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# EMBARGOED MATERIAL

**From:** Todd S. Stewart [TSSStewart@hmslegal.com]  
**Sent:** Wednesday, May 18, 2011 12:37 PM  
**To:** IRRC  
**Subject:** Natural Gas Distribution Companies and Promotion of Competitive Retail Markets; PUC Docket No. L-2008-2069114; IRRC No. 2772; Regulation 57-269  
**Attachments:** IRRC No 2772 - NGS Comments.PDF

Dear Chairman Lutkewitte,

Attached are the Comments of Dominion Retail, Interstate Gas Supply and Shipley Energy Company to the above captioned final rulemaking proceeding. Please include them in the record of this proceeding for consideration at tomorrow's meeting. If you have any questions, please do not hesitate to contact me.

Todd S. Stewart

*Counsel for Dominion Retail, Inc.,  
Interstate Gas Supply, Inc., and  
Shipley Energy Company*

Todd S. Stewart  
Hawke McKeon & Sniscak LLP  
[www.hmslegal.com](http://www.hmslegal.com)  
100 North 10th Street  
Harrisburg, PA 17101  
[tsstewart@hmslegal.com](mailto:tsstewart@hmslegal.com)  
717.236.1300  
717.236.4841 (fax)

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**H**awke  
  **M**cKeon &  
   **S**niscak LLP  
 ATTORNEYS AT LAW

William T. Hawke	William E. Lehman
Kevin J. McKeon	Tori L. Giesler
Thomas J. Sniscak	Judith D. Cassel
Scott T. Wyland	J. Aaron Winn
Todd S. Stewart	
Craig R. Burgraff	Of Counsel
Janet L. Miller	Julia A. Conover
Steven K. Haas	Christopher J. Knight

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

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**VIA ELECTRONIC MAIL**

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

RE: Natural Gas Distribution Companies and Promotion of Competitive Retail  
 Markets; Pennsylvania Public Utility Commission; Docket No. L-2008-  
 2069114; Independent Regulatory Review Commission No. 2772,  
 Regulation 57-269

Dear Chairman Lutkewitte:

The purpose of these Comments are to address the Final Rulemaking Order and appended Regulations, that were entered at the above captioned dockets by the Pennsylvania Public Utility Commission ("PUC") on February 23, 2011 ("Final Rulemaking"). The Final Rulemaking proposes additional sections to be included in Title 52 of the Pennsylvania Code, at Chapter 62, namely, 52 Pa Code §§ 62.221-62.227.

The Independent Regulatory Review Commission ("IRRC") has set the Final Rulemaking Order for discussion at its Public Meeting of May 19, 2011. Dominion Retail, Inc., Interstate Gas Supply, Inc. and Shipley Energy Company (the "NGS Parties") provided Comments to the PUC as part of the rulemaking process that lead to the Promulgation of the Final Rulemaking, and submit these Comments to IRRC in order to clarify the NGS Parties' position before the PUC and to address certain aspects of the Final Rulemaking.

As a general matter, the NGS Parties support the Final Rulemaking as a significant step toward establishing a workably competitive market for natural gas in Pennsylvania. In their comments before the PUC, the NGS Parties made a few suggestions for altering and improving the proposed rules. We will address the Final Rulemaking in the same fashion.

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MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

**§ 62.222 - Definitions.** The NGS Parties suggested that it would be helpful to include within the definition of the Price to Compare (“PTC”) what elements are actually a part of the PTC, including the Merchant Function Charge and the Purchase Gas Costs. The Final Rulemaking substantially changed the definition of the PTC and it is now clear what is included and what is not. The NGS Parties fully support this final version of the definitions.

