

Regulatory Analysis Form

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(1) Agency

Pennsylvania Public Utility Commission

(2) I.D. Number (Governor's Office Use)

L-00990145/57-211

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Coccodrilli

IRRC Number: 2080

(3) Short Title

Proposed Rulemaking Re Establishing Procedures to Ensure Customer Consent to a Change of Natural Gas Supplier

(4) PA Code Cite

52 Pa. Code Sections 59.91-59.99

(5) Agency Contacts & Telephone Numbers

Primary Contact: Dan Mumford 783-1957

Secondary Contact: Terrence J. Buda 787-5755

(6) Type of Rulemaking (check one)

- ☒ Proposed Rulemaking
☐ Final Order Adopting Regulation
☐ Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- ☒ No
☐ Yes: By the Attorney General
☐ Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

On June 22, 1999, Governor Tom Ridge signed into law the "Natural Gas Customer Choice and Competition Act" (the Act). The Act revised the Public Utility Code, 66 Pa. C.S. §§101, et seq., by inter alia, adding Chapter 22, relating to restructuring of the gas utility industry. The purpose of the law is to permit customers to buy natural gas supply service from their choice of gas suppliers. Section 2206(b) of the Act requires that "[t]he Commission shall, by order or regulation, establish procedures to ensure that a natural gas distribution company does not change a retail gas customer's natural gas supplier without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier." The purpose of the regulation is to implement and codify the provisions of the Act.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

66 Pa. C.S. Sections 501 and 2206(b)

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

See answer to No. 8, above.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Implements new procedures in recognition of the effect of newly enacted Chapter 22 of the Natural Gas Customer Choice and Competition Act. (See answer to No. 8)

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

None

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

All natural gas customers could effectively benefit from the regulation.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

None

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

natural gas distribution companies and suppliers.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Pennsylvania Gas Association, Office of Consumer Advocate, Natural Fuel Resources, T.W. Phillips Gas and Oil Company, Columbia Gas of Pennsylvania, United Gas Management, PG Energy Inc., and the Peoples Natural Gas Company.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Although the regulations may increase the regulatory costs of the companies complying with its provisions, these costs are not considered to be significant.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

N/A

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The regulation is not expected to impose significant costs on the Commission.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

Any costs to the Commission should be de minimus.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A				

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

N/A

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

N/A

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

N/A

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

No.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

N/A

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective upon final publication in the Pennsylvania Bulletin.

(31) Provide the schedule for continual review of the regulation.

This regulation will be reviewed on an ongoing basis.

**FACE SHEET
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WITH THE LEGISLATIVE REFERENCE BUREAU**

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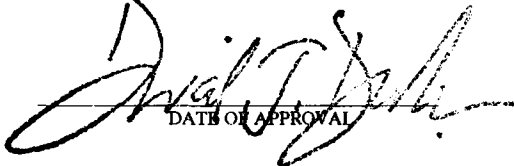
LEGISLATIVE REFERENCE BUREAU
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General.

BY

(DEPUTY ATTORNEY GENERAL)



DATE OF APPROVAL

DEC 01 1999

☐ Check if applicable
Copy not approved. Objections attached

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

Pennsylvania Public Utility Commission
(AGENCY)

DOCUMENT/FISCAL NOTE NO. L-990145/ 57-211

DATE OF ADOPTION November 4, 1999

BY



James J. McNulty

TITLE

(SECRETARY)

Copy below is hereby approved as to form and legality. Executive or independent Agencies.


Bohdan R. Pankiw
Chief Counsel

11-18-99

DATE OF APPROVAL

☐ Check if applicable. No Attorney General approval or objection within 30 days after submission.

L-00990145/57-211
Proposed Rulemaking
Establishing Procedures to Ensure Customer
Consent to a Change of Natural Gas Supplier
52 Pa. Code §§59.91-59.99

The Pennsylvania Public Utility Commission on November 4, 1999, adopted a proposed rulemaking order to promulgate proposed regulations to implement and codify Section 2206(b) of the Natural Gas Choice and Competition Act which requires the establishment of procedures to ensure that natural gas suppliers do not change a customer's gas supplier without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier. The contact persons are Terrence J. Buda, Law Bureau (717) 787-5755 and Daniel Mumford, Bureau of Consumer Services (717) 783-1957.

EXECUTIVE SUMMARY

**L-00990145/57-211
Proposed Rulemaking
Establishing Procedures to Ensure Customer
Consent to a Change of Natural Gas Supplier
52 Pa. Code, Chapter 59**

On June 22, 1999, Governor Tom Ridge signed into law the “Natural Gas Customer Choice and Competition Act” (the “Act”). The Act revised the Public Utility Code, 66 Pa. C.S. §§101, et seq., by inter alia, adding Chapter 22, relating to restructuring of the gas utility industry. The purpose of the law is to permit customers to buy natural gas supply service from their choice of gas suppliers.

