

Original: 2400



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May 17, 2004

Mr. James J. McNulty
Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

MAY 18 2004

VIA HAND DELIVERY

Re: PUC Docket No. L-00030162: Permanent Standards of Conduct

Dear Mr. McNulty:

Pursuant to Ordering Paragraph 5 of the Proposed Rulemaking Order published in the April 17, 2004 issue of the *Pennsylvania Bulletin*, 34 Pa.B. 2071, the Energy Association of Pennsylvania ("Energy Association"), on behalf of its natural gas distribution company ("NGDC") members, submits the original and 15 copies of this letter in lieu of formal comments. Concurrent with this filing, the Energy Association is providing courtesy copies of this letter to the Office of Consumer Advocate and the Office of Small Business Advocate.

The Energy Association supports the proposed regulations and urges their promulgation as published. The Executive Summary to the Proposed Rulemaking Order correctly characterizes the proposed regulations as "adopting the binding interim guidelines without substantive change into formal and permanent regulations." The interim guidelines were adopted in late November 1999, and experience has demonstrated that the guidelines have fulfilled their statutory purpose to the satisfaction of all interested parties. The results of the April 28, 2003 stakeholder conference are significant. The Commission invited all interested parties to suggest any modifications that should be made to the interim guidelines before they are converted to regulations. Every party in attendance felt the guidelines should be promoted to regulations without change.

Maintaining continuity as the interim guidelines are converted into regulations is particularly important to the NGDC members of the Energy Association. Since November 1999, NGDCs have committed significant resources to establish systems and training tailored to comply with the interim guidelines. A change in the standards threatens compliance investments to date.

The Energy Association appreciates this opportunity to comment and we trust these remarks will be considered as the Commission continues its deliberations in this matter. We respectfully request leave to submit reply remarks in the unlikely event a party suggests revisions to the regulations as proposed.

Respectfully submitted,

Dan Regan
Vice President & General Counsel

cc: Office of Consumer Advocate (VIA FIRST CLASS MAIL)
Office of Small Business Advocate (VIA FIRST CLASS MAIL)

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MAY 18 2004
OFFICE OF CONSUMER ADVOCATE



CERTIFICATE OF SERVICE

I hereby certify that I served or caused to be served a true copy of the attached letter upon the persons and by the means described below.


VIA FIRST CLASS MAIL:

William B. Hopkin
Lawrence F. Barth
Law Bureau
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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Deputy Attorney General
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Dated: May 17, 2004

Original: 2400

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AMERADA HESS CORPORATION

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May 14, 2004

James McNulty
Secretary
Pennsylvania Public Utility Commission
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P.O. Box 3265
Harrisburg, PA 17105-3265

MAY 18 2004

Re: Permanent Standards of Conduct
Proposed Rulemaking [52 Pa. Code Ch.62]
Docket No. L-00030162

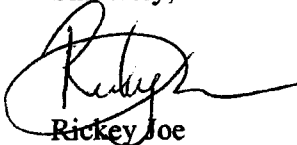
Dear Secretary McNulty:

Enclosed for filing in the above-referenced case, please find an original and fifteen (15) copies of initial comments of Amerada Hess Corporation.

To assist in our record keeping, please file stamp the additional copy of this letter and return it to me in the self addressed stamped envelope included for that purpose.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Rickey Joe
Regulatory Affairs Specialist

Enclosures

cc: Lawrence F. Barth, Law Bureau
Blair Hopkin, Law Bureau

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PUBLIC UTILITY COMMISSION

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**Comments of Amerada Hess Corporation
Regarding
Proposed Rulemaking: Permanent Standards of Conduct
Pennsylvania Public Utility Commission
52 PA. CODE CH. 62.141 and 62.142
Docket No. L-00030162**

Amerada Hess Corporation (“Hess”) appreciates the opportunity to provide comments on the draft Permanent Standards of Conduct as proposed by the Pennsylvania Public Utility Commission (“Commission”). Hess emphasizes that any standards of conduct should ensure that natural gas suppliers have no competitive advantage based on any affiliation with an incumbent utility.

Overall, the draft rules represent a fair approach to upholding a competitive marketplace. As discussed further below, there are a few areas requiring revision and Hess would like to offer its comments as follows:

Definitions

Under the definition for Natural Gas Distribution Company (“NGDC”), section 62.141 (i)(B), should be clarified so that a utility providing gas supply services outside of its territory must do so only through an affiliated Natural Gas Supplier (“NGS”). Hess proposes the following modification:

When the public utility seeks to provide natural gas supply services to retail gas customers outside its service territory in which case it must do so as an affiliated NGS.

NGDCs should not serve customers outside its territory unless through an affiliated NGS. By allowing otherwise, the utility itself would be allowed to compete with suppliers and market services with an unfair advantage.

