

Attachment A

**STATEMENT OF NATIONAL FUEL GAS DISTRIBUTION CORPORATION
AND COLUMBIA GAS OF PENNSYLVANIA, INC.**

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Pennsylvania Public Utility Commission Regulation No. 57-269
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Good morning and thank you for the opportunity to submit a brief statement regarding the Pennsylvania Public Utility Commission's (PUC) proposed regulations regarding natural gas companies and the promotion of competitive retail markets.

While we support the PUC's efforts to improve gas competition for all market competitors, the PUC's Report in support of the proposed regulations that were disallowed by this Commission in August 2011 fails to address the deficiencies and concerns noted by the Commission in its *Dissapproval Order* entered September 12, 2011. Because the PUC failed to make any modifications to the rulemaking and opted to merely resubmit it to the Commission, the proposed regulations still do not comply with the requirements of the Natural Gas Choice and Competition Act and will not accomplish the stated intent of fostering more gas competition in the Commonwealth.

1. The Proposed Regulations Are Inconsistent With Statutory Authority

We remain concerned that the proposed regulation is contrary to the Natural Gas Choice and Competition Act because the regulations disregard the fact that the Supplier of Last Resort (SOLR) obligations performed by natural gas distribution companies (NGDCs) provide a direct benefit to shopping customers who in turn should continue to be responsible for paying those costs along with the non-shopping customers. To place all financial responsibility for SOLR costs on the shoulders of the non-shopping customers will result in inappropriate subsidization of service to shopping customers by non-shopping customers in violation of § 2203(5) of the Natural Gas Choice and Competition Act.

In response to the Commission's *Disapproval Order* the PUC again argued at pages 1-2 of its October 13, 2011 Report that shopping customers are "penalized" with a double payment of gas procurement costs. This argument continues to lack merit because shopping customers are not penalized when they are paying for costs that they receive a benefit from. What the PUC continues to ignore is the fact that NGDCs are obligated to perform as the SOLR and as a result their costs associated therewith cannot be avoided when customers migrate to shopping. The General Assembly recognized the need for SOLR service to benefit both shopping and non-

shopping customers when it passed § 2207(a) of the Natural Gas Choice and Competition Act. Specifically, under 66 Pa. C.S. § 2207(a)(2)(iii), NGDCs in their current roles as the SOLR are obligated to provide “natural gas supply services to those customers whose natural gas supplier has failed to deliver its requirements.” How does this SOLR service not benefit the shopping customer? Also, since only the NGDC has responsibility as the SOLR, gas marketers do not incur SOLR costs and they cannot logically be said to recover costs they do not incur in their charges to customers. In other words, customers cannot be paying twice for SOLR costs since only one SOLR is permitted under § 2207(a) and only NGDCs are currently approved as SOLRs.

The PUC argues in turn that they addressed everyone’s concerns about allocation of SOLR costs by modifying the Price to Compare (PTC) regulation (§ 62.223) to exclude “the administration of firm storage and transportation capacity.” Although this was a step in the right direction it still falls well short of the mark. It is unclear on what facts the PUC concludes that this constitutes the universe of unavoidable SOLR costs. Also, although it would seem that the PUC believes administration of firm storage and transportation capacity are the only SOLR costs that benefit shopping customers, its own argument on page 3 of its October 13, 2011 Report illustrates that the PUC recognizes that there are additional SOLR costs that benefit shopping customers. The PUC states that acquisition and management costs “will, **for the most part**, be performed for the benefit of non-shopping customers” and that shopping customers should not have to pay for “procurement costs that **primarily benefit** non-shopping customers.” (emphasis added) These statements clearly acknowledge that the PUC knows that there are other SOLR costs that are incurred for the benefit of shopping customers. Like the Commission, we question why the PUC is rushing to formulate conclusions about SOLR costs without the benefit of a more thorough analysis or investigation in order to develop quantifiable facts as to what constitutes SOLR costs.

