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From: Lepkoski, Lauren M. [lauren.lepkoski@bipc.com]
Sent: Tuesday, May 17, 2011 9:07 AM
To: IRRC
Cc: Smith, James M.
Subject: Direct Comments to IRRC on PUC Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets (IRRC-#2772)
Attachments: HBG1_GENERAL-#1398890-v1-Direct_Energy_Comments.PDF

Silvan B. Lutkewitte, III, Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Dear Chairman Lutkewitte,

Enclosed for consideration are Comments of Direct Energy Services, LLC at Reg. No 57-269 (IRRC#2772)- Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets. These Comments address EAP's comments regarding the Final Rulemaking Order issued by the Pennsylvania Public Utility Commission at Docket Number L-2008-2069114, which is scheduled to be considered by IRRC at its May 19, 2011 Public Meeting. Thank you for this opportunity to be heard.

Sincerely,

Lauren M. Lepkoski

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Natural Gas Distribution Companies and the :
Promotion of Competitive Retail Markets : Docket No.L-2008-2069114

Comments of
Direct Energy Services, LLC

I. INTRODUCTION

At its meeting of May 19, 2011, the Independent Regulatory Review Commission will be considering the Final Rulemaking Order of the Pennsylvania Public Utility Commission in *Natural Gas Distribution Companies and Promotion of Competitive Retail Markets*, Docket No. L-2008-2069114 ("Final Order").

On May 11, 2011, the Office of Consumer Advocate ("OCA") filed comments regarding the Commission's proposal to reformulate the Price to Compare ("PTC") to include a Gas Procurement Charge ("GPC").

On the same day, the Energy Association of Pennsylvania ("EAP") submitted comments on behalf of Columbia Gas of Pennsylvania ("Columbia"); Equitable Gas Company LLC ("Equitable"); National Fuel Gas Distribution Corporation ("NFG"); PECO Energy Company ("PECO"); Peoples Natural Gas Company; Philadelphia Gas Works ("PGW"); and the UGI Distribution Companies. EAP submitted comments on numerous issues, including but not limited to, the reconciliation for over and under collections in the price to compare and the ability for Natural Gas Distribution Companies ("NGDCs") to apply different discount rates to different customer classes.

Direct Energy Services, LLC ("Direct"), submits the following comments to address the issues raised in EAP's comments. Specifically, Direct will be addressing EAP's concern regarding over and under collections in the PTC and the ability to apply different purchase of receivable ("POR") discount rates to different customer classes.

II. RECONCILIATION FOR OVER AND UNDER COLLECTIONS IN THE PTC

In its comments, EAP takes another bite at the apple, by addressing the Commission's decision to include the E-factor in the PTC. The Commission has addressed the issue of whether the E-factor is or is not an appropriate component of the PTC in both the Advance Notice of Rulemaking and the Final Order in the above-captioned proceeding. Parties had numerous opportunities to supply comments regarding their position on this issue.

After reviewing the parties comments on this issue, the Commission determined in its Final Order that the reconciliation for over and under collections, i.e., the E-factor, should be included as a component of the PTC in order to provide a more accurate indication of the current cost of supplier of last resort ("SOLR") service when comparing offers from alternative suppliers. Specifically, the Commission stated:

In the *ANOFR* [Advance Notice of Rulemaking] *Order*, the Commission noted the concerns of some of the commenters regarding the use of monthly adjustments to the PTC. Therefore, the Commission determined that quarterly rate adjustments would adequately reflect changes in market rates over time. Additionally, the Commission determined that the use of quarterly adjustments would avoid added complexity and, further, the legal issue of requiring NGDCs to offer a fixed rate option. Accordingly, in the *ANOFR Order*, we deleted the monthly adjustment subsection from the regulation and proposed quarterly adjustments of the PTC.

At the same time, we stated in the *ANOFR Order* that in order to avoid the potential for large positive or negative reconciliation adjustments (e-factor) when a customer switches to an alternative supplier, we would direct NGDCs to file tariff revisions that provide for quarterly reconciliation adjustments to their gas cost rates as well. In its comments, NEMA supports this proposal as a means to make the PTC more reflective of current market conditions and provide consumers with a better basis of comparison of marketing offerings. NEMA states that the NGDC's ability to charge interest on under-collections, and be charged a percentage penalty for over-collections, provides a strong incentive for the NGDC to underestimate its GCR rate. NEMA asserts that by doing this, the NGDC has acted to understate the PTC against which consumers have been making comparisons and creating a faulty perception that marketer offers are more expensive than the artificially understated NGDC rates. Also, the Joint Commenters are in agreement with NEMA's observation and stated that including the e-factor as part of the gas cost rate portion of the PTC allows for a more accurate comparison between competitive supplier offers and the rates for default service.

