

Regulatory Analysis Form

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(1) Agency

Pennsylvania Public Utility Commission

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

L-00000151/57-218

IRRC REGULATORY
REVIEW COMMISSION

IRRC Number: 2172

(3) Short Title

Final Rulemaking on Natural Gas Emergency Plans and Emergency Actions.

(4) PA Code Cite

52 Pa. Code 59.71-59.75.

(5) Agency Contacts & Telephone Numbers

Primary Contact: David E. Screven, 717-787-2126 (legal)

Secondary Contact: Dr. Ahmed A. Kaloko, Bureau of
Conservation, Economics and Energy Planning (717) 787-2139
(technical)

(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.

The Natural Gas Emergency Regulations are designed to address the management of natural gas emergencies in the newly competitive environment so as to maintain (or restore as quickly as possible) gas service to essential human needs customers while minimizing service disruption. These regulations are intended to address emergencies which, by definition, are limited to situations where available firm supply or capacity is not sufficient to meet firm service requirements. The regulations address a number of matters that are critical to gas emergency and gas curtailment, including: (1) emergency load shedding, (2) a call for voluntary usage reduction, (3) a call for mandatory load and usage reduction, (4) issuance of periodic reports to the media on emergency situations, (5) notice of affected customers and NGSs, (6) customer and NGS delivery requirements that apply to emergency actions, (7) a procedure for focusing emergency measures to confined geographic areas, and (8) procedures for establishing communications. The regulations provide a strong framework for addressing these issues in more detail in the context of each utility's tariff and operational procedures.

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

66 Pa. C.S. §§ 501, 2203(1).

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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.

Natural Gas Choice and Competition Act, 66 Pa. C.S. §§ 2201-2212.

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

The Natural Gas Emergency Regulations set forth below are designed to address the management of natural gas emergencies in this new environment in order to maintain (or restore as quickly as possible) gas service to essential human needs customers while minimizing service disruption. The purpose of these arrangements is to provide a means to minimize the potential of supply shortfalls that threaten public health and safety in crisis situations and give notice to the public concerning usage reductions so as to avoid confusion in these situations.

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

Non-regulation could result in an immediate threat to the NGDC's system operating integrity with respect to its customers and physical harm to an industrial or commercial consumer's facility, or danger to personnel at such facility because of the lack of detailed procedures for the curtailment of service in crisis situations.

(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 distribution company customers and all NGSs licensed to provide services to their customers will benefit from the regulations because there will be responsive action plans in place to protect their customers, themselves and their property in the event of a crisis

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(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.)

No person or entity will be adversely affected by the regulations. The regulations are imposed on all natural gas suppliers and distributors so as to provide a means to minimize the potential of supply shortfalls that threaten public health and safety.

(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.

(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.

Commission staff established a Collaborative Working Group as the appropriate vehicle to proceed with the implementation of gas emergency plans and curtailment under the Natural Gas Choice and Competition Act, 66 Pa. C.S. §§ 2201, et seq. On February 29, 2000, Commission staff convened the first meeting of the Gas Safety and Reliability Working Group addressing gas emergency plans and curtailment issues. Several meetings of the working group were held between February and April 2000. Commission staff urged the parties to identify those common issues that would be addressed in the meetings. The Office of the Consumer Advocate, the Office of Trial Staff, the Pennsylvania Gas Association, Texas Eastern Corporation, CNG Retail Services Corporation and TXU Energy Services (filed jointly with Statoil Energy) submitted informal comments on February 29, 2000. The working group agreed that the requirements for gas emergency plans should be more than Guidelines. As a result, the working group designated selected members to draft suggested regulations and this draft was delivered to the full group and considered at the meeting on May 23, 2000. The working group agreed that the proposed regulations should be presented at Public Meeting for the Commission's consideration. By order entered July 20, 2000, the Commission adopted the proposed regulations, intending to amend 52 Pa. Code, Chapter 59 to include Sections 59.71-59.75, which established regulations for natural gas emergency plans and curtailment safety and reliability. The Commission directed that the proposed regulations be published in the Pennsylvania Bulletin for comment by interested parties. The proposed regulations were published in the February 10, 2001 edition of the Pennsylvania Bulletin. Comments were received from the Independent Regulatory Review Commission (IRRC), the OCA, and the Energy Association of Pennsylvania (the Association). By Order entered August 9, 2001, the Commission addressed these comments and adopted Final regulations in this area.

(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.

Not applicable.

Regulatory Analysis Form

(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.

Not applicable.

(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.

Not applicable.

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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.

Not measurable at this time.

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

Program	FY -3	FY -2	FY -1	Current FY
Not applicable.				

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

Not applicable.

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

Not applicable.

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

Not applicable.

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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?

The regulations will not put Pennsylvania at a competitive disadvantage with other states.

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

Yes. The Guidelines at Sections 69.21-69.27 in the Pennsylvania Code are to be eliminated. Additionally, since Section 59.63 of the Pennsylvania Code refers to the Guidelines at Sections 69.21-69.27, Section 59.63 will also be modified to reflect the changes.

(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.

Not applicable.

