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PENNSYLVANIA UTILITY LAW PROJECT

118 LOCUST STREET  
HARRISBURG, PA 17101-1414

JOHN C. GERHARD, ESQ.  
JGERHARDPULP@PALEGALAID.NET

PHONE: (717) 236-9486, EXT. 201  
FAX: (717) 233-4088  
MOBILE: (717) 576-2588

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James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

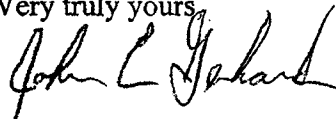
**RE: Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets; Docket No. L-2008-2069114**

Dear Secretary McNulty:

Enclosed for filing, please find the comments of the Pennsylvania Utility Law Project submitted pursuant to the Commission's Proposed Rulemaking Order entered March 27, 2009 in the above-captioned proceeding.

Thank you for your attention to this matter. As always, please feel free to contact me if you have any questions about this filing.

Very truly yours,



John C. Gerhard  
Staff Attorney  
Pennsylvania Utility Law Project  
118 Locust Street, Harrisburg, PA 17101  
E-mail: [jgerhardpulp@palegalaid.net](mailto:jgerhardpulp@palegalaid.net)

Enclosure  
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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COMMENTS OF THE  
PENNSYLVANIA UTILITY LAW PROJECT

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Harry S. Geller, Esq.  
Executive Director  
Pa. Atty. # 22415  
E-mail: [hgellerpulp@palegalaid.net](mailto:hgellerpulp@palegalaid.net)

John C. Gerhard, Esq.  
Staff Attorney  
Pa. Atty. # 94809  
E-mail: [jgerhardpulp@palegalaid.net](mailto:jgerhardpulp@palegalaid.net)

Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
Tel.: 717-236-9486  
Fax: 717-233-4088

Dated: August 25, 2009

## I. INTRODUCTION

*The Natural Gas Choice and Competition Act* (“Competition Act” or “Act”)<sup>1</sup> was enacted in 1999 with the goal of restructuring the natural gas industry so that retail natural gas could be sold and purchased in an open, competitive market. The Competition Act requires the Pennsylvania Public Utility Commission (“PUC” or “Commission”) to conduct an investigation into whether the Act achieves this goal of creating an effective, competitive market for natural gas supply in the Commonwealth.<sup>2</sup> The Commission duly initiated this investigation in May 2004.<sup>3</sup> After completing its investigation, in October 2005 the Commission issued to the General Assembly the *Report to the General Assembly on Pennsylvania’s Retail Natural Gas Supply Market (Report to the General Assembly)* in which the Commission concluded that effective competition did not exist in Pennsylvania’s retail natural gas market.<sup>4</sup> As a result of this determination, the Commission formed the Natural Gas Stakeholders Group to explore ways to increase competition in the retail natural gas market.<sup>5</sup> This group was entitled “SEARCH,” which is an acronym for “Stakeholders Exploring Avenues for Removing Competition Hurdles.” The SEARCH group’s findings were released in 2008 as a report entitled *Investigation into the Natural Gas Supply Market: Report on Stakeholders’ Working Group (SEARCH); Action Plan for Increasing Effective Competition in Pennsylvania’s Retail Natural Gas Supply Services Market*.<sup>6</sup> Based on the SEARCH group’s work, the Commission decided there were a number of steps that could be undertaken to improve competition in the retail markets for natural gas supply

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<sup>1</sup> 66 Pa. C.S. §§ 2201-12.

<sup>2</sup> *Id.*, at § 2204(g).

<sup>3</sup> *Investigation into Competition in the Natural Gas Supply Market*, Docket No. I-00040103, (Order Entered May 28, 2004).

<sup>4</sup> *Investigation into the Natural Gas Supply Market: Investigatory Order and Report to the General Assembly*, Docket No. I-00040103, (Order Entered October 6, 2005).

<sup>5</sup> See 66 Pa. C.S. § 2204(g).

<sup>6</sup> Docket No. I-00040103F0002, (Final Order and Action Plan Entered September 11, 2008).

in the Commonwealth. This Proposed Rulemaking Order constitutes the Commission's first step in promulgating formal regulations in response to the SEARCH group's 2008 report.

While the Commission's Proposed Rulemaking Order discusses five different issues, the Pennsylvania Utility Law Project ("PULP") addresses only two issues in these Comments: the Price to Compare ("PTC") and the Purchase of Receivables programs ("POR"). In these comments, PULP respectfully proposes that it is inappropriate to advance competition for competition's sake alone; while lowering natural gas prices for residential customers, particularly low income residential customers, is a laudable goal, there are other important considerations that must also be given voice: safety of service, reliability of service, consumer protections, customer convenience, and the elimination of volatility in the monthly cost of utility service. All of these features of service bring value to the customer, just as do lower prices; even if the possible achievement of lower prices is the goal, to advance competition at the expense of these other considerations may do a disservice to residential customers.