Conversely, the OSBA, PECO, Equitable and Dominion Peoples state that in order to reflect a more accurate price signal, the Commission should not include the e-factor reconciliation adjustments. In its comments, Equitable states that this reconciliation component should be removed from the PTC. Equitable explains that the reconciliation is a cost component arising from a prior period and not properly included in the estimation of the current cost of gas, nor applicable to customers returning to SOLR service for one year consistent with all NGDCs' migration riders which were approved by the Commission during restructuring proceedings. In its comments, PECO explains that the e-factor results from a past accumulation of over and under recoveries of the procurement cost of gas supply that will be charged or credited to customers over a twelve month period. Therefore, this charge will follow a customer that switches to a supplier for a twelve month period (per migration riders). Thus, these parties agree the PTC will not be reflective of the cost of NGDC supply that a customer would avoid (or pay) when the customer chooses to shop (or to return to NGDC service).

We understand the arguments on both sides; nevertheless, we will continue to direct that the e-factor be included as part of the gas cost rate portion of the PTC as it will allow for a more accurate comparison between competitive supplier offers and the current rates charged by NGDCs for default service. While the e-factor does relate to prior period costs, these are nonetheless gas commodity costs charged by the incumbent NGDC, paid by each default service customer and, thus, includable in the PTC.

The NGSs also support increasing the frequency of the reconciliation of over/under collection as a way of reducing the negative impact of the migration rider. However, in its comments, UGI asserts that pursuant to Sections 1307(f)(3)-(5) and 1318, 66 Pa. C.S. §§1307(f)(3)-(5), 1318, the Commission can only direct that gas cost reconciliations be performed on an annual basis, and only after the Commission makes certain specific findings after the gas cost hearing process. UGI Comments at 13-14. Thus, UGI asserts that quarterly reconciliations would not be possible absent changes to these sections of the Public Utility Code.

We disagree with UGI's interpretation of those sections. Our existing regulations at Pa. Code § 53.64(b) and (i)(5)(i)-(v) already require and direct NGDCs to make quarterly filings when there is a change in the gas costs rates. In particular, the regulation requires NGDCs to make quarterly filings that disclose *projected* versus *actual* costs, and to update its gas cost rate in order to reflect *actual* gas costs if "the recalculated rate differs from the currently effective rate by more than 2% ..." 52 Pa. Code § 53.64(i)(5)(iii). The quarterly filings and supporting information are reviewed by the Commission and interested parties that were involved in the 1307(f) proceeding in which the initial rate was established and become effective on 1 day's notice unless otherwise ordered by the Commission. 52 Pa. Code § 53.64(i)(5)(iv).

Accordingly, since quarterly filings for gas costs rates and the e-factor component have already been addressed in our existing regulations, we will not incorporate quarterly adjustments to gas costs and the e-factor in the instant final-form regulation. We believe that the quarterly adjustments already provided for in existing regulations will adequately

mitigate large reconciliation swings due to the seasonal nature of gas sales and that any over/under collection balance will remain relatively small by comparison to overall gas costs. Additionally, the Commission also determines that through the utilization of more frequent reconciliations, the period of time over which the migration rider is collected might possibly be reduced. The Commission believes that if the reconciliation is done on a quarterly basis, then the migration rider should reflect the reconciliation and should only be imposed for one quarter. In other words, the migration rider should be consistent with the 90 day reconciliation adjustments.

Accordingly, the Commission invites NGDCs to file shortened migration riders [*i.e.*, a 90-day migration rider, as opposed to the current annual migration rider] and requests that they include such a modification to their respective migration riders when they file their compliance tariff filing 90 days after the effective date of these regulations.¹

As the above quote indicates, the Commission has addressed this issue extensively. The Commission has the expertise to decide whether the PTC should include the E-factor. Moreover, the Commission's position should be sustained because it is fundamental that the PTC should include all gas costs incurred by the NGDC, both over and under collected amounts, in acquiring supplier of last resort gas supplies. To decide otherwise is to embrace the position that the PTC will not truly reflect the true cost to the customer of providing service. Therefore, IRRC should defer to the Commission's expertise on this issue and deny the comments submitted by the EAP.

¹¹ Final Order at 23-25.

III. PURCHASE OF RECEIVABLE DISCOUNT RATE

In the Final Order, Section 62.224(a) (6), states that "the POR discount rate shall account for risk and cost differences among the NGDC's customer classes." While Section 62.224(a)(6) does not expressly state that NGDCs may apply different POR discount rates to different customer classes, it does not expressly prohibit it either. Direct agrees with EAP that NGDCs should be able to apply different POR discount rates to different customer classes in order to prohibit cross-subsidization among customer classes. Therefore, Direct does not oppose EAP's request for clarification regarding the POR discount rates.

IV. CONCLUSION

Direct Energy Services, LLC respectfully requests that IRRC consider these comments in its deliberations on this matter.

Respectfully submitted,

Dated: March 17, 2011



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