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08-G-0609

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February 27, 2009

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Honorable William Bouteiller
Administrative Law Judge
State of New York
Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Honorable Jaclyn Brilling
Secretary
State of New York
Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Case 08-G-0609 -- Proceeding on Motion of the Commission as to the Rates, Charges, Rules, and Regulations of Niagara Mohawk Power Corporation for Gas Service -- OPPOSITION TO JOINT PROPOSAL

Dear Judge Bouteiller and Secretary Brilling:

In response to Administrative Law Judge Bouteiller's January 21, 2009 *Ruling Modifying Case Schedule to Consider a Joint Proposal* in the above-referenced proceeding, enclosed please find the Statement in Opposition to the Joint Proposal submitted by the Public Utility Law Project of New York, Inc. on behalf of itself and on behalf of intervenors the New York State Community Action Association, the Albany Community Action Partnership, United Tenants of Albany, and Syracuse United Neighbors (together, "Low Income Consumer Advocates").

Copies of this Statement in Opposition have been served electronically and via U.S. Mail on all active parties.

Respectfully submitted,

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation for Gas Service	)	Case 08-G-0609

STATEMENT IN OPPOSITION TO JOINT PROPOSAL BY PUBLIC UTILITY LAW PROJECT OF NEW YORK, INC., NEW YORK STATE COMMUNITY ACTION ASSOCIATION, ALBANY COMMUNITY ACTION PARTNERSHIP, UNITED TENANTS OF ALBANY, AND SYRACUSE UNITED NEIGHBORS

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United Tenants of Albany
Syracuse United Neighbors

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation for Gas Service	)	Case 08-G-0609

STATEMENT IN OPPOSITION TO JOINT PROPOSAL
BY
PUBLIC UTILITY LAW PROJECT OF NEW YORK, INC.,
NEW YORK STATE COMMUNITY ACTION ASSOCIATION,
ALBANY COMMUNITY ACTION PARTNERSHIP,
UNITED TENANTS OF ALBANY,
AND
SYRACUSE UNITED NEIGHBORS

On February 13, 2009, a Joint Proposal ("JP") in the above-named proceeding was filed with the Secretary to the Public Service Commission ("Commission") regarding a two year rate plan negotiated between National Grid d/b/a Niagara Mohawk ("Niagara Mohawk" or "Company"), Commission Staff, and various interested parties. The Public Utility Law Project of New York, Inc. ("PULP") was an active participant in all aspects of this proceeding, on behalf of itself and on behalf of intervenors the New York State Community Action Association, the Albany Community Action Partnership, United Tenants of Albany, and Syracuse United Neighbors (together, "Low Income Consumer Advocates" or "LICA").

PULP conducted discovery, filed testimony, participated in cross-examination at the evidentiary hearings, and joined in subsequent negotiation sessions which led to the filing of the JP. PULP and LICA opted not to be Signatory Parties to the JP due to significant disagreements with several of its provisions and to its failure to adequately address vital issues affecting affordability and continuity of service to the poor at affordable prices that must be addressed by the Commission in its review.

Overall Framework

Initially, PULP and LICA object to the statement in the Joint Proposal that the settlement is "a comprehensive set of terms and conditions."[1] As demonstrated below, the settlement cannot be said to be "comprehensive" because issued raised, proposals made, and positions taken by PULP and LICA in testimony and at the hearing are not included in the JP, are not resolved in any reasoned compromise reflected in the JP, and some were completely ignored.

For example, PULP's proposal made in testimony to create a meaningful low income rate to reduce energy burdens of low income customers, beyond the token minimum charge reduction proposed in the Company's pre-filed testimony, is not resolved by the JP. We recognize that some consideration of low income customers was eventually agreed upon by the Signatory Parties, along the lines of National Grid's pre-filed testimony, but the overall concerns of PULP and LICA for meaningful reductions in energy cost burdens are not accommodated in the JP.

The JP also does not mention how holding company affiliate issues, related to gas purchasing and portfolio management costs and off-system sales revenues, which surfaced in the case, will be resolved.

Rate Design – Low Income Rates

PULP witness Jerrold Oppenheim discussed in his direct testimony as well as in cross-examination low income rate design proposals to help low income customers pay their bills. Oppenheim stated in his direct testimony:

> I recommend that National Grid adopt a reduced heating rate for low-income customers that is 26% below the standard rate. Customers should be automatically enrolled at this rate on the basis of their receipt of means-tested social services. For customers who demonstrate in the HEAP application process that their income is below 50% of the Federal Poverty Line (FPL), the reduction should be increased to 35%. The revenue loss from these reductions should be reconciled periodically. In addition, the minimum charge should be remain at its current rate.[2]

Under cross-examination, Oppenheim reiterated his recommendation to maintain or reduce the minimum charge at current levels and to apply any increases to the volumetric charges:

> *Q. Is your proposal for New York State the same as it's applied in Massachusetts, just the discount would be applied to the customer charge only?*
>
> A. In Massachusetts it's applied to all of the distribution elements so it's not just the customer charge. It's also applied to the distribution rates. That is what I would propose here.
>
> *Q. What other elements of distribution besides the customer charge?*

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[1] Joint Proposal, at p. 3.

[2] *Direct Testimony and Exhibit of Jerrold Oppenheim*, Proceeding on Motion of the Commission as to the Rates, Charges, Rules, and Regulations of Niagara Mohawk Power Corporation for Gas Service, Case 08-G-0609, at p. 25, December 4, 2008 Hearing Record at p. 1111. ("Oppenheim Testimony").

A. There is a per therm [reduced] rate for distribution.[3]

PULP's and LICA's concerns and the recommendations of witness Oppenheim were not heeded. The rate design in the JP will make Niagara Mohawk's gas service even more unaffordable to low income customers than before.

Currently, National Grid charges a $14.71 minimum charge in its Niagara Mohawk service territory. The proposed increase would increase the minimum charge to $17.45 in year one and to $17.85 in year two. These figures include a proposed $0.65 per month low income surcharge which would be added to the bills of all firm Service Classification customers, including low income customers. It unconscionable to assess this surcharge on the very people intended to benefit from the low income discount supported by the surcharge. Low income and Home Energy Assistance Plan ("HEAP") customers should <u>not</u> be required to contribute to the very program in which they are to be the intended beneficiaries. All low income and HEAP recipients should therefore be exempt from paying the proposed so-called low income surcharge to be included with the minimum charge.

