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LESLIE A. LEWIS JOHNSON, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

July 6, 2009

Honorable James H. Cawley, Chairman
Pennsylvania Public Utility Commission
Keystone Building, 3rd Floor
400 North Street
Harrisburg, PA 17105

Re: Regulation #57-266 (IRRC #2754)
Pennsylvania Public Utility Commission
Licensing Requirements for Natural Gas Suppliers

Dear Chairman Cawley:

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 me.

Sincerely,

Kim Kaufman
Executive Director

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Enclosure

cc: Honorable Robert M. Tomlinson, Chair, Senate Consumer Protection and Professional
Licensure Committee
Honorable Lisa M. Boscola, Chair, Senate Consumer Protection and Professional Licensure
Committee
Honorable Joseph Preston, Jr., Chair, House Consumer Affairs Committee
Honorable Robert W. Godshall, Chair, House Consumer Affairs Committee

Comments of the Independent Regulatory Review Commission



Pennsylvania Public Utility Commission Regulation #57-266 (IRRC #2754)

Licensing Requirements for Natural Gas Suppliers

July 6, 2009

We submit for your consideration the following comments on the proposed rulemaking published in the April 4, 2009 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (PUC) to respond to all comments received from us or any other source.

1. Reduction in Security Requirements – Reasonableness.

In its comments, the Retail Energy Supply Association (RESA) suggests that the regulation allow suppliers “to request a decrease in security requirements under certain conditions where it is apparent that there is a reduction in the risk of a supplier default.” RESA recommends specific criteria to be used in demonstrating the reduction of risk and a five-calendar day time limit within which the natural gas distribution company (NGDC) must make its decision. As proposed, the regulation does not address situations where the supplier’s risk of default is reduced. In that situation, is there an existing process by which the supplier can seek decreased security requirements? If so, that process should be identified in the regulation. If not, the PUC should consider including such a process in the final-form regulation.

2. Section 62.111. Bonds or other security. – Implementation procedures; Reasonableness; Clarity.

“Significant changes”

Subsections (c)(1)(ii)(A) and (B) add the term “changes.” We note that Subsection (C) also includes this phrase, but also defines it in that subsection. The PUC should define this term for each subsection or clearly explain what types of changes would be considered “significant.”

“Materially affects”

Subsections (c)(1)(ii)(A), (B) and (E) add the phrase “materially affects.” The final-form regulation should define this term or include the criteria to be used in each instance to determine if there is a “material” effect.

Volume vs. Number of Customers

Commentators representing NGDCs assert that Subsection (c)(1)(ii)(C) is flawed because the potential impact of a natural gas supplier (NGS) default is not necessarily related solely to the number of customers, but rather the volume of gas that the NGS is responsible for bringing to the system and the volume of gas used by the customers. They further state that this subsection should be changed to reflect the importance of volumetric concerns over a basic number of customers. We agree and recommend that the PUC add a criterion related to the volume of natural gas delivered or consumed. In making this addition, the PUC should specify the percentage change in volume that could trigger an adjustment to the amount of security required.

Accounts Receivables

Commentators have also expressed concerns with Subsection (c)(2)(v), which allows accounts receivables pledged to the NGDC or sold by a supplier participating in a NGDC purchase of receivables program to be used as security. Some commentators assert that something sold by an NGS cannot subsequently be used as equity. Others comment that receivables cannot quickly be converted to cash and consequently should not be eligible for use as a security or should not be used alone as an acceptable form of security. In the preamble to the final-form regulation, the PUC needs to provide further justification for including accounts receivable as acceptable security.

Dispute Resolution

Subsection (c)(6) addresses dispute resolution. Several commentators noted that the regulation does not address the NGS’s responsibilities to customers during the dispute resolution process. In the final-form regulation, the PUC should clarify the responsibilities of all parties during the pendency of the dispute.



Facsimile Cover Sheet



Phone: (717) 783-5417
Fax #: (717) 783-2664
E-mail: irrc@irrc.state.pa.us
Website: www.irrc.state.pa.us

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Sherri A. DelBlondo
Regulatory Review Coordinator
Law Bureau
Agency: Pennsylvania Public Utility Commission
Phone: 2-4597
Fax: 3-3458
Date: July 6, 2009
Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Public Utility Commission's regulation #57-266 (IRRC #2754). 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: Deanie Maher Date: 7-6-09