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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

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COMMENTS OF  
THE ENERGY ASSOCIATION OF PENNSYLVANIA

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Date: August 25, 2009

## I. Introduction

The Energy Association of Pennsylvania ("Association") files on behalf of its gas members<sup>1</sup>, the following comments on the Proposed Rulemaking Order entered by the Pennsylvania Public Utility Commission ("PUC" or "Commission") on March 27, 2009 which proposes rules governing the relationships between Natural Gas Distribution Companies ("NGDC") and Natural Gas Suppliers ("NGS") which sell, or seek to sell natural gas to retail end users on the NGDC distribution systems. The Proposed Rulemaking Order, published in the PA Bulletin on July 11, 2009, establishes a forty-five day period for public comments ending on August 25, 2009.

The instant rulemaking is part of a series of rulemakings<sup>2</sup> by which the Commission seeks to facilitate the development of a competitive retail market as outlined in its Final Order and Action Plan entered on September 11, 2008.<sup>3</sup> As stated by the Commission, "efforts to increase competition in the retail natural gas market...should be concentrated on changing the market structure and its operation to reduce or eliminate barriers to supplier entry and participation." Final Order at pp 5-6. The Commission concluded that customers would be attracted to the retail natural gas market by increasing the number of suppliers and the variety of service offerings available in the market place. *Id.*

In addition to establishing a detailed action plan, the September 11, 2008 Order released a Report on Stakeholders' Working Group (S.E.A.R.C.H.). The Report compiled by the PUC staff after multiple meetings between stakeholders (including NGDCs, NGSs and consumer

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<sup>1</sup> Gas distribution company members supporting these comments include: Columbia Gas of Pa, The Peoples Natural Gas Company d/b/a Dominion Peoples, Equitable Gas Company, LLC, National Fuel Gas Distribution Corp., Philadelphia Gas Works, UGI Central Penn Gas, UGI Penn Natural Gas, UGI Utilities, Inc. and Valley Energy.

<sup>2</sup> Three rulemakings proceedings have been initiated by the Commission to address its conclusion that effective competition does not exist in Pennsylvania's retail natural gas markets. See, Report to the General Assembly on Pennsylvania's Retail Natural Gas Supply Market, Docket No. I-00040103 issued in October 2005.

<sup>3</sup> Investigation into the Natural Gas Supply Market. Report on Stakeholders' Working Group (S.E.A.R.C.H.); Action Plan for Increasing Effective Competition in Pennsylvania's Retail Natural Gas Supply Services Market, Docket No. I-00040103F0002, Final Order and Action Plan entered on September 11, 2008.

representatives) over a two-year period addressed numerous issues relating to competition in the natural gas retail market. Throughout the S.E.A.R.C.H. process, the stakeholders discussed their respective positions mindful of the Natural Gas Choice and Competition Act, 66 Pa.C.S. §§2201-2212 ("Act"), which promotes competition in the retail market, while leaving the SOLR function largely with the NGDCs who also retain the obligation to achieve least cost procurement of gas supply. See, 66 Pa. C.S. 1307(f). These sometimes conflicting concepts and obligations resulted in a wide ranging discussion among stakeholders which did not lead often to consensus positions. The process, however, furthered commitment to competition and the recognition, particularly on the part of the NGDCs, that elimination of barriers to supplier entry and participation in the marketplace must be balanced with the obligations inherent in the regulatory compact, i.e. provision of safe, reliable and affordable service.

The instant rulemaking addresses five issues pertaining to NGDCs and their relation to the retail supply market identified by the Commission as follows: (1) reformulation of the price to compare; (2) purchase of receivables; (3) mandatory capacity assignment; (4) NGDC costs of competition-related activities; and (5) regulatory assessments. The Association will address these issues generally in the context of commenting on the specific proposed rules.

## **II. Comments**

### **A. §62.221. Purpose**

The Association suggests a change to Section 62.221 to both eliminate the use of the phrase "residential and small commercial customers" and to simplify the purpose to reflect legislative intent to create a competitive retail market place for natural gas service. The Act provides all "retail gas customers" with the ability to choose their natural gas supplier. 66 Pa.C.S. §2203(2). The purpose set forth in the proposed rules, however, uses the phrase "residential and small commercial customers". Retail gas customers can include non-profits,

municipalities, colleges and other governmental and large commercial entities which are not encompassed within the phrase "residential and small commercial customers".