There is precedent for exempting low income consumers from a surcharge to support low income programs. California, for example, has adopted measures to ease the burden of public benefit surcharges on the poor. Southern California Gas has a tariffed system benefits charge, the "Public Purpose Programs" ("PPP") Surcharge, but low income California Alternate Rates for Energy ("CARE") customers pay a reduced PPP surcharge because they are exempted from paying for the CARE program costs that are recovered through the

[3] December 4, 2008 Hearing Record, at pp. 1119 – 1120.

surcharge.[4] A simpler solution would be to exempt identified low income customers from the proposed Niagara Mohawk low income program surcharge altogether.

These increases to the minimum charge mark an 18.5 percent and 21.5 percent increase, respectively, on Service Classification 1 customers. With a growing number of customers already unable to keep up with their current Niagara Mohawk gas bill, this level of increase to the minimum charge will result in more people losing service altogether because of their inability to pay, increasing the Company's collection costs. Combined with Niagara Mohawk's policy to use terminations as a collections tool, and major increases in unemployment, a major hardship is in the offing.[5]

To illustrate this dire financial situation, Oppenheim stated in his direct testimony:

> *Q. If National Grid low-income customers cannot afford to heat their homes, what do they do?*
>
> A. Too often, they go without needed food or medicine in order to pay their heating bills. A study by the National Bureau of Economic Research published in June 2002 concluded the following: "Expenditures on food in the home decreased in cold months for poor families but not for richer families.... This decrease in food expenditures by the poor are [sic] not offset by increased expenditures on food outside the home or on clothing." And: "Among poor families,...a monthly temperature that was 10° F colder than normal would result in a reduction in expenditures on food in the home by $11/month and an increase in fuel expenditures by $37/month. Adults and children alike reduce their caloric intake by 10 percent during the winter months, whereas rich family members do not reduce their caloric intake during the winter." Further: "Poor children outside the South consume 292 fewer calories in the winter relative to the summer, poor adults without children consume 299 fewer calories, while poor adults with children consume 374 fewer calories." "Our results suggest that poor American families with children face stark choices in cold weather. In particular, they

[4] The applicable Southern California Gas tariff leaves are attached as Attachment A.

[5] It must be noted that charges to reestablish service do not apply to low income customers in National Grid's Long Island tariff (PSC No. 1 Gas, II.4 (G.5.4), Leaf 62), but do apply in National Grid's Niagara Mohawk service territory, further burdening those who are the most vulnerable.

increase home fuel expenditures at the cost of expenditures on food and nutritional well-being."

Indeed, incomes at the bottom of the economic ladder simply do not cover all essential expenses of life. With Ford Foundation support, the amount of income needed for basic living has been calculated for every county in New York (and many other states). The plain result is that incomes at the Federal Poverty Line, or even at one-and-a-half times the Federal Poverty Line (FPL), are insufficient to sustain life. A single person with an infant and a pre-school age child in Albany County in 2000 (adjusted for inflation since then), for example, needs a basic budget of $42,701a year - 66% more than the 150% FPL standard for a household of three ($25,755 in 2008) and five times the income of a family at the 50% FPL level ($8585):

Housing/utilities $ 9,205
Food $ 4,953
Transportation $ 640
Child care $16,659
Health care $ 4,115
Clothes, telephone, household items, nonprescrip. medicine, etc. $ 3,551
Taxes $ 3,580
TOTAL $42,701

It is difficult to understand how life is sustained, let alone how utility bills are paid.[6]

Niagara Mohawk bills will likely go up to a point where the Company knows that a large percentage of customers will no longer be able to pay. So, the Company may issue a termination notice and advise the customer to apply for a HEAP payment in order to retain service. According to a recent news article:

National Grid threatened in January to shut off electricity and gas to 100,000 Upstate customers who were late paying their bills. ***One out of every 15 customers across the utility's Upstate territory got a termination notice.***[7]

[6] Oppenheim Testimony, at pp. 6 – 8, December 4, 2008 Hearing Record at pp. 1093 - 1095 (internal footnotes omitted).

[7] Tim Knauss, "Thousands of Upstate Utility Customers Receive Termination Notices From National Grid, NYSEG," *Syracuse Post Standard*, February 26, 2009. This is graphically illustrated by the "surge" of

Accordingly, Niagara Mohawk will, in turn, accept the HEAP payment, apply it to old arrears, and keep the customer on for 30 days -- and then will seek to terminate service again in a new effort to collect the arrears balance not covered by the initial HEAP grant. As a result, Niagara Mohawk receives the payment, old arrears are reduced, but the customer does not see any real reduction of bills for the current heating season from the HEAP grant and is left literally in the cold and dark. These policies discriminate against the poorest of Niagara Mohawk's customers, make a mockery of the HEAP program, and do nothing to reduce monthly bills of customers who are forced between heating their homes and buying groceries or medicine for their families.[8] In contrast, our proposal results in real energy burden reductions and real bill reductions for hard-pressed low income customers.

Rate Design – Minimum Charge

PULP and LICA oppose the rate design negotiated by the Signatory Parties which places far too much weight on raising the minimum customer charge. Not enough of Niagara Mohawk's revenue requirements have been placed into the volumetric charges. As a result, low and fixed income customers will be unnecessarily subjected to this regressive form of rate design which burdens those who use the least amount of natural gas and can least afford to pay for it.

The "minimum" charge is in fact a disguised service charge, prohibited by the Public

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service terminations in May and June of each year. See Attachment C.
http://www.syracuse.com/news/index.ssf/2009/02/thousands_of_upstate_utility_c.html

[8] PULP requested at the hearing that Niagara Mohawk provide termination and reconnection statistics for the past two years. While the Company agreed to provide the data, despite PULP's reminders, the information was not received until February 20, 2009.

