and warrants to Central Hudson that the ESCO possesses all legal authority necessary to engage in the business of selling natural gas and/or electricity supply to the retail delivery service customers of Central Hudson, including but not limited to any and all authorizations and approvals required by the PSC, and the ESCO hereby covenants that the ESCO shall promptly notify Central Hudson in the event such authority of the ESCO is terminated, limited or diminished for whatever reason.

III. GENERAL CONDITIONS

1. Central Hudson shall have no obligations under this Agreement unless the ESCO demonstrates to Central Hudson that the ESCO has the capability to exchange with Central Hudson, via the Electronic Data Interchange ("EDI") protocols established by the PSC, customer billing and other information necessary to carry out the transactions contemplated by this Agreement.
2. The ESCO shall make Consolidated Billing services available to all of the ESCO's natural gas and electricity supply customers who use Central Hudson's delivery services for such supply.
3. Central Hudson and the ESCO hereby agree that the terms and conditions set forth in this Agreement shall be subject to and be supplemented by all rules, regulations and orders of the PSC, as the same may be modified from time to time, governing the transactions contemplated hereby including but not limited to the following: (1) Order Establishing Uniform Retail Access Billing and Payment Processing Practices issued and effective May 18, 2001 in Case 99-M-0631; (2) Order Resolving Petitions for Rehearing issued and effective March 14, 2002 in Case 99-M-0631; (3) Order Relating to Implementation of Chapter 686 of the Laws of 2003 and Pro-ration of Consolidated Bills issued and effective June 20, 2003 in Case 99-M-0631; and (4) Order on Petitions for Rehearing and Clarification issued and effective July 15, 2004 in Case 98-M-1343. In the event of any conflict between the terms and conditions of this Agreement and any rule, regulation or order of the PSC governing the transactions contemplated hereby, such rule, regulation or order of the PSC shall govern.

III. ESCO RESPONSIBILITIES - GENERAL

1. The ESCO shall identify by name and Central Hudson account number each ESCO customer that is to receive a Consolidated Bill from Central Hudson and provide this information to Central Hudson no later than ten (10) calendar days prior to the customer's next scheduled meter read date. The ESCO shall use EDI transaction 814-Change and/or Enroll for this purpose.
2. The ESCO shall provide to Central Hudson, no less than four (4) business days prior to their effective date, any rates or prices required to calculate the ESCO's charges to a customer previously identified to Central Hudson in accordance with item 1, above. Business days are any weekdays other than those observed as holidays by Central Hudson.
 - A. Price information shall be provided in a non-EDI format.

B. Price information shall be provided as a single rate, in \$/CCF or \$/kWh and must include any applicable revenue taxes. Not more than two (2) rates shall be applicable to the ESCO's provision of gas supply service and not more than two (2) rates shall be applicable to the ESCO's provision of electricity supply service to any single customer during that customer's billing period. Central Hudson shall prorate the billing based on the effective dates of the rates provided by the ESCO. Central Hudson shall not be obligated to provide interval pricing under this Agreement. Appendix A attached hereto provides the format to be used by the ESCO to advise Central Hudson of price changes and new rate classes.

C. The ESCO shall be responsible for the payment and reporting of any taxes billed to the ESCO's customers under this Agreement.

3. The ESCO shall have no right to any payments from customers for charges billed by Central Hudson under this Agreement. The ESCO shall send to Central Hudson, within one business day of receipt, any and all payments by customers that are received by the ESCO in payment of charges that have been billed by Central Hudson on a Consolidated Bill. The ESCO hereby appoints Central Hudson as the ESCO's true and lawful attorney to endorse on behalf of the ESCO any and all instruments payable to the ESCO or to the ESCO's order intended as payment for charges billed to customers in accordance with this Agreement and hereby authorizes Central Hudson to collect the value of any such endorsed instruments for the benefit of Central Hudson.

IV. CENTRAL HUDSON RESPONSIBILITIES - GENERAL

1. Central Hudson shall render a Consolidated Bill showing Central Hudson's delivery service charges and natural gas and/or electricity supply charges separately from the ESCO's charges for natural gas and/or electricity supply service.

A. Central Hudson shall perform cycled meter readings in accordance with its usual practices as the same may be changed by Central Hudson from time to time. The Consolidated Bill shall be issued in accordance with the established meter reading cycle for the applicable account. Bills will be rendered when the customer's meter reading is determined by Central Hudson to be acceptable for billing purposes.

B. Central Hudson shall calculate the ESCO's natural gas and electricity supply charges using the customer's metered usage and the rate provided by the ESCO under Section III (2) above. In the event an actual meter reading cannot be obtained, Central Hudson shall estimate the customer's consumption for billing purposes in accordance with applicable PSC regulations.

C. For each Consolidated Bill issued by Central Hudson, except bills issued as a result of Central Hudson's application of its cancellation and rebilling procedures, the ESCO shall pay Central Hudson a Billing Services Fee in the amount set forth in the Central Hudson's gas and electric tariffs.

2. Central Hudson shall provide electronically to the ESCO, meter readings (customer usage) and billing information in the format prescribed for EDI transactions 867 and 810 within two (2) business days after rendering a Consolidated Bill to a customer.
3. Central Hudson shall collect and process customer payments in accordance with this Agreement and the applicable rules, regulations and orders of the PSC.
4. Central Hudson shall, at the request of the ESCO, include on the Consolidated Bills a Bill Message of up to 480 characters subject to the following conditions;
 - A. The Bill Message is received by Central Hudson not later than fifteen (15) business days prior to the commencement of the billing cycle.
 - B. The Bill Message is provided in the form shown in Appendix B hereof.
 - C. Central Hudson shall have the right to refuse to include a Bill Message in the event Central Hudson has a reasonable objection to the content of the requested Bill Message. Central Hudson shall promptly notify the ESCO of any such objection.
 - D. The same Bill Message shall be printed on all bills rendered by Central Hudson containing the ESCO's charges. No personalized or customer-specific Bill Messages shall be permitted.
 - E. The Bill Message shall remain on the Consolidated Bills until the ESCO requests that it be changed or discontinued provided the ESCO makes such request not less than fifteen (15) business days prior to the start of a subsequent billing cycle.

