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CURRENT PROJECTS

Pennsylvania Gas Restructuring

Pennsylvania's natural gas utilities should modify eligibility requirements that limit the availability of their low-income affordable rate programs. In testimony filed with the Pennsylvania Public Utility Commission on behalf of the state Office of Consumer Advocate (Pennsylvania Attorney General), FSC said that natural gas distribution companies in Pennsylvania should abandon their 12-month residency requirement and should modify their definition of "payment troubled" customer in establishing eligibility for their respective Customer Assistance Programs (CAPs).

The Pennsylvania PUC requires the energy utilities in that state to establish CAPs. In a March 1999 order, the PUC held that:

CAPs provide an alternative to traditional collection methods for low income, payment troubled customers. . . The results of the CAP impact evaluations show that participants enrolled in CAP increase the number of payments they make while maintaining the same level of energy usage.

More importantly, the results of the two impact evaluations show that. . . an appropriately designed and well-implemented CAP, as an integrated part of a Company's rate structure, is in the public interest. Further, the results show that CAPs can be a more

NOTE TO READERS

ON-LINE DELIVERY

This month presents the second issue involving the bi-monthly electronic delivery of *FSC's Law and Economics Insights*. Previous issues of the newsletter can be obtained at FSC's World Wide Web site:

<http://www.fsconline.com/news/news.htm>

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cost effective approach for dealing with issues of customer inability to pay than traditional collection methods.

Minimum Residency Requirements

FSC challenged the practice of some Pennsylvania utilities which deny assistance to customers who have not been customers on the utility system for a minimum of 12 months despite the fact that the customers would otherwise be eligible for assistance. Citing a strong line of federal court cases invalidating "durational residency requirements" for the receipt of welfare benefits, FSC told the PUC that minimum residency requirements have been found to be an unlawful restraint on consumer mobility.

In addition, FSC said, minimum residency requirements are likely unlawful under federal fair housing and equal credit laws. Enforcing the 12-month residency limitation, FSC said, has an adverse impact on households of color and on female-headed households, in that it disproportionately disqualifies such households from participation in the CAP program.

Defining "Payment-Troubled Customer"

FSC also urged the PUC to reconsider its decision that customers must have defaulted on one or more payment plans in order to be eligible for rate affordability assistance. This definition of "payment troubled," FSC told the PUC, will face substantial operational barriers in a retail choice natural gas industry.

FSC recommended that a definition of payment troubled be adopted that does not depend for its operation on information that a natural gas distribution company may not have (i.e., whether a customer has arrears with a competitive service provider

not billed through the distribution utility, whether a customer has entered into a deferred payment plan with a competitive service provider, and whether that customer has broken or defaulted on a payment plan not billed by the distribution company). If the distribution utility does not bill for the competitive service provider, FSC pointed out, the distribution utility will not necessarily know what the customer's bill would be, let alone whether and to what extent payments have been made (let alone whether payment arrangements have been entered into and/or broken or not).

FSC recommended that the PUC direct the universal service task force, created pursuant to Pennsylvania's recently enacted natural gas retail choice statute, to develop an alternative definition of "payment troubled" as a basis for determining eligibility for rate affordability assistance.

Hearings on cases involving Columbia Gas, Peoples Natural Gas, PG Energy and Equitable Gas should be completed by the end of the year. Decisions on the FSC recommendations are expected in the first quarter of 2000.

OCCUPATIONAL SAFETY FOR VOLUNTEERS

Volunteers will be covered by safe work place regulations in practice, whether or not by explicit state law. According to a recent analysis of work place safety for the U.S. Occupational Safety and Health Administration, Fisher, Sheehan and Colton, Public Finance and General Economics (FSC) said that many states extend occupational health and safety protections to "volunteers" without any explicit reference to federal OSHA standards.

In this sense, FSC said, the term "volunteers" should be used with care. In the workplace safety arena, the term is not

always used in its popular meaning. While some states hold simply that "volunteers" should be extended the same occupational safety protections as paid employees, other states hold that while occupational safety standards do not cover "volunteers," the term "volunteer" does not cover all unpaid workers. In some states, an individual who is working without compensation may be deemed a "gratuitous employee." In other states, such a worker might be classified as a "frequenter." In yet other states, workplace safety protections are extended to "business invitees." In each of these instances, work place safety protections may apply.

In assessing the safe work place obligations of employers toward unpaid workers, it is necessary first to recognize that the term "volunteer" is not a label, but a conclusion, FSC told OSHA.

For example, unpaid workers who are found to be not "volunteers" but "gratuitous employees" are entitled to workplace health and safety protections in many states. The rule is stated:

The duties required by law of an employer with respect to its employees are generally not owed by the employer to a person whom the employer has not authorized to render services as an employee. . . [However] one who performs services gratuitously may be deemed not a volunteer, but rather a gratuitous employee, where he submits himself to the direction and control of the one for whom the services are performed; the primary purpose of the acts undertaken is to serve another; and the person performing the work has some interest therein.

FSC cited an example to help illustrate the difference between a "volunteer" and a "gratuitous employee." If a parishioner agrees, without pay, to come to the church

on a Sunday afternoon to help cut down a tree, he or she is a "volunteer." If, in contrast, the parishioner agrees, without pay, to come to the church four days a week from 10:00 to 2:00 to help do office work, he or she is a "gratuitous employee."

