

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on February 19, 2003

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss
Neal N. Galvin

CASE 99-M-0631 - In the Matter of Customer Billing Arrangements.

ORDER MODIFYING PAYMENT
APPLICATION METHOD

(Issued and Effective February 19, 2003)

BY THE COMMISSION:

INTRODUCTION

The Uniform Business Practices (UBP) chapter on Billing and Payment Practices¹ (Billing Practices) require, unless the customer specifies otherwise, a method for applying customer payments² on consolidated bills for electric and gas service.³ The billing party is required to apply payments first to past due and current distribution utility charges for

¹ Case 99-M-0631, et al., Customer Billing Arrangements, Order Resolving Petitions for Rehearing (issued March 14, 2002), Appendix A, p. 30.

² Billing Practices, C. 8. b. (6).

³ A consolidated bill, issued by a distribution utility or ESCO, is a billing option that provides customers with a single bill combining the charges for (1) delivery services provided by a distribution utility and (2) commodity service provided by an ESCO.

delivery, and second to Energy Service Companies' (ESCO) past due and current charges for commodity. The purposes of this application method are to minimize service terminations due to failure to pay in full distribution utility delivery charges, and to protect distribution utility ratepayers against increased costs resulting from higher uncollectable rates. ESCOs complained that this application method is unfair, results in severe cash flow problems for them, and enables customers to avoid paying for the commodity, an essential part of natural gas and electric service.

A notice, issued November 13, 2001, invited comments on a proposal developed by Staff to modify the payment application method to address the ESCO complaints while continuing to protect customers against unnecessary service interruptions (Staff Proposal). The Staff Proposal, except to the extent customers specify otherwise, would allocate customer payments in the following order:

1. distribution utility arrears that may result in disconnection of utility service and are subject of a pending termination notice;
2. distribution utility arrears that are not the subject of a pending termination notice;
3. ESCO arrears prorated for gas and electric commodity service, if separate ESCOs provide them;
4. current distribution utility charges;
5. current ESCO charges, prorated for gas and electric commodity service, if separate ESCOs provide them;
6. charges for any other ESCO services, prorated for services provided by gas and electric ESCOs, if separate ESCOs provide the services; and,

7. any overpayments, allocated or returned, as determined by the billing entity, if the customer's preference is unknown.

Comments on the proposal were submitted by: New York State Consumer Protection board (CPB); Utility Workers Union of America, AFL-CIO, Local 1-2 and International Brotherhood of Electrical Workers (Unions); KeySpan Energy Delivery (New York) and KeySpan Energy Delivery (Long Island) (KeySpan); Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (Con Edison and O&R); New York State Electric and Gas Corporation (NYSEG); Rochester Gas and Electric Corporation (RG&E); Central Hudson Gas and Electric Corporation (Central Hudson); National Fuel Gas Distribution Corporation (NFG), National Energy Marketers Association (NEM); North American Energy, Inc. (NAE); Small Customer Marketer Coalition (SCMC); New York Energy Service Providers Association (NESPA); Energetix, Inc. (Energetix); ConEdison Solutions (Solutions); Strategic Power Management, Inc. (SPM); and SmartEnergy. Con Edison and O&R filed reply comments.⁴

In this Order, the Staff Proposal is adopted, with several changes described below, and the UBP Chapter on Billing Practices is modified accordingly. Specifically, the Order revises the UBP Billing Practices to authorize the distribution utility or ESCO issuing a consolidated bill to change the priority of payment application in accordance with the Staff Proposal, as modified.

⁴ These comments, although unauthorized, are considered because they advance the record in this proceeding.

COMMENTS

CPB

CPB generally supports the objectives of the Staff Proposal. It would prefer its adoption on a trial basis to ensure that assignment of a new priority to payment of ESCO arrears does not result in unintended service terminations that harm customers, especially low income customers. It is concerned that the proposed shift in payment priorities may increase chances for higher past due charges on future bills for delivery service and future service terminations.

Unions

The Unions oppose changes to the payment application method, because it believes that the current practices protects distribution utility ratepayers from assuming costs resulting from ESCO payment defaults. They maintain that they cannot evaluate the ESCO cash flow complaints, cited as a basis for the Staff Proposal, because the complaints are not public. They point out that the existing payment application method is consistent with the method established for payments to ESCOs acting as billing agents and rebilling the entire amount to customers.⁵ The Unions specifically oppose allowing the billing party to decide how to apply any overpayments. They contend that this provision could harm customers and is not in the public interest, and propose use of an objective criterion.

