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**INDEPENDENT REGULATORY REVIEW COMMISSION
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June 16, 2004

Honorable Terrance J. Fitzpatrick, Chairman
Pennsylvania Public Utility Commission
Keystone Building, 3rd Floor
400 North Street
Harrisburg, PA 17105

Re: Regulation #57-229 (IRRC #2400)
Pennsylvania Public Utility Commission
Permanent Standards of Conduct

Dear Chairman Fitzpatrick:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

evp

Enclosure

cc: Honorable Robert J. Flick, Majority Chairman, House Consumer Affairs Committee
Honorable Joseph Preston, Jr., Democratic Chairman, House Consumer Affairs Committee
Honorable Robert M. Tomlinson, Chairman, Senate Consumer Protection and Professional
Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional
Licensure Committee

Comments of the Independent Regulatory Review Commission

on

Pennsylvania Public Utility Commission Regulation #57-229 (IRRC #2400)

Permanent Standards of Conduct

June 16, 2004

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Pennsylvania Public Utility Commission (PUC) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on May 17, 2004. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. Section 62.141. Definitions. – Consistency with the statute; Reasonableness.

The definition of “NGS – Natural gas supplier” is similar to the corresponding definition in the Natural Gas Choice and Competition Act (Act). However, the definition in the proposed regulation includes the phrase “without regard to structural relationship” in Paragraph (i). This phrase is not included in the statutory definition. For consistency with the Act, the PUC should delete this phrase, or explain why it is necessary to vary from the statutory definition.

2. Section 62.142. Standards of conduct. – Consistency with the statute; Need; Reasonableness; Clarity.

Subsection (a) *General requirements.*

This subsection contains 20 separate paragraphs that set forth standards and requirements. We have concerns with the following five paragraphs under Subsection (a).

Paragraph (2) Unreasonable preference.

This paragraph of Subsection (a) states:

An NGDC [natural gas distribution company] may not apply a tariff provision in a manner that would give its affiliated NGS an **unreasonable** preference over other NGSs....” (Emphasis added.)

Section 2209(c)(1) of the Act (66 Pa.C.S. § 2209(c)(1)) states that the standards of conduct will provide for “[n]o discrimination against or preferential treatment of any natural gas supplier, including an affiliated natural gas supplier.” It makes no distinction between “reasonable” or “unreasonable” preferential treatment. Therefore, the PUC should delete “unreasonable” from Paragraph (2).

Paragraph (4) Waivers.

If an NGDC grants a waiver to a tariff provision, Paragraph (4) requires that the waiver be granted “without preference to its affiliated NGS or nonaffiliated NGS.” A commentator suggests requiring NGDCs to issue an announcement in advance of its granting any waivers related to Paragraph (4). The PUC should consider adopting such a notice requirement, or explain why such a notice requirement is unnecessary or impracticable.

Paragraph (7) Favored customers.

This paragraph includes the term “favored customers.” Under this provision, if an NGDC provides a discount, fee waiver or rebate to these customers, it must make the same offer to “other similarly situated customers.” 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. Therefore, we suggest that the word “favored” be deleted. If the PUC does not delete “favored,” it should define the term “favored customers” in Section 62.141 relating to definitions.

Paragraph (8) Disclosure of customer proprietary information.

The first sentence in Paragraph (8) states that an NGDC may not disclose any customer proprietary information to its affiliated NGS without customer authorization. The second sentence states, “To the extent that an NGDC does disclose customer information without customer authorization, it shall contemporaneously provide this same information to other similarly situated NGSs...” The second sentence appears to contradict the prohibition on disclosing customer information without authorization.

Would the NGDC be required to seek customer authorization before releasing customer proprietary information to additional parties? The PUC should explain how and when disclosure without customer authorization would occur. Paragraph (8) and its implications need to be clarified in the final-form regulation.

Paragraph (17) Marketing or promotional advertising.

This paragraph begins with the phrase “[e]xcept in competitive bid situations,....” This clause applies to the following Subparagraphs (i) and (ii). However, its application is unclear. In addition, Subparagraph (ii) includes language that creates another exception. It allows an NGDC to provide products or services to an affiliated NGS if the same products or services are also available to nonaffiliated NGSs on the same terms and conditions. The PUC needs to clarify the intent of Paragraph (17) in the final-form regulation.

Subsection (b) Dispute resolution procedures.

Paragraph (5) of Subsection (b) states that a party may file a complaint concerning a dispute with the PUC “under relevant provisions of 66 Pa.C.S. (relating to the Public Utility Code).” The final-form regulation should be amended to include references to the specific sections of the pertinent regulations and law.

Facsimile Cover Sheet

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To: Sherri A. DelBiondo
Regulatory Review Coordinator
Law Bureau
Agency: Pennsylvania Public Utility Commission
Phone: 2-4597
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Date: June 16, 2004
Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Public Utility Commission's regulation #57-229 (IRRC #2400). 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: Sheri DelBiondo **Date:** 6-16-04

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