PULP, part of the Pennsylvania Legal Aid Network, a nonprofit network of legal service providers representing the interests of low income Pennsylvanians, is the specialized project providing statewide representation, advice, and support in energy and utility matters related to low income, residential utility consumers. PULP submits these comments pursuant to the Commission's Proposed Rulemaking Order and thanks the Commission for the opportunity to be heard on this issue.<sup>7</sup>

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<sup>7</sup> *Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets, Proposed Rulemaking Order*, Docket No. M-2008-2069114, (Order Entered March 27, 2009), at Ordering Paragraph 5 ("Proposed Rulemaking Order").

## II. COMMENTS

### A. Price to Compare

The Commission states, “[t]he Price to Compare (PTC) lies at the heart of retail choice. It is the means by which consumers can judge whether the price offered by an NGS is more or less than the default service rate.”<sup>8</sup> The SEARCH group and the Commission have come to the conclusion that the current formulation of the PTC is faulty because it excludes some cost elements associated with the cost of procuring natural gas. “The proposed regulation at 52 Pa. Code. § 62.223 is intended to remove the effect of those natural gas procurement costs now included in NGDC base rates which mask and understate the true cost of the commodity.”<sup>9</sup> In addition to removing these hidden costs from base rates, going forward the PTC will be adjusted on a monthly basis to better reflect the actual, current price of natural gas supply.<sup>10</sup>

The purpose of these changes to the PTC is to give customers a more accurate tool with which to shop for alternative natural gas suppliers and, therefore, to enhance competition, with the ultimate goal being to encourage more customers to secure natural gas supply from an alternative supplier. This increased competition among suppliers, theoretically, will drive down the cost of natural gas supply. PULP respectfully cautions the Commission to remain a neutral presence and not to push customers too hard toward choosing an alternate supplier as a means to foster competition. Choosing to stay with an NGDC can itself be a valid choice, not a problem to be solved or an impediment to competition.

Participating in the competitive market may not be advisable for a good many residential customers, particularly low income customers. Regardless of the intended levels of education to be provided by the Commission, NGDCs, or NGSs, shopping for natural gas supply service is a

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<sup>8</sup> *Proposed Rulemaking Order*, at 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*, at 3-6.

difficult, confusing, and time consuming endeavor for residential customers.<sup>11</sup> Quite frankly, a good many customers simply may be incapable of making a sound decision about such a subject as switching to an alternate supplier because the subject matter is so complex. For many residential customers, purchasing natural gas supply is confusing and fraught with danger, as a mistake or lapse in judgment may result in hundreds of dollars of added utility costs to a family's budget. What appears to be a lack of shopping may in fact be a reasoned decision by customers not to enter into a complicated market where the stakes are high.

Low income customers may face even greater barriers to informed participation in a competitive market than other residential customers. Low income populations tend generally to have lower education levels than do their counterparts in the rest of the residential class. With a lower education level, it is more difficult to analyze data about competing natural gas suppliers. Low income households also tend to have fewer resources with which to access the information upon which informed choices about natural gas suppliers are made. For example, many low income households do not have computers or Internet connections in their own homes. These families rely on public resources, such as local libraries, for their computer and Internet access. In these hard economic times, even these resources are being denied to low income households, as localities such as Philadelphia contemplate shutting down all branch and regional libraries as cost cutting measures.<sup>12</sup> Even when those resources are available, time often is not.

A brief example based on Vice Chairman Christy's statement during the March 26, 2009

Public Meeting may illustrate this point:

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<sup>11</sup> PULP submits the provision of objective educational information is an essential component of the Commission's activities and cannot be relegated, delegated, or defaulted to vendors with financial interests related to how the consumer will act. Brochures and community education provided by the Commission's Communication Office and publications prepared by the Bureau of Consumer Services will require renewed attention and commitment of resources.

<sup>12</sup> See [http://www.philly.com/inquirer/local/pa/20090731\\_Nutter\\_s\\_Plan\\_C\\_could\\_cost\\_Philadelphia\\_3\\_000\\_jobs.html](http://www.philly.com/inquirer/local/pa/20090731_Nutter_s_Plan_C_could_cost_Philadelphia_3_000_jobs.html) retrieved on 8/19/09.

Today, when natural gas customers decide to switch to an alternative supplier, many of these customers have no idea if the offered price will continue to be more attractive than the NGDC's Price to Compare. Simply providing the currently effective Price to Compare does not allow consumers to make informed decisions when considering offers from competitive suppliers. More information is necessary, especially if natural gas customers are exposed to NGS proposals which require a long term commitment. Consumers need to be provided projected natural gas price forecasts to make informed, educated choices. I request that commenters address whether the Commission should develop a monthly projection of natural gas prices for the ensuing twelve months based upon the best available market information. This information could be posted on our website and the Commission could require each NGDC to provide this information to its customers on a regular basis. Without this type of information being readily available, consumers will be unaware if the choice they are making today will continue to be the right choice two, four or six months down the road.