V. BILL INSERTS

Central Hudson shall include a bill insert in the Consolidated Bill at the request of the ESCO subject to the following conditions:

1. The ESCO shall pay Central Hudson a fee per insert in accordance with Central Hudson's billing vendor contract for such service. No charge shall be made for inserts required by law or regulation, however, the ESCO shall reimburse Central Hudson for any incremental postage cost incurred by Central Hudson resulting from the inclusion of such inserts in the Consolidated Bill.
2. Central Hudson shall not be responsible for bill insert costs incurred by the ESCO including, but not limited to, costs incurred prior to obtaining Central Hudson's approval of proposed bill inserts.
3. The ESCO shall submit samples of bill inserts for Central Hudson's approval to Director of Retail Choice Programs, Central Hudson Gas & Electric Corporation, 284 South Avenue, Poughkeepsie, New York 12601.
4. Central Hudson may refuse to include a bill insert in the event Central Hudson has a reasonable objection to the content of the requested bill insert. Central Hudson shall promptly notify the ESCO of any such objection.
5. Approved bill inserts must be delivered, freight pre-paid, by the ESCO or on its behalf to Central Hudson's billing vendor, no less than five (5) business days prior to the date the ESCO wishes the inserting to begin.

6. The ESCO shall be responsible for compliance, at its sole cost and expense, with all formatting requirements of Central Hudson and Central Hudson's billing vendor.

7. The ESCO shall specify the time period during which the bill insert is to be used and shall be solely responsible for providing a sufficient supply of the bill inserts for the time period selected. Central Hudson shall have no responsibility to make copies of bill inserts or otherwise arrange to cover a supply shortage.

8. Central Hudson shall have no obligation to store bill inserts for more than a reasonable time in advance of the time at which the ESCO has requested that the bill inserts be included with a Consolidated Bill.

9. Central Hudson shall have no obligation to return or store any supply of bill inserts beyond the time during which the bill insert is included in the Consolidated Bills and shall have the right to dispose of any such excess supply in any manner and at any time in the exercise of Central Hudson's sole judgment.

VI. SPECIAL CIRCUMSTANCES AND SITUATIONS

1. Amounts due from customers to the ESCO arising from service provided by the ESCO prior to the initiation of Consolidated Billing shall not be included in the Consolidated Bills rendered under this Agreement.

2. Amounts paid by customers in connection with Central Hudson's operation of its program known as "The Good Neighbor Fund" (the "GNF") shall be retained by Central Hudson and applied to the GNF. Such amounts shall not be considered payments to the ESCO or to Central Hudson for service. Amounts paid by customers in excess of the total amount due for ESCO and Central Hudson services shall, up to the then current per payment limit on customer contributions to the GNF, be considered GNF contributions unless the customer's account is designated "No GNF" in Central Hudson's records.

3. Charges on Consolidated Bills related to the ESCO's activities shall be limited to the ESCO's charges for natural gas and/or electricity supply. Central Hudson shall have no obligation to include in the Consolidated Bill any charges of the ESCO except the charge for the commodity of natural gas and/or electricity. Charges of the ESCO that shall be excluded from Consolidated Bills include, but are not limited to, charges for deposits and non-commodity services such as energy efficiency advice and installations.

4. The ESCO is strictly prohibited hereby from adding unauthorized charges to customer bills ("cramming").

5. Central Hudson shall have no obligation to provide any separate statements regarding the taxes applicable to the ESCO's charges.

6. Central Hudson shall have the right to cancel Consolidated Bills that it has issued and to re-bill or back bill customers based on actual meter readings or estimated usage and demand under Central Hudson's billing procedures.

7. The format of the Consolidated Bill shall comply with the relevant rules, regulations and orders of the PSC as the same may be modified from time to time.

8. In the event of any suspension or termination of this Agreement, (a) the ESCO shall remain liable to pay Central Hudson for all services rendered by Central Hudson prior to the time of suspension or termination of this Agreement, and (b)

the ESCO shall remain liable to reimburse Central Hudson for adjustments in customer payments due to Central Hudson's cancellation and rebilling of the ESCO's customer accounts originally billed during the period this Agreement was in effect.

9. The ESCO shall be liable for and shall timely pay any and all taxes arising from the ESCO's business operations, and shall indemnify, and hold harmless Central Hudson from and against any and all liabilities, claims, demands, judgments, causes of action, costs, expenses, fines, penalties and fees (including reasonable attorneys and expert witness fees) arising or alleged to have arisen, whether directly or indirectly, as a result of the ESCO's failure to timely pay any tax obligation arising from the ESCO's business operations. The failure by the ESCO to fulfill any obligation of the ESCO pursuant to this paragraph shall specifically be deemed a breach of a material term or condition of this Agreement.

10. Central Hudson shall have the right to impose late payment fees and other fees, such as returned check fees, in accordance with its filed tariffs. Payments for such fees shall be retained by Central Hudson.

11. If accounts included in a summary bill are enrolled for Consolidated Billing service, Central Hudson shall have the right to remove such accounts from the summary bill and return them to their normal billing cycle.

12. The ESCO shall pay to Central Hudson a processing fee in the amount of \$5.00 for each account re-billed by Central Hudson at the request of the ESCO ("Re-Billing Services Fee"). Written notice by the ESCO to Central Hudson for re-billing must be received within twenty (20) calendar days of the original billing date. The written notice must include a list by Central Hudson's customer account number of the accounts to be re-billed and shall be used as the basis for the Re-Billing Services Fee. Any differences in customer charges resulting from such re-billing will be settled in the next semi-monthly payment by Central Hudson.

13. Any changes to a customer's status with respect to Consolidated Billing must be provided to Central Hudson by the ESCO. Central Hudson shall have no obligation to initiate or terminate Consolidated Billing at the request of a customer.