Utilities

Con Edison and O&R, NYSEG, and NFG oppose the Staff Proposal. They argue that the non-public nature of the ESCO complaints makes them unable to evaluate ESCO claims of

⁵ The UBP establishes separate requirements for billing and payment processing by billing agents.

significant financial difficulties and their relationship to payment application priority. They assert that the ESCO claims regarding cash flow amount to simple speculation about potential losses related to future expansion of consolidated billing. They assert that the Staff proposal will disadvantage customers by increasing risks of service termination and would prefer to explore alternative ways of resolving ESCO issues in a formal proceeding.

NFG notes that ESCOs have no obligation to serve customers and may choose to accept customers with good credit, whereas distribution utilities have an obligation to provide service, regardless of a customer's credit history. Thus, NFG asserts that (1) the equities do not favor modification of the payment application method, and (2) it is fair to pay distribution utilities first.

RG&E comments that the Staff proposal should apply only to the Multi-Retailer Model and not to the Single Retailer Model. In the Single Retailer Model, the ESCO purchases delivery service from the distribution utility and issues a single bill for both distribution and commodity service. Thus, no application method is necessary because payments are against the full amount of the bill. RG&E asserts that the Staff Proposal would increase a distribution utility's risk and reduce an ESCO's risks. The company recommends that the costs of modifying utility and ESCO billing systems should be considered prior to adopting new billing and collection rules and that billing services agreements between ESCOs and distribution utilities provide a more effective and less costly means of modifying payment application procedures.

KeySpan supports the purpose of the Staff proposal to pay ESCO past due charges before paying distribution utility current charges. It does question the need for any payment

priority requirement, pointing out that distribution utilities and ESCOs have the right to enter into billing service agreements, setting forth different billing payment and payment practices, including alternative payment application methods. It recommends providing parties with an opportunity to comment on the exact UBP revisions to minimize confusion and misunderstandings. KeySpan requests authority to recover computer programming costs, and adequate time to implement any payment priority changes. It recommends several changes to the Staff Proposal: use of overpayments to pay future charges and application of customer payments initially to combined utility arrears (steps one and two of the Staff Proposal), because distribution utilities are now required to post customer payments to the oldest arrears. Central Hudson also questions the identification of two types of distribution utility arrears, because termination notices do not distinguish between the two types. Central Hudson argues against providing an opportunity for a customer to establish a personal payment application method. It points out that the billing party should apply any payments submitted in response to a termination notice in a manner that prevents service discontinuance.

ESCOs

The ESCOs support Staff's payment application proposal. SCMC, NESPA, NAE, and Energetix generally support the concept of the Staff Proposal, but contend that it does not provide adequate assistance for ESCOs. They suggest consideration of pro-rata application of payments between the ESCO and the distribution utility, instead of the application of monies to the ESCO only after the distribution utility.

NEM recommends application of customer payments first to the ESCO commodity service. NEM argues that, if payment is not made for use of the distribution utility's wires and pipes,

these assets remain available to be used again; the ESCO's commodity is consumed and cannot be reused or recovered. It also suggests pro-rata sharing of any overpayments.

Energetix contends that customers expect and need both delivery and commodity service at the same time; one is of no use without the other. Because delivery service is not useful without commodity service, Energetix argues that no retailer should receive priority payment over another. Energetix advocates pro-ration of payments.

SCMC supports changing the current payment application method because the existing method causes ESCOs to maintain unacceptably high levels of receivables and uncollectables while the distribution utility enjoys a more secure financial position. SCMC asserts that payment of current and past due utility charges first enables customers to game the system and postpone or avoid payment of ESCO charges. SCMC maintains that customers are required only to pay a distribution utility's delivery charges in order to avoid service termination and may withhold payment of ESCO charges without risk of service termination. It supports payment of utility arrears first to ensure that customers are not subject to service terminations, but maintains that once continuation of delivery service is preserved, no rational justification supports a payment priority of utility current charges. This, SCMC claims, discriminates against ESCOs. Further, SCMC contends that allowances for uncollectable amounts are considered in establishing revenue requirements for distribution utilities and that they may threaten to disconnect service as a method of collecting arrears. SCMC states that ESCOs, unlike distribution utilities, have no guaranteed recovery of uncollectables through rates, and are unable to threaten service disconnection because their customers may return to full utility service without payment of

ESCO arrears. It believes that, in a competitive market, regulatory policy should eliminate barriers to competition. It advocates pro-ration of remaining funds after payment of arrears that are the subject of distribution utility termination notices.

