NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES NASUCA

2012-07 Urging Utilities to Eliminate "Convenience" Fees for Paying Utility Bills with Debit and Credit Cards and Urging Appropriate State Regulatory Oversight.

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

Resolution 2012-07

URGING UTILITIES TO ELIMINATE "CONVENIENCE" FEES FOR PAYING UTILITY BILLS WITH DEBIT AND CREDIT CARDS AND URGING APPROPRIATE STATE REGULATORY OVERSIGHT

Whereas, payment by debit and credit card has become a nearly universal means by which consumers pay for goods and services, with such payments having constituted approximately 46 percent of the dollar volume of all U.S. consumer spending in 2010 and projected to constitute approximately 56 percent of such total dollar volume in 2015;[i] and

Whereas, many utilities do not accept debit or credit card payments directly from their customers[ii] but instead make arrangements under which third parties accept such payments on behalf of the utilities and charge the utility customers "convenience" fees that typically range from about $1.50 to about $5.85 per transaction;[iii] and

Whereas, many utilities have closed neighborhood locations where consumers could previously pay bills in person without incurring additional charges and have replaced these locations with authorized agents that do require consumers to incur additional charges; and

Whereas, some individuals, particularly those who lack access to bank accounts and to credit, by one estimate numbering roughly 50 to 70 million,[iv] are unable to write traditional checks or to direct electronic transfers and are therefore finding it difficult to pay utility bills without incurring additional charges; and

Whereas, against the backdrop of a continuing high national poverty level,[v] a decline in median household income,[vi] and an increasing incidence of arrearages,[vii] the convenience fees for debit and credit card payments are adding unnecessarily to the expense of paying for utility services; and

Whereas, the convenience fees are making it unnecessarily costly for utility customers, especially low income customers and customers struggling financially due to illness, layoffs or other reasons, to meet their payment obligations and hence to maintain essential utility services; and

Whereas, the conveniences fees make it hard for low income customers, when paying utility bills, to use the payment method that is often most available to them, namely, prepaid debit cards;[viii] and

Whereas, convenience fees imposed on debit card use undercut the policy objectives of federal programs (for example, social security) and state programs (for example, child support and unemployment compensation) that issue prepaid debit cards to beneficiaries as an effective and cost-efficient way to manage operational expenses,[ix] by eroding the purchasing power of such cards; and

Whereas, convenience fees repeatedly assessed against utility customers who make multiple payments during the course of a month undercut these customers' ability to apply scarce available funds to payment of actual utility services; and

Whereas, a large number of utilities, particularly cooperative and municipal utilities, recognize the concerns identified above and have implemented programs under which debit and credit card payments are accepted, without interposition of a third party and without convenience fees;[x] and

Whereas, utilities incur payment transaction costs no matter what forms of payment they accept; and

Whereas, utilities recover these payment transaction costs in their rates; and

Whereas, due to the reduced interchange rates for credit card transactions under the utility programs referenced above,[xi] the still lower Interchange rates now established by law for debit card transactions,[xii] and the savings that result from not having to process paper checks, the costs of processing direct payments by debit and credit card under the utility programs referenced above are likely comparable to the cost of processing payments by other means, including traditional check;[xiii] and

Whereas, there may well be additional savings associated with the payment of utility bills by debit or credit card, as contrasted with payment by check or other means, such as more immediate receipt of payment, lower collection risks and uncollectible debt expense, improved cash flow and reduced working cost of capital;[xiv] and

Whereas, the utility programs referenced above can incorporate such additional cost-saving features as (i) limiting debit and credit card payments without convenience fees to payments made electronically or through an automated telephone system, or (ii) electronic billing, for customers with Internet access;[xv] and

Whereas, the large number of cooperative and municipal utilities that participate in the programs referenced above[xvi] strongly supports the proposition that the programs are cost effective; and

Whereas, it is not reasonable for a utility, particularly a utility that holds a monopoly franchise, to fail to explore and implement cost-effective payment options that offer substantial benefits to its customers; and

Whereas, it is not reasonable for a utility, particularly a utility that holds a monopoly franchise, to accept debit and credit card payments through a third party but not to accept debit and credit card payments directly from its customers if the direct payments can be made at a lower overall cost than the cost of payments made through the third party;[xvii] and