14. In the event of non-compliance with any term or condition of this Agreement by the ESCO, in addition to all other remedies available at law, in equity and as provided in this Agreement, Central Hudson shall have the right, upon written notice to the ESCO, to refuse to provide Consolidated Billing with respect to any additional customers of the ESCO under this Agreement should the ESCO fail to cure the ESCO's non-compliance within fifteen (15) calendar days of the mailing of such notice by Central Hudson.

VII. PURCHASE OF ESCO RECEIVABLES

1. The ESCO shall sell to Central Hudson, and Central Hudson shall purchase from the ESCO, the amounts included in Consolidated Bills related to the ESCO's provision of natural gas and/or electricity supply to customers, discounted by an amount specified in Central Hudson's electric and gas tariffs (the "ESCO Receivables")

A. Except as otherwise provided for herein, Central Hudson's purchase of the ESCO Receivables shall be without recourse to the ESCO for amounts unpaid by customers.

B. Payment to the ESCO for the ESCO Receivables shall be made semi-monthly by Central Hudson, not later than five (5) business days after the completion of the fifth and fifteenth billing batches as so identified according to Central Hudson's customary billing practices.

C. Each payment to the ESCO for the ESCO Receivables shall be made, at Central Hudson's option, either by electronic funds transfer to an account specified by the ESCO or by check drawn on a local bank.

D. With respect to any and all amounts owing by the ESCO to Central Hudson arising out of the transactions contemplated by this Agreement, including but not limited to fees and charges provided for herein, Central Hudson shall have the option to either satisfy such payment obligation of the ESCO by offset against the amount payable by Central Hudson to the ESCO for the ESCO Receivables or to render an invoice to the ESCO for such amounts. The ESCO shall pay any such invoice within twenty (20) calendar days of the date thereof.

E. If any customer pays an amount that is less than the amount due for natural gas and/or electricity supply provided by the ESCO but is sufficient to end the suspension of service to that customer pursuant to Public Service Law Section 32(5)(d), Central Hudson shall deduct the difference between the payment received and the full amount owed from the next scheduled payment by Central Hudson to the ESCO. Central Hudson shall process an EDI 248 transaction in connection therewith.

F. If the ESCO disputes any amount remitted by Central Hudson to the ESCO with respect to the ESCO Receivables, the ESCO shall notify Central Hudson in writing, including a detailed explanation of the basis for the ESCO's dispute, no later than thirty (30) days after the original payment by Central Hudson was made.

G. If Central Hudson receives a notice from a customer disputing charges for natural gas and/or electricity supply provided by the ESCO, Central Hudson shall notify the ESCO of such dispute and suspend collection of the disputed amount. If such dispute is not resolved by the ESCO within thirty (30) days of such notice to the ESCO, Central Hudson shall deduct the disputed amount from a subsequent payment to the ESCO for the ESCO Receivables. Central Hudson shall credit the ESCO for any subsequent full or partial payments by the customer of the disputed amount. The ESCO shall promptly notify Central Hudson of the terms and conditions of any resolution of the customer's dispute.

2. The ESCO hereby represents and warrants to Central Hudson that the amounts included in Consolidated Bills related to the ESCO's provision of natural gas and/or electricity supply to customers are not subject to and will remain free from any and all claims adverse to Central Hudson, liens, encumbrances, security interests, restrictions, transfers, pledges, sales and assignments and that the ESCO shall, without further consideration and at the ESCO's expense, use all

commercially reasonable efforts to take or cause to be taken, any action, including the execution and delivery of instruments and documents, reasonably requested by Central Hudson to establish a first priority perfected security interest in favor of Central Hudson in the amounts included in Consolidated Bills related to the ESCO's provision of natural gas and/or electricity supply to customers. The failure by the ESCO to fulfill any obligation of the ESCO pursuant to this paragraph shall specifically be deemed a breach of a material term or condition of this Agreement.

VIII. TERMINATION

1. The ESCO shall have the right to terminate this Agreement only upon sixty (60) days written notice to Central Hudson.
2. Central Hudson shall have the right to immediately terminate this Agreement (1) upon the breach by the ESCO of any material term or condition hereof, (2) for any reason provided for in any rule, regulation or order of the PSC, (3) if Central Hudson ceases to offer the services provided to the ESCO hereunder to all suppliers of natural gas and/or electricity supply to Central Hudson's delivery service customers, or (4) if Central Hudson is no longer obligated, for whatever reason, by the rules, regulations or orders of the PSC to provide the services described herein and contemplated hereby . .
3. This Agreement shall terminate upon the issuance of any order or decree directing same by any governmental entity of competent authority.

IX. LIMITATION OF LIABILITY

Central Hudson's total cumulative liability to ESCO for all claims of any kind, whether based upon contract, tort (including negligence and strict liability) or otherwise for any loss, injury, or damage connected with, or resulting from, this Agreement or the services rendered hereunder shall not exceed the sum of the Billing Services Fees billed to and paid by ESCO, applicable only to the most recently issued bill on all customer accounts. In no event shall Central Hudson be liable to ESCO for any and all special, indirect, incidental, penal, punitive or consequential damages of any kind including but not limited to lost profits or revenues and expenses involving cost of capital. ESCO shall indemnify and hold harmless Central Hudson, its directors, officers, and employees from and against any and all actions, charges, complaints, proceedings, claims, damages, penalties, costs, expenses and fines resulting, whether directly or indirectly, from billing errors caused by untimely or inaccurate information provided to Central Hudson by the ESCO.

X. FORCE MAJEURE

Any delay in or failure of performance of any of the duties or obligations of either Party hereto, other than the payment of monies, shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay was caused by or is the result of any occurrence beyond the reasonable control of a Party that causes such party to be delayed in or prevented from performing or carrying out any of its obligations under this Agreement and which, by the exercise of due

diligence, that Party is unable to prevent, avoid, mitigate or overcome, including any of the following: any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, ice, explosion, order, failure of an outside service provider, regulation or restriction imposed by governmental, military or lawfully established civilian authorities provided that a Force Majeure event shall not include lack of finances or change in market conditions. The Party so affected shall give prompt written notice to the other Party of such cause and shall take whatever reasonable steps are necessary to relieve the affect of such cause as rapidly as practicable.