(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 become effective upon publication in the Pennsylvania Bulletin following review and approval by the standing committees and the Independent Regulatory Review Commission.

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

The regulation will be reviewed on an ongoing basis after it becomes effective.

**FACE SHEET
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INDEPENDENT REGULATORY
REVIEW COMMISSION

#2172

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

BY _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

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-00000151/57-218

DATE OF ADOPTION August 9, 2001

BY James J. McNulty
James J. McNulty

TITLE (SECRETARY)

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

Bohdan R. Pankiw
Bohdan R. Pankiw
Chief Counsel

8-9-01
DATE OF APPROVAL

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

L-00000151/57-218
Final Rulemaking
Natural Gas Emergency Plans and
Emergency Actions
52 Pa. Code, Chapter 59

The Pennsylvania Public Utility Commission on August 9, 2001, adopted a final rulemaking order setting forth the procedures the Commission intends to follow in managing natural gas emergencies in order to maintain gas service and minimize service disruptions. The contact persons are Ahmed Kaloko, Bureau of Conservation, Economics and Energy Planning (717) 787-2139 and David Screven, Law Bureau (717) 787-2126.

EXECUTIVE SUMMARY
L-00000151/57-218
Final Rulemaking Order
Re: Natural Gas Emergency
Plans and Emergency Actions.
52 Pa. Code Chapter 59

For many years, natural gas emergency planning has been a staple of Pennsylvania's natural gas distribution companies' (NGDCs) operational considerations. Given the necessity for 100% reliability on all natural gas distribution systems, NGDCs have long planned for force majeure or other unexpected events that threatened system integrity.

On June 22, 1999, Governor Tom Ridge signed into law the Natural Gas Choice and Competition Act (Act). The Act revised the Public Utility Code, 66 Pa. C.S. §§101, et seq., by inter alia, adding Chapter 22, relating to the restructuring of the natural gas utility industry. Nevertheless, the Act is clear that even with the restructuring of the natural gas industry, the requirement for 100% reliability of all NGDC systems remains constant.

The Natural Gas Emergency Regulations set forth below are designed to address the management of natural gas emergencies in this new environment in order to maintain (or restore as quickly as possible) gas service to essential human needs customers while minimizing service disruption. The final regulations address a number of matters that are critical to gas emergency and gas curtailment, including: (1) emergency load shedding, (2) a call for voluntary usage reduction, (3) a call for mandatory load and usage reduction, (4) issuance of periodic reports

to the media on emergency situations, (5) notice of affected customers and NGSs, (6) customer and NGS delivery requirements that apply to emergency actions, (7) a procedure for focusing emergency measures to confined geographic areas, and (8) procedures for establishing communications. On all of these issues, the regulations provide a strong framework for addressing these issues in more detail in the context of each utility's tariff and operational procedures. The contact persons are Dr. Ahmed Kaloko, Bureau of Conservation, Economics and Energy Planning (technical), (717) 787-2139 and David Screven, Law Bureau (legal) (717) 787-2126.

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

Public Meeting held August 9, 2001

Commissioners Present:

Glen R. Thomas, Chairman
Robert K. Bloom, Vice-Chairman
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

Final Rulemaking on Natural Gas Emergency
Plans and Emergency Actions.

Docket No. L-00000151

FINAL RULEMAKING ORDER

BY THE COMMISSION:

Introduction

By order entered July 20, 2000, the Pennsylvania Public Utility Commission (Commission) adopted a proposed rulemaking order setting forth the procedures the Commission intends to follow in managing natural gas emergencies in order to maintain gas service and minimize service disruptions. The Commission proposed to incorporate the regulations into 52 Pa. Code, Chapter 59, as Sections 59.71-59.75. The Commission directed that the proposed regulations be published in the Pennsylvania Bulletin for comment by interested parties. The proposed regulations were published in the February 10, 2001 edition of the Pennsylvania Bulletin. This order addresses the comments received from the

Independent Regulatory Review Commission, the Office of Consumer Advocate, and the Energy Association of Pennsylvania.

Background

For many years, natural gas emergency planning has been a staple of Pennsylvania's natural gas distribution companies' (NGDCs) operational considerations. Given the necessity for 100% reliability on all natural gas distribution systems, NGDCs have long planned for force majeure or other unexpected events that threatened system integrity. After the passage of Pennsylvania's Natural Gas Choice and Competition Act in 1999, 66 Pa. C.S. §§ 2201, et seq., which restructured the natural gas utility industry, the importance of revising these requirements became apparent.

Commission staff established a collaborative working group as the appropriate vehicle to proceed with the implementation of gas emergency plans and curtailment under the Natural Gas Choice and Competition Act. On January 18, 2000, Commission staff convened the first meeting of the Gas Safety and Reliability Working Group (Working Group) addressing gas emergency plans and curtailment issues.

At the initial meeting of the Working Group, Commission staff identified statutory directives that applied to the Working Group, framed a tentative list of issues that should be addressed by the Working Group, and established a date for the submission of informal comments.