Whereas, it is not reasonable for a utility, particularly a utility that holds a monopoly franchise, to require the payment of a convenience fee as a condition to making payment with a debit or credit card if the costs associated with processing such a payment are comparable to the costs associated with processing a payment made by check or other means; and

Whereas, utility acceptance of debit and credit card payments, without convenience fees, will generally enhance customer satisfaction;[xviii]

Now, therefore, be it resolved, that utilities are urged to review their current payment options and, if direct payment by debit and credit card is not an option, to consider making it an option; and

Be it further resolved, that utilities that currently accept debit and credit card payments only through third parties are urged to consider dropping the third party mechanism and offering a direct debit and credit card payment option instead; and

Be it further resolved, that state public utility commissions are urged to survey the utilities within their jurisdictions to determine the options that are available to consumers for paying utility bills without incurring additional charges; and

Be it further resolved, that state public utility commissions are urged to exercise their jurisdiction as necessary and appropriate so as to accomplish the public policy objective that consumers be given an ability to make direct payment of utility bills by debit or credit card, without unjustified convenience fees, and are urged in particular (i) to include, as a part of their rate-making activities, if and as needed, a comparative review of the costs associated with processing payments to utilities by debit or credit card and the costs associated with processing payments to utilities by other means, including traditional check, and (ii) to provide, if and as needed, such oversight and direction as to the reasonableness of utility payment acceptance policies and practices as may be necessary to advance the public policy objective here stated;[xix] and

Be it further resolved, that the support in this resolution for utility acceptance of credit card payments is conditioned upon maintenance by the credit card companies of utility programs with reduced interchange fees, such that the costs incurred by utilities in accepting credit card payments remain comparable to the costs of processing payments by other means, including traditional check; and

Be it further resolved, that the Consumer Protection Committee of NASUCA, with the approval of the Executive Committee of NASUCA, is authorized to take all steps consistent with this resolution in order to secure its implementation.

Submitted by Consumer Protection Committee

Approved November 13, 2012

Baltimore, Maryland

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[i]Nilson Report No. 985 (Dec. 2011), p. 1. Specifically, debit payments constituted 21% of such dollar volume in 2010 and are projected to constitute 25% of such dollar volume in 2015, while credit card payments constituted approximately 25% of such dollar volume in 2010 and are projected to constitute 31% of such dollar volume in 2015. *Id.* In terms of number of transactions, debit cards are now the most prevalent card payment option, constituting roughly 60 percent of card payment transactions. J. Miller, "Paying With Plastic," *Public Utilities Fortnightly*, Dec. 2009, http://www.fortnightly.com/fortnightly/2009/12/paying-plastic (full article accessible to subscribers).

[ii]Miller, note 1 above ("utilities still lag behind other industries with respect to all forms of electronic payments, including card payments"). C. Prater, "High Winter Heating Bills, Meet Credit Cards," http://www.creditcards.com/credit-card-news/winter-heating-bills-credit-card-1267.php (updated March 25, 2008), quoting Dennis Smith, vice president of research and information delivery at Atlanta-based Chartwell, Inc., a utility industry market research company ("utilities are the last unconquered territory for the credit card companies").

[iii]D. Yon, Research Analyst, Chartwell, Slide Presentation, "Chartwell Industry Data on Card Acceptance," May 18, 2011, p. 6. See also Prater, note 2 above (convenience fees range from $3.00 to $6.00 per transaction). For a customer who pays 12 gas, 12 electric and 12 water bills using debit or credit cards, the annual costs would range between $66.60 and $210.60 using the Chartwell range or between $108.00 and $216.00 using the Prater range. Annual costs could be higher for consumers who make multiple payments over the course of a month. NASUCA has not been able to locate a nationwide annual figure for the aggregate cost of the utility third-party convenience fees.

[iv]Miller, note 1 above.

[v]U.S. Census Bureau, "Income, Poverty, and Health Insurance Coverage in the United States: 2011," Sept. 2012, http://www.census.gov/prod/2012pubs/p60-243.pdf.

[vi]*Id.*

[vii]American Gas Association, "Utility Customer Arrearage and Disconnect Survey," Fall 2011, http://www.aga.org/our-issues/liheap/Documents/Fall%202011%20Write%20Up%20-%20arrearages%20NR.pdf.

