

# Regulatory Analysis Form

This space for use by IRRC

(1) Agency

Pennsylvania Public Utility Commission

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

L-00030162/57-229

IRRC Number: 2400

(3) Short Title

Proposed Rulemaking Re: Permanent Standards of Conduct Pursuant to 66 Pa. C.S. Section 2209(b)

(4) PA Code Cite

52 Pa. Code Sections 62.141-142

(5) Agency Contacts & Telephone Numbers

Primary Contact: Lawrence F. Barth (Legal)

Secondary Contact:

(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 Competition and Customer Choice Act (the Act) required the Commission to adopt binding interim standards of conduct to govern the relationships between natural gas distribution companies (NGDCs) and affiliated natural gas suppliers (NGSs). The Act further requires the Commission to adopt permanent standards as part of its formal regulations. Pursuant to the Act, the Commission adopted binding interim guidelines that have been in place for approximately 3 years. The Commission convened a working group in April of 2003 to discuss transforming the interim standards into permanent regulations. Because the consensus was that the interim guidelines are working, the Commission chosen to adopt them permanently with a few changes made to better conform the rules to the applicable statutes.

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

66 Pa. C.S. Sections 501, 1501, and 1701, et. seq.

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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.

Yes. The regulations are mandated by the Natural Gas Competition and Customer Choice Act.

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

The Legislature, in passing the Natural Gas Competition and Customer Choice Act, sought to encourage competition in the industry for the benefit of the energy consuming public. The proposed rulemaking helps define the playing field on which the companies compete, and therefore, among other things, will foster competition.

(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.)

Generally, the energy consuming public will benefit as the gas industry becomes more competitive. Benefits of competition include, among other things, lower prices in the long run than in the absence of competition.

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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 making the binding interim standards permanent regulations. The industry has had 5 years of operational experience under the binding interim standards and both the Commission and the industry are content with the results.

(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.)

All natural gas distribution utilities within the Commission's jurisdiction and their marketing affiliates.

(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.

As already described, the Commission convened a working group in April of 2003 to discuss whether the binding interim standards should be made permanent. The working group agreed overwhelmingly that experiences show that the interim standards are workable and should be adopted as permanent regulations.

(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.

There should be no cost or savings to the gas industry because the industry is already operating under the binding interim guidelines, which are nearly identical to the rulemaking.

## 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.

None.

(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.

None.

## Regulatory Analysis Form

(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. N/A

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

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

Not applicable.

**Regulatory Analysis Form**

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

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>

(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.

No alternative schemes were considered in light of the operational experience under the current binding interim guidelines. Moreover, the Natural Gas Competition Act sets forth the general standards with which the industry must comply. The rules are intended to meet these standards.

## Regulatory Analysis Form

(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. The proposed regulations are largely comparable with 18 C.F.R. 161.3, which is the federal interstate analogue.

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

The Commission has not performed an extensive or in depth analysis of other states' legislation. The rulemaking is an integral component of the deregulation process and will not place Pennsylvania at a competitive disadvantage.

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

The rulemaking will supplant the current binding interim guidelines. In order to ensure the entire industry is covered, the Commission's policy statements found at 52 Pa. Code Sections 69.191-92 will remain in effect for those gas utilities which are not covered by the Natural Gas Competition Act.

(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 by the legislative standing committees and the Independent Regulatory Review Commission.

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

After taking effect, the regulations will be reviewed on an on-going basis and as warranted.



**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU**

**(Pursuant to Commonwealth Documents Law)**

# 2400

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General.</p> <p>BY _____ (DEPUTY ATTORNEY GENERAL)</p> <p>DATE OF APPROVAL _____</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached</p>	<p>Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>Pennsylvania Public Utility Commission</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>L-00030162/57-229</u></p> <p>DATE OF ADOPTION <u>October 27, 2005</u></p> <p>BY <u>James J. McNulty</u> James J. McNulty</p> <p>TITLE ( SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or independent Agencies.</p> <p>BY <u>Bohdan R. Pankiw</u> Bohdan R. Pankiw Chief Counsel</p> <p>DATE OF APPROVAL <u>10-27-05</u></p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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L-00030162/57-229  
Final Rulemaking  
Permanent Standards of Conduct Pursuant to  
66 Pa. C.S. Section 2209(b)  
52 Pa. Code, Chapter 62

The Pennsylvania Public Utility Commission on October 27, 2005, adopted a final rulemaking order which sets forth standards of conduct governing the relationships among natural gas distribution companies and affiliated natural gas suppliers. The contact person is Lawrence F. Barth, Law Bureau, 772-8579.

## EXECUTIVE SUMMARY

L-00030162/57-229

Final Rulemaking

Re: Permanent Standards of Conduct Pursuant to 66 Pa. C.S. §2209(b)  
52 Pa. Code Chapter 62

On June 22, 1999, Governor Tom Ridge signed into law the Natural Gas Choice and Competition Act (Act), codified at 66 Pa. C.S. §§ 2201-12. The Act revised the Public Utility Code, 66 Pa. C.S. §§ 101, *et seq.*, so that the natural gas industry would be restructured so as to allow the retail sale of natural gas in an open market. In short, individual customers would be able to choose from independent suppliers of gas who would not necessarily be affiliated with the local gas utility.