Service Law, §65(6).[9] Despite its longstanding use and approval by the Commission and a lower court in *Mykolin v. Consolidated Edison*,[10] the minimum charge is a charge that must be paid even if no service is taken, which is the test of whether it is a prohibited customer charge, and that was prohibited by the Court of Appeals in *Kovarsky v. Brooklyn Union*.[11] On cross-examination, Niagara Mohawk conceded that the minimum charge has no relation to Company costs. For example, the only cost saved when a customer leaves the system is, in essence, the cost of sending a bill of about 45 cents:

> *Q. I don't think that was my question. My question was, what is the cost of issuing the bill and reading the meter?*
>
> A. (Trainor) The bill cost in particular? Now I'm reading off of the unit cost sheet. The customer cost for the non -- I'm sorry, the heat customers for billing are 45 cents. The collections at -- so 45 cents would be avoided by not sending that customer a bill. Now, meter reading is a combined number, so that would be more difficult to get at.[12]

Even the cost of meter reading is not saved, apparently because meter reading no longer requires a walk to the meter and manually taking the reading. Thus, the minimum charge increase is not justified on a cost basis, and can be almost eliminated altogether.

The need to de-emphasize the minimum charge was addressed by PULP witness Oppenheim in his direct testimony:

> *Q. Do you have any observations about National Grid's proposed rates?*

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[9] NY Pub. Serv. L. §65(6) states: "Service charges prohibited. Every gas corporation shall charge for gas supplied a fair and reasonable price. **No such corporation shall make or impose an additional charge or fee for service or for the installation of apparatus or the use of apparatus installed** . . . ." (emphasis added).

[10] *Mykolin v. Consolidated Edison Company of New York*, 89 Misc. 2d 193, 389 NYS 2d 996 (N.Y. Sup. Ct., 1976).

[11] *Kovarsky v. Brooklyn Union Gas Company*, 279 NY 304, 18 NE2d 287 (NY, 1938).

[12] December 3, 2008 Hearing Record, at pp. 824 - 825.

> A. Yes. National Grid proposes a very substantial increase in its minimum charge in order to be "more reflective of the fixed customer related costs." (Responses to DR PULP-2-21and 3-4). In my view, it is much more important that rates reflect the forward-looking marginal cost of supply -- customer charge price signals will have no impact on whether or not a customer remains a customer, but usage prices will affect consumption and, to be economically efficient, should therefore be sufficient to recover forward-looking marginal costs. Delivery rates recover fixed costs in the second block of usage. As a result, setting delivery usage rates at marginal costs (as defined typically) would require even higher customer charges.
>
> Restraining the minimum charge and pricing commodity rates accurately should thus be an important element of the Company's efficiency effort.[13]

Families across New York are subjected to a double burden – a devastating economic recession and near-record energy costs. People are facing enormous difficulties in keeping current with their utility bills and the rate design included in the JP, if approved, will contribute to their hardship and poverty.

Raising the minimum charge also works against the policies of the State and the Commission favoring greater energy conservation. Every dollar added to the minimum charge is a cost that cannot be avoided or reduced due to conservation or efficiency measures. Every dollar added to the minimum charge is, from the standpoint of a customer faced with a usage decision, a sunk cost that cannot be avoided. As more gas is used, the average cost of the next therm is lower, as the initial minimum charge is amortized or averaged over all units of usage. Every dollar added to the minimum charge allows the volumetric delivery charge to be lower than it otherwise would be, stimulating more sales. The minimum charge, if anything, should be eliminated or significantly reduced, not increased, to promote the goals of energy conservation and efficiency.

[13] Oppenheim Testimony, at p. 20, December 4, 2008 Hearing Record at p. 1107.

Rate Design – The $7.50 Low Income Discount in the JP Insufficiently Reduces Energy Burdens

PULP and LICA recognize that the new rate plan in the JP would introduce for the first time a $7.50 monthly minimum charge discount for all HEAP and HEAP eligible customers, but the rate design proposed in the JP still results in an unnecessary and continued undue burden on low and fixed income customers. Even with the discount, the minimum charge for eligible customers will, effectively, be $9.95 in year one and $10.45 in year two. While lower than the current minimum charge, the minimum charge discount does not go nearly as low as National Grid has already established in two of its other New York utilities, and does not address the need for reductions in the second usage block.

Specifically, in Brooklyn and Long Island, the company agreed in 2007 to create a "reduced rate" residential service classification for both heating and non-heating gas customers.[14] Customers in these Service Classifications receive far more meaningful energy burden reductions.[15]

For example, the minimum charge for heating residential customers (SC1B) in National Grid's KeySpan Long Island territory is $11.38 per month, while the reduced rate heating residential customers (SC1BR) must pay a minimum charge of only $1.88 – an 83.5 percent reduction from the regular residential minimum charge rate. Similarly, in National

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[14] *Order Adopting Gas Rate Plans for KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island*, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York for Gas Service and Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island for Gas Service, Cases 06-G-1185 and 06-G-1186 (Issued and Effective December 21, 2007).

[15] A comparison chart of the SC1A, SC1AR, SC1B, and SC1BR rates of the National Grid companies KeySpan-Brooklyn and KeySpan-Long Island are included as Attachment B.

Grid's KeySpan Brooklyn territory, heating residential customers pay a minimum charge of $13.03, while the reduced rate heating residential customers pay a minimum charge of only $3.53 – a 73 percent reduction. Such a rate design is clearly delineated on the customer's bill and provides a much larger percentage and real dollar savings than the discount proposed in this proceeding.

In addition, the Brooklyn and Long Island customers of Niagara Mohawk affiliates receive further reductions in the second block of delivery rates (SC1A and SC1AR Long Island customers pay $0.9590 per therm for the second block while SC1B and SC1BR customers pay $0.8339 – further reduced to $0.4717 in the winter heating months – and SC1A and SC1AR customers in Brooklyn pay $0.7288 per therm for the second block while SC1B and SC1BR customers pay $0.5827 – further reduced to $0.3181 during the winter heating months).

National Grid does not limit these more meaningful and effective low income programs to its subsidiaries in Brooklyn and Long Island. Its operating companies in New England employ far superior low income programs than what is offered in New York by Niagara Mohawk. While the company admits that it "may consider them for future program development,"[16] that provides no comfort to Niagara Mohawk customers who cannot afford to pay their bills now and who will see increases next year if the rate increase in the JP is approved.