XI. APPLICABILITY

All of the terms of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. The ESCO shall not assign or transfer any of the ESCO's rights, interests or obligations under this Agreement without the prior written consent of Central Hudson (which consent shall not be unreasonably, withheld, delayed or conditioned). The ESCO shall promptly notify Central Hudson of any change in its legal status, name, state of incorporation or other formation, registration with the PSC, or other fact material to its business as an energy services company.

XII. CENTRAL HUDSON'S RATES, SERVICE, POLICIES AND PROCEDURES

Central Hudson shall have the right to at any time propose and file with the PSC such changes to the rates, terms and conditions of service set forth in its rate schedules and operating procedures as Central Hudson, in its sole judgment, determines are desirable, including changes that may affect the services provided by Central Hudson hereunder. Upon approval or other favorable disposition by the PSC, such amendment or modification will become effective with respect to service hereunder on the date specified by the PSC or as provided in Central Hudson's operating procedures. Central Hudson shall also have the right to adopt changes to its security requirements and the ESCO shall forthwith comply with those changes.

XIII. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all previous understandings between the parties with respect to the subject matter hereof. The terms and conditions of this Agreement shall not be deemed nor construed to be an amendment to or modification of any term or condition of any other agreement between the Parties; it being expressly agreed that the terms and conditions of any and all other agreements between the Parties shall not be affected by this Agreement. No modification or waiver of all or any part of this Agreement will be valid unless in writing and signed by the Parties. Any waiver will be effective only for the particular event for which it is issued and will not be deemed a waiver with respect to any subsequent performance, default or matter.

XIV. CONFIDENTIAL INFORMATION

The ESCO agrees that it shall strictly maintain the confidentiality of all information and data disclosed by Central Hudson hereunder or in the performance of this Agreement by Central Hudson, which is designated by the Central Hudson as confidential information. The ESCO agrees that any and all information relating to Central Hudson's business, operations, customers, employees and any assets is confidential information and shall not be disclosed by the ESCO to any third party. The ESCO agrees that the terms and conditions of this Agreement in its entirety shall be considered confidential information and subject to the terms and conditions of this paragraph.

XV. NO THIRD PARTY BENEFICIARIES

This Agreement is for the benefit of the Parties hereto and nothing in this Agreement is intended to confer upon any other person or entity, except the Parties, any rights or remedies hereunder nor is this Agreement intended to create any third party beneficiary rights in any person or entity.

XVI. CHOICE OF LAW, JURISDICTION AND VENUE

This Agreement shall be interpreted and enforced in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable principles of conflicts of law). Each Party agrees that any legal action or proceeding arising under or relating to this Agreement shall be brought in a court of the State of New York. Each Party hereby agrees to consent to the personal jurisdiction of the courts of the State of New York in any legal action or proceeding concerning this Agreement or the transactions contemplated hereby. Each Party agrees to accept service of process by mail in any such action or proceeding in accordance with applicable New York State law. The method of serving process, however, shall not be limited by this Agreement to service by mail.

XVII. MODIFICATION

This Agreement and any provision thereof shall not be superseded, modified, amended, waived, or otherwise changed except by in a writing signed by the duly authorized representatives of both Parties.

XVIII. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

IXX. SEVERABILITY

If any provision, term or condition of this Agreement shall be determined by an administrative agency or court of competent jurisdiction to be invalid or unenforceable, the Parties shall use reasonable commercial efforts to negotiate in good faith to make such equitable adjustments to this Agreement as may be appropriate so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner but the remainder of this Agreement shall continue in full force and effect.

XX. WAIVER

No failure on the part of any Party to exercise, nor any delay by any Party in exercising, any right hereunder shall operate as waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

XXI. HEADINGS

The paragraph headings contained in this Agreement are provided solely for the reference convenience of the Parties and shall not in any way affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered by their duly authorized representatives..

Central Hudson Gas & Electric
Corporation
By: _____
Name: _____
Title: _____
Date: _____

[Name of ESCO]
By: _____
Name: _____
Title: _____
Date: _____



General Information

(Adobe Acrobat Reader 7 or Higher Required)

● **Map of Central Hudson's Service Territory** 2,600 square miles in the Mid-Hudson Valley, stretching from 25 miles north of New York City to 10 miles South of Albany. Central Hudson serves parts of Albany, Columbia, Dutchess, Greene, Orange, Putnam, Sullivan, and Ulster Counties.

● **Electricity Portfolio Performance Reports** Quarterly reports submitted in compliance with Case 06-M-1017.

● **Electric Retail Access Operating Procedures Manual** for Customer Choice Retail Access Program. (220KB PDF File)

● **Class Specific Load Profiles** 14 unique profiles assigned to Electric Customers.

● **Meter Reading Template** for retail access meter readings.

● **Calendar of Gas Transportation Schedule**

● **Gas Transportation Operating Procedures Manual** (248KB PDF File)

● **2008 Meter Reading Schedule**

● **2009 Meter Reading Schedule**

● **SC 9 Balancing Selection**

● **Billing Service Agreement (BSA)**

BSA - Appendix C

BSA - Appendix D

If you do not have the Adobe Acrobat Reader to view PDF files, click on the Get Acrobat Reader icon to download it now.



Return to **Information Center for Retail Suppliers**

Return to [Central Hudson Home Page](#)

Electric or Gas Retail Suppliers wishing additional information about Central Hudson's Retail Access Programs please contact us at 1-845-486-5857 or via e-mail retailaccess@cenhud.com

Central Hudson Gas & Electric Corporation

Electric Retail Access Operating Procedures Manual

Revised April 10, 2009

Tariff and Operating Procedure References:
P.S.C. No. 15 - Electricity

For delivery service under the Retail Access Program, the Company agrees to deliver to the Retail Supplier's customers, energy, less losses, received at an agreed upon receipt point in the State of New York (Central Hudson tie point), subject to the charges specified in the appropriate Service Classification.