The Competition Act, in section 2209(a) requires the Pennsylvania Public Utility Commission (Commission) to establish interim Standards of Conduct governing natural gas distribution companies (NGDCs) and their affiliated natural gas suppliers (NGSs). On November 22, 1999, the Commission fulfilled the requirements of section 2209(a) and adopted binding interim Standards of Conduct. *Binding Interim Standards of Conduct Pursuant to 66 Pa. C.S. §2209(a)*, Docket No. M-00991249 F0004, Final Order, entered November 22, 1999, *as amended*, Order entered March 30, 2000. Pursuant to the Competition Act, the Standards of Conduct were to remain in effect until the Commission promulgated regulations setting forth permanent Standards of Conduct governing these same activities. 66 Pa. C.S. §2209(b).

By Order entered September 23, 2003, the Commission initiated a rulemaking proceeding to adopt regulations governing the relationships between NGDCs and their affiliated NGSs. The proposed rules substantially adopted the binding interim guidelines. The PUC has considered the comments received in response to the proposed rulemaking and made certain changes so that the regulations better conform to the Act.

The contact person for this rulemaking is Lawrence T. Barth, Law Bureau, (717) 772-8579.

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

Public Meeting held October 27, 2005

Commissioners Present:

Wendell F. Holland, Chairman  
James H. Cawley, Vice Chairman  
Bill Shane  
Kim Pizzingrilli  
Terrance J. Fitzpatrick

Permanent Standards of Conduct Pursuant to 66 Pa. C.S. §2209(b)	Docket Nos. L-00030162 M-00991249 F0004
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**FINAL RULEMAKING ORDER**

**BY THE COMMISSION:**

The *Natural Gas Choice and Competition Act*, 66 Pa. C.S. §§2201-12 (Competition Act), was signed into law by former Governor Tom Ridge on June 22, 1999. The Competition Act revised the Public Utility Code, 66 Pa. C.S. §§101-3316, to restructure the natural gas industry to allow the retail sale of natural gas in an open market. By Order entered September 23, 2003, we initiated a rulemaking proceeding to adopt regulations governing the relationships between Natural Gas Distribution Companies (NGDCs) and their affiliated Natural Gas Suppliers (NGSs). We did this to comply with the directive of the legislature and to ensure that consumers of natural gas will be able to shop for gas that is marketed on a level playing field for all market participants.

As we explained in our September 23 Order:

The Competition Act allows individual customers to choose from independent suppliers of gas which are not necessarily affiliated with the local gas utility. Additionally, the

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Competition Act in section 2209(a) requires the Pennsylvania Public Utility Commission (Commission) to establish interim Standards of Conduct governing natural gas distribution companies and their affiliated natural gas suppliers.

On November 22, 1999, the Commission fulfilled the requirements of section 2209(a) and adopted binding interim Standards of Conduct. *Binding Interim Standards of Conduct Pursuant to 66 Pa.C.S. §2209(a)*, Docket No. M-00991249 F0004, Final Order, entered November 22, 1999, *as amended*, Order entered March 30, 2000. Pursuant to the Competition Act, the Standards of Conduct are to remain in effect until the Commission promulgates regulations setting forth permanent Standards of Conduct governing these same activities. 66 Pa. C.S. §2209(b). Now that the industry has three years of operating experience under the Binding Interim Standards of Conduct, the Commission believes it is appropriate to adopt permanent Standards of Conduct.

September 23 Order at 2.

The September 23 Order and the proposed Standards of Conduct regulations were sent to the Office of the Attorney General for review prior to publication as required by law. The Attorney General submitted comments on December 8, 2003, and the September 23 Order and the proposed regulations, as set forth in Annex A, were published for comment in the Pennsylvania Bulletin on April 17, 2004. 34 Pa.B. 2071. Comments on the proposed regulations were submitted by the Energy Association of Pennsylvania (Energy Association) and the Amerada Hess Corporation. Subsequently, the Independent Regulatory Review Commission (IRRC) submitted its comments to the Commission.

Before considering these comments, we note that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Commonwealth Ct. 1984). Any comment or argument which is not specifically addressed herein shall be deemed to have been duly considered and denied for the purposes of this Final

Rulemaking Order.<sup>1</sup> We shall discuss the comments with respect to each section seriatim.

## **Section 62.141. Definitions**

### **A. Comments**

IRRC notes that in the definition of “NGS -- natural gas supplier” includes entities that market natural gas, including those which are affiliated with NGDCs “without regard to structural relationship [to the NGDC].” IRRC observes that the phrase “without regard to structural relationship” does not appear in the Competition Act and states that we should either delete the phrase or explain why it is necessary.