Section 2206(b) of the Act requires that “[t]he Commission shall, by order or regulation, establish procedures to ensure that a natural gas distribution company does not change a retail gas customer’s natural gas supplier without direct oral confirmation from the customer of record or written evidence of the customer’s consent to a change of supplier.” The purpose of the regulation is to implement and codify this provision of the Act. The contact persons are Dan Mumford (717) 783-1957 and Terrence J. Buda, Assistant Counsel, Law Bureau (717) 787-5755.

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held November 4, 1999

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
Nora Mead Brownell
Aaron Wilson Jr.

Interim Guidelines to Ensure
Customer Consent to a Change
of Natural Gas Suppliers

Docket Number
M-00991249F0006

Rulemaking Re Establishing
Procedures to Ensure Customer
Consent to a Change
of Natural Gas Supplier

Docket Number
L-0099 0145

PROPOSED RULEMAKING ORDER AND FINAL INTERIM GUIDELINES

BY THE COMMISSION:

At public meeting of August 26, 1999, the Pennsylvania Public Utility Commission (Commission) issued a tentative order establishing interim guidelines to ensure customer consent to a change of natural gas suppliers. The guidelines were undertaken as part of the implementation duties performed by the

Commission under the Natural Gas Choice and Competition Act (Act). Signed into law on June 22, 1999 by Governor Tom Ridge, the Act revised the Public Utility Code, 66 Pa. C.S. §§101, et seq., by, inter alia, adding Chapter 22 relating to restructuring of the natural gas industry. The Commission is the agency charged with implementing the Act. Section 2206(b) of the Act states that “[t]he Commission shall, by order or regulation, establish procedures to ensure that a natural gas distribution company does not change a retail gas customer’s natural gas supplier without direct oral confirmation from the customer of record or written evidence of the customer’s consent to a change of supplier.” The purpose of the tentative order was to propose interim guidelines relating to the procedures for changing a customer’s natural gas supplier to prevent unauthorized changing of suppliers, commonly referred to as “slamming.” The tentative order was entered August 27, 1999 at Docket No. M-00991249F0006 and a 20-day comment period was set.

Comments were filed by the Pennsylvania Gas Association (PGA), the Office of Consumer Advocate (OCA), Natural Fuel Resources (NFR), T.W. Phillips Gas and Oil Company (T.W. Phillips), Columbia Gas of Pennsylvania (Columbia), United Gas Management (United), PG Energy Inc. (PG Energy), and the Peoples Natural Gas Company (PNG). We thank the parties for their suggestions on developing these guidelines.

The instant order, based on review and consideration of all of the comments, presents a section-by-section summary of comments. The proposed section titles from the tentative order are used as headings. Any substantive changes to a section as a result of consideration of the comments are discussed immediately following the summary of comments for that section. The final interim guidelines, as revised pursuant to the discussion in the instant order, appear in Annex A of this order.

DEFINITIONS

Summary of Comments:

PG Energy recommends revision of the definition of "Customer" to limit it to the scope of the instant guidelines. PG Energy suggests the definition be revised to read as follows:

Customer - A purchaser of natural gas in whose name a service account exists with either a natural gas distribution company or a natural gas supplier. In addition, the term shall include all persons identified in writing by the customer, pursuant to the procedures set forth in these guidelines, as authorized to act on a customer's behalf in changing the customer's natural gas supplier.

PG Energy also suggests that the term "customer" be used "solely and consistently throughout the guidelines."

Discussion/Resolution:

We agree with PG Energy that the definition of “Customer” is improved by wording that limits its applicability to the scope of this proceeding. We have, therefore, revised the definition of “Customer” accordingly. However, we shall replace the word “guidelines” with “regulations” since these provisions are intended to become final regulations.

For residential customers who wish to designate a consenting individual to act on the customer’s behalf for other matters relating to the customer’s account, they may do so by utilizing applicable provisions of our Chapter 56 *Standards and Billing Practices for Residential Utility Service* such as §56.33(2) relating to third-party guarantor or §56.131 relating to third-party notification. Since the guidelines contain this clear definition of the term “Customer”, we have also adopted PG Energy’s other recommendation to consistently use the term “customer” in place of terms such as “customer of record”, “customer or a person authorized to act on the customer’s behalf”, and “customer or authorized party.”

**CUSTOMER CONTACTS WITH THE NATURAL GAS
DISTRIBUTION COMPANY**

Summary of Comments:

T.W. Phillips suggests that in addition to the customer contacting the NGDC, this section should also refer to a “person authorized to act for the customer.” United agrees with the proposed language of this section because it allows suppliers to not only manage their supply forecasts by controlling the enrollment timing, but also helps insure that customers with bad credit history are not given the opportunity to game the system by enrolling in a NGS’s program without the NGS’s consent, or securement of an appropriate security deposit.

Discussion/Resolution:

With respect to T.W. Phillips suggestion, we will not adopt it because, as noted previously, the definition of the term “Customer” in the guidelines has been revised to clearly include “persons identified in writing by the customer, pursuant to the procedures set forth in these regulations, as authorized to act on a customer’s behalf in changing the customer’s natural gas supplier.”