[viii]Miller, note 1 above ("the most explosive growth in payment cards . . . is in pre-paid cards, which are particularly popular among low-income customers . . . .").

[ix]See, for example, U.S. Department of the Treasury, "US Debit Card Program," http://www.usdebitcard.gov/cm/ContentServer?c=TS_Content&pagename=jpmorgan%2Fts%2FTS_Content%2FSimpleSite&cid=1136382700553&source=DirectURL_usdebitcard.

[x]See Prater, note 2 above, describing Visa card acceptance program at Sacramento Municipal Utility District. The Chartwell data indicate that 42% of utilities now offer a fee-free card acceptance program. See Yon, note 3 above, p. 6. The Chartwell data further indicate that of those utilities that do offer a fee-free card acceptance program, 51% are electric cooperatives, 44% are municipal or public utilities and 5% are investor-owned utilities. *Id.*, p. 9. Visa lists more than 4,000 utilities, including many municipal and cooperative utilities, that accept Visa cards with no convenience fee.

[xi]Prater, note 2 above (Visa and MasterCard offer reduced interchange rates to utilities). In a recent case before the Maryland Public Service Commission, a company witness detailed the reduced transaction fees, totaling approximately $1.00 for a residential customer, under a card acceptance program with no convenience fee, as follows: $.75 Visa Utility Program interchange rate; 11 basis points Visa assessment charge; $.10 to $.15 bank processing fee (Wells Fargo Bank, N.A.

estimate). *In the Matter of the Application of Washington Gas Light Co. for Authority to Increase to Increase Existing Rates and Charges for Gas Service*, Case No. 9267, Rebuttal Testimony of Paul S. Buckley, p. 15 and Ex. PSB-R1 p. 3. See also U.S. Government Accountability Office, Report GAO-10-45, "Credit Cards: Rising Interchange Fees Have Increased Costs for Merchants, but Options for Reducing Fees Pose Challenges," Nov. 2009, p. 10 (Visa has flat fee of $.75 for payments accepted by utility companies).

[xii]Regulations under the Dodd-Frank Wall Street Reform and Consumer Protection Act establish a maximum permissible interchange rate per debit transaction for banks with assets of $10 billion of $.21 plus 5 basis points plus up to $.01 for fraud prevention. See Federal Reserve Board, Press Release, June 29, 2011, http://www.federalreserve.gov/newsevents/press/bcreg/20110629a.htm.

[xiii]Vermont Department of Public Service (Vermont), "Utility Bill Payment by Credit or Debit Card," Report Pursuant to Act 47 of the 2011-2012 Legislative Session," Feb. 21, 2012, pp. 7, 12 ("[w]hile each method of payment results in some level of cost shifting of expense, the Department was able to determine that the impact to ratepayers for the cost of processing payments by credit cards would have minimal effect if the additional costs incurred with payments processed through a third party vendor is avoided"); Miller, note 1 above ("the utility card payment business case is moving in the direction of cost neutrality").

[xiv]Vermont, note 13 above, pp. 7, 12.

[xv] Under the Sacramento program, see note 10 above, in order for a customer to pay by debit or credit card and not incur a convenience fee, the customer must pay electronically or use an automated phone payment system. Customers who call the utility's customer service hotline to pay by card are charged $4.25.

[xvi] See note 10 above.

[xvii] In proceedings before the Colorado Public Service Commission, SourceGas Distribution LLC observed: "When SourceGas engaged banking service providers to accept credit card payments, SourceGas opted into a utility payment service that significantly lowered the overall transaction costs of accepting credit card payments." Initial Comments, SourceGas Distribution, LLC, Docket No. 11M-818EG (Dec. 22, 2011), p. 5.

[xviii]Miller, note 1 above ("The dramatic shift in usage from credit to debit, in addition to the growth for prepaid cards, are clear indicators that customers from all income levels increasingly are demanding the ability to pay by card . . . . [T]he acceptance of no-fee card payments is central to supporting a utility's transformation into a utility of the future").

[xix] See *In the Matter of the Application of the Washington Gas Light Co.*, Md. Pub. Serv. Com'n Case No. 9267, Order No. 84475 (Nov. 14, 2011), p. 112 (approving use of fee-free credit card payment program for eligible customers and denying cost adjustment).

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