### **B. Resolution**

We are aware that the phrase does not appear in the Competition Act. It does, however, come from our *Policy Statement Addressing Affiliated Interest Issues of Natural Gas Marketers* at 52 Pa. Code §69.191 and 69.192 which pre-dates the Competition Act. It must be remembered that the ability to purchase natural gas from sources other than the incumbent utility began during the late 1970s due to changes in federal law, most notably passage of the Natural Gas Policy Act (15 USCS §§3301 *et seq.*) which initiated the national policy to decontrol natural gas prices at the wellhead. As such, we have been dealing with the transportation of gas purchased from non-incumbent utilities for more than 25 years.

In those regulations, we set forth the purpose of the policy statements:

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<sup>1</sup> The Energy Association did not comment on any specific section of the proposed regulations, but expressed its general support for adopting the regulations.

This section and §69.192 provide guidance to an LDC's [local natural gas distribution company's] affiliate, regardless of the format used to operate an LDC's affiliate, in order to be effective, to prevent discriminatory behavior, and insure compliance with section 1502 of the code (relating to discrimination in service). This section and §69.192 will apply **without regard to the structural relationship of the LDC's marketer to the LDC.**

52 Pa. Code §69.191(b); (emphasis supplied). This policy was adopted based upon our experience with regard to the transportation of customer-owned natural gas within the distribution systems regulated by the Commission. As the market developed, particularly in the 1990s, we began to see a greater diversity of arrangements among gas distribution utilities and their marketing affiliates. We cannot anticipate all arrangements which may present themselves in the future so the policy was drafted to include all possibilities.

This phrase “without regard to the structural relationship” between the NGDC and its NGS affiliate offers an additional degree of protection for end-users of natural gas in Commonwealth. Additionally, we note that it in no way conflicts with the provisions of the Competition Act. We believe it is a necessary safeguard and will leave this section as drafted.

## **Standards of Conduct, General Requirements**

### **Section 62.142(a)(2).**

#### **A. Comments**

The proposed regulations state that no NGDC shall give an affiliated NGS an “unreasonable preference over other NGSs” in matters such as scheduling, balancing, transportation, storage and other services. Both the Attorney General and IRRC have commented that the Competition Act does not allow for any deviation in regard to

preferences citing section 2209(c) which states that our Standards of Conduct shall provide for:

No discrimination against or preferential treatment of any natural gas supplier, including an affiliated natural gas supplier.

66 Pa.C.S. §2209(c)(1). These agencies state that our proposed regulation, by prohibiting *unreasonable* preference, allows NGDCs to give affiliated NGSs *reasonable* preferences. IRRC argues that we should delete the word “unreasonable” from the proposed regulation.

#### **B. Resolution**

We agree with the Attorney General and IRRC and will make the change. This is an instance where the Competition Act has set a specific standard to which we must adhere. The word “unreasonable” shall be stricken.

#### **Section 62.142(a)(4).**

This subsection states that, if a NGDC tariff is not mandatory or provides for waivers, the NGDC may not give preferences to its affiliated NGSs or to nonaffiliated NGSs when granting waivers. IRRC and Amerada Hess comment that this subsection should be amended to require NGDCs to give advance notice when they intend to grant a waiver to an NGS. Amerada Hess states that one NGS will not know when another is getting a waiver.

## **B. Resolution**

This subsection is drawn directly from our existing policy statement. The policy statement also does not have a requirement that a NGDC must first give notice before it grants a waiver. It states that the gas utility must not give preferences in granting waivers. *See* 52 Pa. Code §69.192(4). It also requires that utilities must keep logs of all requests for waivers which have been granted. *See* 52 Pa. Code §69.192(5). These logs must contain details as to the party getting the waiver, the reasons for granting the waiver and other factors. *Id.* These same requirements are incorporated into the proposed regulation. *See* 52 Pa. Code §62.142(a)(4).

Our policy statement regarding natural gas utilities with marketing affiliates was adopted eight years ago and has been in effect since. Prior to drafting the *Binding Interim Standards of Conduct* pursuant to 66 Pa.C.S. §2209(a) we convened a collaborative working group of industry stakeholders to work with the staff in proposing those standards. We consulted the same group before we issued this proposed regulation.

While these commentators posit that there might be a problem in not requiring NGDCs to give notice prior to allowing a waiver of their tariffs, we have seen nothing to indicate that this has been a problem for NGSs in Pennsylvania. We are not inclined to adopt regulations which might place additional burdens upon the market absent good cause. Should a need for a notice requirement develop in the future, we will consider adopting one, but we see no need for it now. However, so that the process of granting waivers be as transparent as possible, we will require that the NGDC granting the waiver post the terms of the waiver on its web site, provided it has a web site, for a period of not less than three months.



**Section 62.142(a)(7).**

**A. Comments**

Subsection 7 provides that if a NGDC discounts a distribution service or provides a fee waiver or rebate to its favored customers, or to the favored customers of its affiliated NGS, it must also offer the same discount, fee waiver or rebate to other similarly situated customers. It also must keep a log, which will be open to the public, of any such transactions.

