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INDEPENDENT REGULATORY REVIEW COMMISSION

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Licensing Requirements For Natural Gas Supplier; *S.E.A.R.C.H. Final Order and Action Plan*: Natural Gas Supplier Issues	:	Docket No. L-2008-2069115 I-00040103F0002

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COMMENTS OF
THE ENERGY ASSOCIATION OF PENNSYLVANIA
TO
PROPOSED RULEMAKING ORDER

I. Introduction

On December 4, 2008, the Pennsylvania Public Utility Commission ("PUC" or "Commission") issued a Proposed Rulemaking Order setting forth revisions to regulations in regard to the level of security and forms of security necessary to meet the statutory security requirements for the licensing of natural gas suppliers ("NGS"). The Order was subsequently published in the Pennsylvania Bulletin on April 4, 2009 and comments are due on June 3, 2009, sixty days after publication in the Bulletin. The Energy Association of Pennsylvania ("EAPA" or "Association"), on behalf of its member natural gas distribution companies,[1] submits these comments along with revisions attached here as Annex A to the proposed regulatory language for consideration and incorporation in the final form regulations.

In general, financial security requirements for natural gas suppliers are necessitated by Section 2207(k) of the Public Utility Code, 66 Pa.C.S.A. §2207(k), which requires a natural gas distribution company ("NGDC"), acting as the supplier-of-last-resort ("SOLR"), to charge

[1] The Energy Association of Pennsylvania's natural gas distribution company members include Columbia Gas of Pa., Dominion Peoples, Equitable Gas, National Fuel Gas Distribution Corp., PECO Energy Company, Philadelphia Gas Works and UGI Utilities, Inc.

customers returning from a defaulting NGS the rates the NGS would have charged the customer for the remainder of the billing cycle. The statute provides that "[a]ny difference between the costs incurred by the supplier of last resort and the amounts payable by the retail gas customer shall be recovered from the natural gas supplier or from the bond or other security provided by the natural gas supplier without recourse to any retail gas customer not otherwise contractually committed for the difference." Id. (Emphasis added.)

The risks imposed by Section 2207(k) vary significantly between NGDC service territories. In some parts of the Commonwealth, where NGDCs may have on-system storage, natural gas production and ample pipeline capacity, the financial risks of obtaining supplies for unanticipated loads during peak periods may be relatively small, whereas in other parts of the Commonwealth serviced by NGDCs with little or no on-system storage or production and limited available pipeline capacity, the financial risks may be relatively large. Consequently, the statute specifies that the bond or other security to be provided by the NGS seeking a license shall "ensure the financial responsibility of the natural gas supplier." 66 Pa.C.S.A. §2208(c)(1)(i). The objective is "to ensure the safety and reliability of the natural gas supply service in this Commonwealth..." id. while establishing a criteria for the amount and form of security which is not so onerous as to create an unnecessary barrier to competition. It is the role of the Commission through its regulations to balance the perspective of the NDGC/SOLR and the NGS while protecting the consumer so as to enable the NGDC to meet the objective of safe and reliable gas supply.

II. Comments and Changes to Specific Proposed Regulations

To meet this objective, the PUC has proposed revisions to the NGS licensing regulations found at Section 62.111 of 52 Pa. Code. EAPA offers for consideration the attached Annex A with changes as marked. The changes are suggested to achieve the necessary balance between promoting competition and protecting the NGDC/SOLR from financial risk which would in turn affect system operation, reliability and ultimately impact the end-user.

A. 52 Pa. Code §62.111(c)(1)(ii)

EAPA suggests striking or deleting the phrase "but not more often than every 6 months" as unnecessary in light of the more detailed criteria provided in the proposed revisions. The imposition of a timeframe is unnecessary where, as here, the criteria for adjusting security will become more stringent.

EAPA further suggests deletions and additions in this section to achieve two purposes: first, to ensure that security is provided in advance of a default and is sufficient to cover the risk; and second, to allow for adjustment where there is a significant increase in customer number, change in class of customers or significant change in the volume of gas supplied by the NGS. The modification to identify specific triggers for security adjustment should provide certainty for suppliers but needs to account not only for change in the number of customers, but also in the amount of volume supplied. The "twenty-five percent" trigger proposed is arbitrary and does not consider a change in the volume supplied. A 24% increase in customers can add a considerable volume of gas supply and yet not trigger the security adjustment as the regulation is drafted. If the parties can not agree on the meaning of the term "significant", the revised regulations provide a means to resolve disputes, see 52 Pa.Code §62.111(c)(6). Thus prescriptive triggers can be avoided and EAPA asks that the final sentence of §62.111(c)(i)(ii)(C) be deleted.