The Association suggests using the phrase "retail and transportation gas customers" and shortening the purpose to state: "To foster a competitive retail marketplace for natural gas service *to all retail and transportation gas* customers" so as to provide a neutral purpose rather than assume that a level playing field may not currently exist or adopt regulations presumably weighted in favor of one stakeholder group over another. Thus, the Association would propose placing a period after "customers" and striking the remainder of the draft rule.

#### **B. §62.222. Definitions**

With respect to the proposed definitions, the Association notes that while "small business customer" is defined in this section, it is used only in Section 62.224 – Purchase of Receivables. Moreover, use of that phrase may be confused with the use of "small commercial customer" in other sections of the proposed regulations. Therefore, the Association suggests either eliminating this definition or moving it to within Section 62.224 to clarify its use and meaning.

#### **C. §62.223. Price to Compare**

This proposed regulation creates a new regulatory process whereby natural gas procurement costs are removed from base rates and transferred along with the purchased gas cost or "PGC" to the price to compare or "PTC". The PGC is then adjusted monthly. The Proposed Rulemaking Order states that this new process will allow for an apples-to-apples comparison of prices for consumers. See Proposed Rulemaking Order at p.4.

Initially, the Association notes that the Proposed Rulemaking Order recognizes the difficulties inherent in removing gas procurement cost expenses from base rates to the PTC. The process established in these proposed regulations creates a tariff rider, the net gas

procurement adjustment tariff rider, to recognize and move gas procurement costs embedded in base rates along with the current PGC to the PTC. The regulations contemplate an annual proceeding within the context of the Section 1307(f) process coupled with further adjustments in each company's next base rate filing under Section 1308(d). The Association remains concerned that the process established is complicated, will foster litigation and does not recognize that expenses related to the NGDC SOLR function are not borne by the suppliers.

Moreover, the Association is not convinced that this process will create the contemplated increase in the PTC ostensibly needed to encourage supplier entry into the market place. The Association contends that requiring monthly adjustments of PGC gas costs will not necessarily "reflect actual market fluctuations which may be due to changes in weather, the seasons and other factors." Proposed Rulemaking Order at p.5. Currently, PGC rates reflect the obligation of NGDCs to purchase gas commodities at the least cost. To achieve this obligation, NGDCs now employ a variety of practices, including hedging and the timing of storage withdrawals and injections to meet least cost obligations. The PGC does not represent current wholesale prices and monthly adjustments will not alter this fact. Gas procurement is currently structured to achieve the best price for consumers and moving incremental costs of purchasing gas from base rates to the PTC may not provide the desired "apples-to-apples" comparison.

The proposed regulations at Section 62.223 further contemplate the establishment of a surcharge on PGC rates referred to as a gas procurement charge or GPC and also an offsetting credit to the GPC referred to as Gas Procurement Reduction Rate ("GPRR"), collectively referred to as a Net Gas Procurement Adjustment or "NGPA". The NGPA would be established at a Section 1307(f) Purchased Gas Cost ("PGC") filing and remain in effect until establishment of new base rates and a PGC rider following a §1308(d) base rate case filing. The aforementioned

surcharge is intended to recover the natural gas procurement costs removed from the NGDC's base rates pursuant to §62.222.

The Association's members continue to question whether monthly fluctuations in consumer gas bills will lead to elimination of barriers to market entry and/or more suppliers in the market. Prior to adopting a new and complicated regulatory process, the Association asks, at a minimum, that the experience in New York State with monthly adjustments to the PGC be examined for possible best practices; that NGDCs' current experience with purchase of receivable programs should be analyzed to determine the impact, if any, on elimination of market entry barriers; and, that careful consideration be accorded to the NGDC SOLR function.

Otherwise, it would appear that new regulations assume a monthly rate will directly track market prices (i.e. NYMEX prices) and, as was discussed earlier in these comments, the NGDCs' use of Commission-approved price mitigation methods such as long-term contracts, hedging and other storage practices which are locked in months before the gas is used may make this underlying assumption incorrect.

#### **D. §62.224 Purchase of Receivables Program**

The Association and its members support the voluntary nature of the regulations providing for a purchase of receivables ("POR") program and the Commission's policy to promote the use of POR programs. The changes suggested to Section 62.224 by the Association and its members are aimed at improving the specifics of program design and customer care so as to encourage optimum use of POR programs.