IRRC objects to the use of the term “favored customer” in the proposed regulation. It states:

It appears that it is unnecessary to label certain customers as “favored.” The provision is clear without this word. If certain accommodations are made for a customer, the same accommodations must be offered to other similarly situated customers.

IRRC suggests that the word “favored” be removed and, if we should keep it, that “favored customer” be defined in section 62.141.

**B. Resolution**

Again, this is an issue which relates to the history of the provision of natural gas service in the Commonwealth. Because of its geographic location, Pennsylvania is crisscrossed by numerous interstate natural gas pipelines which transport gas from the production areas in the Gulf of Mexico and the Southwest to the Mid-Atlantic and Northeast. After Congress initiated the decontrol of wellhead prices of natural gas in 1978 and the Federal Energy Regulatory Commission authorized open access to transportation services on the pipelines, it became possible for end-users to buy gas from independent producers in the production fields and to have that gas delivered to their

facilities. By and large, initially only users of large volumes of gas, could afford to purchase gas in this manner. These tended to be industrial users of gas.

We described the dangers associated with bypass of the system in an earlier order in which we amended our regulations governing transportation of non-utility owned natural gas:

The LDC distribution network is an expensive investment in plant "in the ground", originally designed to serve retail customers, but increasingly designed to serve transportation customers as well. Because such costs are sunk costs, it is in the interests of all customers to share the costs of gas distribution amongst as many customers as possible. Retention of customers on the brink of bypass and attraction of new customers to the distribution system benefit all customers as long as such customers bear their variable costs and a share of the fixed costs of the system.

*Gas Transportation Tariffs*, Docket No. L-00930084, 171 P.U.R.4th 496, 503, Final Rulemaking Order entered August 28, 1996.

In order to retain these customers who are at risk of leaving the local distribution system, natural gas utilities in Pennsylvania have long sought to retain such customers through economic concessions granted to keep them on the system. Generally, these are the customers which are referred to as "favored customers." We believe it is both necessary and appropriate to retain that phrase in the regulation. However, in light of IRRC's comment we will add the following definition to section 62.141 (52 Pa. Code §62.141):

*Favored Customer* – Any customer of a NGDC or its affiliated NGS which receives a benefit of economic value in order to retain that customer on the distribution system.

**Section 62.142(a)(8).**

**A. Comments**

Subsection 8 provides that “subject to privacy or confidentiality constraints” a NGDC may not disclose any proprietary information it has with respect to the customer to its affiliated NGS unless the customer has consented in advance. In the event that it does disclose such information without the customer’s consent, it must provide that information to all similarly situated NGS so that its affiliate will not have an unfair advantage.

Both the Attorney General and IRRC state that this unfairly releases the customer’s proprietary information to third parties. IRRC asks if it is necessary to obtain the customer’s permission before releasing the information. It states that this should be clarified in the final form regulation.

**B. Resolution**

As noted above, the release of information is to be made “subject to customer privacy or confidentiality constraints.” Therefore, the NGDC would be bound by its tariffs, our regulations and any other applicable terms in its contracts with its larger industrial and commercial customers. Nonetheless, we agree that this should be clarified in the regulation and will add amplification so that the second sentence of subsection 62.142(a)(8) reads as follows:

To the extent that a NGDC does disclose customer information without customer authorization, it shall first seek the permission of the customer consistent with its tariffs, any contractual obligations it may have to the customer or 52 Pa. Code §62.78 (Privacy of customer information) and, if that customer grants permission, contemporaneously provide this same information to other similarly situated NGSs in a similar

fashion so as not to selectively disclose, delay disclosure or give itself or its affiliated NGS an advantage related to the disclosure.

We would note that 52 Pa. Code §62.78 regarding the privacy of customer information does not apply to industrial and large commercial customers; therefore, it is necessary to reference their contracts with the NGDC. Additionally, some programs to assist payment troubled customers require the release or exchange of information relative to that customer. Therefore, we shall exempt disclosures made in the course of those programs by adding the following sentence at the end of subsection 62.142(a)(8).

This subsection shall not apply to the disclosure of customer information made pursuant to a customer assistance program mandated by state law or regulation.

**Section 62.142(a)(13).**

We are also clarifying this section which requires that an NGDC does not share personnel with an affiliated NGS in that this could give that marketing affiliate an advantage over non-affiliated companies. We are adding language which specifies that, among the personnel which the NGDC must keep separate from the affiliated NGS are marketing and customer service personnel.

**Section 62.142(a)(17).**

**A. Comments**

IRRC comments that it finds the prohibition against a NGDC offering marketing or promotional advertising to an affiliate to be somewhat confusing. Its comments go to

the way the proposed rule is structured and not to the prohibition itself. Proposed subsection 17 states that:

- (17) Except in competitive bid situations, a NGDC may not:
  - (i) Jointly market or jointly package its Commission-regulated services with the services of an affiliated NGS.
  - (ii) Offer or provide to its affiliated NGS products or services, including bill inserts in its NGDC bills, promoting an affiliated NGS's services or a link from the NGDC's website, unless the NGDC offers or provides the products or services to nonaffiliated NGSs on the same terms and conditions.