Retail Suppliers and Direct Customers must purchase installed capacity subject to the requirements established by the NYISO.

M. LOAD BALANCING AND SETTLEMENT

Central Hudson will be responsible for determining the aggregated hourly usage for each Retail Supplier's customers taking service under the Central Hudson Retail Access Program.

The Company or a Meter Data Service Provider will perform meter readings according to established reading cycles and current practices. When meter readings are available for all of a Retail Supplier's customers' for the time period to be settled, the Company will calculate the aggregated hourly usage for the Retail Supplier. For customers whose meters supply hourly data, the Company will extract and use the actual hourly consumption data. For customers whose meters do not supply hourly data, the Company will compute hourly consumption from periodic meter readings through application of customer-segmented load profiles. The hourly usage so determined will be aggregated for each Retail Supplier and provided to the NYISO, which will use this information to calculate and bill energy imbalances.

N. CUSTOMER BILLING OPTIONS

Customers who are participating in the Company's Retail Access program may choose to receive separate bills from Central Hudson and their Retail Supplier or may choose to receive a single-bill, which contains the charges from both the Company and their Retail Supplier. The Company's billing options will be in accordance with the consolidated billing and payment processing practices as specified in the

Commission's Order in Case 99-M-0631, Appendix A, issued and effective May 18, 2001 and as may be modified from time to time by the Commission, and as described in the Company's Consolidated Bill-Billing Services Agreement. A copy of the Billing Services Agreement may be obtained at Central Hudson's website or by contacting Central Hudson's Director of Customer Choice.

Customers who choose consolidated billing services will receive a billing credit from the Company. The Company will charge Retail Suppliers a billing charge for each consolidated bill issued by the Company. The billing services credits and charges are as follows:

Billing Services Charge \$0.68 per bill

Billing Services Credit \$0.68 per bill

If there is one Retail Supplier for electric service and another Retail Supplier for gas service the Company will charge each Retail Supplier one-half of the applicable charge for consolidated billing services.

O. BILLING OF RETAIL SUPPLIER

1. Invoices

The Company will issue invoices to Retail Suppliers/Direct Customers monthly for extraordinary customer data (besides the information provided without charge), special meter reading charges, adjustments to prior invoices and other retail tariff services provided at the request of the Retail Suppliers/Direct Customers. The Company will bill customers for services requested directly by them unless their Retail Supplier requests those charges. The provisions described below relate only to retail access billing and collection services and charges to be paid by Retail Suppliers/Direct Customers. If the Retail Supplier has entered into a Billing Services Agreement with the Company, charges may also be deducted from amounts due to the Retail Supplier resulting from customer billings.

2. Invoice Payments

a. Terms of Payment

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Natural Gas Distribution Companies :
and the Promotion of Competitive : Docket No. L-2008-2069114
Retail Markets :

APPENDIX C TO THE
COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

ORANGE AND ROCKLAND UTILITIES, INC.

CONSOLIDATED BILLING

AND

ASSIGNMENT AGREEMENT

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**CONSOLIDATED BILLING AND ASSIGNMENT AGREEMENT
COMMON TERMS AND CONDITIONS**

This Consolidated Billing and Assignment Agreement ("Agreement") is made and entered into this _____ day of _____, 200__, by and between Orange and Rockland Utilities, Inc., a New York corporation having its principal office at One Blue Hill Plaza, Pearl River, New York 10965 ("O&R"), and _____, a _____ corporation, having an office at _____ ("ESCO"), both O&R and the ESCO hereinafter sometimes referred to collectively as the "Parties" or individually as a "Party".

WITNESSETH:

WHEREAS, O&R has implemented retail access programs, as described in its Schedule for Electricity Service, P.S.C. No. 2 – Electricity and Schedule for Natural Gas Service, P.S.C. No. 4 – Gas, (together "Tariff") and in its Retail Access Implementation Plan and Operating Procedures and Gas Transportation

Operating Procedures (collectively, "Operating Procedures"), under which O&R's retail customers may purchase natural gas and/or electricity from an energy services company or gas marketer ("energy services company");

WHEREAS, ESCO has been deemed approved by the New York State Department of Public Service ("NYDPS") to act as an energy services company and has met any requirements established by O&R to be an energy services company authorized to sell natural gas and/or electricity to O&R's retail customers under the retail access programs;

WHEREAS, ESCO has requested that O&R render a consolidated single monthly bill to its retail access customers for both the ESCO's commodity supply and O&R's delivery services; and

WHEREAS, O&R agrees to provide such consolidated billing service on behalf of the ESCO subject to the terms and conditions of this Agreement, the ESCO Operating Agreement, the Operating Procedures and the Tariff; and

WHEREAS, ESCO desires that O&R accept assignment of all amounts billed by O&R on ESCO's behalf and make payments to ESCO relating to such assignment.

NOW, THEREFORE, in consideration of the premises and mutual promises set forth below, O&R and ESCO, intending to be legally bound, hereby covenant, promise and agree as follows:

ARTICLE I

TARIFF AND OPERATING PROCEDURES AND TERM OF AGREEMENT

1.1 Incorporation By Reference

The terms and conditions of the Tariff, Operating Agreements, Operating Procedures, and the New York Public Service Commission's ("NYPSC") Uniform Business Practices ("UBPs"), as applicable, are fully incorporated in this Agreement except as is otherwise expressly provided herein.

1.2 Term

This Agreement shall commence on the date set forth above (“Effective Date”) and will remain in effect until terminated (i) in accordance with its terms, (ii) by an order of the NYPSC, or (iii) if the ESCO Operating Agreement(s) between the Parties is (are) terminated.