CUSTOMER CONTACTS WITH NATURAL GAS SUPPLIERS

Summary of Comments:

NFR recommends that paragraph (a) under this section be modified to clearly place the responsibility on the customer's new NGS to notify the NGDC of the customer's request to switch suppliers. To accomplish this, NFR suggests replacing "contacted NGS" with "customer's new NGS" in the fourth line under the heading "Customer Contacts with NGS."

NFR, PNG, and United express concerns with the requirement at paragraph (a)(1) that the NGS notify the NGDC "by the end of the next business day following the customer contact." NFR points out that this requirement conflicts with the customer's three (3) day right of rescission found in the tentative interim customer information order [Docket No. M-00991249F000] entered by the Commission on August 27, 1999. NFR suggests that the communication to the NGDC should be required no later than the end of the fourth day following the request. In NFR's opinion, this change will allow an NGS to wait for the rescission period to end, thereby avoiding the need to retract switch requests if a customer exercises the right of rescission. PNG also expresses concerns that confusion could result from sending out confirmation letters before the customer's 3-day rescission right expires, along with the additional administrative burden this will place on NGDCs if the rescission right is exercised. United suggests that a customer request should not be forwarded to the NGDC until all statutory "cooling

off periods” have expired; the NGS has completed the customer’s credit review; and that any verification procedure a NGS might use has been completed.

PNG suggests that NGSs should have the option of batching supplier requests and transmitting them to the NGDC on a monthly basis before the beginning of the next available billing cycle. PNG claims that this is a process that they have used in their Energy Choice Program since 1997 and that batching requests is easier for both NGSs and NGDCs “without jeopardizing the timeliness of the customer’s start date.”

Discussion/Resolution:

We agree with the NFR recommendation that paragraph (a) under this section be modified to clearly place the responsibility on the customer’s new NGS to notify the NGDC of the customer’s request to switch suppliers. With respect to the parties’ concerns with the requirement at paragraph (a)(1) that the NGS notify the NGDC “by the end of the next business day following the customer contact”, we have altered the language in this guideline to recognize that NGSs may choose to apply the Chapter 56 credit provisions. Instead of requiring notification by the end of the next business day “following the customer contact”, we will require notification by the end of the next business day “following completion of the application process.” This new wording will allow NGSs to implement appropriate credit practices. Customers who contact an NGS that has chosen to

apply the Chapter 56 credit provisions as part of the application process will not be disadvantaged since one of the requirements of these provisions is that applicants receive a full explanation of the credit and deposit procedures. 52 Pa. Code, §56.36(2). If a customer does not want to continue discussion with an NGS upon being informed by the NGS that its application process includes a credit check and possible request for a deposit, then the customer can shop elsewhere. We believe this revision in paragraph (a)(1) more accurately conveys the intent of this guideline; i.e. , that the NGS inform the NGDC in a timely manner once the NGS and customer reach an agreement. We have rejected PNG's suggestion that NGSs should have the option of batching supplier requests and transmitting them to the NGDC on a monthly basis before the beginning of the next available billing cycle. We have rejected this suggestion because we believe it will unnecessarily delay some customer requests and, therefore, fail to reflect our desire to see that customer requests to change suppliers are processed without unnecessary delays. For the same reason, we have rejected the suggestion to allow NGSs to wait for the 3-day rescission period to end before informing the NGDC of the customer's request to switch. While we recognize that some rescissions will occur during this 3-day period and thus cause additional administrative activity, we do not want the overwhelming majority of customer requests to be delayed for this reason. With the revision noted above, we believe the guideline strikes the proper balance

between the establishment of an appropriate application period, and our desire to see that customer requests to change suppliers are processed without unnecessary delays.

TIME FRAME REQUIREMENT

Summary of Comments:

Columbia is concerned that by requiring NGDCs to make the change of suppliers effective at the beginning of the first feasible billing period following the 10-day waiting period, NGDCs will be placed in the position of “facilitating the breach of existing contracts that customers may have had with other NGSs,” and will place NGDCs in the inappropriate position of “investigating and determining which NGS is the proper entity to provide service to the customer.” Columbia recommends continuation of their current practice of rejecting an enrollment if an NGS submits a request to enroll a customer that is currently being served by another NGS. In such instances, Columbia’s information system rejects the enrollment and sends a notice to the NGS. The NGS must then contact and inform the customer that their contract with their current NGS must first be terminated before service with the new NGS can be initiated.

United suggests that the term “switch” be changed to “enroll” to conform with utility operational rules already in place.

Discussion/Resolution:

With respect to Columbia's concerns, we disagree with their analysis.—Our experience to date with electric competition indicates that suppliers do not share with the distribution companies all of the terms of their contracts with customers. These terms, as well as any claims that one party has breached these terms, are clearly a matter between the customer and supplier. Suppliers may certainly pursue any complaints they may have regarding breach of contract, but that would be directed at the other party to the contract, not the NGDC who properly responds to an authorized customer request to change suppliers. We want the decision to change suppliers to remain with the customer, not the NGDC. In our view, the NGDCs would more likely become a party involved in disputes about switches if we modify the proposed method of NGDC processing of customer requests to change suppliers, and adopt in its place the "gatekeeper-type" model suggested by Columbia. Therefore, we have not modified the language in this guideline as recommended by Columbia.