IRRC states that the subsection creates an exception for competitive bid situations, but that section (ii) adds an additional exception when the NGDC offers these marketing services to nonaffiliated NGSs on the same basis as it offers them to affiliates. It asks us to clarify the intent of paragraph 17.

## **B. Resolution**

This subsection is intended to prevent a NGDC from packaging its PUC-regulated service with services offered by its affiliated NGS or from offering promotional services to the affiliated NGS without also making the same product packaging and marketing services available to nonaffiliated NGSs on the same terms. To do so, it may offer those services through competitive bidding in which all interested parties can compete or it can offer its services to affiliated and nonaffiliated NGSs on the same terms and conditions. Each alternative puts all of the NGSs on an equal footing without regard to their relationship, or lack thereof, to the NGDC. To clarify the proposed regulation, we shall remove the exception from the beginning of the section and place it in a separate subsection so that the section reads:

- (17) A NGDC may not:

- (i) Jointly market or jointly package its Commission-regulated services with the services of an affiliated NGS.
- (ii) Offer or provide to its affiliated NGS products or services, including bill inserts in its NGDC bills promoting an affiliated NGS's services or a link from the NGDC's website, unless the NGDC offers or provides these products or services to nonaffiliated NGSs on the same terms and conditions.
- (iii) The restrictions in (i) and (ii) do not apply to competitive bid situations.

**Section 62.142(b)(1).**

**A. Comments**

Section 62.142(b) involves alternative dispute procedures. The Attorney General pointed out a typographical error in subsection (1) which we were able to correct prior to publication of the proposed regulation in the Pennsylvania Bulletin; however, there is one point of clarification which we believe needs to be addressed. The rule states that when a dispute arises between a NGDC and an affiliated NGS or a nonaffiliated NGS concerning these Standards of Conduct, the NGS should provide notice of the dispute to the NGDC or affiliated NGS. The Attorney General said it is unclear which NGS is to provide notice.

**B. Resolution**

It is intended that the NGS alleging the violation of the Standards of Conduct would provide notice to the subject of that allegation whether it is a NGDC or its nonaffiliated NGS. We do not believe a change is necessary.

### **Section 62.142(b)(3)**

This section provides that, if the parties are unable to resolve their dispute by mutual agreement, they may apply for mediation with the Commission's Office of Administrative Law Judge (OALJ). We are *sua sponte* adding a reference to our regulations which provide for the mediation process to make this section easier for parties to use.

### **Section 62.142(b)(4), (5) and (6).**

#### **A. Comments**

Subsections (4), (5) and (6) all involve moving a dispute from the mediation process to the formal complaint process. With reference to subsection (5), the Attorney General states that it is not clear when a party may file a complaint. He also asks if the informal mediation process is mandatory. IRRC comments that we should add references to specific sections of the pertinent statutes and regulations which deal with the complaint process.

With regard to subsection (6), the Attorney General states that it appears to be redundant with subsection (5) in that it states that a party may pursue its allegations through our complaint procedures.

#### **B. Resolution**

We agree that there is some redundancy inherent in all three of these subsections. We believe we can simplify these subsections by eliminating superfluous language. First, subsections (4) and (5) duplicate each other. Subsection (4) requires the OALJ to convert

the dispute to a formal complaint proceeding if it is not resolved through mediation. Subsection (5) states that a party may file a complaint, if it so desires.

The Public Utility Code provides that the Commission, or another party, may file a complaint at any time. 66 Pa.C.S. §§701-03 (Procedure on complaints). Therefore, it is unnecessary to have two subsections stating that a dispute which is not resolved may be converted into a complaint and we will eliminate subsection (4). Moreover, the confusion with respect to subsection (6) seems to arise from the first sentence of that paragraph which states that a party may file a complaint. The second sentence carries the intent of that paragraph in that it deals with the burden of proof in any such complaint. Therefore we shall eliminate the first sentence of subsection (6).

With regard to IRRC's comments, we will add references to the Public Utility Code and our regulations in subsection (5). These sections, once renumbered, will read as follows:

(4) A party may file a complaint concerning the dispute with the Commission under relevant provisions of 66 Pa.C.S. §§701-03 (Procedure on complaints) and 52 Pa. Code §5.21-5.31 (Formal complaints).

(5) A complainant bears the burden of proof consistent with 66 Pa.C.S. §332 (relating to procedures in general) in regard to the allegations and may request penalties for violations under 66 Pa.C.S. §3301 (relating to civil penalties for violations).