ARTICLE II

CONSOLIDATED BILLING ARRANGEMENTS

2.1 Assignment of ESCO’s Accounts Receivables

ESCO hereby assigns to O&R its rights in all amounts due from all of its retail access, single-billed customers (“Customers”) on consolidated bills issued by O&R on and after the Effective Date of this Agreement and any amounts due from its Customers on consolidated bills issued previously under any prior consolidated billing services agreement with O&R (“Customers’ Accounts”).

ESCO hereby grants O&R a security interest in said Customers’ Accounts and

authorizes O&R to file, on behalf of ESCO, all financing statements and other documents necessary to perfect said security interest.

2.2 ESCO Obligations

A. ESCO will provide O&R a single rate (\$/kWh and/or \$/ccf) to be charged each Customer for each unit of electricity and/or gas supply consumed by that Customer. Rates may differ from Customer to Customer. The rate provided by ESCO will be used by O&R for billing purposes for the next bill issued to the Customer and every bill thereafter until changed by ESCO no later than 4 business days prior to the Customer's next scheduled meter read date.

B. ESCO will submit the monthly billing information to O&R in an Electronic Data Interchange ("EDI") format prescribed by O&R identifying the name, O&R account number and unit rate(s) for each Customer.

C. ESCO will satisfy all other obligations set forth in the Operating Procedures.

D. ESCO will furnish O&R with an affidavit from an officer of ESCO representing that ESCO has notified its current non-residential Customers and will notify its future non-residential Customers that O&R is permitted to disconnect the non-residential Customer for nonpayment of the ESCO charges. ESCO will indemnify O&R for any cost, expense, or penalty if any Customer's service is discontinued for nonpayment and the Customer establishes that it did not receive such notification.

E. ESCO hereby assigns to O&R its rights, subject to all applicable laws and regulations, to require deposits from all of its Customers on and after the effective date of this Agreement.

2.3 Representations and Warranties

ESCO makes the following representations and warranties to O&R:

A. The information provided in the O&R Application Form for Qualified Seller Service under Gas Service Classification No. 11 and/or the Electric

ESCO Operating Agreement is correct as of the Effective Date, and ESCO will promptly inform O&R of any changes in such information.

B. ESCO is in compliance with all of the requirements set forth in Appendix B of NYPSC Opinion 97-5 and such requirements as have been adopted in and/or superseded by the UBPs and will continue to be in compliance with such requirements and all subsequently adopted regulatory requirements throughout the term of this Agreement.

C. No material changes in the data contained in ESCO's initial eligibility application filing with the NYDPS have occurred or will occur, except such changes as have been or will be reported to the NYDPS.

D. Throughout the term of this Agreement, ESCO will adhere to its own policies and procedures as set forth in its retail access application form filed with the NYDPS, as updated from time to time.

E. ESCO will not, either directly or indirectly, engage in, participate in or encourage or assist others to engage or participate in the practice of

transferring customers without authorization, commonly referred to as "slamming.

F. No third party has any right, title or interest to any Customers' Accounts (as defined in Section 2.1 above) assigned by ESCO hereunder to O&R, and ESCO undertakes that it shall not grant any interest or permit any third party to assert a claim of right, title or interest on those Accounts or any new Customers' Accounts opened during the term of this Agreement.

2.4 O&R Billing Service

A. O&R will render ESCO's Customers a consolidated bill for both ESCO's commodity supply (electricity and/or natural gas) and O&R's energy delivery services on a monthly basis. O&R will calculate the Customer's ESCO commodity charges for billing purposes by multiplying the Customer's monthly consumption by the rate provided by ESCO pursuant to Section 2.2 (A) of this Agreement. O&R will not bill for any ESCO charges other than the commodity supply charges for volumes consumed by Customers.

B. The consolidated bill will display the amount and price of the commodity sold by ESCO and the ESCO's identity. O&R's charges will be reflected in the manner prescribed in the Tariff.

C. O&R will perform cycled meter readings in accordance with its business practices. In the event an actual meter reading cannot be obtained, O&R shall estimate the Customer's consumption for billing purposes in accordance with applicable PSC regulations. The consolidated bill will be issued in accordance with the established meter reading cycles for the applicable account. If the meter read date for a particular Customer changes, O&R will notify ESCO of same.

D. O&R will receive and process Customers' payments. O&R will perform collection activities on Customers' accounts in conformity with the Home Energy Fair Practices Act ("HEFPA") with respect to residential customers and in accordance with Part 13 of 16 NYCRR with respect to non-residential customers. For non-residential Customers, O&R shall disconnect its delivery service and the ESCO commodity service where: (i) the Customer fails

to make full payment of all amounts due on the consolidated billing; (ii) O&R purchased the ESCO receivable; and (iii) the ESCO furnishes O&R an affidavit as described in Section 2.2 (D) herein.

Any Customer payment or portion thereof that is billed by O&R under this Agreement and received by ESCO from Customer shall be held by ESCO in trust as the property of O&R and shall be immediately remitted in full to O&R within five (5) business days without any deduction or set-off by ESCO.

E. Within five (5) business days, O&R will notify ESCO if (i) O&R terminates a Customer for non-payment; or (ii) Customer voluntarily closes its O&R account.

F. O&R will treat information received from ESCO pursuant to this Agreement as confidential and will not share the information with any third party. In the event that disclosure of confidential information is required by a governmental body, court or applicable law, O&R may disclose such information to the extent so required, but shall promptly notify ESCO prior to disclosure and shall cooperate (consistent with its legal obligations) with ESCO's efforts to

obtain protective orders or similar restraints with respect to such disclosure at the expense of ESCO. Notwithstanding the foregoing, retail access data, including migration data, shall be reported to the Commission consistent with procedures outlined by the New York Department of Public Service.

