2754

RECEIVED

Exelon.

Legal Department

Exelon Business Services Company
2301 Market Street/S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Telephone 215.841.4000
Fax 215.568.3389
www.exeloncorp.com

Business Services Company

Direct Dial: 215-841-4220

2009 JUN 10 PM 2: 01

INDEPENDENT REGULATORY REVIEW COMMISSION

June 3, 2009

COPY

RECEIVED
JUN 3 2009
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA FEDERAL EXPRESS

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd floor
Harrisburg, PA 17120

Re: Licensing Requirements for Natural Gas Suppliers: SEARCH Final Order and Action Plan: Natural Gas Supplier Issues

Docket Nos. L-2008-2069115 and I-00040103F0002

Dear Mr. McNulty:

Enclosed are an original and fifteen copies of the Comments of PECO Energy Company To Proposed Rulemaking Regarding Licensing Requirements for Natural Gas Suppliers. Kindly file the original of record with your office and acknowledge same by time-stamping and returning the additional copy of this letter in the self-addressed stamped envelope provided.

Thank you for your assistance in this effort.

Sincerely,

Michael S. Swerling
Assistant General Counsel

MSS/mb
Enclosures

P283428

RECEIVED
JUN 3 2009
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

LICENSING REQUIREMENTS FOR NATURAL GAS SUPPLIERS; SEARCH FINAL ORDER AND ACTION PLAN: NATURAL GAS SUPPLIER ISSUES	Docket Nos. L-2008-2069115 I-00040103F0002

COMMENTS OF PECO ENERGY COMPANY TO PROPOSED RULEMAKING REGARDING LICENSING REQUIREMENTS FOR NATURAL GAS SUPPLIERS

INTRODUCTION

Pursuant to the Public Utility Commission's ("PUC" or "Commission") September 11, 2008, Final Order[1] and December 4, 2008, Proposed Rulemaking Order ("Order")[2] requesting comments on the Commission's proposed revisions to increase supplier competition, PECO Energy Company ("PECO") hereby submits the following comments on the Order.

I. Executive Summary

PECO is pleased to provide these comments to the Commission's Order and looks forward to working with the Commission, Staff and interested stakeholders to improve and clarify the revisions to the regulations governing licensing and security for natural gas suppliers. PECO supports the Commission's efforts to enhance competition among suppliers. To help make competition as effective as possible, PECO offers the following four comments.

---

[1] *Final Order and Action Plan for the Investigation into the Natural Gas Supply Market: Report on Stakeholder's Working Group*, Docket I-00040103F0002 and *Licensing Requirements For Natural Gas Suppliers*: SEARCH Final Order and Action Plan: *Natural Gas Supplier Issues*, Docket Nos. L-2008-2069115, I-00040103F0002 (order entered Dec. 8, 2008).

[2] *Licensing Requirements For Natural Gas Suppliers*: SEARCH Final Order and Action Plan: *Natural Gas Supplier Issues*, Docket Nos. L-2008-2069115, I-00040103F0002 (order entered Dec. 8, 2008).

First, PECO recommends that the threshold for increasing supplier security should be a 25% increase in natural gas delivered or consumed by supplier customers. A 25% increase in customer base alone may not account for costs associated with the projected quantity of natural gas that suppliers deliver or the projected volume of supply consumed.

Second, pledged supplier receivables are not a desirable form of security and PECO recommends they not be considered as such. Receivables cannot be used to quickly address sudden costs associated with supplier failure to deliver.

Third, PECO requests that the Commission reconsider using receivables sold by a supplier participating in a voluntary Purchase of Receivables ("POR") program as security. Allowing suppliers to receive payment and security credit for the same receivables would result in "double dipping."

Fourth, PECO requests clarification in the proposed dispute process as to assignment and supplier responsibilities. PECO recommends that complaints first be referred to the Office of Competitive Market Oversight ("OCMO") for mediation and advisory roles. Suppliers should also be required to continue supplying their customers during dispute periods.

II. <u>PECO's Comments To Proposed Rulemaking</u>

A. The threshold for increasing supplier security should be a 25% increase in natural gas delivered or consumed by supplier customers.