## **Conclusion**

Accordingly, under sections 501, 502, 504-506, 508, 701, 1501, 1502, 2102-2107, and 2201-2212 of the Public Utility Code §, 66 Pa. C.S. §§501, 502, 504-506, 508, 701, 1501, 1502, 2102-2107, and 2201-2212, and the Commonwealth Documents Law (45 P.S. § 1202 *et. seq.*) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1-7.4, we hereby adopt Chapter 52 of the Pennsylvania Code §§62.141 and 62.142, as set forth in Annex A hereto; THEREFORE,

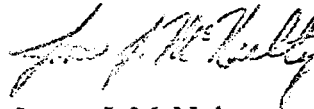


IT IS ORDERED:

1. That the regulations of the Commission, 52 Pa. Code Chapter 54, are amended by adding §§62.141 and 62.142 to read as set forth in Annex A.
2. That the Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.
3. That the Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.
4. That the Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.
5. That the Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by the Independent Regulatory Review Commission.
6. That a copy of this order and Annex A shall be served upon the Office of Consumer Advocate, the Office of Small Business Advocate, all jurisdictional natural gas distribution companies and all parties which submitted comments.
7. That this regulation shall become effective upon publication in the Pennsylvania Bulletin.

8. The contact person is Lawrence F. Barth, Assistant Counsel, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, (717) 787-5000.

BY THE COMMISSION,



James J. McNulty  
Secretary

(SEAL)

ORDER ADOPTED: October 27, 2005

ORDER ENTERED: **NOV 01 2005**

**Annex A**  
**TITLE 52. PUBLIC UTILITIES**  
**PART I. PUBLIC UTILITY COMMISSION**  
**Subpart C. FIXED SERVICE UTILITIES**  
**CHAPTER 62. NATURAL GAS SUPPLY CUSTOMER CHOICE**  
**Subchapter E. STANDARDS OF CONDUCT**

Sec.

Subchapter E. STANDARDS OF CONDUCT

62.141. Definitions.

62.142. Standards of Conduct.

**§ 62.141. Definitions.**

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

*Affiliated NGS--*

(i) An NGS engaging in marketing activities related to natural gas supply services by the marketing division or marketing operation of an NGDC.

(ii) The term does not include a utility's marketing department or division to the extent that it informs existing or prospective customers of the availability and price of the regulated sales service that utility furnishes in its role as supplier of last resort.

*Commission--*The Pennsylvania Public Utility Commission.

*FAVORED CUSTOMER* – ANY CUSTOMER OF A NGDC OR ITS AFFILIATED NGS WHICH RECEIVES A BENEFIT OF ECONOMIC VALUE IN ORDER TO RETAIN THAT CUSTOMER ON THE DISTRIBUTION SYSTEM.

*NGDC--Natural gas distribution company--*A public utility or city natural gas distribution operation that provides natural gas distribution services and which may provide natural gas supply services and other services. For purposes of this standard of conduct, the term does not include:

(i) A public utility subject to the jurisdiction of the Commission which has annual gas operating revenues of less than \$6 million per year, except:

(A) When the public utility voluntarily petitions the Commission to be included within the definition of NGDC.

(B) When the public utility seeks to provide natural gas supply services to retail gas customers outside its service territory.

(ii) A natural gas public utility subject to the jurisdiction of the Commission that is not interconnected to an interstate gas pipeline by means of a direct or indirect connection through the distribution system of another natural gas public utility or through a natural gas gathering system.

NGS--Natural gas supplier--

(i) An entity other than an NGDC, but including NGDC marketing affiliates without regard to structural relationship, which provides natural gas supply services to retail gas customers utilizing the jurisdictional facilities of an NGDC. The term includes:

(A) An NGDC that provides natural gas supply services outside its certificated service territories.

(B) A municipal corporation, its affiliates or any joint venture, to the extent that it chooses to provide natural gas supply services to retail customers located outside of its corporate or municipal limits, as applicable, other than:

(I) As provided prior to July 1, 1999, the effective date of 66 Pa.C.S. Chapter 22 (relating to natural gas competition), under a certificate of public convenience if required under this title.

(II) Total natural gas supply services in de minimis amounts.

(III) Natural gas supply services requested by, or provided with the consent of, the public utility in whose certificated territory the services are provided.

(IV) Natural gas supply services provided to the municipal corporation itself or its tenants on land it owns or leases, or is subject to an agreement of sale or pending condemnation, as of September 1, 1999, to the extent permitted by applicable law independent of 66 Pa.C.S. Chapter 22.

(ii) The term excludes an entity to the extent that it provides free gas to end-users under the terms of an oil or gas lease. Notwithstanding any other provision of 66 Pa.C.S. (relating to the Public Utility Code), an NGS that is not an NGDC is not a public utility as defined in 66 Pa.C.S. § 102 (relating to definitions) to the extent that the NGS is utilizing the jurisdictional distribution facilities of an NGDC or is providing other services authorized by the Commission.

**§ 62.142. Standards of conduct.**

(a) General requirements. NGDCs and NGSs shall comply with the following requirements:

(1) An NGDC shall apply its tariffs in a nondiscriminatory manner to its affiliated NGS and a nonaffiliated NGS.

(2) An NGDC may not apply a tariff provision in a manner that would give its affiliated NGS an unreasonable preference over other NGSs with regard to matters such as scheduling, balancing, transportation, storage, curtailment, capacity release and assignment, nondelivery and other services provided to its affiliated NGS.

(3) Mandatory tariff provisions may not be waived by an NGDC for an NGS absent prior approval of the Commission.