Commission staff urged the parties to identify those common issues that would be addressed in the meetings. The Office of the Consumer Advocate (OCA), the Office of Trial Staff (OTS), the Pennsylvania Gas Association (PGA), Texas Eastern Corporation, CNG Retail Services Corporation and TXU Energy Services (filed jointly with Statoil Energy) submitted informal comments on February 29, 2000.

The working group agreed that the requirements for gas emergency plans should be more than guidelines. As a result, the Working Group designated selected members to draft suggested regulations and this draft was delivered to the full group and considered at the meeting on May 23, 2000. The proposed regulations addressed a number of matters that are critical to gas emergency and gas curtailment, including: (1) emergency load shedding, (2) a call for voluntary usage reduction, (3) a call for mandatory load and usage reduction, (4) issuance of periodic reports to the media on emergency situations, (5) notice to affected customers and NGSs, (6) customer and NGS delivery requirements that apply to emergency actions, (7) a procedure for focusing emergency measures to confined geographic areas, and (8) procedures for establishing communications. The regulations provide a strong framework for addressing these issues in more detail in the context of each utility's tariff and operational procedures.

Since the proposed regulations were designed to replace the Commission Gas Curtailment Guidelines at Sections 69.21-69.27 of Chapter 69, the Working Group suggested having proposed regulations placed in Chapter 59 on Gas Service of Title 52 rather than in Chapter 69 concerning Policy Statements and Guidelines. The Working Group agreed that the proposed regulations should be presented at Public Meeting for the Commission's consideration.

By order entered July 20, 2000, the Commission adopted the proposed regulations, intending to amend 52 Pa. Code, Chapter 59 to include Sections 59.71-59.75, which established regulations for natural gas emergency plans and curtailment safety and reliability. The Commission directed that the proposed regulations be published in the Pennsylvania Bulletin for comment by interested parties. The proposed regulations were published in the February 10, 2001 edition of the Pennsylvania Bulletin. Comments were received from the Independent Regulatory Review Commission (IRRC), the OCA, and the Energy Association of Pennsylvania (the Association).

Comments

1. Section 59.72(a)

Comments

In its comments, IRRC stated that subsection 59.72(a) had to be clarified. Subsection (a) states that an NGDC is required to file a natural gas emergency plan with the PUC “within 90 days from the effective date of these regulations, or such later date as may be determined by the Commission...” IRRC questioned how the Commission would communicate this date to NGDCs. IRRC stated that the date should be specified in the final-form regulation.

Discussion

We are in agreement with IRRC’s comments regarding subsection 59.72(a). Accordingly, we shall delete the language “or such later date as may be determined by the Commission” from the subsection. This deletion does not substantially affect this subsection.

2. Section 59.72(b)

Comments

IRRC, the OCA, and the Energy Association submitted comments on proposed subsection 59.72(b). Subsection 59.72(b) deals with the arrangements that NGDCs make with their various customers so as to avoid or, at least, minimize the potential of natural gas supply shortfalls to the public. In its comments, IRRC noted that the proposed subsection contained language which

implied that the provision was optional. IRRC stated that regulations establish binding norms and have the full force and effect of law. IRRC explained that if the subsection was intended to impose mandatory requirements on NGDCs, the word “shall” must be used in place of the phrase “are encouraged to.” Conversely, IRRC stated that if subsection 59.72(b) was considered optional, then it should be deleted from the regulations.

The OCA also commented that the language in subsection 59.72(b) should be strengthened. The OCA stated that the critical nature of the proposed regulations made it necessary to frame the requirements set forth therein in clear, unambiguous, and mandatory language. The OCA asserted that NGDCs should be obligated to attempt to make contractual and informal arrangements with market participants. Therefore, the OCA determined that the words “are encouraged” in subsection (b) cannot be expected to produce the best possible result for NGDCs to make preparations for emergencies and should be replaced with the phrase “shall make a reasonable effort. . .” The OCA was of the belief that this phrase strengthened the requirement substantially without making it unrealistic.

The Energy Association’s comments were essentially in response to the comments submitted by the OCA. The Energy Association stated that because it is impossible to require a regulated party to contract with an unregulated one, section 59.72(b) should be adopted as proposed. The Energy Association asserted that the OCA’s proposed revision would require NGDCs to make a “reasonable attempt”

to enter into arrangements for customers to reduce or discontinue service so that forced service reductions can be avoided or at least minimized. The Energy Association questioned what is meant by the phrase “shall make a reasonable attempt.” The Energy Association explained that since the other parties to these potential arrangements are not subject to the Commission’s jurisdiction, there is no legal mechanism to force them to do anything. The Energy Association further asserted that NGDCs would be subject to constant regulatory second-guessing in two instances: (1) if an arrangement is not made, the NGDC could find itself having to defend whether its actions were reasonable, and (2) if an arrangement is made, the NGDC could find itself having to defend whether the *quid pro quo* it offered to the non-jurisdiction entity was unreasonably generous. Therefore, for these reasons, the Energy Association stated that the OCA’s modified language should not be adopted.