Regarding United's suggestion to use the term "enroll" instead of "switch", we decline to do so since we believe the term "switch" more accurately reflects that the focus of the instant guidelines is on "change" of natural gas suppliers, not initial enrollment.

PERSONS AUTHORIZED TO ACT ON BEHALF OF A CUSTOMER

Summary of Comments:

In addition to a signed authorization document, T.W. Phillips suggests that this guideline be modified to allow NGDCs to establish an electronic confirmation procedure for identification by the customer of third parties authorized to act on the customer's behalf.

Columbia is concerned that allowing third parties to change NGSs could increase slamming, and maintaining a record of authorized third parties would pose an increased administrative burden on NGDCs. This is especially a problem if the customer authorizes many different people to switch NGSs since the proposed guideline places no limit on the number of people a customer can authorize. Columbia suggests that this provision be eliminated from the guidelines, or at a minimum, customers should be limited to one authorized agent.

United "does not believe that the proposed guideline is either feasible or even-handed" and notes that "the current practice is not for the NGDC to insure that their communications are with the customer of record, but to assume that a householder or spouse who suggests that they have the ostensible authority to bind the accountholder is sufficient."

PG Energy believes that the proposed guideline is “overly broad and should be revised to appropriately identify the narrow scope of authority vested in the third party by the customer.”

Discussion/Resolution:

In regard to T.W. Phillips suggestion that this guideline be modified to allow an electronic confirmation procedure established by the NGDC for identification by the customer of a third party to act on the customer’s behalf, we are reluctant to allow use of an electronic confirmation procedure without additional information. Therefore, we have not revised the guideline to allow electronic designation of third parties to act for a customer. However, we would be receptive to NGDC pilot programs for electronic designation of third parties to act for a customer. Such pilots would help all parties identify and address any legal or technical issues that may be involved with electronic communications of this nature.

Regarding Columbia’s comments, we disagree that this guideline would increase slamming, or pose an undue increased administrative burden on NGDCs. As noted previously in the instant order, Chapter 56 allows customers to designate third-party guarantors, as well as designate third parties to receive termination notices. These customer options have been in effect since 1978 without any indication from NGDCs that they pose an unreasonable administrative hardship.

Nor is there any indication that this guideline has posed undue increased administrative burden on electric distribution companies in electric competition. Moreover, while Columbia asserts this practice may increase the incidences of slamming, we view it as an added protection against unauthorized switches since NGSs know in advance that they must deal only with persons authorized to make decisions on an account. For these reasons, we have not modified this guideline as recommended by Columbia.

We disagree with United that the proposed guideline is neither feasible nor even-handed. Our view is that it reflects a practice to ensure compliance with Section 2206(b) of the Act which states that “The Commission shall, by order or regulation, establish procedures to ensure that a natural gas distribution company does not change a retail gas customer’s natural gas supplier without direct oral confirmation from the customer of record or written evidence of the customer’s consent to a change of supplier.” [emphasis added]. The instant guideline allows NGDCs to verify that a person other than the customer of record has the customer’s permission to act on behalf of the customer.

VALID WRITTEN AUTHORIZATION

Summary of Comments:

Both OCA and NFR address the use of contracts in their comments. The OCA suggests the following:

“in certain types of sales circumstances, particularly door to door solicitations or offerings at public gatherings, the Commission should require that the customer sign the actual Terms of Service document itself and not an alternative document accompanying the Terms of Service document. In these types of sales situations, the opportunity for hard sell is obvious and it is possible that the written document will be presented to the customer as a mere formality or possibly even be misrepresented.”

NFR requests “clarification as to whether or not a signed contract will be acceptable as authorization to switch.” NFR also suggests that the guidelines should let NGSs use their own discretion as to how verbal or electronic switch requests be validated.

T.W. Phillips suggests that the guidelines should be revised to allow NGDCs “to utilize an electronic confirmation procedure to verify a customer’s consent to a change of natural gas supplier.”

Discussion/Resolution:

Regarding the OCA’s suggestion that in certain types of sales circumstances, particularly door-to-door solicitations or offerings at public gatherings, the Commission should require that the customer sign the actual Terms of Service document itself, we disagree with this approach. We believe the best

way to ensure that the purpose of a written authorization is clearly understood by a customer is to keep it limited to the sole purpose of obtaining the customer's consent to change supplier. A "hard sell" sales approach may actually be easier to close if the customer is asked to sign a form filled with extensive information since the customer may not take the opportunity to read the whole document before signing. A document whose sole purpose is to obtain the customer's consent to change suppliers is more likely to be read and understood in such circumstances.

With respect to NFR's request for clarification as to whether or not a signed contract will be acceptable as a valid written authorization to switch, it does not since it has purposes other than obtaining the customer's consent. For NGSs that intend to implement practices which rely on written rather than oral customer authorization, we advise that they develop a separate written authorization form whose sole purpose is to obtain the customer's consent to change suppliers.