##### **1. Section 62.224(c) Should Be Stricken**

Initially, the Association suggests striking Section 62.224(c) inasmuch as the issue of utilizing accounts receivable as security to satisfy in full or in part NGS licensing requirements is

currently being addressed in a separate rulemaking proceeding at Docket #L-2008-2069115.<sup>4</sup> The proposed rule set forth at Section 62.224(c) does not directly impact the development or use of POR programs by NGDCs and, as set forth in the Association's comments at Docket #L-2008-2069115, once accounts receivables are sold to an NGDC, the NGS no longer has a property interest and can not pledge those accounts receivable as collateral in a separate transaction. See Association Comments filed June 3, 2009.

Additionally, it is potentially confusing to have two different regulatory sections identify assets (i.e., accounts receivable) that can potentially be used as collateral to satisfy NGS licensing requirements. This subject is better addressed through the pending rulemaking proceeding at Docket #L-2008-2069115 which proposes regulations regarding NGS licensing and security issues. Again, it must be emphasized that only if the NGS does not sell its accounts receivable to the NGDC can that asset be used as collateral for security in connection with licensing requirements. Once sold, the accounts receivable are not available to be pledged as collateral to meet a distinct obligation.

## 2. Several Changes to Program Design Are Advisable

With respect to Section 62.224(a) Program Design, the Association offers the following suggestions. First, requiring NGDCs and NGSs "to negotiate the parameter of any discount arrangement", see Order at p.6, when read in conjunction with the proposed regulation at Section 62.224(a)(4) is confusing. There is either a discount rate set based on incremental costs and the risk associated with the purchase of receivables, which can then be applied to the receivables of certain classes of customers OR there is a negotiation between a NGDC and each NGS operating on its system which chooses to participate in a POR program. The Association does not understand how both options can be made available to stakeholders particularly

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<sup>4</sup> The Rulemaking Order was issued on 12/4/2008 with public comments filed on 6/3/2009. Thereafter, IRRC filed comments on 7/18/2009.

coupled with the directive to "apply the same discount rate to all accounts receivable it purchases on its [the NGDC's] system." Section 62.224(a)(4)(ii).<sup>5</sup> The Association would propose that a formula for calculating a discount rate be the subject of regulation rather than directing a negotiation. The formula can establish incremental costs and a risk factor which can then fluctuate on a regular basis, similar to the merchant function charge used in NFG's NY POR program. Such a process would provide certainty and predictability to the method of calculating a discount rate. Moreover, questions regarding the discount rate calculation could be resolved by the Commission.

Second, a discount rate is appropriate where, as here, the Commission lacks authority to mandate a zero discount rate absent assurance that all accounts receivable will and can be collected under the law and regulations governing utility collection practices. Actual experience supported by years of data reported by utilities supports a discount rate which reflects incremental costs and a risk factor. To the extent suppliers argue for a zero discount rate, the Association and its members believe such a result is a disincentive to the adoption of POR programs.

Third, the Association believes that the Commission should adopt the interim guideline providing that an NGS, participating in a POR program, must use the NGDC consolidated billing system. The Proposed Rulemaking Order eliminates the requirement that NGSs use NGDC billing systems, reasoning that use of the NGDC billing system would inhibit the development of other non-supply added services and opining further, that it "may" stifle innovative products such as demand response, efficiency or green products. See Order at p.6. Yet the proposed

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<sup>5</sup> With respect to a single discount rate for all accounts receivable purchases, the Commission possesses data based on years of collection experience that demonstrates that commercial accounts have a greater certainty of collection than residential accounts. This may suggest different discount rates within a POR program for different classes of customers. The risk factor of collection would almost further be impacted by Pennsylvania Code Chapter 56 and Pennsylvania legislation embodied in Chapter 14. There is no compelling public interest served in establishing a uniform discount rate for all accounts purchased when differences in the risk of serving different customer classes is readily apparent.



rule at Section 62.224(a)(2) requires an NGS which seeks to sell accounts receivable through a POR program to certify that the receivables only contain gas supply services and are not receivables for other supply services. The NGS must be able to separate services for purposes of participating in a POR program and thus, the alleged inability of existing NGDC billing systems to handle advanced supply products offered by NGS' will not stifle innovation. The NGS can and should bill that service separately, if needed.