Discussion

We are in agreement with IRRC and the OCA that regulations establish binding norms and have the full effect and force of law. See generally, Pa. Human Relations Commission v. Norristown Area School District, 473 Pa. 334, 374 A.2d 671 (1977). The Working Group agreed that the requirements for gas emergency plans should be more than mere guidelines and proposed regulations designed to replace the Commission Gas Curtailment Guidelines at Sections 69.21-69.27 of Chapter 69. Since it was the intention of the Working Group to establish binding

norms concerning the maintenance of gas service and the minimization of service disruptions during natural gas emergencies, these proposed regulations must set forth mandatory language, not optional language. Thus, we shall replace the phrase “are encouraged” which is currently set forth in proposed subsection 59.72(b) with the phrase “shall attempt to make every reasonable effort.”

We are not persuaded by the Energy Association’s argument that making this revision to subsection 59.72(b) will result in continuous regulatory second-guessing for NGDCs. We believe that the revision of this subsection fits better into the mold of a regulation. Moreover, in order to prevent catastrophic results in natural gas emergencies, we believe that NGDCs must make every “reasonable” effort to contract with their various customers so as to minimize the potential of supply shortfalls that threaten public health and safety. This is the essence of the entire rulemaking.

3. Section 59.72(c)

The OCA stated that the language in subsection 59.72(c) should be strengthened. Subsection 59.72(c) sets forth the make-up of a natural gas emergency plan. The OCA concluded that in order to make the subsection more specific and mandatory, the word “should” must be stricken and replaced with the word “shall.”

In response, the Energy Association stated that the OCA's suggestion to amend the word "should" to "shall" in subsection 59.72(c) is erroneous because the word "shall" already appears in the proposed subsection.

Discussion

We note that subsection 59.72(c) already includes the word "shall" and, therefore, we disregard the OCA's comments regarding this subsection.

4. Section 59.72(d)

Comments

In its comments, IRRC noted that subsection (d) provides that each natural gas emergency plan "should specify the procedures the NGDC shall use to provide notices to affected customers." IRRC stated that this subsection should include language that requires notice to be issued by the NGDC within a specified time period and should also use more binding language.

Similarly, the OCA commented that language should be added to subsection (d) which specified that the notice procedures set forth therein would be initiated as quickly as is reasonably possible. The OCA stated that timely notification will insure that customers have the greatest opportunity to respond to expected or potential curtailment. Therefore, the OCA proposed the inclusion of the following language in subsection (d): "Notice shall be given as quickly as is reasonably possible after the existence of emergency conditions and the appropriate responses are determined by the NGDC."

Additionally, the OCA stated that clarity is a fundamental element of effective communication; thus, the OCA proposed that subsection (d) also should be modified to require that notice be consistent with the Commission's existing Plain Language Policy. The OCA suggested the following language for inclusion in subsection (d): "All notices shall be prepared consistent with the Commission's Plain Language Policy."

In response, the Energy Association argued that OCA's suggested changes to proposed subsection 59.72(d) should be rejected as an inappropriate attempt to prescribe the method, timing and wording of customer notices to a level of detail beyond that agreed to by the members of the Working Group. The Energy Association asserted that proposed subsection 59.72(d) read the way it was intended to by the members of the Working Group because they recognized that there were (1) diverse (and ever changing) means that could be used to notify customers; (2) that different means of notification may be appropriate under different circumstances; and (3) the impossibility of predetermining which means would be appropriate in the throes of a specific emergency situation.

Moreover, the Energy Association noted that the notices would, to a significant extent, be governed by the individual NGDC's emergency plan. The Energy Association further asserted that since the members of the Working Group did not approve the level of micro-management that the OCA suggests for this subsection, the modification should be rejected accordingly.

Discussion

We are in agreement with the OCA that timely notification of natural gas emergencies will insure that customers have the greatest opportunity to respond to expected or potential curtailment. Therefore, in response to the OCA's and IRRC's comments regarding the inclusion of a specific time period in subsection 59.72(d), we shall add the sentence "After the NGDC determines the appropriate response, the NGDC shall issue notices to affected customers, their NGSs and NGDCs as soon as reasonably possible." This sentence also incorporates IRRC's concerns regarding using binding and more mandatory language.

We also agree with the OCA that the notice must be specific and clear. Therefore, we adopt the OCA's suggestion that the following language be placed within section 59.72(d): "All notices shall be prepared consistent with the Commission's Plain Language Policy."

5. Section 59.73

Comments

In its comments, IRRC noted that subsection 59.73(a) appeared to contain a typographical error. The subsection states that the definition of "Priority 1 customers" is set forth in subsection (j). Nevertheless, the definition of "Priority 1 customers" is contained in subsection (i).

Additionally, IRRC commented that subsections (b), (c)(3),¹ (h)(1) and (h)(3) of section 59.73 use the term “will” to describe actions that the NGDC must take. All of these subsections deal with the actions the NGDC is required to perform in responding to a natural gas emergency. IRRC explained that according to the Pennsylvania Code & Bulletin Style Manual, the term “will” is used to describe actions that an agency will undertake. IRRC stated that the term “shall” is to be used whenever anyone else has a duty to act.

IRRC also commented that subsections 59.73(h) and (h)(2) appear to set forth language which implied that the provisions were optional. IRRC stated that because regulations establish binding norms, the language therein must be mandatory.