G. Beginning in the second (2nd) calendar month following commencement of consolidated billing under this Agreement, O&R will remit payment to ESCO (reflecting the Purchase Discount as described below), via wire transfer to a bank (or other mutually agreed to depository or payee) designated in writing by ESCO, on the 20th calendar day of the month (or the next following business day if the 20th falls on a Saturday, Sunday, or public holiday) of all undisputed ESCO charges billed to Customers in the previous calendar month. An amount is deemed disputed if the Customer contacts O&R questioning the validity of ESCO's unit commodity rate or ESCO's service to the Customer. A Customer's claim of either inability to pay or inaccurate meter reading shall not constitute a dispute for purposes of O&R's obligation to pay ESCO amounts billed for its commodity supply.

In consideration for O&R agreeing to the payment arrangement described in the preceding paragraph, commencing on November 1, 2006, O&R will apply a discount rate (the "Purchase Discount") to the face value of the amounts billed on behalf of ESCO for gas supply. The Purchase Discount, which includes an uncollectibles component and a risk factor, will be set at 0.416 percent as of November 1, 2006. The uncollectibles component of the Purchase Discount will be reset annually effective November 1 based on O&R's actual uncollectibles experience applicable to all gas and electric "purchase of receivable"-eligible customers for the thirty-six month period ended the previous June 30. The risk factor also will be reset annually effective November 1 and shall be equal to 20% of the uncollectible rate. O&R will notify ESCOs as soon as practicable after the new rate is calculated.

O&R will notify ESCO within 24 hours of its receipt of notification by a Customer of the latter's refusal to pay the ESCO charges billed due to an unresolved dispute between ESCO and the Customer. O&R will pay ESCO for resolved disputed ESCO charges in accordance with this Section 2.4(G).

H. Subject to the NYPSC UBPs, O&R may, at its option, reject requests for or discontinue consolidated billing for any Customers' Accounts that are at least 38 calendar days past due, unless the past due amount is subject to a Deferred Payment Agreement and the customer is fulfilling its Deferred Payment Agreement obligations.

I. O&R will provide a budget billing option to Customers for the combined ESCO and O&R charges using O&R's budget billing protocol for Full-Service Customers.

J. O&R's remittance to ESCO in accordance with Section 2.4 (G) shall be net of all amounts owed to O&R by the ESCO for retail access program services and/or other charges in accordance with the applicable provisions of the Tariff or the ESCO Operating Agreements, such as:

- Special meter reading fees
- Customer energy history fees
- Account separation fees
- Profile information fees
- Consolidated Billing Service fees
- Gas imbalance charges
- Capacity Release charges

- Winter Bundled Sales Service charges
- Other PSC-approved Tariff fees and charges
- Delta amounts not paid by a customer to restore Service pursuant to Public Service Law § 32(5)(d).

K. O&R will provide to the ESCO customer bill information including the commodity usage, the billed amount, and tax information pursuant to Section 2.4 (L) below, for each of the ESCO's Customers with the monthly remittance identified in Section 2.4 (G). O&R shall use EDI standards for transmittal of customer information and may transmit data, in addition to the minimum information required, via EDI or by means of an alternative system.

ESCO shall notify O&R in writing of any error(s) alleged to be made by O&R in the billed amount for ESCO's customers, including all such errors related to the rate provided by ESCO pursuant to Section 2.2 (A) of this Agreement, within thirty (30) days of the posting of such statement on O&R's electronic bulletin board. In the event ESCO fails to notify O&R in writing of any such error(s) alleged to be made by O&R within thirty (30) days of receiving such billed information from O&R, ESCO waives any claims to loss, injury or

damage resulting from such error and O&R shall be relieved of all liability resulting from such error, whether based in contract or tort (including negligence or strict liability). O&R has no responsibilities under this Agreement for errors made by ESCO in the rate information provided to O&R pursuant to Section 2.2(A) herein.

L. O&R is not responsible for the paying or remitting to the applicable taxing authorities, on behalf of ESCO, any federal, state or local taxes as a result of this Agreement. Based on information regarding each Customer's tax status supplied by ESCO, O&R will calculate and identify the sales and use tax associated with ESCO's charges and will provide such calculations to ESCO at the same time as the remittance payment is made pursuant to Section 2.4 (G) above. The remittance payment shall reflect the Purchase Discount provided for in Section 2.4(G). ESCO shall be liable for and pay all such taxes and shall indemnify, defend, and hold harmless O&R from and against any and all liability for such taxes, and any interest and penalties thereon.

M. ESCO, to the fullest extent allowed by law, shall indemnify, defend and hold harmless and shall reimburse O&R, from and against any and all damages, losses, liabilities, obligations judgments, orders, writs, injunctions, decrees, fines, penalties, taxes, costs, suits, charges, expenses (including attorneys' fees), claims, investigations, proceedings, or causes of action (collectively "Damages") which may at any time be imposed on, incurred by, or asserted against O&R by third parties (including Customers) that are directly or indirectly caused by, arise out of or under, associated with, incident to or in connection with ESCO's performance under this Agreement, including, but not limited to any of the following: (i) ESCO's acts or omissions regarding Customer Accounts or billing rates; (ii) any claim, demand, cause of action, litigation, suit, proceeding, hearing or investigation (collectively "Claims") by any person for payments based upon any agreement or understanding alleged to have been made by such person, directly or indirectly, with ESCO or any of its representatives, in connection with any of the transactions contemplated by this Agreement; (iii) any Claims with respect to the action or inaction of ESCO or its

representatives, which is contrary to the requirements of this Agreement; (iv) any inaccuracy in or other breach of any representation or warranty made by ESCO in this Agreement; (v) any failure by ESCO to perform or comply, in whole or in part, with any covenant, agreement or provision of this Agreement; and (vi) any costs and expenses, including reasonable fees and attorney's fees associated with all Damages incurred by O&R in connection with any Claims subject to indemnification rights as provided herein.

2.5 Consolidated Billing Service Fee

A. O&R will charge ESCO a Consolidated Billing Service fee per bill rendered on behalf of ESCO in accordance with Section 2.5 (B) below. As of the Effective Date of this Agreement, the fee is \$0.62 per bill, plus any applicable government surcharges. The fee will be adjusted, as necessary, to comply with any changes approved by the NYPSC.

