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May 11, 2011

Via Electronic Mail

The Honorable Chairman Silvan B. Lutkewitte, III
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA17101

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IRRC
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Re: Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets
PUC Docket L-2008-2069114
IRRC No. 2772
Regulation 57-269

Dear Chairman Lutkewitte:

On February 23, 2011, the Pennsylvania Public Utility Commission ("PUC") entered a *Final Rulemaking Order* regarding the above-referenced regulation, which proposes changes to 52 Pa. Code §§ 62.221 – 62.227. Pursuant to paragraph 5 of the *Final Rulemaking Order*, a copy was submitted to the Independent Regulatory Review Commission ("Commission" or "IRRC") for review and approval. The Energy Association of Pennsylvania ("EAP") submits these comments on behalf of Columbia Gas of Pennsylvania ("Columbia"), Equitable Gas Company, LLC ("Equitable"), National Fuel Gas Distribution Corporation ("NFG"), PECO Energy Co. ("PECO"), Peoples Natural Gas Co., Philadelphia Gas Works ("PGW"), and the UGI Distribution Companies.

Initially, EAP wants to assure the Commission that the natural gas distribution utilities support the Choice program in Pennsylvania and strive to contribute to its success. However, inflating the regulated utility's price as compared to the unregulated supply price by inappropriately adding costs that must be paid by non-shopping customers is not a suitable way to increase competition within the Commonwealth. The EAP respectfully requests that the IRRC consider the following issues when evaluating the final form regulations submitted by the PUC.

Inequity Among Customer Classes

The *Final Rulemaking Order* will violate 66 Pa. C.S.A. § 2203(5). The Commission raised concerns about the legality of the proposed regulation in your comments issued on September 24, 2009, and published at 39 Pa.B. 5997. The Commission's concerns were echoed in the *Statement of Vice Chairman Tyrone J. Christy* entered at the PUC's public meeting held on July 29, 2010. In

his *Statement*, Vice Chairman Christy expressed that, “overall I have significant concerns that the regulations as drafted could result in increased costs to non-shopping customers of NGDCs, as well as cost shifting among customers that shop and those that decide to stay with the local NGDC” and “[s]uch an unbundling of unavoidable expenses could result in stranded costs, which is an impact we must consider pursuant to 66 Pa. C.S.A. § 2203.” Like the Commission, Vice Chairman Christy specifically referenced 66 Pa. C.S.A. § 2203 and called upon interested parties to comment on this issue.

The EAP, Columbia, Equitable, NFG, PECO, the UGI Distribution Companies and the Office of Consumer Advocate (“OCA”) all commented on the legality and appropriateness of the proposed regulation. The consistent message in these entities’ comments was that only those Supplier of Last Resort (“SOLR”) gas procurement costs that are intended solely for the benefit of non-shopping customers should be included in the price to compare. Moving all SOLR costs into the price to compare as proposed would unjustifiably cause non-shopping customers to pay for costs that provide a benefit to shopping customers, thereby subsidizing service to shopping customers which contradicts 66 Pa. C.S.A. § 2203.

The PUC, in a 3-2 decision, proposed in the *Final Rulemaking Order* to remove “all fuel related procurement charges from each NGDC’s individual base rates by a means of a gas procurement reduction rate.” *Final Rulemaking Order* at 18. Although SOLR costs benefit both shopping and non-shopping customers, this new rule will require that all SOLR costs be charged to non-shopping customers through a gas procurement charge that would be reflected in the price to compare. In support of its position, the majority claimed that the arguments against including all SOLR costs in the price to compare “ignore competitive equity.” *Id.* at 19 and 20. EAP is concerned, however, that competitive inequity will occur with the proposed rule.

NGDC’s SOLR costs are incurred for the benefit of both shopping and non-shopping customers since the SOLR is obligated to stand ready to serve one, some, or all of the customers in its territory – both shopping and non-shopping. Therefore, the NGDC’s SOLR costs are unavoidable. The regulation proposes that only one customer class, the non-shopping customers, should pay all the costs through the price to compare.