In regard to T.W. Phillips suggestion that the guidelines should be revised to allow NGDCs to utilize an electronic authorization procedure, we are reluctant to include in the instant guidelines use of an electronic authorization procedure. Our reluctance is based, in part, on the difficulties parties have encountered setting up electronic communications between electric distribution companies and suppliers. Therefore, we have not revised the guideline to allow electronic authorizations. However, as previously stated in regard to T.W. Phillips' other

suggestion to establish an electronic confirmation procedure for identification of third parties, we would be receptive to NGDC pilot programs for electronic authorizations to help all parties identify and address any legal or technical issues that may be involved with electronic communications of this nature.

CUSTOMER DISPUTE PROCEDURES

Summary of Comments:

The proposed guidelines under this section require that when a customer contacts a NGDC with a slamming allegation, the NGDC must “consider the matter a customer registered dispute.” PGA objects to this requirement for numerous reasons. First, PGA points out it would require the NGDCs to investigate and address slamming allegations in accordance with the Chapter 56 dispute provisions, which PGA characterizes as “costly and detailed standards.” Moreover, PGA notes that the proposed guideline conflicts with the Chapter 56 definition of “dispute” and “initial inquiry”, since the guidelines require that customer contacts alleging unauthorized switching must automatically be considered a customer registered dispute. PGA also argues that, if adopted, the NGDCs “stand to have a significant number of registered disputes entered on their records, and to incur significant investigation costs, even where the NGDC does little more than change the name of the supplier on the customer’s bill.” Further, PGA rejects the argument that this provision is necessary, in part, to prevent an

NGDC from favoring an affiliate NGS by discriminating in their application of dispute procedures. PGA asserts that existing and pending standards of conduct proceedings and the Public Utility Code's prohibitions against undue discrimination are sufficient to address these concerns. PGA also rejects the imposition of dispute requirements in the name of maintaining a "competitive balance between electric and gas service." PGA urges the Commission to lift these requirements from the electric industry, instead of placing them on both industries. For all these reasons, PGA recommends the guidelines be revised to allow the NGDC, once it has ascertained that it has fulfilled its responsibilities under the guidelines, to refer the customer to the NGS and not have to classify the contact as a dispute.

NFR suggests that the procedures under part (b) of the proposed guidelines be made discretionary and applicable only in cases of repeated intentional slamming. NFR believes that as proposed, this section could "unjustly penalize" an NGS for an unintentional error. In addition, since the customer receives written notice of an NGS switch and is provided an opportunity to cancel the switch, the customer should not "be relieved of paying for gas it received after a switch."

Discussion/Resolution:

After careful consideration of the comments regarding these procedures, we are not convinced that it is in the public interest to alter the requirements in this

guideline. Consumers who contact either the NGDC or the NGS and allege slamming will have their grievance addressed by application of procedures which fully reflect the Commission's firm intolerance for this practice. The Chapter 56 dispute provisions have been applied by NGDCs for 20 years and, therefore, can be applied by NGDC customer service representatives with limited additional training. Certainly, one clarification that customer service representatives will need to be informed of is the standard that all slamming complaints are to be considered disputes on the initial call from the customer. We believe this is reasonable and necessary to both ensure satisfactory resolution of the customer's claim, and to ensure that complaints against affiliated suppliers are not handled differently than disputes against nonaffiliated suppliers.

In regard to PGA's concern that NGDCs stand to have a significant number of registered disputes entered on their records and incur significant investigation costs, parties must recognize that we are attempting establish a process that reflects our often stated "zero tolerance" to slamming incidences. Simply put, we do not intend to tolerate numerous slamming complaints. If PGA's concern is realized and a "significant number" of customers need to complain to the NGDC about unauthorized switches, the Commission will take immediate enforcement action. Such action often requires Commission staff review of appropriate company records. Any increased costs associated with the investigation of slamming

complaints or the retention of appropriate records, must be balanced against the benefit to be derived for consumers. We find that any increased costs are offset by the fact that this guideline enhances the Commission's ability to find and stop inappropriate practices relating to changing suppliers.

We also disagree with PGA's contention that it is not important to maintain a "competitive balance between electric and gas service." Some suppliers will offer both gas and electric supply to customers. It would be counterproductive to our goal of developing competitive gas and electric markets to impose substantively different rules for essentially the same activity.

Finally, in regard to NFR suggestion that the procedures under part (b) of the proposed guidelines be made discretionary and applicable only in cases of repeated intentional slamming, we have not altered this procedure as recommended since we believe the customer is entitled to relief so long as the customer's claim is filed in a timely manner, regardless of whether the customer was adversely affected intentionally or unintentionally.

PROVIDER OF LAST RESORT

No parties commented on this section of the guidelines. Therefore, we have retained them as proposed.

RECORD MAINTENANCE

No parties commented on this section of the guidelines. Therefore, we have retained them as proposed.

INFORMATION NEEDED TO PROCESS A SELECTION REQUEST

Summary of Comments:

In the preamble to the tentative order, the Commission invited parties to comment on “what information a natural gas distribution company needs from a natural gas supplier to accurately process a supplier selection request.”

