

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

North Shore Gas Company)	
)	
The Peoples Gas Light)	
and Coke Company)	
)	Docket No. 10-0090
Petition Pursuant to Section 19-140 of the)	
Public Utilities Act to Submit an On-Bill)	
Financing Program)	
)	

**Brief on Exceptions of North Shore Gas Company
and The Peoples Gas Light and Coke Company**

Pursuant to Section 200.830 of the Illinois Commerce Commission's ("Commission") Rules of Practice and the schedule set by the Administrative Law Judge, Petitioners, North Shore Gas Company ("North Shore") and The Peoples Gas Light and Coke Company, file their Brief on Exceptions to the Administrative Law Judge's Proposed Order ("ALJPO") in the above-captioned proceeding. Attachment A of this Brief is Petitioners' proposed modifications to the ALJPO.

This proceeding concerns Petitioners' filing to implement an on-bill financing ("OBF") Program pursuant to Section 19-140 of the Public Utilities Act (the "Act"). The ALJPO thoroughly discussed Petitioners' proposed Program and the comments filed in this proceeding. Petitioners' exceptions are very limited. In particular, Petitioners seek clarification on the portion of the ALJPO addressing reconnection, and they except to the cost recovery mechanism for any applicable taxes. Petitioners also identify two minor technical corrections.

I. Substantive Exceptions

A. Reconnection

The Citizens Utility Board and the City of Chicago (“CUB/City”), in jointly filed comments, proposed that, if a customer’s service is disconnected, the amount the customer would owe for reconnection should be only loan payments missed since the disconnection and not the full amount due under the loan. ALJPO at 25. The ALJPO concluded that Part 280 of the Commission’s rules apply to this circumstance and Section 280.110 supports CUB/City’s proposal. *Id.* at 32. The ALJPO continued with the observation that the goal should be to recover as much of the loaned amounts as possible from the participants and “avoid sending these amounts to uncollectibles.” *Id.* at 33.

Petitioners seek clarification. They agree that 83 Ill. Admin. Code Part 280 applies to OBF Program participants, including possible eligibility for a deferred payment arrangement. However, Part 280 does not squarely address a former customer who, under CUB/City’s proposal, continues to incur charges for utility service after service disconnection. This creates ambiguity when applying Part 280 to an OBF Program participant. For example,

- If the utility pays off the full amount of the loan at some point after service disconnection and prior to a request for service reconnection, does the customer owe, as a condition of reconnection, the full loan amount that the utility paid off?

- If title transfers to the property in question while service is disconnected, does the full amount of the loan become due at that point?¹ Is the utility expected to track property title at a premises where it may not even be providing service?
- If the customer requests reconnection at another premises, at which the energy efficiency measure financed by the loan is not installed, does the customer owe the full amount of the loan or only the amount represented by the missed monthly payments? If the latter, does the customer continue to pay the monthly loan installments at the new premises?
- Is the utility required to track the loan and the customer until the customer seeks reconnection or until amounts are written off as an uncollectible expense or some other period?

Moreover, while Petitioners concur that avoiding uncollectible expenses attributable to the OBF Program is desirable, Section 19-140 unambiguously states: “In the event a participant defaults on payment of its gas utility bill, the gas utility shall continue to remit all payments due under the program to the lender, and the utility shall be entitled to recover all costs related to a participant’s nonpayment through the automatic adjustment clause tariff established pursuant to Section 19-145 of this Act.” 220 ILCS 5/19-140(c)(6). As Petitioners stated in their Verified Reply Comments, at some point after the customer defaults, the utility may fully pay the loan because it would create a lower uncollectible expense to do so, rather than continue making

¹ Section 19-140(c)(5) states, in part: “Upon transfer of the property title for the premises at which the participant receives gas service from the utility or the participant's request to terminate service at such premises, the participant shall pay in full its gas utility bill, including all amounts due under the program, provided that this obligation may be modified as provided in subsection (g) of this Section.”

payments that include interest. In such a case it would be inappropriate for the customer to owe upon reconnection only the loan amount associated with missed monthly payments. The reconnection policy should not preclude the utility from paying off the full loan if it would be permitted and reasonable to do so under the agreement with the financial institution, nor may its cost recovery for the related uncollectible expense be impaired in any way by taking this step.