B. ESCO's payment of the Consolidated Billing Service fee will be effectuated by a recoument from remittances due ESCO as provided in Section 2.4 (J).

C. In the event of termination of this Agreement, O&R shall have the right to retain all Customer payments associated with bills rendered to ESCO's Customers (pursuant to Section 2.4 above) prior to the date of termination, and O&R shall make the appropriate remittance payments to ESCO associated with those bills in accordance with Section 2.4 (G) and (J). To the extent that amounts owed to O&R by the ESCO for retail access program services and/or other charges in accordance with the applicable provisions of the Tariff or the ESCO Operating Agreements exceed Customer payments, either upon termination of this Agreement or at any time during the course of the Agreement, O&R shall invoice ESCO for any and all amounts due to O&R and ESCO shall pay such invoice pursuant to the terms and conditions set forth in Section 7 of the NYPSC UBPs as incorporated in the Operating Procedures.

ARTICLE III

MISCELLANEOUS

3.1 Resolution of Disputes

If a dispute arises between Parties, including those issues requiring NYPSC action, the dispute resolution process set forth in the NYPSC UBPs will be followed.

3.2 Notices

Any notice to be provided pursuant to the terms of this Agreement will be deemed given, and any other document to be delivered hereunder will be deemed delivered, if in writing and (i) delivered by hand, (ii) deposited for next-business day delivery (fee prepaid) with a reputable overnight delivery service such as Federal Express, or (iii) mailed by certified mail (return receipt requested) postage prepaid, addressed to the recipient at the address set forth below for that Party (or at such other address as that Party may from time to time designate by giving notice thereof).

Notice to:

Orange and Rockland Utilities, Inc.
Manager - Retail Access
390 W. Route 59
Spring Valley, NY 10977
Telephone #: 845-577-3121
Fax # 845-577-3628
E-Mail: ciglianoc@oru.com

and to:

ESCO -

Attn: _____

Telephone #: _____

Fax # _____

E-Mail: _____

3.3 Termination of Agreement

O&R shall have the right to terminate this Agreement on thirty (30) days'

written notice to ESCO; provided, however, that this Agreement may be

terminated: (i) on one (1) day's written notice if the ESCO Operating

Agreement(s) is terminated for any reason; (ii) on not less than fifteen (15) days' written notice if ESCO breaches any of the representations and warranties set forth in Section 2.3 above or any of the other provisions of this Agreement and does not cure said breach within the fifteen-day period; or (iii) on one (1) day's written notice following issuance of an order or ruling by the NYPSC materially impacting any of the terms or conditions herein. In the latter instance, O&R will offer ESCO an alternative consolidated billing arrangement to replace the one provided for in this Agreement, to the extent that the NYPSC requires utilities to provide consolidated billing services. O&R will render ESCO's Customers a consolidated bill for ESCO's commodity supply provided to Customers through the date of termination or expiration of this Agreement.

3.4 Force Majeure

Any delay in the performance of any of the duties or obligations of either Party hereto shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of

such delay, provided that such delay has been caused by or is the result of any occurrence beyond the reasonable control of a Party which causes such Party to be delayed in or prevented from performing or carrying out any of its obligations under this Agreement and which, by the exercise of due diligence, that Party is unable to prevent, avoid, mitigate, or overcome, including any of the following: any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, ice, explosion, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, provided that a Force Majeure Event shall not include lack of finances or change in market conditions. The Party so affected shall give prompt written notice to the other Party of such cause and shall take whatever reasonable steps are necessary to relieve the effect of such cause as rapidly as possible.

3.5 Amendments

Notwithstanding any provision of this Agreement, O&R may at any time propose and file with the NYPSC changes to the rates, terms, and conditions of the Tariff, and/or the Operating Procedures. Such amendment or modification will become effective with respect to service pursuant to this Agreement on the date specified by the NYPSC.

3.6 Assignment

Except for the assignment of ESCO's right to receive payment under Section 2.4(G) and 2.4(J) of this Agreement for which written notice shall be provided to O&R, neither Party shall assign any of its rights or obligations under this Agreement without obtaining the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this

Agreement until such obligations have been assumed by the assignee. Any assignment in violation of this Section shall be void.

3.7 Prior Agreements Superseded

This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof, supersedes any and all previous understandings between the Parties with respect to the subject matter hereof, and binds and inures to the benefit of the Parties, their successors and permitted assigns.

3.8 Waiver and Modification

No modification or waiver of all or any part of this Agreement will be valid unless in writing and signed by the Parties or their agents. Any waiver will be effective only for the particular event for which it is issued and will not be deemed a waiver with respect to any subsequent performance, default or matter.

3.9 Applicable Law and Forum

Interpretation and performance of this Agreement will be in accordance with, and will be controlled by, the laws of the State of New York except its conflict of laws provisions to the extent they would require the application of the laws of any other jurisdiction. Each Party irrevocably consents that any legal action or proceeding arising under or relating to this Agreement will be brought in a court of the State of New York or a federal court of the United States of America located in the State of New York, County of New York. Each Party irrevocably waives any objection that it may now or in the future have to the State of New York, County of New York as the proper and exclusive forum for any legal action or proceeding arising under or relating to this Agreement.

3.10 Severability

If one or more provisions herein are held to be invalid, illegal or unenforceable in any respect it will be given effect to the extent permitted by

applicable law, and such invalidity, illegality or unenforceability will not affect the validity of the other provisions of this Agreement.

3.11 Agency

This Agreement is not intended, and will not be construed, to create any association, joint venture, agency relationship or partnership between O&R and ESCO or any other parties or to impose any such obligation or liability upon either Party.

3.12 Not for the Benefit of Third Parties

This Agreement is for the benefit of the Parties hereto and not for the benefit of any third parties.

IN WITNESS WHEREOF, the Parties hereto have caused this

Agreement to be executed, as of the date first above written.

ORANGE AND ROCKLAND UTILITIES, INC.

By _____

Name _____

Title _____

ESCO -

By _____

Name _____

Title _____