PGA suggests that NGSs should be required to provide some form of customer identification, and that guideline (a)(1) should be revised by adding a requirement that an NGS “provide such customer identification data as required by the natural gas distribution company or established by Commission order.”

The OCA, NFR, and T.W. Phillips agree that an NGS should have to submit a name, address and account number. The OCA states that this “will aid in preventing the situation where a customer is inadvertently switched due to an incorrect account number, or a transposition of an account number,” and will also require a procedure for NGSs and NGDCs to address information that does not match. NFR also suggests that mailing address and date of customer switch request should be added to the list of required information.

Columbia suggests that in addition to the account number, “enrollment type and rate code” are the only other pieces of information that “allows it to properly match the NGS’s record to Columbia’s.” Peoples claims that they do not need any information other than the account number in order to process a request.

Discussion/Resolution:

The comments have helped clarify that, to aid in preventing unauthorized supplier selections caused by inadvertent errors, the “information match” by the NGDC is more important than the specific information required by each NGDC. Our current view is that specific customer identification data requirements will evolve on the basis of review of each natural gas distribution company’s restructuring filing, or established with uniform requirements by Commission Order. To help reduce the number of errors, however, we have revised Guideline (a)(1) under the Customer Contacts with Natural Gas Suppliers section to require that NGDCs verify the accuracy of the information provided by the NGS by matching at least two data elements with their records. If, for example, an NGDC matches account number and customer name, it is more likely to identify errors than if the NGDC matches just one of these data elements with their records.

THIRD PARTY VERIFICATION

Summary of Comments:

Vice Chairman Bloom attached a statement to the tentative order inviting parties to comment on the use of a third party to verify NGS selection requests.

PGA and Peoples object to any third party verification system which NGDCs would be required to financially support.

Columbia and T.W. Phillips suggest that third party verification is unnecessary. T.W. Phillips “sees no need for the Commission to establish an independent third party verification procedure” as long as customers receive a 10-day confirmation letter.

The OCA believes that “independent third party verification is an important protection and a good business practice to be implemented particularly by those suppliers receiving oral authorizations to switch” and it “would provide an additional layer of protection for both customers and suppliers.” OCA also “submits that the Commission’s clear policy of zero tolerance may prove to be the most effective deterrent to slamming.” If third party verification is used, OCA suggests that the third party verifier should be completely independent of the NGS, operate from facilities that are physically separate from the NGS, and should receive no compensation or commission of any kind based upon the number of

confirmed sales. The cost of the third party verification procedure should be incurred by the NGS that utilizes the procedure. OCA also notes that the "form and content of oral confirmation is not made clear, nor is the necessity for verification or for record keeping." OCA goes on to note the importance of record maintenance by the NGS in case the switch later becomes the subject of a dispute.

Discussion/Resolution:

We greatly appreciate the comments of parties regarding third party verification. Upon consideration of the comments, we have not revised the guidelines to include a third party verification method. Essentially, we agree with the OCA's opinion that the proposed guidelines strike the proper balance between the need to assure that a customer's supplier is not changed without their consent, and the desire of all parties to create a market "that does not unduly hinder the move to competitive natural gas supply."

CONCLUSION

As we indicated in the tentative order (page 4), "given the ambitious implementation of customer choice, which is to begin November 1, 1999, sufficient time does not exist to complete a rulemaking proceeding and have final regulations." Therefore, we shall finalize these interim guidelines which must receive mandatory compliance. At the same time, we shall initiate the rulemaking proceeding to establish final-form regulations.

Accordingly, this proposal is promulgated under sections 501 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501; sections 201 and 202 of the act of July 31, 1968 (P.L. 769 No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732.204(b)); section 745.5 of the Regulatory Review Act (71 P.S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P.S. § 232), and the regulations promulgated thereunder in 4 Pa. Code §§ 7.251-7.235; **THEREFORE,**

IT IS ORDERED:

1. That the proposed rulemaking at Docket No. L-0099 is hereby granted to consider the regulations set forth in Annex A.
2. That the Secretary shall submit this Order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.
3. That the Secretary shall submit this Order and Annex A for review and comment to the Independent Regulatory Review Commission and the Legislative Standing Committees.
4. That the Secretary shall certify this Order and Annex A, and deposit them with the Legislative Reference Bureau to be published in the Pennsylvania Bulletin. An original and 15 copies of any comments referencing the docket

number of the proposed regulations be submitted within 30 days of publication in the Pennsylvania Bulletin to the Pennsylvania Public Utility Commission, Attn: Secretary, P.O. Box 3265, Harrisburg, PA 17105-3265. The Secretary shall specify publication of the Order in accordance with 45 Pa. C.S. §727.

5. That the proposed Annex A regulations are hereby adopted as Final Interim Guidelines at Docket No. M-00991249F0006 to provide mandatory guidance until such a time as final regulations are approved at Docket No. L-0099

6. That the contact persons for this rulemaking are Dan Mumford, Bureau of Consumer Services, (717) 783-1957 (technical), and Terrence J. Buda, Law Bureau, (717)-787-5755 (legal).

