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Public Utility Law Project

October 9, 2001

Hon. Janet Hand Deixler, Secretary
New York State Public Service Commission
Three Empire State Plaza, 14th Floor
Albany, New York 12223-1350

Re: Case 01-G-1223 - *Proceeding on Motion of the Commission Investigating the Death of a National Fuel Gas Distribution Corporation Customer During the Winter of 2000-2001 and Whether National Fuel Gas Distribution Corporation Violated the Public Service Law and the Home Energy Fair Practices Act.*

Dear Secretary Deixler:

The Public Utility Law Project of New York, Inc. (PULP) is a not-for-profit organization representing the interests of low and fixed income residential consumers throughout New York State in matters affecting energy, utility and telecommunication services. PULP respectfully requests permission to intervene in this proceeding. As set forth more fully below, PULP's intervention is appropriate because its participation "is likely to contribute to the development of a complete record [and] is otherwise fair and in the public interest." 16 New York Code, Rules and Regulations, Section 4.3(c)(1). matter arises out of the Commission's investigation of the death from hypothermia in the winter of 2000-2001 of Velma Fordham, a Buffalo, N.Y. customer

This matter arises out of the Commission's investigation of the death from hypothermia in the winter of 2000-2001 of Velma Fordham, a buffalo, N.Y. customer of National Fuel Gas Distribution Company ("NFG" or "Company"). This tragic death occurred after Ms. Fordham had repeatedly sought to have the gas service continued at an apartment to which she was moving.

In PULP's view, the factual scenario set forth by the Commission demonstrates a clear and unequivocal violation of Public Service Law, Article 2, the Home Energy Fair Practices Act ("HEFPA"). HEFPA provides the detailed statutory rules that are intended to prevent tragedies such as this from occurring. Section 30 of the Public Service Law, one of the key elements of

HEFPA, states:

the policy of this state 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.¹

As set forth in the Order to Show Cause issued by the Public Service Commission (“PSC”) on September 21, 2001, Velma Fordham was moving from one apartment to another and asked the Company to stop the gas service to the old apartment and to establish service in her name at the new apartment. The facts disclosed in this Order confirm that Ms. Fordham provided to the Company the necessary information for this change in a timely manner. However, while the Company stopped service at the old apartment, it never began service in the new apartment. After weeks of trying to obtain service from the Company, Ms. Fordham froze to death in her new apartment. It is difficult to imagine a clearer violation of Section 30’s prohibition of “unreasonable conditions” and “lengthy delays”.

In PULP’s view, the Company defaulted in its obligations under HEFPA. It appears that the Company contends, however, that it could withhold service because of an outstanding unpaid judgment against Ms. Fordham. The Company also appears to claim that Ms. Fordham failed to respond to a form letter (issued nearly a month after her service should have been transferred to her new address). Each of these excuses is extraneous to the core of this matter. In a most grievous manner, Ms. Fordham’s rights under HEFPA were denied, and the continued provision of her gas service as a residential customer of NFG was obstructed by unreasonable qualifications² and lengthy delays.

NFG apparently believes that its obligations pursuant to the Home Energy Fair Practices Act are subject to wholesale disregard when a customer as vulnerable as Ms. Fordham may be exploited. According the Buffalo News, a company spokesperson said, regarding a letter sent by NFG’s December 19, 2000 asking Ms. Fordham to call and make an appointment: “We believe it was received and opened ... We don’t know why she didn’t respond.”³ This is a despicable attempt to blame the victim and shift attention from NFG’s multiple violations and lapses in service. The company should not be asking now why Ms. Fordham didn’t respond to its letter sent weeks after service was supposed to be established and well after she ordered service through a telephone call (which the regulations permit her to do), but did not receive it.

¹ Public Service Law § 30 (emphasis added).

² It is unreasonable to require a current residential customer to pay \$2000 of outstanding debt that is clearly an old liability in order to transfer current service to a new address. Public Service Law § 41 and 16 NYCRR § 11.14

³ *Buffalo News Online*, City and Region, www.buffalonews.com/editorial/20010928/1028330.asp (September 28, 2001).

PULP is also concerned by the approaching cold weather period.⁴ Indeed, it has already started to get cold in the NFG service area. Many low and fixed income NFG customers depend on the company for heat essential to life and health. PULP is apprehensive that NFG's actions and non-actions, excuses and attempts at justification in this matter reflect an attitude toward HEFPA that places its heating customers in jeopardy.

PULP commends the Public Service Commission ("PSC" or Commission") for its aggressive investigation of Ms. Fordham's unfortunate death. Clearly, the Company's apparent failure to provide HEFPA compliant service must be thoroughly evaluated and remedial measures taken to assure there will be no recurrences. PULP suggests, further, that until such time as the Commission is convinced that NFG's staff and its policies and procedures are in accord with the requirements of HEFPA and that comparable violations will not occur, the Company should be required to take further steps to maximize customer awareness of the protections available to them under HEFPA and of the steps that customers should take to invoke those protections.