In contrast to Niagara Mohawk, National Grid-Massachusetts has three low income programs in place:

[16] Response of Sharon Bentzoni to PULP Interrogatory Request 5, Question 1 (September 9, 2008).

(1) The Arrearage Management Program is a 24-month program for low income customers. The program is designed to assist those low income customers that have an account in arrears in making timely utility payments. Arrearage Management Program customers are eligible to receive up to $1,196 in arrears forgiveness for heating accounts and $400 in arrears forgiveness for non-heating accounts.

(2) The Residential Assistance for Families in Transition Program is a state-funded program that helps low income families avoid homelessness by providing assistance to keep or obtain a home. Families can receive up to $3,000 in financial assistance toward certain household expenses, including security deposits, first/last month's rent, and utility arrears.

(3) On Track is an 18-month program for low income customers designed to educate consumers on efficient energy use and to encourage timely, regular bill payment through behavior modification techniques that include financial and energy management education, consistent customer representative support, and social service referrals. The account must be for heating in a one or two family home.[17]

As described by witness Oppenheim under cross-examination, the low income rate in Massachusetts benefits both the customer and the utility:

> *Q. Mr. Oppenheim, turning to page 18 of your testimony.*
>
> A. Yes.
>
> *Q. Beginning on line 9 and continuing, you compared National Grid's low income rates in other jurisdictions, specifically Massachusetts and New Hampshire, to what you are proposing here in New York. Your first line, line 12 of your answer, states that your proposed low income rate of 26 percent of the total bill is the same as the discount National Grid offers in its metropolitan Boston service territory in Massachusetts. From that, I understand that you are asking for a percent discount of the total bill here in New York?*
>
> A. That is correct.
>
> *Q. Is that how it is applied in Massachusetts, to the total bill or delivery only?*
>
> A. The short answer is to the total bill but let me explain. It's not quite that simple. The system in Massachusetts is to compute the discount based on the total bill, and to do that once a year, and then to apply it only to the distribution. So the discount is actually taken only from the distribution

[17] *See:* Response of Sharon Bentzoni to PULP Interrogatory Request 2, Question 7 (July 16, 2008).

elements but it's meant to create in this case 26 percent discount on the entire bill.

Q. So it's just the way it's allocated on the line items on the bill?

A. Well, [yes], in essence. It's actually a separate rate in Massachusetts which is simpler in a lot of ways and makes it much easier to track the numbers of people on the rate, and the behavior of those customers in terms of their consumption, but the effect is to provide a 26 percent decrease on the entire bill. Since it's applied only to the distribution elements, the discount off the distribution elements is of course much larger.[18]

Accordingly, not only would the low income rate proposal result in a reduced rate for low income customers, Oppenheim testified that the Company would also benefit from having an easier way to track the number of customers on the lower rate as well as their consumption than the proposed $7.50 monthly discount within the general residential rate classification.

In addition, National Grid-Rhode Island offers the Very Low Income Budget Program, a 36-month program for low income customers. This Plan can be offered only one time and the customer has either been shut off for non-payment or has received a notice of shut off on their current bill. Fifty percent of original Arrears Forgiveness is provided if the terms of the agreement are kept over the 36-months agreement.[19]

In contrast, Niagara Mohawk offers its "AffordAbility Program," which provides minimal customer benefit because it takes HEAP grants and applies the money exclusively to arrears and not to current charges.[20] It does not reduce bills for current service. More can

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[18] December 4, 2008 Hearing Record, at pp. 1113 – 1115. (*emphasis added*)

[19] *See:* Response of Sharon Bentzoni to PULP Interrogatory Request 2, Question 7 (July 16, 2008).

[20] *See:* Response of Sharon Bentzoni to PULP Interrogatory Request 5, Question 5 (October 21, 2008).

done to protect Niagara Mohawk's poor customers, as amply demonstrated by National Grid's practices in other states and in other service territories in New York and actions of other forward-thinking state commissions.

Even if a discount to the normal residential rate were preferable over a separate low income rate classification, there is no justification in the record for the arbitrary selection of just a $7.50 per month discount amount for low income customers, a slight change from the $5 per month discount proposed by Niagara Mohawk in its pre-filed testimony:

> *Q. Well, let's take them one by one. The $5 -- the proposed $5 reduction in the minimum charge.*
>
> A. (Bentzoni) That program was modeled after our current $5 electric discount program that's been in effect for several years, and it's been highly successful. So we were modeling the program after that.
>
> *Q. And why was the number $5 chosen as opposed to $4 or $6?*
>
> A. (Cianflone) We do believe that the number of $5 was a rate design confine within the terms of the entire case. And it's something that we weren't involved in constructing. We were involved in saying we needed a program. And then in terms of the rest of the case, it was how much money could be available to fit that program.[21]

Under a decision of the Court of Appeals, utilities can provide a rate reduction for reasons not based on cost of service differences if there is a rational justification.[22] The only justifications in the record for the small rate break in the JP – to parallel an electric division rate break and to shift no more revenue than a predetermined amount deemed "available to fit

[21] December 5, 2008 Hearing Record, pp. 1767 – 1768. The discount was subsequently revised to $7.50 during settlement, with an equal lack of support in the record.

[22] "It does not necessarily follow . . . that the commission's rate fixing must be controlled exclusively by precise cost allocations in all classifications. On the other hand, it is not enough to discriminate among classes without a rational basis." *Matter of Lefkowitz v. Public Service Commission*, 40 NY2d 1047, 360 NE2d 918, 392 NYS2d 239.

that program" – is insufficient. As stated by the Court:

> **The disproportion has not been related to income, needs, or over-all budget requirements of the residential users,** ...The very tinkering with the electric charges for but one year was some indication that the motivation was only to provide a temporary sop. If the discrimination had a rational basis, it most likely would have been entitled to a more extended application. Without regard to the amounts of increase as distinguished from the proportions of increase, and without respect to other burdens upon the customers, there was insufficient basis to justify the temporary adjustment to tide such customers over a difficult period.[23]

Similarly, the proposal in the JP to provide a one-time $40 bill credit to all elderly, blind, disabled, or life support equipment customers for whom the Company receives a HEAP grant[24] but not also to, say, adults under 62 or working single mothers with young children who also receive HEAP, is not based on any identifiable rational basis.[25] The $40 one-time bill credit was discussed at the hearing:

> *Q. The Panel has talked about the -- its proposal to modify the benefit for HEAP customers. And as I understand it, under your proposal, elderly, blind and disabled HEAP customers would receive a benefit – a one-time benefit of $40, correct?*
>
> A. (DeVito) Correct.
>
> *Q. And how is elderly defined? At what age does one become elderly?*
>
> JUDGE BOUTEILLER: If you recall the criteria. Do you recall the criteria for the program?
>
> A. (DeVito) It's 62.
>
> JUDGE BOUTEILLER: Thank you.