NESPA supports the objective of modifying the payment application method to eliminate impediments to the development of a competitive market. It contends that the Staff Proposal does not go far enough to change existing circumstances and marginally improves cash flow for ESCOs. NESPA advocates pro-ration of partial customer payments similar to the plan adopted by the Massachusetts Department of Telecommunications and Energy.

NESPA and SPM recommend a requirement that distribution utilities purchase ESCO accounts receivable. NESPA asserts that this arrangement would eliminate concerns over partial payment application, avoid customer gaming of the system, and protect customers. SPM believes that a distribution utility would be authorized to disconnect utility service for failure to pay any portion of the account or, if pro-ration is used, for failure to pay the delivery portion of the bill.

SmartEnergy supports adoption of the Staff Proposal, and suggests a method of avoiding the delays and costs associated with software changes to modify billing systems. It proposes that the Commission authorize, and not require, ESCOs and utilities to adopt the proposed payment application method. SmartEnergy argues that immediate help is required because without additional cash flow and improved collections, it is not able to remain in business in New York State.

DISCUSSION AND CONCLUSION

The Staff Proposal would balance the interests of ESCOs in obtaining payment for the commodity services they provide and the State's interests in maintaining continuance of an essential service. It would enable customers to pay arrears and avoid service disconnection and to rearrange payment priorities to pay ESCO arrears before distribution utility current charges are satisfied.

The State recently enacted amendments to the Home Energy Fair Practices Act (Chapter 686 of the Laws of 2002). Implementation of the amendments will result in a significant number of changes in billing and payment practices relating to consolidated bills. Regulatory changes implementing Chapter 686 and proposals for pro-ration of partial payments of consolidated bills are under consideration in other proceedings. These pending changes will require software changes and the imposition of associated costs. Because of these pending changes, it is inefficient at this time to require ESCOs and utilities issuing consolidated bills to implement the Staff Proposal. Thus, this Order authorizes, rather than requires any distribution utility or ESCO that issues consolidated bills to change its payment application methods in accordance with the Staff Proposal as modified.

Process

The Unions and some utilities complain that they do not have sufficient information about ESCO cash flow complaints to evaluate the need for reallocation of payment priorities. ESCOs consistently complain about the damage to their business caused by failure of customers to pay arrears. The Staff Proposal rearranges the payment priorities to protect customers against service termination.

Shift of Risks

The distribution utilities argue that Staff's proposal will shift some of the risk of customer underpayments from the ESCOs to the utilities, and this can ultimately lead to a greater risk of service disconnection for customers.⁶ Customers are at minimal risk for disconnection of utility service because the Staff Proposal requires that all arrears, including any past due amounts, be paid first. A customer who remits a payment that satisfies the utility and ESCO arrears, but does not satisfy the utility current charges, will be placed in a situation of having a past due amount on their next bill. While this possibility may lead to the issuance of a disconnection notice in the future, the customer is not immediately placed in a disconnection situation.

The utilities also argue that they will incur an increase in uncollectables as a result of the Staff Proposal. This risk is minimal because utilities have the ability to encourage customer payments by its right to disconnect utility service. Further, many utility rate plans provide a certain level of compensation to the utility for uncollectables.

Pro-ration & Accounts Receivable

Parties have recommended pro-ration and the purchase by the utility of the accounts receivable as alternatives to the Staff Proposal. A Department effort is currently underway to investigate the issues associated with the pro-ration of customer payments on consolidated bills between the utility and ESCO. This effort is a companion to the Department's activities associated with the implementation of Chapter 686 of the Laws of 2002. The recommendation, however, of purchasing accounts

⁶ The CBP indicated that it is also concerned about the potential for greater customer disconnections.

receivable is outside the scope of the Staff Proposal in the November 13 Notice, and is not ripe for consideration at this time.

Arrears and Overpayment

KeySpan and Central Hudson are correct that there is no need to specify that utility payments must be allocated first to the arrears identified in a termination notice prior to application to other past due charges. Accordingly, the Staff Proposal, items 1 and 2, are merged. Pursuant to this modification, customer payments will be allocated first to settle any utility arrears, including past due charges.

NYSEG also seeks clarification of Step 6 in the Staff proposal, specifically the meaning of "any other ESCO services." Step 6 does not add to the Staff's goal of a more equitable distribution of customer payments. This step is eliminated from the Staff Proposal.