Petitioners' "half-hearted" (ALJPO at 32) agreement with CUB/City's proposal was predicated on addressing questions such as those posed above. Absent answers to those questions, CUB/City's proposal is untenable. When the utility disconnects service to a customer who has defaulted on his utility bill, the customer has, by extension, also defaulted on the loan that was being recovered through the utility bill. At that point, the customer owes the full amount of the loan and reconnection under Part 280 would require payment of that amount, subject to rights the customer may have to a deferred payment arrangement. See Exception I.A in Attachment A.

B. Cost Recovery of Taxes

Petitioners appreciate that the ALJPO addressed the applicability of the Public Utility Fund ("PUF") Tax to OBF Program revenues and did not defer the question to a separate proceeding. ALJPO at 49-51. Although Petitioners found compelling the Staff's arguments that the PUF Tax applies to the OBF Program revenues, they do not except to the ALJPO's contrary conclusion. What is important to Petitioners is that the Commission definitively address the question, so that Petitioners may rely on the decision in billing customers under the OBF Program.

Petitioners except to the conclusion that any tax that is applied to OBF Program revenues be treated as a Program cost recovered from all ratepayers. ALJPO at 31, 51. See Exception I.B in Attachment A. While collecting the tax from the participant may be a disincentive to participate in the OBF Program (ALJPO at 51), treating these costs as Program costs is inconsistent with Section 9-222.2 of the Act, with Section 19-140 of the Act and with how utilities collect these costs under Sections 9-221 and 9-222 of the Act. The Act prescribes that utilities recover tax costs (GRT, MUT and PUF Tax) based on a customer-specific calculation.

First, Section 9-222.2 states, in relevant part:

The additional charge authorized by Section 9-221 or Section 9-222 shall be made (i) in the case of a tax measured by gross receipts or gross revenue, by adding to the customer's bill a uniform percentage to those amounts payable by the customer for intrastate utility service which are includible in the measure of such tax, except, however, such method is not required where practical considerations justify a utility's or telecommunications carrier's use of another just and reasonable method of recovering its entire liability for such tax, and (ii) in the case of a tax measured by the number of therms or kilowatt-hours distributed, supplied, furnished, sold, transported or transmitted, by adding to the customer's bill an amount equal to the number of therms or kilowatt-hours which are includible in the measure of such tax, multiplied by the applicable tax rate

220 ILCS 5/9-222.2. The taxes addressed by this section are imposed on utilities.

Section 9-221 applies to the Municipal Utility Tax ("MUT") and Section 9-222 applies to the Gas Revenue Tax ("GRT") and the PUF Tax. Sections 9-221, 9-222 and 9-222.2 are the mechanisms for utilities to recover the costs from customers. Those mechanisms require the tax cost collection amount to appear as a line item on the customer's bill and require the utility's calculation to be specific to the customer. The exception in Section 9-222.2 for "practical considerations" does not apply. If the GRT or MUT or both apply, the OBF-related revenue will be another item on the bill to which the

tax collection calculation applies, and it is no different or more difficult than the current calculations associated with tax recovery. The ALJPO's inclusion of these amounts as Program costs is inconsistent with Section 9-222.2.

Second, Section 19-140(f) allows utilities to recover Program costs from customers eligible to participate in the OBF Program through the automatic adjustment clause tariff established under Section 8-104 of the Act. Assuming, *arguendo*, that taxes are a Program cost, Petitioners cannot properly recover those costs through the Section 8-104 tariff from all eligible customers. For example, one of the possible taxes is the MUT. North Shore serves customers fifty-four communities, only some of which have a MUT and not all municipalities having an MUT charge the same rate. North Shore recovers its MUT costs only from customers residing in the municipality imposing the tax. Treating the MUT cost as a Program cost would cause customers in municipalities not having an MUT to pay a portion of the utility's MUT cost. Also, Section 9-221 expressly prohibits the utility from recovering the MUT from certain exempt customers. If the MUT cost were rolled into the Program costs recovered under the Section 8-104 tariff, Petitioners would effectively be recovering the MUT from exempt customers. The GRT, and its exemptions, poses the same problem.

Third, as stated above, Sections 9-221 and 9-222 of the Act require the tax amount to appear as a line item on the customer's bill. That line item on each customer's bill is the amount resulting from applying the appropriate tax rate to the usage or revenue amount, as applicable, on that bill. The back of the bill explains the taxes, and the calculation of the amount for which that customer is responsible is determinable from the bill. Rolling the tax cost recovery associated with the OBF

Program into the Program costs recovered under the Section 8-104 tariff would result, contrary to Sections 9-221 and 9-222, in the cost recovery not appearing as a line item.