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[23] *Id.*, at p. 1048. (*emphasis added*)

[24] Joint Proposal, at p. 26.

[25] An annual bill credit to <u>all</u> HEAP customers, and not just the favored groups, would be more likely to pass muster under *Lefkowitz*.

*   *   *

Q. Assume hypothetically I were several years younger and I was 61, and my neighbor was 62. And assume further that my neighbor is my twin brother, and we have the same income and the same house and the same car and the same expense and the same energy burden.

JUDGE BOUTEILLER: It was New Year's Eve.

Q. And I ask you, what is the basis to deny me, a hypothetical 61-year-old –

A. (DeVito) One day.

Q. -- the benefit?

A. One day.

Q. And how – that's not related to my energy burden, correct?

A. (DeVito) It is not.[26]

This one-time sop cannot be seen as a substitute for the low income rate proposed by PULP which clearly identifies energy burden reducing objectives and is tailored to accomplish that purpose.

It is unclear why the Signatory Parties rejected PULP's and LICA's logical and simple proposals, which are already in place in New York for Niagara Mohawk's sister companies and in other states by utilities owned by National Grid. No successful argument can be made that a rate design with includes a reduced rate for low income customers or which better manages arrears is unwarranted or is inapplicable in this case. Any rate design in this proceeding which does not include a reduced rate that provides meaningful reductions in energy burdens at least similar to what was recently approved by the Commission for Brooklyn and Long Island low income customers as being in the public interest should be rejected.

Performance Incentives to Reduce Service Interruptions for Bill Collection Purposes

Niagara Mohawk's answers to on-the-record and subsequent written discovery requests provided data which show growing reliance on service terminations to collect unpaid bills. In 2007, Niagara Mohawk terminated service to 22,098 customers. In 2008, Niagara Mohawk terminated service to 23,852 heat-related customers, an increase of nearly nine percent in one year.[27] In addition, many non-heating gas customers lost electric service. With the current economic condition facing the citizens of New York State, 2009 will likely result in even higher termination numbers.

In his direct testimony, witness Oppenheim called for the implementation of service performance metrics to reduce the use of terminations as a collections measure:

> *Q. Do you have a recommendation to address this concern?*
>
> A. Yes. State policy, as codified in the Home Energy Fair Practices Act (HEFPA, Public Service Law Article 2, sec. 30) is that "the continued provision of gas, electric and steam service to residential customers without unreasonable qualifications or lengthy delays is necessary for the preservation of the health and general welfare and is in the public interest."
>
> To address this regulatory gap, I propose that a collaborative be established that includes all interested parties, with the objective of proposing rules and procedures to enhance the enforcement of HEFPA's objectives. This would include development of a performance metric, such as:
>
> > o reduction in the percentage of customers who are terminated for non-payment, or
> > o increase in the percentage of customers who are enrolled in

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[26] December 5, 2008 Hearing Record, at pp. 1822 – 1823.

[27] Response of Joseph Ash to PULP Interrogatory Request 6, Question 1 (February 20, 2009).

discount and arrearage management programs.[28]

As admitted by the Commission Staff during the hearing, there are currently no National Grid performance incentives relating to the Public Service Law's goal of continuous residential service. Obviously, many customers struggling to pay bills under today's pricing plans are threatened with disconnection as a tool to increase collections. As stated, according to a news report this week, National Grid threatened one out of every 15 residential customers with service termination in January.[29]

Commission Staff witnesses also indicated there are no performance incentives in place to limit the use of terminations as a collections measure:

> *Q. Now, does the Company have any service quality incentive or performance incentive related to the number of service -- intentional service terminations for collection purposes?*
>
> A. (Silverstein) Could you -- can you repeat the question, please?
>
> *Q. Does the Company have any performance incentive mechanism relating to the number of deliberate service interruptions for collection purposes?*
>
> A. (Silverstein) No.
>
> *Q. So there's no performance incentive relating to the Public Service Law's goal of continuous residential service?*
>
> A. (Silverstein) Right. There are not.
>
> *Q. With the exception of the reliability performance ones of the SAIDI and so forth, correct?*
>
> A. (Silverstein) Correct.[30]

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[28] Oppenheim Testimony, at pp. 22 – 23.

[29] *See:* footnote 7, *supra.*

[30] December 5, 2008 Hearing Record, at p. 1822.

Despite this growing problem, the JP has no performance incentive mechanism designed to reduce the Company's growing number of deliberate service interruptions for collections purposes. Without concrete limitations being placed by the Commission on the Company's harsh collection tactics, more low income customers will face service turn offs as Niagara Mohawk's rates are permitted to rise.

Terminations may also have an important role to play in Company revenues under the proposed Revenue Decoupling Mechanism ("RDM"). Under the JP, revenue per customer will be used to develop the allowed delivery service revenues.[31]

RDM -- Gaming Potential with Shutoff Surges

The RDM is designed to hold the Company harmless from reductions in gas usage and deliveries due to factors such as customer usage reductions due to energy efficiency measures and conservation. PULP and LICA are concerned that customers with growing arrears and in receipt of a termination notice will be included in the RDM count on the first day of the month, for example, but will be terminated for non-payment on day two, thus manipulating the final customer count and usage reductions for RDM purposes. Gas will not be delivered while the service is off due to deliberate interruption for collection purposes. This reduction in deliveries will then be treated by Niagara Mohawk the same for RDM purposes as if the customer reduced usage with a new setback thermostat or insulation.

In response to PULP's discovery request, the Company claimed that terminations for nonpayment would not affect RDM calculations:

The impact on the delivery revenues utilized in the RDM calculation as a result

[31] Joint Proposal, at p. 9.