7. That a copy of this Order and any accompanying statements of the Commissioners be served upon all jurisdictional natural gas distribution companies, the Office of Consumer Advocate, the Office of Small Business Advocate, the Natural Gas Competition Legislative Stakeholders, the Pennsylvania Natural Gas Association, and all parties to this proceeding.

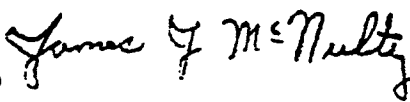
8. That a copy of this Order shall be posted on the Commission's web site and shall be made available, upon request, to all interested parties.

BY THE COMMISSION,

SEAL

ORDER ADOPTED: November 4, 1999

ORDER ENTERED: NOV 10 1999


James J. McNulty
Secretary

ANNEX A

TITLE 52. PUBLIC UTILITIES PART 1. PUBLIC UTILITY COMMISSION Subpart C. FIXED SERVICE UTILITIES Chapter 59. GAS SERVICE STANDARDS FOR CHANGING A CUSTOMER'S NATURAL GAS SUPPLIER

Editor's Note: As part of this regulatory package the Public Utility

Commission prepares the insertion of §§59.91 - 99.

§59.91 Definitions

The following words and terms, when used in these guidelines, have the following meanings, unless the context clearly indicates otherwise:

Customer - A purchaser of natural gas in whose name a service account exists with either an natural gas distribution company or an natural gas supplier. In addition, the term shall include all persons identified in writing by the customer, pursuant to the procedures set forth in these regulations, as authorized to act on a customer's behalf in changing the customer's natural gas supplier.

Natural Gas Distribution Company or NGDC - An natural gas distribution company as defined by Section 2202 of the Natural Gas Choice and Competition Act, 66 Pa. C.S. § 2202.

Natural Gas Supplier or NGS - A supplier as defined by Section 2202 of the Natural Gas Choice and Competition Act, 66 Pa. C.S. § 2202.

§59.92 Customer Contacts with the Natural Gas Distribution Company.

When a customer orally contacts the natural gas distribution company to request a change of natural gas suppliers, the natural gas distribution company shall notify the customer that the selected natural gas supplier must be contacted directly in order to initiate the change.

§59.93 Customer Contacts with Natural Gas Suppliers.

(a) When a contact occurs between a customer and a natural gas supplier to request a change of the natural gas supplier, upon receiving direct oral confirmation or written authorization from the customer to change the NGS, the customer's new NGS shall:

(1) Notify the natural gas distribution company of the customer's NGS selection by the end of the next business day following completion of the application process. The NGDC shall verify the accuracy of the information provided by the NGS by matching at least two data elements with their records.

(2) Upon receipt of this notification the natural gas distribution company shall send the customer a confirmation letter noting the proposed change of natural gas supplier. This letter shall include notice of a ten day waiting period in which the order may be canceled before the change of the NGS takes place. The notice must include the date service with the new NGS will begin unless the customer

contacts the natural gas distribution company to cancel the change. The ten day waiting period shall begin on the day the letter is mailed. The letter must be mailed by the end of the next business day following the receipt of the notification of the customer's selection of a NGS.

§59.94 Time Frame Requirement.

When a customer has provided the natural gas supplier with oral confirmation or written authorization to change natural gas suppliers, consistent with our data transfer and exchange standards, the natural gas distribution company must make the change at the beginning of the first feasible billing period following the 10-day waiting period, as prescribed above.

§59.95 Persons Authorized to Act on Behalf of a Customer.

Any customer may identify persons authorized to make changes to the customer's account. To accomplish this, the customer provides the natural gas distribution company with a signed document identifying by name those persons who have the authority to initiate a change of the customer's NGS.

§59.96 Valid Written Authorization.

A document signed by the customer whose sole purpose is to obtain the customer's consent to change natural gas suppliers shall be accepted as valid and result in the initiation of the customer's request. Documents not considered as valid include, but are not limited to, canceled checks, signed entries into contests and documents used to claim prizes won in contests.

§59.97 Customer Dispute Procedures.

(a) When a customer contacts an natural gas distribution company or a natural gas supplier and alleges that his/her natural gas supplier has been changed without consent, the company contacted shall:

(1) Consider the matter a customer registered dispute.

(2) Investigate and respond to the dispute consistent with the requirements found in §§56.151 and 56.152 (relating to utility company dispute procedures).

(b) When the customer's dispute has been filed within the first two billing periods since the customer should reasonably have known of a change of natural gas suppliers and the dispute investigation establishes that the change occurred without the customer's consent, the customer shall not be responsible for any NGS charges rendered during that period. If the customer has made payments during this period, the company responsible for initiating the change of supplier shall

issue a complete refund within 30 days of the close of the dispute. The refund or credit provision applies only to the natural gas supply charges.

(c) A customer who has had a natural gas supplier changed without having consented to that change shall be switched back to the original NGS for no additional fee. Any charges involved in the switch back to the prior natural gas supplier shall be the responsibility of the company that initiated the change without the customer's consent.