Uniform Treatment of Tariff Provisions

Section 62.142(a)(2) prevents an NGDC from providing unreasonable preferential treatment to an affiliated NGS through its tariff provisions. This section should be revised to indicate that *no* preferential treatment should be afforded as opposed to the current prohibition of *unreasonable* preference. In addition, the examples included in this section may not be comprehensive. Hess proposes revising this section as follows (where brackets indicate deletions and underlines indicate additions):

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

Waivers of Tariff Provisions

Section 62.142(a)(4) should be amended so that any waivers granted by the NGDC should be announced in advance of being granted to afford the same opportunity to all NGSs. If it is left to the NGSs to determine whether any waivers have been granted to the Affiliated NGS, it is highly likely that competitive NGSs will be left unaware of the large majority of such waivers. It is therefore necessary, in order to maintain a level playing field, that the NGDC should communicate with all suppliers on its system when waivers are granted.

Chronological Logs

Under sections 62.142(a)(5) and 62.142(a)(7), waivers, discounts and rebates would be publicly accessible during normal business hours. While this does provide public access to the information, this information should also be emailed to NGSs or at a minimum, placed on the NGDC's electronic bulletin board ("EBB"). Providing electronic access to these records would certainly be administratively simple and would ensure that NGSs have regular and efficient access to the information necessary to any open, competitive market.

Conditioning of Products, Services or Prices

Conditioning services, products or pricing by the NGDC on their provision by the Affiliated NGS not only provides a competitive advantage to its affiliated NGS, but also undermines the progress made towards deregulated markets. Any implication of a tie between and NGDC and competitive product or service of its affiliated NGS is not appropriate. Therefore, section 62.142(a)(10) should be revised as follows:

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 nor may it in any way imply that this condition exists.

This revision ensures that even subtle references to any advantage existing due to the NGS's affiliation with the NGDC would be prohibited.

Separation of Costs between an Affiliated NGS and NGDC

To ensure the proper allocation of costs and to prevent instances of cross subsidies between the utility and its affiliate, sections 62.142(a)(9) and 62.142(a)(12) should include the requirement that a full review of the method, including appropriateness, of calculating these costs should be subject to review in its next base rate proceeding. Without a provision to review these allocated costs, there is little ability to police the proper allocation of resources. Inappropriate allocation of these costs would no doubt result in ratepayers subsidizing the provision of a competitive supply service by an affiliated NGS, and place other NGSs at a competitive disadvantage since they do not have ratepayers from which to receive these costs.

Sharing of Resources

In section 62.142(a)(13), NGDC employees would be allowed to transfer to an affiliated NGS. In these situations, there is a high chance that a sharing of information will occur as the employee has direct knowledge of NGDC operations. While Hess understands that employees should be allowed to leave the NGDC for other professional opportunities, it is important to ensure that such transfers are not used as "a means to circumvent these standards of conduct" as is stated in this subsection. In order to further protect against that possibility, transfers of NGDC employees to an affiliated NGS must not be temporary. To allow otherwise would provide a medium for gaining a competitive advantage as the employee switched to and from the NGDC.

Use of NGDC Logo

Hess recognizes that there are instances where a shared resource may be used by an affiliated NGS. Nevertheless, it should always be clear to the customer that the NGS employee is not an employee of the NGDC. Section 62.142(a)(16) should be expanded to include a reference to customer meetings, and not just advertisements or radio and television communications. Moreover, this subsection should be revised to require that the disclaimers listed in paragraph (15)(i)–(iii) must be provided to the customer at the beginning of the meeting, and not at the end as is required in advertisements.

Hess suggests the following revisions:

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

Jointly Offered Services

In order to promote a level playing field in the market, section 62.142(a)(17) should not allow NGDCs to promote an affiliated NGS product. The phrase, "Except in competitive bid situations," should be removed.

NGDC Commodity/Capacity Offers

Section 62.142(a)(18) should be clarified to ensure that the affiliated NGS does not have a competitive advantage on offers from the NGDC. By requiring the NGDC to post the offer simultaneously with the sale of commodity or capacity to its Affiliated NGS allows for that sale to go through before any other NGS has an opportunity to bid. This section should be clarified as follows:

An NGDC may not offer [or] to 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...

Conclusion

With the changes recommended above, Hess believes the proposed standard of conduct will help to promote a competitive environment without imposing onerous requirements on the NGDC. An Affiliated NGS should receive no advantage over other NGSs in its dealings with the NGDC. Finally, Hess would emphasize that while these Standards of Conduct, with the modifications proposed herein, would likely provide protections against Affiliated NGS' competitive advantages over other NGSs, no standards will be effective unless they are fully monitored and enforced. Hess recognizes that this requires dedication of some Commission resources. Without enforcement, the efforts of the Commission and all interested parties in crafting these Standards of Conduct will be fruitless.

Hess appreciates the Commission's interest in designing effective Standards of Conduct and in promoting and protecting the competitive energy markets. Hess looks forward to the Commission's final version of these standards.