The proposed revisions to 52 Pa. Code § 62.111(c)(1)(ii)(C) would require additional security when a supplier experiences a 25% increase in its customer base. PECO supports the concept of a threshold for additional security. However, PECO recommends that the threshold relate directly to either an increase in the *projected quantity of natural gas that suppliers deliver* or *an increase in the projected volume of natural gas consumed.* Simply stated, a 25% increase in the number of customers may not substantially impact natural gas volumes or pipeline transportation capacity.

Increases in use of projected quantities delivered or consumed provide a better basis for the threshold to align with Natural Gas Distribution Companies ("NGDC") financial and operational risks. NGDCs have a significant risk if the NGS fails to supply natural gas, as the NGDC must provide for those customers as the Provider of Last Resort ("POLR").

In addition, a few large commercial or industrial customers participating in the NGDC's choice program could significantly raise demand and would require additional security. Such additional security would facilitate gas purchases needed to remedy a failure to supply. Therefore, PECO recommends that a 25% increase in natural gas delivered or consumed be used as the threshold for requiring additional security.

B. Pledged supplier receivables are not a desired form of security.

The proposed revisions to 52 Pa. Code § 62.111(c)(2)(v) would allow Natural Gas Supplier ("NGS") receivables to qualify as an acceptable form of security. However, NGDC's require a form of security that can quickly mitigate risk if a NGS fails to deliver natural gas. Receivables are not an adequate form of security because they cannot be quickly converted to cash and their value is not quickly discernable.

When a supplier fails to supply, the POLR is expected to purchase natural gas to supply the affected NGS customers. The associated costs are unplanned, unexpected and must be resolved quickly. NGDCs cannot use receivables as a means to cover unexpected costs associated with supplier failure to supply. Receivables do not possess the readily available cash value that negotiable security provides in such situations. Therefore, PECO suggests that receivables do not adequately mitigate risk for NGDCs and should not be eligible for use as security.

C. Receivables sold by a supplier participating in a voluntary POR program provide a supplier advantage that should not be allowed.

The proposed revisions to 52 Pa. Code § 62.111(c)(2)(v) would allow suppliers to receive payment for their receivables and also use those receivables to satisfy security requirements. Such a practice would allow NGSs to unfairly double dip. Once the NGS sells a receivable, it is no longer an NGS asset to pledge as security. Suppliers should not be allowed to receive value for something that is not their asset.

If an NGDC purchases NGS customer receivables, the receivables belong to the NGDC and the NGDC acquires the increased risk of uncollectible accounts. NGDCs should not be required to use those receivables to satisfy NGS security requirements, which are supposed to mitigate NGDC risk. PECO recommends that the Commission reconsider using receivables sold by a NGS participating in a voluntary POR program to satisfy supplier security requirements.

D. The PUC dispute process regarding complaints as to the form and amount of security should be clarified.

The proposed additions set forth in 52 Pa. Code § 62.111(c)(6) specify the Commission's complaint process when disputes as to the form and amount of security arise.[3] PECO suggests

[3] Although 52 Pa. Code § 62.111(c)(6) relates to complaints about form and amount of security, PECO notes that 52 Pa. Code § 62.111(c)(2) specifies the allowable forms of security. PECO, therefore, requests that the Commission reconsider allowing complaints to proceed as to form of security.

the following comments regarding assignment of complaints to the Office of Competitive Market Oversight and continuing supplier responsibilities during disputes.

1. Assignment of complaints to the proper PUC department.

The proposed addition at 52 Pa. Code § 62.111(c)(6)(i) explains that the Secretary will assign disputes to the appropriate agency bureau. This section underscores the value of alternative dispute resolution. According to the PUC's Web Site,[4] the OCMO's purpose is the following:

> The Office (OCMO) will also facilitate the resolution of disputes between natural distribution companies (NGDCs) and natural gas suppliers (NGSs) and provide a forum for informally addressing obstacles faced by NGSs in participating in the retail market.

The Commission has also stated that, "the OCMO will assume only advisory and informal mediation roles."[5]

Given the OCMO's mission toward alternative dispute resolution, PECO suggests complaints be initially referred to the OCMO for mediation and advisory purposes.