> of terminated customers is only affected by the number of days the customer is not taking service. Given that the number of days is fewer than 7 and the number of customers whose gas service is terminated is small, the impact on delivery revenue is small. In addition, the 12-month averaging of monthly customer numbers would smooth and minimize the impact. Further, the methodology used to derive the Target Revenue Per Customer relied on historical data that included terminated customers and interrupted delivery revenue. Thus, the impact of terminations on revenue per customer, however small, is already reflected in the RDM target in a manner that is similar to the way it will be reflected in the Actual Revenue Per Customer going forward. As the impact of terminations on delivery revenue is small to begin with, any differential impact between Target and Actual will necessarily be smaller still.[32]

In contrast to the Company discovery response, however, actual termination data provided by the Company clearly show that terminations do <u>not</u> occur at an even rate during the year or anything close to that, thus it is impossible to average the monthly terminations and "smooth and minimize the impact." Instead, there are periods when the Company performs massive shutoffs, perhaps using a shock and awe approach, or a blitz or surge – especially from May through September.[33] Given this proven history of discretionary use and timing of terminations, the possibility of even more terminations in the coming years, and given the simplistic formula of the RDM, Niagara Mohawk will be able to game the RDM customer counts so that usage and delivery reductions due to its service interruptions for bill collection purposes will be compensated through the RDM as if the 20,000 or more customers who are terminated each year had conserved energy instead. With Niagara Mohawk's increased propensity to terminate customers as a means to collect arrears, these issues may be far more than *de minimus* concerns, yet are not addressed in the JP.

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[32] Response of Amy S. Wisner to PULP Interrogatory Request 6, Question 4 (February 24, 2009).

[33] As the chart in Attachment C indicates, a spike in terminations occurs from May through September every year, ranging from over 4,400 shut-offs in May 2008 and a low of zero in December 2008. Keep in mind that according to NYSERDA, even in the month of May, Syracuse has an average of 244 heating

Affiliate Transactions - Gas Portfolio Management

In pre-filed testimony, the Company sought recovery of gas portfolio management expenses and waiver of the regulations prohibiting any recovery of non-gas costs in the Gas Adjustment Clause ("GAC"). These costs included charges of unregulated KeySpan affiliates for law firms, consultants, and an Orlando conference. During the hearings, after cross-examination regarding the affiliate transactions, the Company withdrew the request.

The JP, however, does not mention or reflect this commitment.

Further, upon reflection, PULP believes that a subsequent filing relating only to pass-through of affiliate *costs* and the mechanism for that is not a sufficient safeguard, because there is a need to check whether the arrangement is leading to a loss of *revenue*. In particular, the Company witness Garcy testified in substance that due to the optimization services of the KeySpan affiliate, it expects to have less off-system revenues from sales of excess capacity because it is receiving capacity managed by the affiliate in amounts more tailored to its requirements:

> *Q. Please describe the Company's plans and strategy with respect to off-system sales and capacity release.*
>
> A. The Company continues to modify its portfolio of long-term upstream assets and gas supply to reliably match its sales responsibilities and lower costs to customers. As a result, the amount of resources that are temporarily underutilized and available for off-system transactions is small. Any resources not needed to meet firm requirements during the winter will likely exist for only short periods subject to weather conditions.[34]

There should be an inquiry to determine whether capacity initially arranged for

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degree days, meaning service terminations can still reduce gas deliveries, which would be compensated by the RDM. http://www.nyserda.org/energy_information/nyepch.asp

[34] *Direct Testimony of Bruce P. Garcy*, Proceeding on Motion of the Commission as to the Rates, Charges, Rules, and Regulations of Niagara Mohawk Power Corporation for Gas Service, Case 08-G-0609, at pp. 13 - 14, December 2, 2008 Hearing Record, at pp. 393 - 394.

Niagara Mohawk (or other New York gas companies cooperating in the affiliate arrangement) but not needed on warm winter days due to low demand is being sold off at the unregulated affiliate level, when prices are favorable for that, when instead the revenue from any such sales should flow through to consumers. The Commission should conduct that inquiry, even though the issue has been dropped by the Signatory Parties. The Commission should examine more fully the justification for the affiliate relationship and to probe whether customers are disadvantaged by it, either by excess or unnecessary costs, or by loss of revenue from sales of capacity or other transactions at the affiliate level. At a minimum, these affiliate relationship issues should be referred by the Commission to the team currently conducting a management audit at Niagara Mohawk.[35]

Revenue Requirement

PULP did not put forward an alternative revenue requirement proposal. PULP did, however, question some of the estimates of revenue from reconnection charges. Cross-examination revealed a major discrepancy in the forecast reconnection charge revenue. The number of reconnections upon which the revenue estimate was made did not jibe with the number of terminations and reconnections provided to PULP in response to its discovery requests. Staff supported the Company's estimate of reconnection charge revenue based on the low figure.

PULP made on the record requests for termination data routinely provided to the Commission. The Company was slow in providing that data, but eventually provided it last

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[35] *See:* http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/ArticlesByCategory/1B7930EC552CBE118525748 8005A141A/$File/pr08078.pdf?OpenElement.

week, at a point too late in time to do follow-up discovery for this submittal. The Company attempted to explain the higher numbers as being terminations of electric service in order to collect gas bills owed by combination (natural gas and electric) customers. If this is true, then the electric division is receiving reconnection revenue that should be allocated to the gas division. The electric division is in a multi-year rate plan where it can maximize and keep revenues earned for turning off electric service of gas customers in arrears. The electric division should not receive all the reconnection charge revenue. At most, the electric division should only retain its incremental cost of shutting off electric service to customers with gas arrears. Since costs of the employees who do the snip and their trucks and equipment, etc., are largely fixed, the incremental cost of an additional termination of electric service for collection of gas charges is minimal. Accordingly, revenue from the reconnection activity should be imputed to the gas division, and the revenue requirement reduced by a corresponding amount.