**§ 62.223 - PTC.** Perhaps the most controversial aspects of the Final Rulemaking are the provisions requiring the reformulation of the PTC so that it better reflects all of the actual costs of providing default service. The proposed rules made it clear that the PUC was intent on requiring the unbundling of gas procurement costs out of base rates and including them in the PTC, since there can be little credible argument that customers of NGSs do not cause the NGDC to incur any procurement related costs. The NGS supported the PUC on this issue and contended that in reality, there are no “stand ready” costs associated with default service. The NGS Parties also suggested that even if one concludes that pipeline and storage capacity costs are to some degree “stand ready” costs, the assets that are the basis of those costs also produce significant revenue that benefits non-shopping customers and the NGDC’s as well, and that if these costs are considered “stand ready costs,” that revenue, which is produced by off system sales and capacity release to 3<sup>rd</sup> parties, should be shared with shopping customers. However, as a general matter, those revenues are not shared. It should be obvious that there really are no stand ready costs and that all costs associated with natural gas procurement for default service should be paid by default service customers. Accordingly, the NGS Parties support the result in the Final Rulemaking that requires the unbundling of all procurement costs, and which assumes that all such costs are avoidable.

The NGSs also supported the notion that the e-factor adjustment is correctly included as part of the PTC. The basis for this support is the fact that the e-factor is charged to all customers that remain on default service. That means that on an ongoing basis, if a customer remains a default service customer, they pay the e-factor adjustment each and every month to their NGDC. While it is true that if a customer were to switch to a competitive supplier, they would only be responsible for paying that e-factor charge ( in this context called a “migration rider”) for one year, that is not the correct comparison. The comparison is between what the customer would pay on an ongoing basis as a default service customer, versus what they would pay the competitive supplier. The only way to allow for that true comparison is by including the e-factor in the PTC, to give the customer a truly comparable cost of what they pay as a default service customer. The inability to make accurate price comparisons is perhaps the critical negative factor that keeps customers from shopping.

Accordingly, it is wholly appropriate to include the e-factor adjustment within the Price to Compare, and the PUC recognized that fact (Final Rulemaking Order, Pages 23-24). In short, the PUC understands that even though e-factor adjustments relate to prior periods, they are costs that are avoidable by the customer if they shop and accordingly should be made known to the customer as part of the Price to Compare. To do otherwise would suggest that these costs are not Gas Commodity Costs and would create a category of costs that are not avoidable but not otherwise comparable to supplier costs. These costs, as discussed in the Comments of the NGS Parties, can be significant and the continual lag of these costs can create a huge mismatch between the actual cost of taking default service versus the cost of competitive supply in the

minds of customers. Accordingly, the NGS Parties fully support the PUC's requirement to include the e-factor within the Price to Compare.

The NGS Parties also requested that the PUC require more frequent reconciliation, both of the over-under collection mechanism and the gas costs and had asked for the shortening of the migration rider collection period. The PUC declined to require the implementation of these provisions, but did request that NGDCs shorten their Migration Rider collection periods in the future. While the NGS Parties believe that this lack of action is unfortunate, they understand that the PUC was attempting to address concerns raised by other parties with regard to the frequency of reconciliation and the elimination of the migration rider. While the NGS Parties do not agree that 66 Pa. C.S. § 1307(f) would prohibit more frequent adjustment of the over-under collection mechanism, they are willing to accept the result because the PUC did include the e-factor in the price to compare.

**§ 62.224 - Purchase of Receivables ("POR").** At this point in time, the vast majority of Pennsylvania NGDCs have POR programs, or are in the process of implementing them. Most of those programs were developed on an *ad hoc* basis in the context of settlements. Accordingly, the NGS Parties, to the extent they participated in those settlements, were and are willing to abide by their terms. Nonetheless, while the NGS Parties do agree that some amount of standardization is appropriate, standardization should not be made at the expense of the approved settlements. While the PUC made some accommodation for this concern, it appears that ultimately more standardization will be required, not less.

The NGS Parties did suggest, however, that the PUC require that any adjustments to the POR discount rate that are based upon experience should be bidirectional. That is, POR rates should be able to go up or down depending on actual uncollectibles. The PUC addressed this concern with modifications to § 62.224(a)(11) by requiring that NGDCs track program costs and if/when the discount rate no longer reasonably compensates the NGDC for its program and collections costs, the NGDC must update the POR discount rate. The NGS Parties believe that the requirement is written such that the adjustment can go both ways. To the extent that the IRRC does not agree, the regulation should be required to be made clear that the adjustment can be made in both positive and negative directions. It should also be clarified that an NGDC may have a different POR discount rate for different rate classes, to the extent it is not clear from the requirements.