(4) When a tariff provision is not mandatory or provides for waivers, an NGDC shall grant the waivers without preference to its affiliated NGS or nonaffiliated NGS.

(5) An NGDC shall maintain a chronological log of tariff provisions for which it has granted waivers. Entries must include the name of the party receiving the waiver, the date and time of the request, the specific tariff provision waived and the reason for the waiver. The chronological log must be open for public inspection during normal business hours. WHEN THE NGDC MAINTAINS A WEB SITE, IT SHALL POST THE TERMS SET FORTH ABOVE ON ITS WEB SITE FOR A PERIOD OF NOT LESS THAN 3 MONTHS.

(6) An NGDC shall process requests for distribution services promptly and in a nondiscriminatory fashion with respect to other requests received in the same or a similar period. An NGDC shall maintain a chronological log showing the processing of requests for transportation services. The chronological log must be open for public inspection during normal business hours.

(7) If an NGDC provides a distribution service discount, fee waiver or rebate to its favored customers, or to the favored customers of its affiliated NGS, the NGDC shall offer the same distribution service discount, fee waiver or rebate to other similarly situated customers. Offers may not be tied to an unrelated service, incentive or offer on behalf of either the NGDC or its affiliated NGS. A chronological log must be maintained showing the date, party, time and rationale for the action. The chronological log must be open for public inspection during normal business hours.

(8) Subject to customer privacy or confidentiality constraints, an NGDC may not disclose, directly or indirectly, any customer proprietary information to its affiliated NGS unless authorized by the customer. To the extent that an NGDC does disclose customer information without customer authorization, it shall FIRST SEEK THE PERMISSION OF THE CUSTOMER CONSISTENT WITH ITS TARIFFS, ANY CONTRACTUAL OBLIGATIONS IT MAY HAVE TO THE CUSTOMER OR 52 PA. CODE §62.78 (PRIVACY OF CUSTOMER INFORMATION) AND, IF THAT CUSTOMER GRANTS PERMISSION, contemporaneously provide this same information to other similarly situated NGSs in a similar fashion so as not to selectively disclose, delay disclosure or give itself or its affiliated NGS an advantage related to the disclosure. A chronological log must be maintained showing the date, party, time and rationale for the disclosure. The chronological log must be open for public inspection during normal

business hours. THIS SUBSECTION SHALL NOT APPLY TO THE DISCLOSURE OF CUSTOMER INFORMATION MADE PURSUANT TO A CUSTOMER ASSISTANCE PROGRAM MANDATED BY STATE LAW OR REGULATION.

(9) An NGDC shall reasonably allocate to its affiliated NGS the costs or expenses for general administration or support services provided to its affiliated NGS.

(10) NGDCs may not condition or tie the provision of a product, service or price agreement by the NGDC, including release of interstate pipeline capacity, to the provision of a product or service by its affiliated NGS.

(11) An NGDC may not give its affiliated NGS preference over a nonaffiliated NGS in the provision of goods and services including processing requests for information, complaints and responses to service interruptions. An NGDC shall provide comparable treatment in its provision of goods and services without regard to a customer's chosen NGS.

(12) An NGDC and its affiliated NGS shall maintain separate books and records. Transactions between the NGDC and its affiliated NGS may not involve cross-subsidies. Shared facilities must be fully and transparently allocated between the NGDC function and the affiliated NGS function. The NGDC accounts and records must be maintained so that the costs incurred on behalf of an affiliated NGS are clearly identified.

(13) NGDC employees who have responsibility for operating the distribution system, including natural gas delivery or billing and metering, AS WELL AS THOSE RESPONSIBLE FOR MARKETING AND CUSTOMER SERVICE, may not be shared with an affiliated NGS, and their offices shall be physically separated from the offices used by those working for the affiliated NGS. NGDC employees may transfer to an affiliated NGS provided the transfer is not used as a means to circumvent these standards of conduct.

(14) Neither the NGDC nor its affiliated NGS may directly, or by implication, falsely and unfairly represent to a customer, NGS or third party that an advantage may accrue to a party through use of the NGDC's affiliates or subsidiary, such as:

(i) The Commission-regulated services provided by the NGDC are of a superior quality when services are purchased from its affiliated NGS.

(ii) The merchant services for natural gas are being provided by the NGDC when they are in fact being provided by an affiliated NGS.

(iii) The natural gas purchased from a nonaffiliated NGS may not be reliably delivered.

(iv) Natural gas must be purchased from an affiliated NGS to receive Commission-regulated services.

(15) When an affiliated NGS markets or communicates to the public using the NGDC name or logo, it shall include a legible disclaimer that states that:

(i) The affiliated NGS is not the same company as the NGDC.

(ii) The prices of the affiliated NGS are not regulated by the Commission.

(iii) A customer does not have to buy natural gas or other products from the affiliated NGS to receive the same quality of service from the NGDC.