Furthermore, the OCA stated that it generally agrees that the proration hierarchy specified in section 59.73(h) is reasonable and provides adequate flexibility for operating contingencies. The OCA, however, determined that the language must be mandatory and the word “should” set forth therein must be replaced with the word “shall.”

The OCA also stated the definition of Priority 1 set forth in subsection 59.73(h)(3)(i)(1)² should be modified so as to be consistent with the consensus achieved in the Interim Guidelines Working Group. The OCA proposed that the

¹ IRRC inadvertently referred to this section as 59.73(b)(3) in its comments.

definition be modified to “Service for essential human needs and any other residential use.” The OCA was of the opinion that this modification ensured that all residential customers are on par with other essential human needs customers.

In response to the OCA’s comments, the Energy Association stated that the OCA’s comments were nothing more than a reargument on the matters that were previously settled in the collaborative process and, therefore, should be wholly rejected. The Energy Association argued that the OCA’s suggestion to reword subsection 59.73(h) contradicts the Working Group’s consensus and incorrectly presumes that a pro rata allocation of methane molecules on a customer-by-customer basis can be accomplished as a practical matter.

The Energy Association asserted that permitting OCA’s rewording would, in effect, make pro rata curtailment mandatory. The Energy Association explained that while pro rata curtailment is desirable as an objective, it is impossible to achieve as a practical matter. The Energy Association further explained that given present technology, there is simply no way to ensure that every member of a curtailment priority category (or sub-category) will in fact receive only its pro rated share of available natural gas molecules. Therefore, the Energy Association supports keeping the Working Group language as proposed.

² The OCA inadvertently referred to this section as 59.73(h)(3)(1) when it appears it should have been referred to as 59.73(i)(1). We shall refer to this section as 59.73(i)(1) in the remainder of this document.

In the alternative, the Energy Association stated that if the Commission believed that some revisions to subsection 59.73(h) are necessary, the Energy Association suggested the following language:

(h) Upon issuance of an order to initiate priority-based curtailments, ~~the available gas supplies to the NGDC should be prorated among its customers in accordance with~~ **deliver available supplies to its customers according to** the following priorities of use:

(1) Customers in a higher priority **category** will not be curtailed until all customers falling into a lower **priority** category have been restricted to plant protection use levels, unless operational circumstances or physical limitations warrant a different result.

(2) Where only a partial restriction of a classification is required, implementation should be pro rata **to the extent practical under the circumstances, as set forth in the NGDC's tariff.**

~~(3) The pro rata rationing, to the extent practical under the circumstances, will be based on a method set forth in the NGDC's tariff.~~

(additions in bold, deletions stricken through)

The Energy Association asserted that its above-referenced changes better reflect the operating realities that motivated the Working Group to draft initially subsection 59.73(h) as it appears in the Proposed Rulemaking Order, rather than the OCA's proposed revisions.

The Energy Association also asserted that the inclusion of the term “residential use” in the definition of Priority 1 customers, may not be the kind of change that would have been unanimously adopted by the members of the collaborative. The Energy Association further maintained that the OCA failed to explain fully the substantive effect of such an inclusion given the types of consumption already falling within the definition of “essential human needs use.”

Discussion

We note the typographical error in subsection 59.73(a), and will make the appropriate revision to this subsection. Additionally, in accordance with the Pennsylvania Code & Bulletin Style Manual, we will replace the term “will” currently set forth in subsections 59.73(b), (c)(3), (h)(1) with the term “shall.” Subsection 59.73(h)(3) has been deleted from the final form regulation.

We also conclude that in order to make the proposed regulations meet the criteria for “binding” regulations, we will replace the word “should” set forth in proposed subsections 59.73(h) and (h)(2) with the word “shall.” Regulations establish “binding” norms and must set forth mandatory language. We, however, take note of the Energy Association’s argument that given the present state of technology, pro rata curtailment may be impossible to achieve as a practical matter. Therefore, in order to reflect accurately the operating realities of NGDCs in today’s environment, we adopt the Energy Association’s proposed amendment for subsection 59.73(h) with slight revisions.

Lastly, we decline to adopt OCA's suggestion to modify subsection 59.73(i)(1) to read "Service for essential human needs and any other residential use." The definition of "essential human needs" set forth in the proposed regulations already incorporates "residential use." We agree with the Energy Association's statement in its comments that, "OCA does not explain why its suggested wording would add anything to the regulations given the types of consumption already falling within the definition of 'essential human needs use'."

6. Section 59.74

Proposed subsection 59.74 deals with the scope of a NGDC's liability for the actions it has taken to respond to a natural gas emergency. IRRC commented that subsection 59.74(b)(1) also uses the term "will" to describe a required NGDC action. Proposed subsection 59.74 (b)(1) deals with the compensation a NGDC may have to pay a customer for the loss of firm service during a natural gas emergency. As mentioned earlier, IRRC explained that the Pennsylvania Code & Bulletin Style Manual establishes that the term "will" is to be used to describe the actions that an agency undertakes. The term "shall" is used whenever anyone else has a duty.