**§62.225 – Release, Assignment or Transfer of Capacity.** In this provision, the PUC revised the proposed regulations to make it clear that pipeline and storage capacity must be released on a nondiscriminatory basis "as to price, reliability and functionality", and that "a release of an NGDC's pipeline and storage capacity assets shall follow the customer for which the NGDC has procured the capacity, subject only to the NGDC's valid system reliability and FERC" §62.225(a)(1)&(2). The Final Rulemaking order recognized the PUC's prior misinterpretation of the statutory requirements, and these changes assure that the PUC will treat NGS' and NGDCs' customers equally with regard to the assignment of capacity, recognizing that there may be valid pipeline reliability issues that may affect such release. The NGSs support the notion of capacity following the customer and also support the notion that a fair share of comparable assets that are necessary to serve customers be assigned at a fair price that is no more than what default service customers pay.

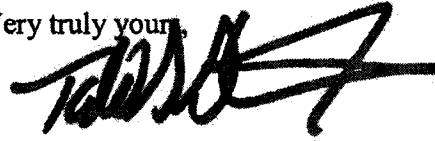
**Other Issues.** In addition to addressing the modifications to the Rulemaking, the NGS Parties also addressed Vice Chairman Christy's comments regarding the definition of natural gas procurement costs, whether it is appropriate to identify and evaluate such costs outside of a base rate case context, and whether such costs are truly avoidable. The NGS Parties' primary concern here is that the NGDCs, being forced to unbundle costs, would seek to recover those costs elsewhere from NGS, in the guise of new fees. The NGS Parties do recognize that there may be costs associated with NGSs operating on NGDC systems, and they agree that those costs may appropriately be recovered.

However, the NGS Parties are adamant that neither they nor their customers be required to subsidize non-shopping customers. It is clear that such subsidies are in place today in many ways. The NGS Parties simply do not share a "concern" that there may be some costs of providing default service which are not avoidable. The NGS Parties pointed out that such a view appeared to be based upon the idea that there are certain costs of standing ready to serve customers when they shop, in case those customers were to return. The NGS Parties also noted that there simply is no evidence of mass return once customers shop, thus refuting the notion that there is either a need to stand ready for such a mass return, or an identifiable cost of doing so.

To the contrary, most of the costs that typically are identified as standing ready costs are the costs of maintaining pipeline and storage capacity. The NGS Parties pointed out that to the extent NGDC's hold such assets, they currently earn significant profits on the use of those assets through off-system sales and capacity release. The profits from such transactions generally are used to offset natural gas costs of customers, thus subsidizing default service. What this means is that there is a potential benefit to the NGDC and non-shopping customers, of holding these assets. To the extent that an NGDC assigns capacity assets, the recipient NGS is responsible for the costs, yet the assets (per the Final Rulemaking) follow the customer. That is, the assets are recallable and if customers return to default service, the assets follow. In short, the NGS Parties agree with the PUC's determination that all costs relating to gas procurement should be removed from base rates. The suggestion that those procurement costs should be born by shopping customers because the utility has to maintain a certain level of capacity to provide default service should those customers return is not germane. To suggest that a "doomsday" scenario of all customers shopping then dramatically all returning to default service so quickly that the NGDC would not be able to procure assets to serve those customers without continuing to hold those assets is likely, simply is not credible. Moreover, to suggest that that shopping customers should bear the cost of continuing to hold such assets because someday they could return, is unwarranted and unnecessary. The PUC Order recognized this fact and appropriately rejected the notion that there are procurement costs associated with default service that are not avoidable.

The NGS Parties thank the IRRC for this opportunity to provide input on the Final Rulemaking and request that the IRRC consider these comments as it deliberates. We ask that the Final Rulemaking be approved, consistent with these Comments.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Todd S. Stewart', written over a horizontal line.

Todd S. Stewart  
*Counsel for Dominion Retail, Inc., Interstate  
Gas Supply, Inc. and Shipley Energy  
Company*

TSS/alw

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