Table 1¹ illustrates the inequity of the proposed regulation. Scenario 1 assumes there are 0 customers shopping and customers are paying \$0.90 for gas procurement. Scenario 2 demonstrates the impact of 50% of the firm volumes migrating to Choice. In Scenario 2 the gas procurement cost to non-shopping customers increases by 100% to \$1.80. Scenario 3 demonstrates the impact of 90% of firm volumes migrating to Choice causing the gas procurement charge to increase by 1000% to \$9.00 for the remaining non-shopping customers. Finally, Scenario 4 reflects a situation where all customers are shopping. The NGDC still incurs the \$500,000 annual gas procurement costs; however, under these new regulations there are no customers left from which to recover the \$500,000. The \$500,000 becomes stranded costs borne by the NGDC contrary to the express

¹ Numbers in Table 1 are for illustrative purposes only and do not represent a specific gas utility company. It is important to note that Non-Choice and SOLR related costs as well as the number of non-shopping customers and costs represented by the Gas Procurement Charge vary significantly among gas utilities.

language of 66 Pa. C.S.A. § 2203.² Had the unavoidable SOLR gas procurement costs not been moved to the price to compare, all customers would have continued to pay the \$0.90 rather than obligating non-shopping customers to subsidize the shopping customer's ability to return to the SOLR for their gas supply as established in the proposed regulations.

Table 1

		Scenario 1	Scenario 2	Scenario 3	Scenario 4
		No Shopping	50% of volumes move to Choice	90% of volumes move to Choice	100% of volumes move to Choice
A.	Non-Choice and SOLR Related Costs in Base Rates	\$500,000	\$500,000	\$500,000	\$500,000
B.	Firm Sales (Mcf) – Non-Shopping customers	50,000,000	25,000,000	5,000,000	-
C.	Gas Procurement Charge/Mcf (Row A divided by Row B)	\$0.0100	\$0.0200	\$0.1000	-
D.	Average Annual Residential Customer Usage (Mcf)	90	90	90	90
E.	Average Annual Cost to Non-Shopping Customer (Row C multiplied by Row D)	\$0.90	\$1.80	\$9.00	-

It is also important to note that many customers participating in NGDC Customer Assistance Programs (“CAP”) are non-shopping customers. CAP customers are low income customers who are required to pay only a portion of their NGDC bill and therefore may be the least likely customers to shop. It would be inappropriate and inconsistent with 66 Pa. C.S.A. § 2203(3) and (7) to require low income customers participating in universal service programs to subsidize service to shopping customers.

² The *Final Rulemaking Order* issued by the PUC recognizes the creation of stranded costs and suggests that the “situation can be addressed by future rate changes or designation of an alternative SOLR supplier.” *Id.* at 19. The PUC’s proposed solutions are inconsistent with its proposed regulations, which require that all SOLR costs be included in the price to compare. The contemplated solutions would require further changes to these proposed regulations.

The PUC Commissioners who dissented on the final regulations were Vice Chairman Christy and Commissioner Wayne E. Gardner. Both Commissioners dissented for reasons similar to those set forth above and we urge the Commission to review the arguments and concerns set forth in their *Statements* issued at the PUC's public meeting on January 13, 2011.

Reconciliation for Over and Under Collections in the Price to Compare

Section 62.223 Price to Compare requires inclusion of the reconciliation for over and under collections (*i.e.*, E-factor). The E factor represents a reconciliation of *historic* gas costs and therefore is not an appropriate component of a price to compare used by customers when determining what they will pay in the future. Currently, the E factor, or Gas Cost Adjustment, appears as a separate line item on a customer's bill and no longer applies to a shopping customer's bill twelve months after the customer shops. EAP recommends the Gas Cost Adjustment remain a separate line item on all customer bills, which will result in accurate price signals. As noted by then Vice Chairman Christy:

"Including the E-factor in the PTC is doing a disservice to consumers as it is misleading and misinforms them of the current market prices of natural gas. Inappropriate price signals are going to be given to consumers as a result. Also, consider that when a shopping customer returns to SOLR service that customer is not subject to the E-factor for one full year. Consumers need clear pricing signals, not more confusion." *Id.*

Unbundling of Pipe and Storage Procurement

The *Final Rulemaking Order* further states that "the regulations do not provide for the unbundling of pipeline and storage procurement". However, the specific language of the regulations fail to include any reference to these exclusions. *Final Rulemaking Order* at 20. Therefore, accounting for the administration of pipeline and storage releases to NGSs is not moot as implied by the PUC on page 20 of the *Final Rulemaking Order*.

Merchant Function Charge

The definition of "MFC - - Merchant Function Charge" was modified in the Final Rulemaking Order to limit the charge to "uncollectibles associated with an NGDC's *SOLR costs*." *Id.* at 2.(emphasis added) In its *Advanced Notice of Proposed Rulemaking Order* at 36 the definition specified "uncollectibles associated with the NGDC's gas costs." This is a significant change and it will have a prominent impact on the calculation of the MFC. Section 62.223(c) states that the "MFC Rider must remove the cost of uncollectibles applicable to *current gas cost rates* from its delivery rates and apply it to the PTC on a revenue neutral basis." *Final Rulemaking Order* at 4.(emphasis added). Neither "SOLR costs" nor "current gas cost rates" are defined terms under the regulation and they do not appear to be equivalent terms. As a result, the use of these separate terms makes the regulation unclear, confusing and likely to result in litigation to determine its meaning.

POR Discount Rate

Unlike the previous version, the new Section 62.224(a)(6) does not expressly state that NGDCs may apply different discount rates to different customer classes. This change was not explained in the body of the *Final Rulemaking Order* and could be read as intending to limit NGDCs to one discount rate for their POR programs. If NGDCs are limited to one all-inclusive discount rate, the new regulation will create further cross-subsidization among customer classes.

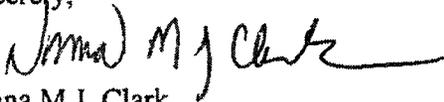
Definitions

Section 62.222 contains terms and definitions which are either undefined or which differ from existing terms and definitions found in other sections of the Pennsylvania Code. For instance, §62.224(4) specifies that an NGS shall use consolidated billing from the NGDC, “*unless the NGDC’s billing system cannot accommodate the NGS’s billings for ‘basic supply service’*”. The term “basic supply service” is not defined in Subchapter G, nor does it appear to be defined anywhere within the Pennsylvania Code. However, some potentially similar and some conflicting definitions exist in other parts of the Pennsylvania Code. Section 62.72 defines “Basic services” and “Non-basic services” as well as “Natural gas supply charges”, but nothing in the Pennsylvania Code defines “basic supply service”.

Moreover, other definitions contained within proposed §62.222 expressly contradict those found in other sections of the Pennsylvania Code. For instance, the proposed definition for “price to compare” contained within §62.222 conflicts with the existing definition contained in §62.80. Likewise, the term “supplier of last resort” in proposed §62.222 is defined in a manner that differs from its definition in existing §62.101. The EAP suggests that only when an existing term is not already defined in current regulations should a new definition be created. For consistency, the same definitions should be used whenever possible. EAP submits that these new terms in §62.222 are inconsistent with existing definitions in §62.72, §62.80 and §62.101 and will cause confusion.

We thank you for your attention to these comments and concerns regarding the PUC’s *Final Rulemaking Order* and we remain hopeful that the Commission will take appropriate actions to address the unlawful, vague, and confusing provisions of the proposed final form regulations.

Sincerely,



Donna M.J. Clark
Vice President & General Counsel

cc: James M. Smith, IRRC (via email) jsmith@irrc.state.pa.us