It has been said, FSC noted, that the right to control the person's conduct is the key element in the determination of whether there is an employment relationship. Another factor to be considered is the right of the "employer" to select (or to dismiss) the worker. Other key factors that are considered involve the right to replace the volunteer as well as a determination of whether the volunteer is doing work that, but for the volunteer, would be performed by a paid employee.

FSC's publication, *Applying Federal OSHA Standards to Volunteers*, can be obtained by sending an e-mail to: publications@fsconline.com.

ENERGY EFFICIENCY EDUCATION ACCREDITED FOR DELAWARE REALTORS

The Delaware Board of Realtors has accredited a two-hour continuing education course for realtors that will focus on home energy efficiency and home energy rating systems (HERS).

The course was developed by Fisher, Sheehan and Colton, Public Finance and General Economics (FSC) for the Delaware state energy office and the Delaware Office of Community Services. Course materials have been published in support of the HERS education program. The course is supported by a student "workbook" containing four separate sections:

- “ An overview of energy use in the home;
- “ A description of the HERS transaction;

- “ A consideration of energy efficiency borrowing from the consumer's perspective; and
- “ A consideration of energy efficiency lending from the lender's perspective.

These materials prepared will also be used in support of educational courses directed toward lenders, HUD housing counselling agencies, housing builders and developers, and other housing professionals.

In addition to the student materials, a "teacher's workbook" contains supporting discussion problems, worksheets, and a series of technical "notes" that provide additional in-depth information not presented in the student book.

The Delaware workbooks, titled *Home Energy Ratings in Delaware: An Education Program for Delaware's Housing Community*, along with the proposed format for the educational seminar, can be obtained by sending an e-mail to: publications@fsconline.com.

UPDATES

Ameritech Ohio Approves Technology Diffusion Fund

Ameritech Ohio has agreed to a range of low-income protections as a condition of gaining approval of its merger with Southwestern Bell Telephone Company. (See, *Law and Economics Insights*, November/December 1998). Amongst the programs Ameritech agreed to implement are:

- “ **Community Technology Fund:** Ameritech will provide \$750,000 per year for three years to be disbursed through a Community Technology Fund (CTF). The CTF "shall be

dedicated to uses which help assure that rural and low-income areas in Ohio have access to advanced telecommunication technology. Such uses may include expenditures for computer equipment and associated software, Ameritech tariffed services, Internet access, technical support, program design and implementation expenses not to exceed \$50,000 annually. . .and other associated services and equipment in rural and low income communities.

- “ **Community Computer Center Network:** Ameritech agreed to provide \$500,000 in the first year, and \$250,000 for each of two more years, to support a Community Computer Center Network throughout Ohio. As part of the settlement of its Alternative Regulatory Plan, Ameritech funded 14 computer centers through the Ameritech service territory. While funding for that network of Centers has lapsed, the centers and the Ohio Community Computing Center Network have been a true success story. During the last quarter of 1997, there were over 26,000 visits by children and adults to the 14 Ameritech funded centers, with over 6,000 using the centers for the first time during that period. Many of the centers have people waiting in line at the door when they open. Most of the centers are located in communities where, without them, there would be no access to this technology.

- “ **Non-telephone households:** Ameritech agreed to complete, within 15 months after the merger closing date, a series of studies to determine the various causes of non-telephone households in Ameritech Ohio's current service territory. "Once the reasons for non-telephone households have been identified, Ameritech Ohio,

in conjunction with the Commission Staff, [Office of Consumer Counsel], Edgemont [Neighborhood Association], and any other consumer group that is a Supporting Stipulating Party will develop potential short and long-term practices and policies designed to decrease the number of non-telephone households in Ameritech Ohio's current service territory."

.. **Consumer Education Fund:**

Ameritech agreed to establish a Consumer Education Fund. The Company will contribute \$750,000 in each of three consecutive years to the fund. The fund will be used to inform and educate Ohio consumers of their rights concerning telecommunications and information services, minimum telecommunication service standards, Commission policy, programs such as Lifeline programs, and optional payment plans, especially in low-income areas.

.. **Late payment charges:** Ameritech agreed to withdraw its pending request for a consumer late payment charge, without prejudice to its right to resubmit such a proposal at a later date for costs the company incurs in implementing the Commission's disconnection policies. No such proposal will be submitted, however, until the Commission approves a new Alternative Regulatory Plan for Ameritech, or until the existing Alternative Regulatory Plan expires, whichever comes first.

FSC's testimony in the Ameritech Ohio merger proceeding, on behalf of the Edgemont Neighborhood Association, can be obtained by sending an e-mail to: publications@fsconline.com.

Fisher, Sheehan and Colton, Public Finance and General Economics (FSC) is a research and consulting firm with offices in Belmont (MA), Scappoose (OR), and Iowa City (IA).

FSC specializes in providing economic, financial and regulatory consulting. The areas in which FSC has worked include infrastructure financing, public enterprise planning and development, natural resource economics, community economic development, telecommunications, public sector labor economics, planning and zoning, regulatory economics, energy law and economics, fair housing, and public welfare policy.

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