To protect customers, any excess payments received (Step 7) shall be held for payment on future bills, unless the customer directs otherwise. This addresses the complaint of KeySpan and the Unions about the appropriateness of allowing the billing party to determine how any overpayment of funds will be applied. NEM's proposal, however, that any excess funds should be split between the billing and non-billing parties, is rejected. In addition, the request of Central Hudson and NESPA, that customer preferences be ignored in some situations, is rejected. While Central Hudson is correct that customers could designate payment allocations that might place them at risk of loss of service, customers should have the right to accept such risks if they so choose.

Cost Recovery and Timing

Some utilities have raised concern over the cost associated with the implementation of the Staff Proposal.

Utilities are permitted to seek recovery of any verifiable and reasonable costs incurred in the implementation of the Staff Proposal. Because the Staff Proposal, as modified above, is voluntary, any utility or ESCO implementing the proposal may do so at its earliest convenience.

The CPB asks that the Staff Proposal be adopted on a trial basis, with an opportunity for review and comment before the approach is widely used.⁷ As stated above, the customer risk associated with the Staff Proposal is minimal. In any event, Staff is ordered to monitor the customer impacts associated with the change in the payment application method.

Other Issues

KeySpan notes that the Billing Practices allow parties to agree to other payment application methodologies, with customer authorization. The Billing Practices specifically allow parties to amend the payment application method so long as the parties agree to the amendment, and the customer is not disadvantaged and provides consent. The Billing Practices are amended to allow a billing party, if customer contracts permit, to modify the payment application method as described herein, without consent of the customer, provided the customer receives notice from the billing party 15 days in advance of modifying the method.

Further, the non-billing party consent requirements of the Billing Practices may make it difficult for the billing party to adopt the Staff Proposal. As stated above, providing

⁷ KeySpan's request, to have the opportunity to comment on the final language for the payment application requirements, is denied. The November 13 Notice has already provided KeySpan with the opportunity to comment, and the modifications to that proposal, as described herein, do not materially change the Staff proposal.

increased cash flow to ESCOs, coupled with the minimal risk to the customer and utility, warrant amending the Billing Practices. Therefore, the Billing Practices are amended (Appendix A) to allow a party modifying the payment application method, as described herein, to do so without prior consent of the non-billing party, provided that the non-billing party receives notice from the billing party 15 days in advance of modifying the method.

RG&E and Energetix both ask that the Staff Proposal not apply to the "Single Retailer" model. This request is moot because modification of the payment application method is voluntary.

The Commission orders:

1. The Staff Proposal on payment application be modified as described herein.
2. Any Utility or ESCO offering a consolidated bill is authorized to adopt, after customer and non-billing party notification, the Staff Proposal, as amended.
3. The proceeding is continued.

By the Commission,

(SIGNED)

JANET HAND DEIXLER
Secretary

Payment Application Method
Uniform Business Practices
Billing and Payment Processing §9.c.8.b.6)

[Unless] Except as provided below and unless the customer specifies otherwise,¹ the billing party,² shall allocate customer payments first to utility charges that are not in dispute, past due and current and then to the non-billing party's charges, past due and current. A billing party may elect to allocate customer payments in the following order: past due utility charges, past due ESCO charges, utility current charges, and ESCO current charges, after it provides notice to the non-billing party and customers on or before 15 calendar days prior to such payment allocation. The parties may agree to other allocations as long as customers are not disadvantaged. At the time notice of payment is provided to the non-billing party, the billing party shall also notify the non-billing party of any customer designated payment allocations that are inconsistent with the payment allocation requirements specified above.

The billing party may retain any payment amounts in excess of the amounts due as prepayments for future charges or return the excess amounts to customers. For customers on distribution utility deferred payment or budget plans, the billing party shall apply amounts in excess of the amount due (which includes the deferred or budget installment payment) to the balance of outstanding deferred charges, if applicable, or credited as additional payments under the customer's budget plan.

¹ Customers authorizing other payment allocations must provide written instruction to the billing party separate from any notation on the bill payment stub or check. The billing party, however, may honor a customer's notation on a bill payment stub or check, or a verbal or electronic request, if it retains clear proof of the customer's instructions.

² Utilities supplying delivery service for both natural gas and electricity to customers receiving consolidated bills shall apply the receipts to the separate services in accordance with their normal procedures. Where a consolidated bill displays delivery charges for separate gas and electric utilities, the customer's payments shall be first prorated between the utility accounts in accordance with the amount each is due compared with the total amount due both utilities.