(d) Should a customer file an informal complaint with the Commission alleging that the customer's natural gas supplier was changed without the customer's consent, the Bureau of Consumer Services will issue an informal decision that includes a determination of customer liability for any natural gas supplier bills or administrative charges that might otherwise apply, rendered since the change of the NGS.

(e) In addition to customer-specific remedies, the Commission may, after investigation and decision, assess fines pursuant to Chapter 33 of the Public Utility Code, 66 Pa. C.S. §§3301, et seq., and initiate proceedings to revoke the license of any NGS that demonstrates a pattern of violating these regulations. The Commission may order a particular NGS that has a pattern of violating these regulations to obtain written authorization from every new customer as a condition

of providing service in this Commonwealth. Nothing herein is intended to limit the Commission's authority.

§59.98 Provider of Last Resort.

The provisions of this subchapter do not apply in instances when the customer's service is discontinued by the NGS and subsequently provided by the provider of last resort because no other NGS is willing to provide service to the customer.

§59.99 Record Maintenance.

Each natural gas distribution company and each natural gas supplier shall preserve all records relating to unauthorized change of natural gas supplier disputes for a period of three years from the date the customers filed the dispute. These records shall be made available to the Commission or its staff upon request.



PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG, PENNSYLVANIA

THE CHAIRMAN

December 21, 1999

The Honorable John R. McGinley, Jr.
Chairman
Independent Regulatory Review Commission
14th Floor, Harristown II
333 Market Street
Harrisburg, PA 17101

Re: L-990145/57-211
Proposed Rulemaking
Establishing Procedures to Ensure
Customer Consent to a Change of
Natural Gas Supplier
52 Pa. Code, Chapter 59

Dear Chairman McGinley:

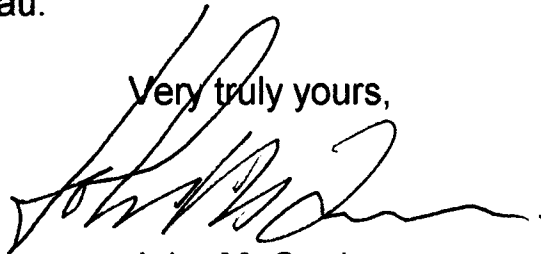
Enclosed please find one (1) copy of the proposed rulemaking and the Regulatory Analysis Form prepared in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." Pursuant to Section 5(a) of the Regulatory Review Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission is submitting today a copy of the proposed rulemaking and Regulatory Analysis Form to the Chairman of the House Committee on Consumer Affairs and to the Chairman of the Senate Committee on Consumer Protection and Professional Licensure.

The purpose of this proposal is to establish procedures to ensure that natural gas suppliers do not change a customer's gas supplier without direct oral confirmation from the customer of record or written

evidence of the customer's consent to a change of supplier. The contact persons are Daniel Mumford, Bureau of Consumer Services, telephone (717) 783-1957 and Terrence Buda, Law Bureau, telephone (717) 787-5755.

The proposal has been deposited for publication with the Legislative Reference Bureau.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John M. Quain', written over the closing 'yours'.

John M. Quain
Chairman

Enclosures

cc: The Honorable Clarence D. Bell
The Honorable Lisa Boscola
The Honorable Chris R. Wogan
The Honorable Keith McCall
Legislative Affairs Director McDonald
Chief Counsel Pankiw
Assistant Counsel Buda
Regulatory Coordinator DelBiondo
Mr. Mumford
Mr. Zogby

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE REGULATORY REVIEW ACT

RECEIVED

1999 DEC 21 AM 11:01

ID Number: L-00990145/57-211

INDEPENDENT REGULATORY
REVIEW COMMISSION

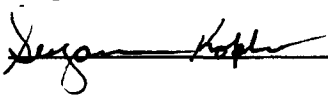
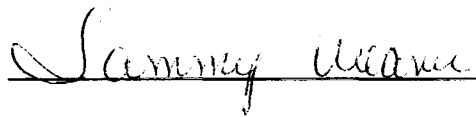
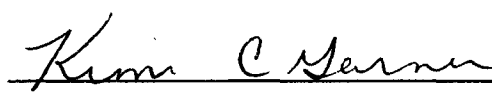
Subject: Proposed Rulemaking Establishing Procedures to
Ensure Customer Consent to a Change of Natural Gas
Supplier

Pennsylvania Public Utility Commission

TYPE OF REGULATION

- ☒ Proposed Regulation
- ☐ Final Regulation with Notice of Proposed Rulemaking
Omitted.
- ☐ Final Regulation
- ☐ 120-day Emergency Certification of the Attorney
General
- ☐ 120-day Emergency Certification of the Governor

FILING OF REPORT

Date	Signature	Designation
12/21/99		HOUSE COMMITTEE Consumer Affairs
12/21/99		SENATE COMMITTEE Consumer Protection and Professional Licensure
12/21/99		Independent Regulatory Review Commission
		Attorney General
		Legislative Reference Bureau