Additionally, IRRC commented that subsection 59.74(b)(2) uses the phrase "will have a right to" in describing the NGDC's discretionary authority to discontinue service. Proposed subsection 59.74(b)(2) deals with the NGDC's ability to discontinue service, during an emergency, to a customer that takes gas in

violation of the rules of the subchapter. IRRC explained that according to the Pennsylvania Code & Bulletin Style Manual, the term “may” is used to express a right, power, or privilege. Therefore, the phrase “will have a right to” should be replaced with “may.”

Discussion

We are in agreement with IRRC’s reading of the Pennsylvania Code & Bulletin Style Manual and, thus, we will make the appropriate revisions to subsections 59.74(b)(1) and (b)(2).

Conclusion

Accordingly, under Sections 501, 2203 (12) and 2208 of the Public Utility Code, 66 Pa. C.S § 501, § 2203(12) and § 2208, and the Commonwealth Documents Law, 45 P.S. §§ 1201, et seq., and regulations promulgated thereunder at 1 Pa. Code §§ 7.1-7.4, we amend the regulations at 52 Pa. Code Chapter 59 as noted above and as set forth in Annex A; **THEREFORE,**

IT IS ORDERED:

1. That the regulations of the Commission at 52 Pa. Code are amended by adding §§ 59.71-59.75 to read as set forth in Annex A.
2. That the Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to form and legality.
3. That the Secretary shall submit a copy of this order, together with Annex A, to the Governor’s Office of Budget for review of fiscal impact.

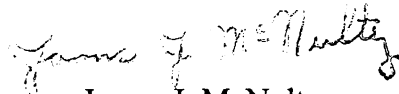
4. That the Secretary shall submit this order and Annex A for formal review by the designated standing committees of both Houses of the General Assembly, and for formal review and approval by the Independent Regulatory Review Commission.

5. That the Secretary shall duly certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

6. That this Final Rulemaking shall be come effective upon publication in the Pennsylvania Bulletin.

7. The contact persons are David E. Screven, at 717-787-2126 (legal) or Dr. Ahmed Kaloko, at 717-787-2139 (technical). Alternate forms of the this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Review Coordinator, Law Bureau at 717-772-4597.

BY THE COMMISSION



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: August 9, 2001

ORDER ENTERED: **AUG 14 2001**

Annex A
TITLE 52. PUBLIC UTILITIES
PART I. PENNSYLVANIA PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
Chapter 59. GAS SERVICE
REPORTING AND CURTAILMENT OF SERVICE

§ 59.63. **[Curtailment tariffs] Natural gas emergency plans.**

As part of its officially filed tariff, each jurisdictional gas utility shall have on file with the Commission **[detailed procedures for the curtailment of service] natural gas emergency plans**. The **[curtailment tariffs] plans** shall be under Commission **[guidelines] requirements [contained at] §§ [69.21--69.27 (relating to gas curtailment)] 59.71--59.75 (relating to gas emergency plans)**.

* * * * *

GAS EMERGENCY PLANS

§ 59.71. **Definitions.**

The following words and terms, when used in this section and in §§ 59.72--59.75, have the following meanings, unless the text clearly indicates otherwise:

Alternate fuel--Any fuel other than natural gas.

Alternate fuel capability--The installed and operable ability to use any fuel other than natural gas on a time sensitive basis.

Commercial use--Gas usage by customers engaged primarily in the sale of goods and services including consumption by office buildings, institutions and government agencies.

Essential human needs use--Gas usage in any building where persons normally dwell including residences, apartment houses, dormitories, hotels, hospitals and nursing homes.

Firm service--Natural gas service offered to consumers under tariffs or contracts that anticipate no interruption.

Industrial use--Gas usage by customers engaged primarily in a process which creates or changes raw or unfinished materials into another form or product including the generation of electric power.

Interruptible service--Natural gas services that can be temporarily discontinued under terms and conditions specified by tariff or contract.

NGDC--Natural gas distribution company.

NGS--Natural gas supplier.

Plant protection use--Minimum usage of natural gas required to prevent physical harm to an industrial or commercial consumer's facility, or danger to personnel at the facility, when the protection cannot be afforded through the use of an alternate fuel. Plant protection use includes usage necessary for the protection of the material in process as would otherwise be destroyed, but does not include deliveries required to maintain production.

Residential use--Gas usage in a residential dwelling or unit for space heating, air conditioning, cooking, water heating or other domestic purpose.

§ 59.72. Natural gas emergency planning.

(a) By _____ (*Editor's Note: The blank refers to a date 90 days from the effective date of adoption of this proposal.*) ~~or a later date as may be determined by the Commission,~~ each NGDC shall file with the Commission a natural gas emergency plan reflecting its unique operational characteristics and design criteria. Each plan shall contain simplified and understandable rules and regulations so that all of the NGDC's customers and all NGSs licensed to provide services to their customers can have a responsive action plan in place to protect themselves and their property in the event of a crisis. NGDCs shall file revisions to their plans when and as appropriate, or as directed by the Commission.