(16) When an affiliated NGS advertises or communicates verbally through radio or television to the public using the NGDC name or logo, the affiliated NGS shall include at the conclusion of the communication a legible disclaimer that includes all of the disclaimers in paragraph (15)(i)--(iii).

(17) ~~Except in competitive bid situations, an~~ A NGDC may not:

(i) Jointly market or jointly package its Commission-regulated services with the services of an affiliated NGS.

(ii) Offer or provide to its affiliated NGS products or services, including bill inserts in its NGDC bills, promoting an affiliated NGS's services or a link from the NGDC's website, unless the NGDC offers or provides the THESE products or services to nonaffiliated NGSs on the same terms and conditions.

(III) THE RESTRICTIONS IN (I) AND (II) DO NOT APPLY TO COMPETITIVE BID SITUATIONS.

(18) An NGDC may not offer or sell natural gas commodity or capacity to its affiliated NGS without simultaneously posting the offering electronically on a source generally available to the market or by otherwise making a sufficient offer to the market. The NGDC shall maintain a chronological log of these public disseminations. The chronological log must be open for public inspection during normal business hours.

(19) An NGDC shall establish and file with the Commission complaint procedures for dealing with alleged violations of the standards of conduct, with the exception of paragraph (9), which is exclusively under the purview of the Commission. These procedures shall be developed in consultation with interested parties during consideration of tariffs guided by this section and § 69.191 (relating to general). The Commission may grant an exception to these requirements if warranted by the facts or circumstances.

(20) An NGDC shall keep a chronological log of any complaints filed, excepting those filed to paragraph (9), regarding discriminatory treatment of NGSs. This chronological log must include the date and nature of the complaint and the resolution of the complaint. The chronological log must be open for inspection during normal business hours.

(b) *Dispute resolution procedures.* In addition to the procedures in subsection (a)(19):

(1) When a dispute between an NGDC, an affiliated NGS or a nonaffiliated NGS alleging a violation of the standards of conduct provisions occurs, the NGS shall provide the NGDC or affiliated NGS, as applicable, a written notice of dispute that includes the names of the parties and customers, if any, involved and a brief description of the matters in dispute.

(2) Within 5 days of an NGDC's or affiliated NGS's receipt of a notice of dispute, a designated senior representative of each party shall attempt to resolve the dispute on an informal basis.

(3) If the representatives are unable to resolve the dispute by mutual agreement within 30 days of receipt, they shall refer the complaint to the Commission's Office of Administrative Law Judge for mediation PURSUANT TO 52 PA. CODE §69.392 (AVAILABILITY OF MEDIATION PROCESS). A party may request mediation prior to that time if informal resolution is not productive.

~~(4) If mediation is not successful, the Office of Administrative Law Judge will convert the matter to a formal proceeding before a Commission administrative law judge.~~

~~(5) A party may file a complaint concerning the dispute with the Commission under relevant provisions of 66 Pa.C.S. (relating to the Public Utility Code), 66 PA.C.S. §§701-03 (PROCEDURE ON COMPLAINTS) AND 52 PA. CODE §5.21-5.31 (FORMAL COMPLAINTS).~~

~~(6) (5) Parties alleging violations of the standards of conduct may pursue their allegations through the Commission's complaint procedures. A complainant bears the burden of proof consistent with 66 Pa.C.S. § 332 (relating to procedures in general) in regard to the allegations and may request penalties for violations under 66 Pa.C.S. § 3301 (relating to civil penalties for violations).~~

(c) Adoption as company policy. An NGDC and its affiliated NGS shall formally adopt and implement these provisions as company policy and take appropriate steps to train and instruct employees in their content and application.





PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG, PENNSYLVANIA

WENDELL F. HOLLAND  
CHAIRMAN

January 19, 2006

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


Re: L-00030162/57-229  
Final Rulemaking  
Permanent Standards of Conduct Pursuant  
To 66 pa. C.S. §2209(b)  
52 Pa. Code Chapter 62

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 April 6, 2004, 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 34 Pa.B. 2071, on April 17, 2004. 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, IRRC and the public.

Very truly yours,

A handwritten signature in cursive script that reads "Wendell F. Holland".

Wendell F. Holland  
Chairman

Enclosures

cc: The Honorable Robert M. Tomlinson  
The Honorable Lisa Boscola  
The Honorable Robert J. Flick  
The Honorable Joseph Preston, Jr.  
Legislative Affairs Director Perry  
Chief Counsel Pankiw  
Regulatory Coordinator DelBiondo  
Assistant Counsel Barth  
Ms. Bailets

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT  
TO THE REGULATORY REVIEW ACT

ID Number: L-00030162/57-229

Subject: Permanent Standards of Conduct pursuant to 66 Pa.  
C.S. §2209(b)

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

<u>Date</u>	<u>Signature</u>	<u>Designation</u>
1/19/06	Linda George	HOUSE COMMITTEE Consumer Affairs
1/19/04	Mary Walmer	SENATE COMMITTEE Consumer Protection and Professional Licensure
1/19/06	A. Belmont	Independent Regulatory Review Commission Attorney General
		Legislative Reference Bureau