The imputation of reconnection charge revenue to the gas division would also tend to discourage unnecessary terminations and reconnections, reducing risks to the public from "churning" customers off and on as a bill collection tactic. That concern is justified in light of the fact that the Company shut off service to over 18,000 HEAP recipients in 2007 – 2008 and reconnected 11,212.[36]

Conclusion

PULP and LICA raised significant issues throughout this process which have been ignored to the detriment of Niagara Mohawk's most vulnerable customers and which do not promote affordable, continuous service. The JP should be rejected or modified to correct these deficiencies.

For all of the above reasons, PULP and LICA can not lend its support to the JP and, as a result, formally opposes the JP as presently formulated.

Respectfully Submitted,

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[36] Response of Patti Ross to PULP Interrogatory Request 1, Questions 3 and 4 (June 30, 2008).

ATTACHMENT A

Schedule No. G-PPPS
PUBLIC PURPOSE PROGRAMS SURCHARGE

APPLICABILITY

Applicable to all gas sales and transportation services rendered under all tariff rate schedules authorized by the Commission. Customers will have a gas public purpose program (PPP) surcharge as a separate line item on their bills unless they are exempt* (e.g. Electric Generation including cogeneration, Enhanced Oil Recovery, Wholesale service, and consumption of natural gas which California is prohibited from taxing under the United States Constitution or the California Constitution, as referenced in Section 896 of the Public Utilities Code. (See also the California Energy Resources Surcharge Regulation Sections 2315 and 2316 as identifying exempt customers.) California Alternate Rates for Energy (CARE) customers will receive the surcharge excluding CARE program costs along with applicable customers receiving sales for street lighting.

TERRITORY

This schedule is applicable within the entire territory served by Utility.

RATES

Customer Class	PPP Surcharge** For all service, per meter, per month — CARE Customer*** (¢/therm)	Non-CARE Customer (¢/therm)	
Core			
Residential	2.695	5.074	I,I
Commercial/Industrial	4.001	6.380	|
Gas Air Conditioning	4.173	6.553	I,I
Gas Engine	N/A	6.505	I
Natural Gas Vehicle	N/A	2.379	R
Noncore			
Commercial/Industrial	N/A	2.807	I

* Commission Resolution G-3303, dated December 21, 2000, references Sections 896, 897, and 898 of Assembly Bill (AB) 1002 regarding consumers of natural gas who are exempt from the tax surcharge. Section 896 states "Consumption means the use or employment of natural gas. Consumption does not include the use or employment of natural gas to generate power for sale or use of gas for enhanced oil recovery, natural gas utilized in cogeneration technology projects to produce electricity, or natural gas that is produced in California and transported on a proprietary pipeline. Consumption does not include the consumption of natural gas which this state is prohibited from taxing under the United States Constitution or the California Constitution." Section 897 states "Nothing in this article impairs the rights and obligations of parties to contracts approved by the Commission, as the rights and obligations were interpreted as of January 1, 1998." Section 898 is in reference to a municipality, district, or

(Continued)

Schedule No. G-PPPS Sheet 2

PUBLIC PURPOSE PROGRAMS SURCHARGE T

(Continued)

SPECIAL CONDITIONS N

1. General Description. The gas public purpose program (PPP) surcharge is shown on a customer's bill as a separate line item. The surcharge is authorized to recover the cost of public purpose programs such as low-income assistance, energy efficiency, and public interest research and development. The Utility remits surcharge payments quarterly to the State Board of Equalization (BOE) by the last day of the month following a calendar quarter. The BOE deposits the payments in the Gas Consumption Surcharge Fund (Fund) with the State Treasurer. Utility public purpose programs are financed through monies appropriated to the Utility from the Fund by the Commission. T

2. Filing Requirements. Pursuant to Decision 04-08-010, the Utility shall file an annual advice letter, with proposed surcharge rates, by October 31, with a requested effective date of January 1 of the following year. Surcharge rates will be determined by customer class and by CARE participation. Accordingly, non-CARE customers shall be charged the CARE component of the surcharge whereas CARE customers will not be charged for this component. N

   The Commission will establish the gas PPP surcharge rates annually.

3. Surcharge Formula. The gas PPP surcharge rates will be calculated pursuant to the surcharge formula adopted in D.04-08-010. N

4. Treatment of F&U. Franchise Fees and Uncollectibles (F&U) shall not be included in the calculation of the PPP surcharge and the utility shall exclude PPP surcharge amounts in determining franchise payments. N

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public agency but also references Section 890. Subdivision (e) of Section 890 states in part "The Commission shall determine the total volume of retail natural gas transported within the service territory of a utility gas provider, that is not subject to exemption pursuant to Section 896, for the purpose of establishing the surcharge rate."

** AB 1002 of September 30, 2000 authorized the Commission to establish a gas PPP surcharge. Resolution G-3329 established public purpose program surcharge rates for both CARE and Non-CARE customers and for use in calculating the surcharge payments to the BOE. The surcharge rates were removed from utility energy rates and added as line items to applicable billings effective July 1, 2001.

*** Low-income customers who qualify for CARE receive a 20% discount on rates and pay all of the public purpose program costs except CARE.

(Continued)

Schedule No. G-PPPS
PUBLIC PURPOSE PROGRAMS SURCHARGE
Sheet 3

(Continued)

SPECIAL CONDITIONS (Continued)

5. BOE Remittances. Per PU Code Sections 892 and 892.1, the utility remits revenues collected from the PPP surcharge to the BOE on a quarterly basis. N

6. Cost and Volume Assumptions.

   a. Interstate Pipeline Gas Throughput - The Energy Division shall obtain interstate pipeline customer gas volumes from the BOE and provide these volumes to the appropriate utilities, by September 30, for determining surcharge rates.

   b. Administrative Costs - The Energy Division will provide the BOE and Commission's administrative costs by September 30 to include in the Utility's October 31 surcharge filings for rates effective January 1 of the following year. The Utility shall identify these administrative cost amounts in their quarterly remittances to the BOE.

   c. R&D Program Costs – Energy Division shall provide the Utility, by September 30, with its allocation of R&D costs that were approved by the Commission for the following year.

7. PPP Surcharge Refunds. Per D.04-08-010, to prevent the issuance of duplicate refunds of PPP surcharge collection, the utility shall inform the BOE of any PPP surcharge refunds it intends to issue. The refunds will not be issued if previously made by the BOE. The utilities shall inform the BOE of any refunds that they issue. The utility will annually review its customer accounts to determine if any refunds are warranted.