B. 52 Pa.Code §62.111(c)(2)

The Association proposes the striking of the revised language reading "or sold by a supplier participating in a NGDC purchase of receivables program that is consistent with Commission order, guidelines and regulations governing such programs." EAPA notes that once an asset is sold, it cannot be pledged or used as security by the seller for a separate obligation. Participation in a NGDC purchase of receivables program by a NGS may reduce the financial risk or exposure created by the default or bankruptcy of a NGS and may impact the amount of security necessary to ensure the financial responsibility of the NGS/licensee.[2] Participation in the program, however, can not in itself be the security necessary pursuant to 66 Pa.C.S.A. §2207(k), nor can assets (i.e., accounts receivable) which are sold by the NGS participating in the program become security for a separate obligation.

C. 52 Pa.Code §62.111(c)(5)

EAPA offers a number of changes to the proposed regulations found at §62.111(c)(5) in a effort to streamline and consolidate the new reporting requirements and clarify that it is not the NGDC which grants the license, but the Commission. See Annex A attached hereto and incorporated herein by reference. The changes recommended underscore that the amount and form of the security should be reasonably related to the financial exposure imposed on the NGDC or SOLR resulting from a potential default or bankruptcy of the NGS. The criteria established for security must "ensure the financial responsibility" of the licensee in event of default or bankruptcy and thus the revisions proposed utilize that specific wording.

Additionally, EAPA proposes that inasmuch as this is a yearly report, the report should detail the number of times within the last "year" rather than "quarter" that the NGDC determined a change in amount or form of security was necessitated.

D. 52 Pa.Code §62.111(c)(6) and (7)

EAPA applauds the addition of a dispute resolution procedure and suggests revisions as set forth at Annex A, attached hereto and incorporated herein by reference, to

[2] As quoted in the Proposed Rulemaking Order at page 6, "the use of a POR program should be examined as a way to reduce the level of required security, to lesson the need for frequent credit reviews and to ameliorate adjustments in security level that might normally be triggered by changes in a company's creditworthiness rating...".

require that the NGS first attempt to resolve a dispute with the NGDC, to assign the dispute initially to the Office of Competitive Oversight, and to provide a process whereby if a dispute arises when an adjustment in security is requested by the NGDC from an existing licensee that the adjusted security be posted while the dispute is resolved. This last addition proposed by the Association is to ensure adequate security to cover the exposure of the NGDC while the dispute is resolved.

III. Conclusion

EAPA commends the Commission's efforts to clarify criteria for security necessary to enable a NGS to obtain a license so as to eliminate a barrier to competition. The changes proposed by the Association seek to simplify the new reporting requirement, streamline the new dispute resolution procedure and ensure that security is posted in sufficient amount in advance of a default or bankruptcy so as to cover the potential exposure of the NGDC or SOLR. Finally, EAPA notes that the type of instruments and property acceptable as security can not include receivables already sold to the NGDC in a Commission approved POR program and thus asks that reference to receivables sold pursuant to a POR program be stricken.

Respectfully Submitted,

J. Michael Love
President & CEO
mlove@energypa.org

Donna M. J. Clark
Vice President & General Counsel
dclark@energypa.org

Energy Association of Pennsylvania
800 North Third Street, Suite 301
Harrisburg, PA 17102

Date: June 3, 2009

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.

(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. The adjustments shall be reasonable and based on one or more of the following criteria:

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

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

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(C) A significant change [Changes] in the number of customers, a change in the class of customers being served by the licensee or a significant change in the volume of natural gas supplied by the licensee.

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

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

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(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 account.

(v) Accounts receivable pledged to the NGDC.

(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 necessary to ensure the licensee's financial responsibility.

(ii) The criteria that is being used to determine that a change in the amount of security is needed to ensure the licensee's continuing financial responsibility.

(iii) The number of times in the last year that the NGDC determined that a change in the level of security was needed to ensure the licensee's continuing financial responsibility.

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

(6) When there is a dispute relating to the form or amount of security necessary to ensure the licensee's financial responsibility, the NGS may, after having attempted to resolve the dispute with the NGDC:

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(iii)

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

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

(7) In the case of a current licensee, if a dispute arises relating to the form or amount of security necessary to ensure the licensee's continuing financial responsibility, the licensee shall post the security as requested by the NGDC in order to continue operating on the system, shall attempt to resolve the dispute first with the NGDC and only after that attempt has failed proceed under §62.11(c)(6).

(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.

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