Moreover, requiring the use of NGDC consolidated of billing systems for gas supply services encourages the use of POR programs inasmuch as the NGDC that purchases the receivable should be responsible for pursuing collection of that receivable. Once the receivable asset is sold in a POR program, no incentive exists on the part of the NGS to vigorously pursue collection which is to the detriment of the customers of the NGDC who will eventually cover the bad debt costs of such a program.

A consolidated billing system will also assure maximum use of those assets to the benefit of all customers whereas allowing the NGS to bill for receivables it already has sold will add costs to those services supplied by a NGS. While the issue of mandating the NGS to use the NGDC billing system was not discussed in the 2008 Report, the Association believes that such a requirement will benefit both the NGDC and the NGS, while serving the customer.

Finally, if the Commission is to allow dual billing systems, it must address how NGS' will comply with Chapter 14 for residential customers. Specifically, the Chapter 14 issues surrounding payment arrangements, security deposits, termination of service and reconnection will need to be reflected in the collection practices of NGSs which bill for services already sold to an NGDC.

### **E. §62.226 Natural Gas Distribution Cost of Competition Related Activities**

Initially, the Association seeks to clarify that the costs recovered for competition related activities pursuant to the proposed tariff include the costs of "implementing and promoting" competition. See Section 62.226(a). Consequently, Sections 62.226(d) and (e) also should include the words "implementing and" before the word "promoting" and the words "reasonable and prudent" before the word "costs", as to allow for the recovery of all reasonable and prudent costs.

Additionally, Section 62.226(c) states that these costs shall be recovered on a per unit basis on each unit of commodity which is sold or transported over the NGDC distribution system without regard to the customer class of the end user. The Association would respectfully suggest that the wording should be amended to be over each "retail and transportation unit of commodity" to be consistent with the other regulations and the statutory mandate. The term "customer class" and "retail and transportation load" may have different meanings to different NGDCs as does the definition of "retail and transportation load" may have different meanings to different NGDCs,

Finally, proposed Section 62.226 provides the NGDC with the option of utilizing a tariff rider to recover these costs but then mandates that prior to using such a surcharge, a base rate case must be initiated to "remove the amounts attributable to promoting [and implementing] retail competition from base rates." Compare Section 62.226(a) with Section 62.226(d). The Association believes that this would actually discourage recovery of those costs because only those companies prepared to undergo a costly base rate case proceeding could exercise the recovery option. Requiring a base rate case will not eliminate a barrier to competition.

## **F. §62.227 Regulatory Assessments**

The Association suggests a few changes to the proposed language of this regulation. In §62.227(b)(1), the Commission seeks to assess not only its costs, but those of the OCA and the OSBA. Thus, the words "regulatory agency" should be placed after the word "each" and before "assessment".

Section 62.227(b)(2) needs to be further amended to reflect the occasional Commission special regulatory assessment. Therefore, the words "special regulatory assessment" should be inserted after "adjusted bills".

In addition to special assessments, there are other areas in which additional costs have been assessed by the Commission – for example, the Commission has adjusted its regulatory assessments for the results of litigation. Consequently, the revised rule should read as follows:

1. Copies of its most recent annual billings, for the Commission and for each "*regulatory agency*" assignment.
2. Copies of the adjusted bills, "*special regulatory assessments*", the impact of litigation or refunds received since its prior filing.


The Association would argue against the inclusion of the verbiage "(3) Proof of payment of each bill." Such a requirement is unnecessary, because the Commission already maintains documentation demonstrating that a NGDC has paid its assessment.

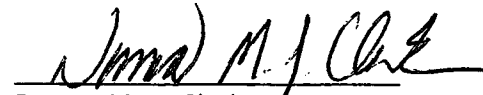
## **III. Conclusion**

The regulations proposed in this rulemaking are aimed at promoting competition through the elimination of barriers to market entry for suppliers. The comments above reflect suggested changes which the Association contends will further the stated goal, recognize the unique SOLR role of NGDCs, and distribute costs and risks fairly when initiating new programs

such as POR and the new regulatory processes set forth at Section 62.223. The Association and its members appreciate the opportunity to provide comments and look forward to working with all stakeholders as the Commission seeks to improve competition in the natural gas retail market.

Respectfully Submitted,

  
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