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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

December 2, 1999

Honorable John M. Quain, Chairman
Pennsylvania Public Utility Commission
104 North Office Building
Harrisburg, PA 17105

Re: IRRC Regulation #57-207 (#2067)
Pennsylvania Public Utility Commission
Natural Gas Choice and Competition

Dear Chairman Quain:

Enclosed are our Comments on the subject regulation. They are also available on our website at <http://www.irrc.state.pa.us>.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact Mary Lou Harris at 772-1284.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce". The signature is fluid and cursive.

Robert E. Nyce
Executive Director

REN:kcg

Enclosure

cc: Lawrence F. Barth
Thomas P. Maher
Sherri DelBiondo
Office of General Counsel
Office of Attorney General
Lee Ann Labecki

Comments of the Independent Regulatory Review Commission

on

The Pennsylvania Public Utility Commission Regulation No. 57-207

Natural Gas Choice and Competition

December 2, 1999

We have reviewed this proposed regulation from the Pennsylvania Public Utility Commission (PUC) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to statutory authority, legislative intent, fiscal impact and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 53.69. Fixed rate option – Clarity.

Applicable Revenue Threshold

This proposed regulation is based on Section 1307(f) of the Natural Gas Choice Competition Act (Act). Section 1307(f) of the Act applies to distribution companies with annual operating revenues over \$40 million. However, the Regulatory Analysis Form indicates that distribution companies with revenues in excess of \$6 million must comply with this regulation. The PUC should explain this discrepancy and clarify the applicability of Section 53.69 in the final regulation.

2. Section 53.69 (a), (b) and (e) – Statutory Authority, Legislative Intent, Fiscal Impact, Clarity.

Subsection (a)

This subsection allows a natural gas distribution company to offer the fixed rate option for either the heating season or another time period, as long as the time period does not exceed 12 months. It appears to be in direct conflict with the Act. The following statutory provisions illustrate that the Legislature did not contemplate allowing a distribution company to offer the fixed rate option for a time period shorter than 12 months.

Section 1307(f)(1)(ii) of the Act establishes “a fixed rate option which recovers natural gas costs over a 12-month period.” Additionally, Section 1307(f)(3) provides that “at the end of such 12-month period,” the distribution company shall file a statement with the PUC, indicating the difference between rates charged and the cost of natural gas. Finally, Section 1307(f)(5) provides that the PUC shall determine the amount of refund to the consumer by the distribution company by evaluating actual natural gas costs “in the previous 12-month period.” (Emphasis added.)

Therefore, we question the PUC's statutory authority to offer the fixed rate option for less than 12 months.

If the PUC can demonstrate its statutory authority for a time period less than 12 months, it must clarify what it means by "another time period." The regulation should include minimum and maximum time frames.

Subsection (b)

This subsection requires a separate reconciliation of the fixed rate option sales. We understand that separate reconciliation of these sales refers to a distinct calculation within a single 1307(f) proceeding. The PUC should clarify this point in the final regulation.

Subsection (c)

How is the date determined for the time period that "ends on the 1st day of the 12-month fixed rate option contract period?" Additionally, letter (E) of the Preamble states: "The process of when and how customers may elect to sign up for participation in a fixed rate offering needs to be established." These two statements are confusing.

Does the time period, as well as the sign up period, begin on the first day of the 1307(f) filing period? If so, nothing in the regulation supports that statement. For clarity, the PUC should specify this time frame in the final regulation.

In addition, letter (E) of the Preamble lists particular items that would be included on a customer's application form for the fixed rate option. These requirements should be included in a new proposed regulation with an opportunity for public comment.

3. Response to the PUC's Request for Comments – Statutory Authority.

Fixed rate option with no reconciliation

Section 1307(f)(1)(ii) of the Act requires the fixed rate option be "subject to annual reconciliation" if the natural gas distribution company adjusts its rates more often than quarterly. However, the PUC has requested comments on allowing the fixed rate option with no reconciliation. Since the Act requires annual reconciliation of the fixed rate option, the PUC does not have the statutory authority to allow the fixed rate option without reconciliation.

Fixed rate option for companies with annual operating revenues less than \$40 million and greater than \$6 million

The PUC requested comments on the appropriate reconciliation period for the fixed rate option for natural gas distribution companies with annual operating revenues less than \$40 million and greater than \$6 million. The PUC specifically asked if these companies could apply their current gas cost rate reconciliation period to the fixed rate option.

Can the PUC allow companies with revenues less than \$40 million to offer a fixed rate option? As noted above, Section 1307(f)(1)(ii) of the Act only applies to companies with annual operating revenues greater than \$40 million.

INDEPENDENT REGULATORY REVIEW COMMISSION

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To: Sherri A. DelBlondo
Regulatory Review Coordinator
Law Bureau

Agency: Pennsylvania Public Utility Commission
Phone: 2-4597
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From: Kristine M. Shomper
Deputy Director for Administration
Company: Independent Regulatory Review
Commission
Phone: (717) 783-5419 or (717) 783-5417
Fax: (717) 783-2684

Date: December 2, 1999

of Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Public Utility Commission's regulation #57-207. Upon receipt, please sign below and return to me immediately at our fax number 783-2684. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Sherri DelBlondo **Date:** 12-2-99