It now appears that, instead of promptly transferring service to the new address after receiving Ms. Fordham's oral request, Ms. Fordham was erroneously treated as a new customer with arrears and her application for a service was denied. However, even under this scenario, the Company was obliged to offer Ms. Fordham a deferred payment agreement on terms affordable to her, and had to notify her in writing within three days of this opportunity as well as of her right to a review of the Company's denial of service, including her right to access the PSC through the PSC's hotline telephone number.⁵ Thus, even if Ms. Fordham had been a new applicant (which she wasn't), the company defaulted in providing the important procedural protections, including important notices of her opportunity to seek help to assure the continuation of her service. Accordingly, until the Commission has sufficient assurance of the NFG's ability to reliably provide HEFPA-compliant service, the Company should be required to establish interim procedures through which the date and delivery of all notices to customers relating to service termination may be independently confirmed.

The Commission in its Order to Show Cause raises the issue whether NFG violated three sections of the Commission's HEFPA regulations and one section of the HEFPA statute.⁶ Based on the narrative of facts contained in the Order to Show Cause, it is likely that other sections of the HEFPA statute and regulations have also been violated. For

⁴ The PSC, as mandated by the Public Service Law § 32(3)(c), has determined that the cold weather period begins on November 1 of each year and terminates on April 15 of the following year.

⁵ Public Service Law § 31(2) and 16 NYCRR §11.3(b)(2).

⁶ PULP agrees with the Commission's determination that a violation of 16 NYCRR § 11.3(a)(4) necessarily implies a violation of Public Service Law § 31(3). By the same token, when the Commission suggests that HEFPA rules 16 NYCRR §§ 11.10(a) and 11.10(b) were violated, Public Service Law § 37, which implements those regulations, has also been violated.

example, by failing to provide Ms. Fordham's service at her new residence (taking into consideration the short delay due to a snow storm), the company effectively terminated her utility service. Ms. Fordham, pursuant to the HEFPA statute, was a current

residential customer ... eligible to receive service at the new residence [which] shall be considered a continuation of service in all respects, with any deferred payment agreement honored, and with all rights of such customer and such utility corporation provided by this article unimpaired.⁷

As a current residential customer Ms. Fordham was entitled to written notice of any termination, and her request to transfer service to a new location without a hiatus did not affect her status as a current customer, with a statutory right to continuation of service.⁸ HEFPA precluded the utility from terminating residential service until she has first been served with

a final notice of termination [which] shall, at a minimum, clearly state the reason for termination of service; how termination may be avoided; that the utility corporation or municipality has available procedures for handling complaints; a summary of the protections available under this article; that any customer eligible for such protections should contact the utility corporation or municipality; and such other provisions as the commission may require.⁹

There is no indication that a termination notice was served upon Ms. Fordham. Such a failure would be another violation of important HEFPA's procedural safeguards, a bulwark protecting customers from erroneous or arbitrary utility action.¹⁰

Additional Public Service Law provisions, other than HEFPA, also may have been violated. For example, § 65-b of the Public Service Law provides in relevant part that "[n]o

⁷ Public Service Law § 31(3) (emphasis added).

⁸ Had Ms. Fordham stopped her service at the initial location, temporarily moved elsewhere for a month, and then applied for service at a new location, she would still be a "current" customer whose request for resumption of service could not be refused. HEFPA considers persons in such situations current customers if they request continued service at a new location within 60 days.

⁹ Public Service Law § 32(2). See 16 NYCRR §§ 11.4(a) and (b).

¹⁰ Also, if the customer was disabled, Ms. Fordham was entitled to personal notification of any impending termination under HEFPA under Public Service Law § 32(3). See 16 NYCRR §§ 11.5(b). HEFPA also mandates the creation of special procedures for medical emergencies and cold weather periods. Public Service Law §§ 32(3)(a) and (c).

gas corporation, electric corporation or municipality shall refuse to supply or to continue to supply utility services to any person ... if the utility corporation or municipality receives, or is entitled to receive, a direct payment ... from a social services district.”¹¹ Although Ms. Fordham orally requested continuation of service at a new location and should not have been required to apply again for service, and even though she was not properly terminated as a residential customer, and even though she probably was not billed or notified of the utility action withholding service because of a past judgment, she did apply to the Erie County Department of Social Services (“ECDSS”) for assistance in responding to the demand for payment of \$2,000. She returned to NFG with a HEAP authorization from ECDSS advising NFG that they were entitled to receive a direct payment of \$710.¹² Section 65-b of the PSL contains no requirement that the “direct payment”, which triggers a utility’s obligation to continue service under PSL Section 65-b must be in an amount equal to the amount due from the person; nor does the statute place any restrictions on the source of the “direct payment”. Rather, the statute requires that the company supply or refrain from terminating supply, if the customer applies for public assistance and the utility is entitled to receive a direct payment.¹³ Thus, in addition to its violations of HEFPA, NFG appears also to be in violation of its obligations under Public Service Law § 65-b.