2. Supplier responsibilities should continue while disputes are pending.

The proposals at 52 Pa. Code § 62.111(c)(6) do not currently specify supplier responsibilities to customers during the pendency of a complaint. PECO, therefore, requests that the Commission clarify its intention that NGSs continue to provide service to customers during

---

[4] See, http://www.puc.state.pa.us/.

[5] Commission's January 9, 2009, Secretarial Letter regarding the Office of Competitive Market Oversight at Docket M-2009-2082042.

disputes. Such a requirement will protect customers from being adversely affected by dispute between the NGS and the NGDC.

CONCLUSION

PECO appreciates the opportunity to comment on the Final Order. PECO respectfully requests that the Commission adopt its comments to the Proposed Rulemaking Order. All other comments to the Order not incorporated in the body of these comments are set forth in a redlined copy of Annex A, Revisions to 52 Pa. Code § 62.111, attached as Exhibit A.

Respectfully submitted,

Michael S. Swerling
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
Direct Dial: 215.841.4220;
Fax: 215.568.3389
Michael.Swerling@exeloncorp.com

ANNEX A

PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 62. NATURAL GAS SUPPLY CUSTOMER CHOICE

Subchapter D. LICENSING REQUIREMENTS FOR NATURAL GAS SUPPLIERS

*   *   *   *

§ 62.111. Bonds or other security.

(a) A license will not be issued or remain in force until the licensee furnishes proof of a bond or other security. See section 2208(c)(1)(i) of the act (relating to requirements for natural gas suppliers).

(b) The purpose of the security requirement is to ensure the licensee's financial responsibility. See section 2208(c)(1)(i) of the act.

(c) The amount and the form of the security, if not mutually agreed upon by the NGDC and the licensee, shall be based on the criteria established in this section. The criteria shall be applied in a nondiscriminatory manner. The Commission will periodically review the established criteria upon petition by any party.

(1) The amount of the security should be reasonably related to the financial exposure imposed on the NGDC or supplier of last resort resulting from the default or bankruptcy of the licensee. At a minimum, the amount of security should materially reflect the difference between the cost of gas incurred and the supplier's charges, if any, incurred by the NGDC or supplier of last resort during one billing cycle.

EXHIBIT
A

(i) The amount of security established under this paragraph may be modified based on one or more of the following:

(A) The licensee's past operating history, including the length of time that the licensee operated on the NGDC's system, the number of customers served and past supply reliability problems.

(B) The licensee's credit reports.

(C) The number and class of customers being served.

(D) Information that materially affects a licensee's creditworthiness.

(E) The licensee's demonstrated capability to provide the volume of natural gas necessary for its customers' needs.

(ii) The amount of the security may be adjusted, but not more often than every 6 months. The adjustments shall be reasonable and based on one or more of the following criteria:

(A) Significant changes [Changes] in a licensee's recent operating history on the NGDC's system that have materially affected NGDC system operation or reliability.

(B) A change [Changes] in a licensee's credit reports that materially affects a licensee's creditworthiness.

(C) A significant change [Changes] in the ~~number of customers or a change in the class of customers being served~~ the projected quantity of natural gas that suppliers deliver or the projected volume of natural gas consumed by customers of the licensee. An increase of 25% in ~~the number of customers~~ either the projected quantity of natural gas that suppliers deliver or the projected volume of natural gas consumed would represent a significant change that would justify an NGDC directing that additional security be provided.

(D) A change [Changes] in circumstances that materially affects [affect] a licensee's creditworthiness.

(E) A change in the [The] licensee's demonstrated capability to provide the volume of natural gas necessary for its customers' needs that materially affects NGDC system operation or reliability.

(2) The following legal and financial instruments and property shall be acceptable as security:

(i) Bond.

(ii) Irrevocable letter of credit.

(iii) Corporate, parental or other third-party guaranty.

(iv) Escrow accounts allowing the NGS to post money into an interest bearing account that the NGDC may access as security.

~~(v) Accounts receivable pledged to the NGDC or sold by a supplier participating in a NGDC purchase of receivables program that is consistent with Commission orders, guidelines and regulations governing such programs.~~

(vi) Calls on capacity or other operational offsets as may be mutually agreed upon by the NGDC and the NGS.

