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VIA ELECTRONIC MAIL

October 28, 2011

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

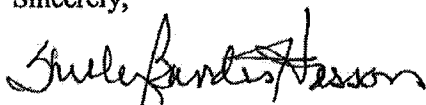
Re: Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets
PUC Docket L-2008-2069114
IRRC No. 2772; Regulation 57-269

Dear Chairman Lutkewitte:

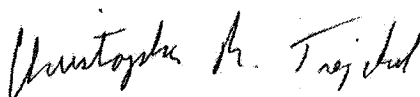
On June 23, 2011, the Pennsylvania Public Utility Commission ("PUC") entered a *Revised Final Rulemaking Order and Annex A* regarding the above-referenced regulation, which proposes changes to 52 Pa. Code 62.221 – 62.227. The *Revised Final Rulemaking Order and Annex A* was submitted to the Independent Regulatory Review Commission ("Commission") for review. At its August 25, 2011 public meeting the Commission considered and disapproved the *Revised Final Rulemaking Order and Annex A*. On September 12, 2011, the Commission issued its *Disapproval Order*, which set forth the Commission's rationale for finding that the *Revised Final Rulemaking Order and Annex A* was not in the public interest. The PUC subsequently resubmitted the *Revised Final Rulemaking Order and Annex A* on October 13, 2011 without further revision but including a Report explaining its rationale. The Energy Association of Pennsylvania ("EAP") submitted comments to the Commission on October 27, 2011, on behalf of several member companies (comments attached). Columbia Gas of Pennsylvania and National Fuel Gas Distribution Corporation joined in the EAP's comments and are also requesting that the Commission disapprove the proposed final form regulations for the reasons set forth in the Commission's *Disapproval Order* and the comments of the EAP.

We thank you for your attention to these comments and concerns regarding the PUC's *Revised Final Rulemaking Order and Annex A* and we remain hopeful that the Commission will again disapprove the proposed final form regulations.

Sincerely,



Shirley Bardes Hasson
Manager, Regulatory Policy
Columbia Gas of Pennsylvania



Christopher M. Trejchel
Assistant General Counsel
National Fuel Gas Distribution Corporation

Enclosure

Cc: James M. Smith, IRRC (via e-mail: jsmith@irrc.state.pa.us)



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October 27, 2011

RECEIVED
OCT 28 11:11

Via Electronic Mail

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

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 and later withdrawn by the PUC on May 18, 2011, to consider certain clarifications to regulatory language suggested by the IRRC and other stakeholders who submitted comments to the IRRC. The PUC then sought further public input as set forth in a Secretarial Letter dated June 9, 2011, resulting in the approval of a *Revised Final Rulemaking Order and Annex A* on June 23, 2011 which was resubmitted to the IRRC for consideration.

At its August 25, 2011 Public Meeting, the IRRC considered and disapproved the *Revised Final Rulemaking Order and Annex A*. The Disapproval Order issued on September 12, 2011, by the IRRC stated that the final-form regulation was not in the public interest for two reasons: 1) the IRRC agreed with the natural gas distribution companies (“NGDCs”) that the inclusion of certain procurement costs in the PTC was contrary to the Natural Gas Choice and Competition Act of 1999 (“Choice Act”); and 2) the IRRC concluded that information presented to retail gas customers regarding the Price to Compare (“PTC”) did not meet the directives of Section 2206(c) of the Choice Act. The PUC responded on October 13, 2011 by resubmitting the *Revised Final Rulemaking Order and Annex A* without further revision and providing a Report supporting the agency re-submission. It is the resubmitted *Revised Final Rulemaking Order and Annex A* which is listed for consideration at the November 3, 2011 IRRC Public Meeting.

The Energy Association of Pennsylvania ("EAP") submits the following 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. The Association again raises concerns consistently expressed throughout the instant regulatory process that, under the *Revised Final Rulemaking Order*, unavoidable costs related to gas procurement will be included in the PTC to the detriment of non-shopping customers. These customers who do not switch from the gas utility will inevitably be required to unfairly subsidize the cost of service to shopping customers. The unbundling required by the current rulemaking may result in stranded costs in the future. The EAP continues to underscore that the risk of future stranded costs can be eliminated if unavoidable procurement costs remain in base rates. Including these procurement costs in the PTC along with the E-factor thwarts the expressed policy objective of providing consumers with the ability to make an "apples to apples" comparison between the commodity price offered by the utility and a supplier.

These concerns have not changed with the re-submission of the *Revised Final Rulemaking Order and Annex A* by the PUC to the IRRC after it disapproved the initial filing. EAP believes that the reliance on the promise of a waiver to cure any inequity among customer classes in the event an NGDC can demonstrate significant *incremental* procurement costs are incurred for the benefit of returning or abandoned shopping customers belies the reality that unreasonable cross-subsidization will occur when gas procurement costs are unbundled and placed in the PTC as set forth in the rulemaking. The supplier of last resort ("SOLR") costs which EAP contends should remain in delivery rates are not incurred by natural gas suppliers, but are incurred by the SOLR (*ie*, the gas utilities). Accordingly, a shopping customer will not pay such costs twice if they remain in the delivery charge. On the other hand, inflating the regulated utility's price as compared to the unregulated supply price by inappropriately adding costs that should be paid by all customers is not a suitable way to increase competition within the Commonwealth.

The EAP respectfully requests that the IRRC consider the issues outlined in its previous comments dated August 17 (attached hereto and incorporated herein by reference) when evaluating the resubmitted *Revised Final Rulemaking Order and Annex A*.

With respect to the concerns raised by the IRRC regarding the clarity of information presented to customers to enable an informed decision, the EAP agrees that the PUC has issued regulations that address supplier billing and disclosures. Also, the Natural Gas Shopping webpage on the PUC's website is an additional source of information regarding how to shop for gas supplies which presents basic information about shopping and frequently asked consumer questions. However, the PUC has not addressed the IRRC's concerns within the context of the changes proposed in the *Revised Final Rulemaking Order and Annex A*. As noted by the IRRC, the proposed regulation is quite complex and fails to comply with the requirements of Section 2206(c) of the Choice Act (*e.g.*, including the E-factor in the PTC). In neither the proposed regulation, nor its statements in support thereof, has the PUC explained how these complex changes will be easily and effectively communicated to customers in a manner that they will understand and that will help them to make more informed choices regarding their gas supplier.

Finally, EAP reiterates its support and the support of its NGDC members for competition in the natural gas retail market in Pennsylvania. EAP has striven to work collaboratively with all stakeholders throughout this rulemaking and in the S.E.A.R.C.H. investigation conducted by the PUC. We thank you for your attention to these comments and concerns regarding the resubmitted *Revised Final Rulemaking Order and Annex A*.

Sincerely,

A handwritten signature in black ink that reads "Donna M.J. Clark". The signature is written in a cursive style with a large initial "D" and a long, sweeping underline.

Donna M.J. Clark
Vice President & General Counsel

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