The PSC’s Order to Show Cause issued September 21, 2001 reflects positively on the Commission’s commitment to enforce Article 2 of the Public Service Law, the Home Energy Fair Practices Act of 1981 (“HEFPA”), which was enacted in 1981 in order to prevent such tragedy. It is clear from the Order to Show Cause that NFG’s compliance with HEFPA - both the statute (Public Service Law §§ 30-52) and its regulatory implementation (16 NYCRR Part 11) - are at the heart of this proceeding. In addition, the Company’s apparent refusal in December 2000 to provide service despite the tender of benefits from the New York State Home Energy Assistance Program (“HEAP”) invites scrutiny during the winter of 2001-2002.

PULP was an original participant in the legislative process to create and an advocate for the adoption of HEFPA. PULP has actively participated in almost every Commission proceeding involving HEFPA regulations. For example, PULP intervened and participated with other parties when the PSC issued the initial set of rules implementing the HEFPA statute in 1983, through and including the most recent amendments to the Commission’s

¹¹ Public Service Law § 65-b.

¹² Case 01-G-1223 - *Proceeding on Motion of the Commission Investigating the Death of a National Fuel Gas Distribution Corporation Customer During the Winter of 2000-2001 and Whether National Fuel Gas Distribution Corporation Violated the Public Service Law and the Home Energy Fair Practices Act*, p. 3.

¹³ There can be no dispute that the statute mandates that the service be restored when a social services official tenders a payment. If ECDSS had offered NFG a payment pursuant to Social Services Law § 131-s (in an amount equal to the cost of 4 months service) it could have been significantly less than the HEAP benefit of \$710.

HEFPA regulations issued in 1998.¹⁴ For nearly twenty years, PULP, on a nearly daily basis, has assisted low-income residential customers in obtaining and maintaining utility service by enforcing the HEFPA laws and regulations. PULP's experience with and involvement in the adoption, implementation, interpretation and daily application of HEFPA, will assist in development of the record for this proceeding, will facilitate the Commission's search to identify whether the statute and regulations may have been violated by the Company during its transactions with Ms. Fordham, and will assist in formulation of recommendations for appropriate interim and final remedies.¹⁵

Conclusion

For the forgoing reasons, PULP respectfully requests that

- 1) The PSC grant PULP leave to intervene in this proceeding pursuant to 16 NYCRR § 4.3(c)(1);
- 2) The PSC fully investigate and review NFG's tariffs, rules and practices regarding:
 - (a) transfer of service to a new address of a current customer;
 - (b) notices of termination and denial of service;
 - (c) dissemination of information to customers regarding HEFPA rights; and
 - (d) restoration of service when a social services official tenders a direct payment of HEAP or SSL §131-s grants;
- 3) The PSC impose upon NFG all the penalties proposed in its Order to Show Cause and any further penalties which may be appropriate based on this investigation;

¹⁴ Case 96-M-0706 - *In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR Chapter I - Rules of Procedure, Subchapter B - Procedure and Requirements Concerning Consumer Protections - Proposed Amendments to Streamline and Clarify the Current Language Contained in Part 11 - Home Energy Fair Practices Act - Rules, Filed in C28080.*

¹⁵ PULP also has expertise and knowledge with respect to New York's Home Energy Assistance Program ("HEAP"), established under Section 97 of the New York Social Services Law to implement the federal Low Income Home Energy Assistance Act ("LIHEAA"), 42 U.S.C.A. § 8623, *et seq.* For more than a decade a PULP representative has been a member of the New York State HEAP Block Grant Advisory Board, which provides input to the State Office of Temporary and Disability Assistance regarding each year's HEAP plan detailing how the federal dollars will be spent to fulfill the purposes of the state and federal statutes.

- 4) The PSC order, in the interim and until NFG's tariffs, rules, procedures and practices are affirmatively confirmed to provide HEFPA-compliant service, the Company:
 - (a) to notify each residential customer, in writing, of their specific rights pursuant to HEFPA and the procedures for complaints to the utility and recourse to the Commission's toll-free complaint and hotline numbers, as an enclosure in all bills sent in its next billing cycle and every billing cycle thereafter until notice has been given to all the company's customers; and
 - (b) to provide independent third-party verification of each notice provided to a consumer relating to the termination of service;
- 5) The Commission grant such other and further relief as it deems just and proper.

Very truly yours,

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