Fourth, in addition to the requirements in Section 9-222.2, the GRT is necessarily a tax that is computed on a per customer basis. As shown in the language quoted on page 35 of the ALJPO, the GRT is based on a per therm calculation “for each customer” or a percentage of gross receipts “from each customer.” 35 ILCS 615/2. Petitioners perform a calculation “for each customer” and apply the appropriate rate to the customer’s usage or the revenue falling under the definition of “gross receipts.”

Fifth, the Commission supports allocating costs to those customers who cause the utility to incur costs. “We continue to believe that the overall principle of allocating costs to those responsible for the incurrence of the costs is reasonable and should be encouraged.” Central Illinois Light Company d/b/a Ameren CILCO et al., Docket Nos. 06-0070/06-0071/06-0072 (Cons.) (Order Nov. 21, 2006). In North Shore’s most recent rate case, the Commission approved two new riders to allocate costs more accurately to those customers who cause the costs to be incurred. In re North Shore Gas Company and The Peoples Gas Light and Coke Company, Docket Nos. 09-1067/09-0168 (Cons.) (Order Jan. 21, 2010). Those riders are Rider FCA, Franchise Cost Adjustment,² and Rider GCA, Governmental Agency Cost Adjustment³. Recovering from OBF Program participants tax costs that Petitioners incur due to billing required by Section 19-140 of the Act is consistent with cost causation principles.

² “North Shore’s proposal is consistent with cost causation principles and would recover costs from customers living in the locality causing North Shore to incur the costs.” *Id.* at 197.

³ “North Shore’s proposal is consistent with cost causation principles and would recover costs from customers living in the locality causing North Shore to incur the costs.” *Id.* at 198.

Finally, the ALJPO states that the tax costs should be recovered “from all ratepayers.” ALJPO at 51. Assuming, *arguendo*, that the tax cost would be recovered as a Program cost, that is contrary to Section 19-140(f), which permits Program cost recovery only from customers eligible to participate in the OBF Program and not “all ratepayers.”

For these reasons, recovery of Petitioners’ tax costs, if any, associated with OBF revenues should be from the OBF participant. Recovery as Program costs is inconsistent with Sections 9-221, 9-222, 9-222.2 and 19-140 of the Act and cost causation principles.

II. Technical Exceptions

A. On page 21, in Section V.D.2, there is a reference to Rider 31. While the ALJPO is using the language that appeared in Staff’s Initial Comments, Petitioners’ proposed tariff is Rider OBF. Petitioners propose changing “Rider 31” to “Rider OBF.” See Exception II.A in Attachment A.

B. On page 31, in Section IX.A.1, there is a reference to Section 16-111.7(f) of the Act. For gas utilities like Petitioners, the reference should be to Section 19-140(f). Petitioners propose changing “Section 16-111.7(f)” to “Section 19-140(f).” See Exception II.B in Attachment A.

Respectfully submitted,
North Shore Gas Company
The Peoples Gas Light and Coke Company

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Dated at Chicago, Illinois
this 28th day of April, 2010

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EXCEPTIONS

ATTACHMENT A

This Attachment A shows, in legislative style, the revisions to the ALJPO supported in Petitioners' Brief on Exceptions.

Exception I.A (ALJPO at 32-33)

IX. Commission Analysis and Conclusions

D. Reconnection

~~Although NS/PGL correctly suggest that this situation is not directly addressed by the statute, which addresses a voluntary service termination and a title change at the premises. the Commission does not agree. However, the Commission finds that several provisions in the statute, including the referenced section, are instructive in addressing this issue lead us to disagree.~~
First, the oft-cited sentence that amounts due under the program shall be deemed amounts owed for residential and, as appropriate, small commercial gas service is relevant. 220 ILCS 5/19-140(c)(5). Because the amounts due under the program are deemed amounts owed for utility service, the Commission's rules apply, specifically Part 280.

And, second, the statute recognizes that the utility retains its right to disconnect a participant ~~the that~~ defaults on the payment of its utility bill. 220 ILCS 5/19-140(c)(6). This is not granting the utility a new right, but rather

recognizing that because these amounts are amounts owed for utility service, the utility continues to have the right to disconnect customers that do not pay their ~~electric gas~~ bills, pursuant to Part 280. Similarly, because these amounts are amounts due for utility service, the Commission's rules for reconnection would apply.

~~The Commission notes that NS/PGL half-heartedly agrees with CUB's proposal that would require only those payments that have been missed to be paid prior to reconnection. It would appear that Section 280.110 of our rules, which governs Deferred Payment Agreements, also applies to this situation. Our reading of this section supports not only CUB's proposal but also that the utility could agree to enter into a deferred payment agreement with the participant for the missed payments.~~ loan amounts owed.