(b) As part of their emergency planning, NGDCs ~~are encouraged~~ **SHALL ATTEMPT TO MAKE EVERY REASONABLE EFFORT** to make contractual or informal arrangements with their transportation customers, sales customers and others to obtain supplies or, as an alternative, to implement usage reductions, so that resorting to firm service reductions under § 59.73 (relating to emergency action) can be avoided, or the severity of supply or capacity disruption can be mitigated. The purpose of these arrangements is to provide a means to minimize the potential of supply shortfalls that threaten public health and safety, and not to make up for inadequate performance by individual parties.

- (c) Each natural gas emergency plan shall include provisions addressing:
- (1) Emergency load shedding.
 - (2) Voluntary usage reductions, for example, reducing space or water heating temperatures to levels specified by the NGDC.
 - (3) Mandatory usage reductions for certain customers consistent with § 59.73(c).
 - (4) Issuance of periodic reports to the media concerning the existing natural gas emergency.
 - (5) Notice to affected customers and NGSs of the expected initiation of emergency actions under § 59.73.
 - (6) Customer and NGS delivery requirements that apply during the term of emergency action under § 59.73, regardless of customer-specific usage reductions that arise or may arise from end-use curtailments.
 - (7) A procedure for focusing emergency measures to confined geographic or operational portions, segments or zones of the NGDC system where a natural gas emergency exists.
 - (8) Procedures for establishing communications with electric system control area operators, if the NGDC provides gas service to electric generation stations.
- (d) Each natural gas emergency plan ~~should~~ **SHALL** specify the procedures the NGDC shall use to provide notices to affected customers, their NGSs and NGDCs. **AFTER THE NGDC DETERMINES THE APPROPRIATE RESPONSE, THE NGDC SHALL ISSUE NOTICES TO AFFECTED CUSTOMERS, THEIR NGSs**

AND NGDCs AS SOON AS REASONABLY POSSIBLE. ALL NOTICES SHALL BE PREPARED CONSISTENT WITH THE COMMISSION'S PLAIN LANGUAGE POLICY. Notice to the public concerning usage reductions ~~should~~ SHALL be designed to avoid confusion in geographical areas served by more than one NGDC.

§ 59.73. Emergency action.

(a) An emergency exists whenever the aggregate demand of firm service customers on an NGDC's system or confined segment of the system exceeds or threatens to exceed the gas supply or capacity that is actually and lawfully available to the NGDC to meet the demands, and the actual or threatened excess creates an immediate threat to the NGDC's system operating integrity with respect to Priority 1 customers as defined in subsection ~~(j)~~ (i).

(b) If, in the sole judgement of the NGDC, there is sufficient time, the NGDC ~~will~~ SHALL use reasonable business and operational efforts to: interrupt all interruptible services, issue operational flow orders, and call for voluntary usage reductions by all customers before taking any action under subsection (c). The NGDC shall take these three actions sequentially to the extent feasible.

(c) In the event of an emergency under subsection (a), the NGDC may require each commercial and industrial retail and transportation customer that is not a Priority 1 customer under subsection (i) to reduce its consumption of gas.

(1) The reduction required shall be determined by the utility without regard to priorities of use, as necessary to minimize the potential threat to public health and safety.

(2) The minimum authorized usage may not be lower than the minimum usage of firm service necessary for plant protection use.

(3) When all other service has been curtailed except for Priority 1 service and the NGDC continues to be unable to meet Priority 1 requirements, the NGDC ~~will~~ SHALL exercise its judgment as to any further curtailment that may be necessary and ~~will~~ SHALL utilize measures designed to minimize harm to customers if curtailments to plant protection use are found to be necessary.

(4) Consistent with its responsibility to maintain system integrity at all times, the NGDC shall restore service as soon as practicable to any gas-fired electric generation facility that is deemed critical to electric system reliability by the electrical system's control area operator.

(d) Mandatory reductions under subsection (c) shall be for a period specified by the NGDC until further notice. The NGDC may change a customer's authorized usage, upon notice, at any time during an emergency.

(e) Mandatory reductions under subsection (c) shall be for a maximum duration of 5 business days unless extended by Commission order. As an alternative to extending mandatory reductions under subsection (c), the Commission may order the NGDC to initiate priority-based curtailments under subsection (f).

(f) In determining whether to order the NGDC to initiate priority-based curtailments, the Commission will examine whether the NGDC did the following:

- (1) Interrupted all interruptible services.
- (2) Issued operational flow orders.
- (3) Called for voluntary usage reductions by all customers.

(g) Upon issuance of an order to initiate priority-based curtailments, the NGDC shall provide all affected customers the maximum notice possible, via telephone, fax or electronic data interchange, specifying the curtailment percentage of the customer's firm gas service and resulting allowance as may be the case.

(h) Upon issuance of an order to initiate priority-based curtailments, the available gas supplies to the NGDC ~~should~~ SHALL be prorated, IF PRACTICABLE, among its customers ~~in accordance with~~ ACCORDING TO the following priorities of use:

(1) Customers in a higher priority CATEGORY ~~will~~ SHALL not be curtailed until all customers falling into a lower PRIORITY category have been restricted to plant protection use levels, unless operational circumstances or physical limitations warrant a different result.