Because the PUC knows its proposed regulation will require non-shopping customers to unjustifiably pay for SOLR costs that benefit shopping customers it should fix the regulation today. However, rather than making an appropriate modification to address these matters in the regulation, the PUC instead has repeatedly stated that it would *evaluate* the matter on a case-by-case basis at a later date as needed, which potentially could lead to inequitable treatment of NGDCs and their customers. Approving this proposed regulation in light of the requirements of § 2203(5) and § 2207(a) of the Natural Gas Choice and Competition Act and the PUC’s own acknowledgment that the proposed regulation would require non-shopping customers to subsidize SOLR service for the benefit of shopping customers would be unfair to the NGDCs who are at risk of being forced to absorb stranded costs and it would likewise be unfair to the non-shopping customers who will be required to pay more for their service than they should.

The conclusion to be drawn is that the SOLR clearly and positively benefits both non-shopping and shopping customers and because both groups benefit from the SOLR, both groups should pay for those costs. Therefore, the proposed regulations should again be disallowed by this Commission.

2. Failure to Comply with § 2206(c) of the Natural Gas Choice and Competition Act

Like the Commission, we are also concerned that the proposed regulations do not comply with § 2206(c) of the Natural Gas Choice and Competition Act, which requires NGDCs and NGSs to provide adequate, accurate information to customers so they can make informed decisions about their gas supplier.

Regarding the issue of customer confusion, the Commission noted in its Disapproval Order:

- It is not clear what pricing information the customer will continue to receive after switching to an NGS.
- Customers may get a false impression from the PTC that they are getting a good deal.
- The PUC should produce a clear example of a bill or pricing comparison illustrating the result of the final-form regulation.
- The PUC should demonstrate that the proposed regulation will help customers make informed choices.

In our opinion, the PUC's October 12, 2011 Report fails to adequately address these concerns of the Commission. Yes, the PUC's Report references other regulations that deal with information provided to customers, but it fails to address the Commission's concerns as to customer information and confusion likely to arise due to the proposed regulation. One recent UGI bill and one recent Shipley Energy proposal are attached to the Report as explanation of what information is provided to customers. The Commission asked for an example of what would be presented to customers if the proposed regulation were adopted as-is. The PUC seems to indicate that nothing would change. In fact, at page 4 of its Report, the PUC says "Accordingly, a customer is provided with more than enough information to make an informed choice to choose between the NGDC's default service and available competitive offers." If that is the case, what is the purpose of the proposed regulation?

Adding to customer confusion is the PUC's insistence on including the reconciliation for over and under collections (*i.e.*, E-factor) into the PTC. The E-factor represents a reconciliation of *historic* gas costs and therefore is not an appropriate component of the PTC, which is a *projection* of gas cost. Currently, the E-factor, or Gas Cost Adjustment, appears as a separate line item on a customer's bill and it will not apply to a shopping customer's bill 12 months after the customer shops. Also, a customer who returns to the NGDC after shopping for 12 months or more will not be subject to the Gas Cost Adjustment for 12 months after returning to non-shopping status. Adding the E-factor to the PTC when there is a migration rider in place, will inaccurately identify the charges that a customer will avoid when they choose supply service from a NGS. NGDC representatives will certainly struggle to explain to customers why the PTC

is the “price *not* to compare”. As noted by then Vice Chairman Christy in his January 13, 2011 Statement:

“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.**”

(emphasis added)

Including the E-factor in the PTC will artificially over/understate the PTC and will increase complexity for customers attempting to shop and will contribute to volatility of the PTC.

Because the proposed regulation is too complex and likely to add to customer confusion about gas pricing and gas competition, the regulation is inconsistent with § 2206(c) of the Natural Gas Choice and Competition Act and is not in the public interest and should, therefore, be disallowed.

We thank you for the opportunity to speak to you about this important issue and we would be happy to answer any questions you may have.