(3) In addition to the requirements in this section, small suppliers with annual operating revenues of less than $1 million may utilize real or personal property with the following supporting documentation acceptable as security:

(i) A verified statement from the licensee that it has clear title to the property and that the property has not been pledged as collateral, or otherwise encumbered in regard to any other legal or financial transaction.

(ii) A current appraisal report of the market value of the property.

(4) When practicable, the NGDC shall use applicable North American Energy Standards Board forms or language for financial and legal instruments that are used as security.

(5) The NGDC shall file an annual report with the Secretary no later than April 30 of each year. The report shall contain the following information for the prior calendar year:

(i) The criteria that is being used to establish the amount of security that a supplier must provide to be granted a license.

(ii) The criteria that is being used to determine the amount of security that a supplier must provide to maintain a license.

(iii) The criteria that is being used to determine that a change in the amount of security is needed for the supplier to maintain a license.

(iv) The number of times in the last ~~quarter~~ calendar year that the NGDC determined that a change in the level of security was needed for a supplier to maintain its license.

(v) The types of legal and financial instruments and property, real and personal, that the NGDC ~~accepted~~ is holding as security for licensing purposes.

(6) When there is a dispute relating to the ~~form or~~ amount of security, the NGS may:

(i) Submit the dispute to the Secretary for assignment to the ~~appropriate bureau~~Office of Competitive Market Oversight ("OCMO") for advisory and informal mediation, ~~and resolution~~roles.

(ii) File a formal complaint with the Commission and request alternative dispute resolution by the Office of Administrative Law Judge.

(iii) File a formal complaint with the Commission and proceed with the litigation of the complaint.

(iv) ~~(iv)~~ File a petition with the Commission and request review of the criteria used by the NGDC.

(v) Pending the outcome of a complaint filed with the Commission, about the amount of security, the NGS shall be obligated to honor its contractual obligations to continue to provide natural gas service to the NGS's customers during the span of a complaint assigned to the Office of Competitive Market Oversight or the Office of Administrative Law Judge or any other relevant Commission department.

(d) The licensee shall submit to the Commission documentation demonstrating that it has complied with the bonding or security requirement. One copy of each bond, letter of credit, or other financial or legal instrument or document evidencing an agreement between the licensee and the NGDC shall be submitted to the Commission.

(e) Licensee liability for violations of 66 Pa.C.S. (relating to the Public Utility Code) and Commission orders and regulations is not limited by these security requirements.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

LICENSING REQUIREMENTS FOR NATURAL: GAS SUPPLIERS; SEARCH FINAL ORDER : AND ACTION PLAN: NATURAL GAS : SUPPLIER ISSUES :	Docket Nos. L-2008-2069115 I-00040103F0002

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a true copy of Comments of PECO Energy Company To Proposed Rulemaking Regarding Licensing Requirements For Natural Gas Suppliers upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by First Class Mail, postage prepaid, addressed as follows:

James H. Cawley, Chairman
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Tyrone Christy, Vice Chairman
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Wayne E. Gardner, Commissioner
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Robert F. Powelson, Commissioner
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Kim Pizzingrilli, Commissioner
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Donna M.J. Clark, Vice President
and General Counsel
Energy Association of Pennsylvania
800 North Third Street
Suite 301
Harrisburg, PA 17102

Karen Oill Moury, Director of Operations
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Robert F. Wilson, Director, Fixed Utility Services
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Paul Diskin, Energy, Fixed Utility Services
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Mitchell A. Miller, Director
Bureau of Consumer Services
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Bohdan R. Pankiw, Chief Counsel
Law Bureau
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Robert F. Young, Deputy Chief Counsel
Law Bureau
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Patricia Krise Burket, Assistant Counsel
Law Bureau
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Daniel Mumford, Policy Analyst
Bureau of Consumer Services
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Tanya McCloskey
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101

William Lloyd
Office of Small Business Advocate
300 North 2nd Street
Commerce Building, Suite 1102
Harrisburg, PA 17101

Michael S. Swerling
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
Direct Dial: (215) 841-4220
Fax: (215) 568-3389
Michael.swerling@exeloncorp.com

Dated: June 3, 2009