8. Distribution and Treatment of Amounts Received from the Gas Consumption Surcharge Fund. Per D.04-08-010, all funds remitted to the BOE are to be returned to the utility in a timely manner, except for R&D funds (excluding R&D funds to reimburse the utility for R&D activities conducted in 2004), BOE and Commission administration costs, and deductions for any refunds issued by the BOE. Non-exempt interstate pipeline customer remittances to the BOE are to be returned to the public utility in whose service territory the customer resides. All amounts received from the Gas Consumption Surcharge Fund are to be recorded to the appropriate PPP balancing accounts.

9. Interim Rate Changes. The Utility may also request via advice letter to change surcharge rates during the year only if failure to make the rate change would result in a forecasted total rate increase of 10% or more on January 1 of the following year. The Utility shall file the advice letter at least 40 days prior to the beginning of the next quarter with an effective date to be determined by the Energy Division in consultation with the BOE. N

ATTACHMENT B

KEDLI

	Non-Heating		Heating	
	SC1A	SC1AR	SC1B	SC1BR
Delivery Rate Surcharge	$0.0291	$0.0291	$0.0134	$0.0134
Minimum Charge	$10.18	$7.68	$11.38	$1.88
Next 47 Therms	$0.9590	$0.9590	$0.8339	(May – October) $0.8339 (November – April) $0.4717
Over 50 Therms	$0.3268	$0.3268	$0.3468	(May – October) $0.3468 (November – April) $0.3468

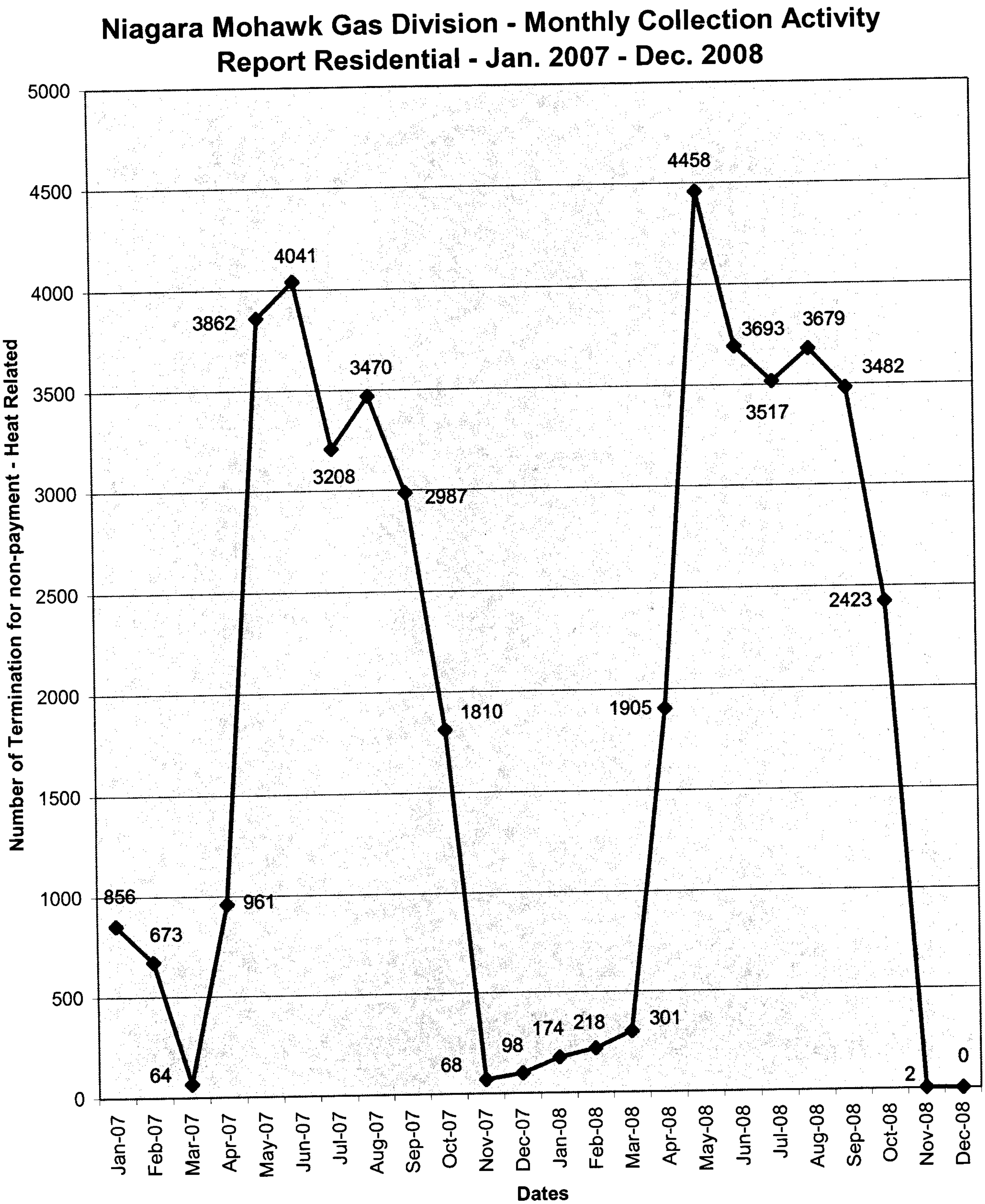
** SC1AR and SC1BR are limited to 30,000 customers

KEDNY

	Non-Heating		Heating	
	SC1A	SC1AR	SC1B	SC1BR
Delivery Rate Surcharge	$0.0311	$0.0311	$0.0084	$0.0084
Minimum Charge	$11.46	$8.96	$13.03	$3.53
Next 47 Therms	$0.7288	$0.7288	$0.5827	(May – October) $0.5827 (November – April) $0.3181
Over 50 Therms	$0.3428	$0.3428	$0.2890	(May – October) $0.2890 (November – April) $0.2890

** SC1AR and SC1BR are limited to 60,000 customers

ATTACHMENT C



Source: Response of Joseph Ash to PULP Interrogatory
Request 6, Question 1 (February 20, 2009)