Third, the statute states that, upon voluntary service termination or transfer of property title, the full amount of the loan is due. The situation of payment default is comparable.

Considering all these sections and our Part 280 rules, the Commission concludes that, when a customer's utility serviced is disconnected, it has the effect of defaulting on the on-bill financing loan. At that point, the full amount of the loan becomes due, together with other amounts due and owing for utility service. If the customer seeks reconnection, this will be the amount owed. If the customer is otherwise eligible for a deferred payment arrangement, the utility must offer that arrangement with the loan amounts as part of the arrangement.

Ideally, reconnection of program participants should be the same across all the affected utilities with the goal being to recover as much of the loaned amounts from the participants to avoid sending these amounts uncollectibles, consistent with Section 19-140, which clearly permits the utility to recover missed loan payments under its Section 19-145 tariff. Without doubt, all utilities must comply with Part 280 for both disconnections and reconnections.

Exception I.B, Part 1 (ALJPO at 31)

IX. Commission Analysis and Conclusions

A. Eligible Measures

3. Miscellaneous

As discussed below, the Commission does not have the jurisdiction to determine whether the gross receipts tax should apply to the financing payment. In the event it is determined that the gross receipts tax does apply, this should be

recovered from ~~all ratepayers and not~~ the individual participant. Thus, it would play ~~no~~ a part in determining the eligibility of measures.

Exception I.B, Part 2 (ALJPO at 51)

X. Taxes

E. Commission Analysis and Conclusions

Staff maintains that the only issue to be decided in this docket, or the related dockets, is that if any taxes were to apply, whether these taxes should be imposed on the individual participant or collected from all ratepayers. ~~In reality, any energy efficiency measure that is purchased by a consumer will presumably be subject to a sales tax. It makes no sense that further taxes should be applied to that purchase.~~ In the event that ~~some other~~ a tax for which the utility receives cost recovery under the Act is applied, ~~however,~~ it is appropriate that these taxes be recovered from the program participant. The taxes, unlike program costs that are recoverable from all eligible customers, are determined based on customer-specific bill amounts. Moreover, Sections 9-221, 9-222 and 9-222.2 of the Act, under which utilities recover certain tax costs from customers, require the tax amount to be shown as a line item on the bill and calculated based on the customer's bill amounts. Consequently, Petitioners calculate the amount based on the specific revenues on the customer's bill. Program cost recovery would not be customer-specific and would not separately identify these costs. Moreover, there are certain tax exemptions and some taxes (municipal utility taxes) are not levied by all taxing authorities and are levied in different amounts. Recovery from all eligible OBF participant customers would be incompatible with how utilities incur these costs. Finally, the tax costs, if any, are directly linked to the loan payment amounts, which generate the revenues that produce the tax. Accordingly, rate design principles of matching costs with those who cause them to be incurred leads us to conclude that recovery from the individual customers is proper. ~~all ratepayers. It would be a great disincentive to a potential participant in this program if they were told that they would be required to pay additional taxes because they chose to finance through their utility bill instead of just outright purchasing the item. This would diminish the purposes, intents, and goals of the OBF statutes.~~

Exception II.A (ALJPO at 21)

V. Staff's Position

D. Tariffs

2. Company Filings

Staff reviewed the Utilities' proposed Rider OBF ~~34~~ – On-Bill Financing Program tariff (“Rider OBF”) for natural gas service.

Exception II.B (ALJPO at 30-31)

IX. Commission Analysis and Conclusions

A. Eligible Measures

1. Loan Origination Fees

Accordingly, the Commission agrees with CUB/City that loan origination fees can be properly classified as “administrative costs” as provided for by Section 16~~6~~ ~~411.719-140~~(f) of the Act and recovered through NS/PGL’s automatic adjustment clause tariff.

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NOTICE OF FILING AND CERTIFICATE OF SERVICE

I hereby certify that North Shore Gas Company and The Peoples Gas Light and Coke Company filed their Brief on Exceptions on the Illinois Commerce Commission's e-docket system and served by electronic mail upon each person designated in the official service list compiled in this proceeding, Docket No. 10-0090, in accordance with requirements of the Commission's Rules of Practice.

Dated at Chicago, Illinois, this 28th day of April, 2010.

By: /S/ MARY KLYASHEFF

Mary Klyasheff
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