(2) Where only a partial restriction of a classification is required, implementation ~~should~~ SHALL be pro rata, TO THE EXTENT PRACTICAL UNDER THE CIRCUMSTANCES, AS SET FORTH IN THE NGDC'S TARIFF.

(3) ~~The pro rata rationing, to the extent practical under the circumstances, will be based on a method set forth in the NGDC's tariff.~~

(i) Following are the priority categories, listed in descending order, pertaining to the curtailment of firm services:

(1) *Priority 1.* Service for essential human needs use.

(2) *Priority 2.* Firm services not included in essential human needs use.

(j) As part of its natural gas emergency plan, an NGDC may divide any or all of the priority of use categories in subsection (i) into subcategories.

§ 59.74. Utility liability.

(a) Each NGDC may restrict or discontinue service in accordance with this section and §§ 59.71--59.73 and 59.75 without thereby incurring any penalty or liability for any loss, injury or expense that may be sustained by the customer except when the restriction or discontinuation of service is as a result of the NGDC's willful or wanton misconduct.

(b) NGDC liability for actions taken under § 59.73 (relating to emergency action), or to a regulation, policy statement, directive or order issued by the Commission or an emergency order issued by the Governor shall be governed by the following principles:

(1) If an NGDC appropriates natural gas during an emergency action, the NGDC ~~will~~ SHALL compensate the applicable entity, whether the customer or the customer's NGS, for the cost of lost, firm gas service. The compensation, in the aggregate, shall equal but not exceed the greater of: the city gate cost of the appropriated natural gas, including transportation charges up to the NGDC's city

gate, or the reasonable cost actually paid by the customer for delivered substitute energy, as documented to the NGDC. NGDCs may provide compensation in kind only at the discretion of the affected customer or NGS.

(2) The NGDC ~~will have the right to~~ MAY discontinue service, for the duration of an emergency, to a customer that continues to take gas in violation of the rules found in this subchapter.

§ 59.75. Penalties for unauthorized takes.

The tariff, operating practices, and billing periods of the NGDCs and their suppliers differ significantly. Therefore, each NGDC is permitted to utilize its own appropriate billing periods for calculating pipeline transportation, storage service, and balancing or other penalties and its own tariffed procedure for imposing those penalties on customers who take gas service and NGSs who operate in a manner that is contrary to the rules and regulations of this chapter.

**CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND
GUIDELINES ON FIXED UTILITIES**

[GAS CURTAILMENT]

(Editor's Note: As part of this proposed rulemaking, the Commission is proposing to delete the text of §§ 69.21--69.27 (relating to gas curtailment), which currently appears in 52 Pa. Code pages 69-16.2--69.21, serial pages (271646)--(271650), (201989), (201990), (263695), (263696) and (201993).)

§§ 69.21--69.27. (Reserved).



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA

GLEN R. THOMAS
CHAIRMAN

October 5, 2001

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

Re: L-00000151/57-218
Final Rulemaking
Natural Gas Emergency Plans
and Emergency Actions
52 Pa. Code Chapter 59

Dear Chairman McGinley:

Enclosed please find one (1) copy of the regulatory documents concerning the above-captioned rulemaking. Under Section 745.5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§745.1-745.15) the Commission, on January 31, 2001, submitted a copy of the Notice of Proposed Rulemaking to the House Committee on Consumer Affairs, the Senate Committee on Consumer Protection and Professional Licensure and to the Independent Regulatory Review Commission (IRRC). This notice was published at 31 Pa.B. 805, on February 10, 2001. In compliance with Section 745.5(b.1) copies of all comments received were provided to your Commission and the Committees.

In preparing this final form rulemaking, the Public Utility Commission has considered all comments received from the Committees, IRRRC and the public.

Very truly yours,

A handwritten signature in cursive script that reads "Glen Thomas". The signature is written in black ink and is positioned above the printed name and title.

Glen R. Thomas
Chairman

Enclosures

cc: The Honorable Clarence D. Bell
The Honorable Lisa Boscola
The Honorable Chris R. Wogan
The Honorable Joseph Preston, Jr.
Legislative Affairs Director Perry
Chief Counsel Pankiw
Regulatory Coordinator DelBiondo
Assistant Counsel Screven
Dr. Kaloko
Ms. Labecki

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT
TO THE REGULATORY REVIEW ACT

ID Number: L-00000151/57-218

Subject: Natural Gas Emergency Plans and Emergency Actions

Pennsylvania Public Utility Commission

RECEIVED

OCT 5 " 2001 3:21PM

INDEPENDENT REGULATORY
REVIEW COMMISSION

TYPE OF REGULATION

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

FILING OF REPORT

Date	Signature	Designation
10/5/01	<u>John Selles</u>	HOUSE COMMITTEE Consumer Affairs
10/5/01	<u>Sammy Weaver</u>	SENATE COMMITTEE Consumer Protection and Professional Licensure
10/5/01	<u>Olivia Pagan</u>	Independent Regulatory Review Commission
_____	_____	Attorney General
_____	_____	Legislative Reference Bureau