

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN  
ALVIN C. BUSH, VICE CHAIRMAN  
ARTHUR COCCODRILLI  
ROBERT J. HARBISON, III  
JOHN F. MIZNER, ESQ.  
ROBERT E. NYCE, EXECUTIVE DIRECTOR  
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417  
FAX: (717) 783-2664  
irrc@irrc.state.pa.us  
<http://www.irrc.state.pa.us>

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

April 26, 2001

Honorable John M. Quain, Chairman  
Pennsylvania Public Utility Commission  
Keystone Building  
400 North Street, 3<sup>rd</sup> Floor, North Wing  
Harrisburg, PA 17105

Re: Regulation #57-218 (IRRC #2172)  
Pennsylvania Public Utility Commission  
Natural Gas Emergency Plans and Emergency Actions

Dear Chairman Quain:

Enclosed are our Comments. They will soon be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us).

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

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce  
Executive Director

cae

Enclosure

cc: Honorable Chris R. Wogan, Majority Chairman, House Consumer Affairs Committee  
Honorable Keith R. McCall, Democratic Chairman, House Consumer Affairs Committee  
Honorable Clarence D. Bell, Chairman, Senate Consumer Protection & Professional Licensure Committee  
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection & Professional Licensure Committee

# Comments of the Independent Regulatory Review Commission

on

## Pennsylvania Public Utility Commission Regulation No. 57-218

### Natural Gas Emergency Plans and Emergency Actions

April 26, 2001

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Pennsylvania Public Utility Commission (PUC) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by March 27, 2003, the regulation will be deemed withdrawn.

#### 1. General. – Nonregulatory language.

Sections 59.72(b) and (d) and 59.73(h) and (h)(2) contain language which implies that the provisions in these subsections are optional. For example, Section 59.72(b) states, in part, "...NGDCs **are encouraged to** make contractual or informal arrangements..." (Emphasis added.) Section 59.72(d) states, in part, "Each natural gas emergency plan **should specify**..." and "...usage reductions **should be** designed..." (Emphasis added.) Section 59.73(h) and (h)(2) uses the term "should" to describe natural gas distribution company (NGDC) actions related to priority-based curtailments.

Regulations establish binding norms and have the full force and effect of law. If these subsections are intended to impose mandatory requirements on NGDCs, the word "shall" must be used in place of the phrases "are encouraged to" and "should." If the provisions in Sections 59.72(b) and (d) and 59.73(h) and (h)(2) are not mandatory, then these subsections should be deleted.

#### 2. Section 59.72. Natural gas emergency planning. – Reasonableness; Clarity.

##### *Subsection (a)*

This subsection 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..." If the PUC decides to use a later date, how will the PUC communicate this date to NGDCs? This should be specified in the final-form regulation.

##### *Subsection (d)*

This subsection provides that each natural gas emergency plan "should specify the procedures the NGDC shall use to provide notices to affected customers." This section should include language that requires notice to be issued by the NGDC within a specific time period.

**3. Section 59.73. Emergency action. – Reasonableness; Clarity.**

*Subsection (a)*

It appears that the cross-reference in this subsection contains a typographical error. The last sentence references the definition of “Priority 1 customers” in Subsection (j). The definition is contained in Subsection (i).

*Use of the term “will”*

Subsections (b), (b)(3), (h)(1) and (h)(3) use the term “will” to describe actions that the NGDC must take. Based on the *Pennsylvania Code & Bulletin Style Manual*, the term “will” is used to describe actions that an agency will undertake. The term “shall” is used whenever anyone else has a duty to act. Therefore, the term “will” in these subsections should be replaced with “shall.”

**4. Section 59.74. Utility liability. – Clarity.**

Subsection (b)(1) uses the term “will” to describe a required NGDC action. For the reasons discussed in **Issue #3**, the term “will” should be replaced with “shall.”

Subsection (b)(2) uses the phrase “will have the right to” in describing the NGDC’s discretionary authority to discontinue service. Based on the *Pennsylvania Code & Bulletin Style Manual*, the term “may” is used to express a right, power or privilege. Therefore, the phrase “will have the right to” should be replaced with “may.”

---

# INDEPENDENT REGULATORY REVIEW COMMISSION

**To:** John M. Quain, Chairman  
**Agency:** Pennsylvania Public Utility Commission  
**Phone:** 2-4597  
**Fax:** 3-3458

**From:** Kristine M. Shomper  
 Administrative Officer  
**Company:** Independent Regulatory Review  
 Commission  
**Phone:** (717) 783-5419 or (717) 783-5417  
**Fax:** (717) 783-2664

**Date:** April 26, 2001  
**# of Pages:** 4

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Public Utility Commission's regulation #57-218. Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by:     *Sherri DeBindo*     Date:     4-26-01