Natural gas consumers need to be informed as much as possible in order to make reasoned decisions if the competitive gas market is to succeed. In my opinion, the development of gas price forecasts will help reduce the number of cases where marketers take advantage of uninformed consumers with price offers that in reality cost consumers more than if they simply not had shopped. These gas price forecasts are readily available and should be made available to all natural gas customers.<sup>13</sup>

Vice Chairman Christy's comments illustrate the profound complexity involved in this process. Further, even if the objective information should become available, there are many customers who do not even know what "projected natural gas price forecasts" are, much less how to use them intelligently to make an informed decision about whether to switch to a natural gas supplier over their NGDC. Therefore, it is no wonder why a good many residential customers have opted to rely on their NGDC to provide them with natural gas supply.

A second point to consider is that customers may not only factor in cost in choosing their natural gas supplier. Customers may consider the various services they receive from the NGDC to be of good value, worth the price they pay for gas supply. This is not avoidance or ignorance of competition; it is a choice made in the competitive process. Customers may feel that they are

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<sup>13</sup> *Statement of Vice Chairman Tyrone J. Christy, Docket No. M-2008-2069114, (Public Meeting, March 26, 2009), at 2.*

buying a valuable product from the NGDC: a reliable agent who searches out and buys reasonable priced gas on a least cost basis; an agent who provides fairly stable, non-volatile prices in an unpredictable market; an agent who provides expertise not possessed by the customer; and the convenience of not having to worry about learning a whole new trade (i.e. gas purchasing expertise) – all of this, of course, comes with the stamp of approval of a regulatory body charged with protecting the public's welfare. Consumers may determine reasonably that NGDCs bring better value and peace of mind than can their unregulated competitors. In a time of financial upheaval caused by the dubious actions of under regulated financial entities, the protection of a regulatory body should not be under valued.

As the Commission seeks to bolster competition, it is good to remember that many customers may be happy with the value they purchase from the NGDC and that their choice NOT to shop is still a valid choice. The words of the Pennsylvania Consumer Advocate, Sonny Popowsky, the official charged with understanding and representing the interests of residential ratepayers should be noted:

I also believe that the relatively low numbers of Pennsylvania residential customers who have opted to take natural gas supply service from an alternative supplier is partly a reflection of how difficult it is for many residential customers to shop for natural gas supply service in a volatile, confusing marketplace. Customers must first make a determination of what they are paying for that portion of their natural gas supply service that is subject to competition, i.e., the "price to compare." Even though the price to compare is generally available from the NGDC, or from other sources such as the OCA Shopping Guides, it is still no easy task for a typical residential customer to make a comparison of an NGS offer when the NGDC's price to compare changes on a quarterly basis. This is especially true when it can take up to 45 days or more for a switch to an alternative supplier to take place. In the interim, a quarterly update by the NGDC could turn what looked like a good deal into a bad deal before the term of the new contract with the NGS even commences.<sup>14</sup>

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<sup>14</sup> *Investigation into Competition in the Natural Gas Supply Market, Testimony of Sonny Popowsky, Docket No. I-00040103, (Testimony Given September 30, 2004) at 4-5.*



PULP respectfully cautions the Commission against pushing customers too hard in the direction of shopping. Competition for competition's sake serves no one, except perhaps the natural gas suppliers, marketers, and lawyers. When suppliers can not provide service that customers value and low income customers require – regulated protections, stable prices, service on demand, ongoing purchasing to achieve least cost service – customers may validly and intelligently choose to remain with an NGDC who can provide those services. That may be the market at work, and the Commission should pause before making adjustments to it.

*B. Purchase of Receivables programs ("POR")*

The Commission has elected to propose regulations that will make permanent the Commission's recent interim adoption of POR programs.<sup>15</sup> PULP respectfully recommends that the decision to permit POR programs in which customer's service may be terminated by the NGDC for nonpayment of supplier charges is misplaced and should be reconsidered.

The proposed regulations allow for the approval of POR programs in which NGDCs may terminate service of customers who have failed to pay for natural gas supply charges (which may be comprised of only the cost of basic natural gas supply) to their alternative supplier.<sup>16</sup> PULP submits that it is not appropriate for a customer to have service terminated by a NGDC where the underlying rates were unregulated, as is the case of the rates paid for natural gas supply to alternative suppliers. Section 2206(a) of the Competition Act requires that customer service and consumer protection standards and policies, at a minimum, be maintained at the same levels as before the passage of the Act.<sup>17</sup> Allowing a customer to have their service terminated for

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<sup>15</sup> See Proposed 52 Pa. Code § 62.224 (Purchase of receivables programs) and *Establishment of Interim Guidelines for Purchase of Receivables (POR) Programs*, Docket Nos. Docket No. M-2008-2068982 and I-00040103F0002, (Order entered December 19, 2008).

<sup>16</sup> "When a NGDC purchases accounts receivable from a NGS through a Commission-approved POR program and the accounts receivable are comprised only of charges for basic natural gas supply, the NGDC may terminate service to customers for failure to pay NGS supply charges." Proposed 52 Pa. Code § 62.224(6).

<sup>17</sup> 66 Pa.C.S. § 2206(a).

nonpayment of unregulated service is a clear degradation of consumer protections in violation of Section 2206(a) and should not be entertained by the Commission.

Quite simply, the POR is a tool being proposed by the alternative suppliers to improve their collection rates from customers. Alternative suppliers have recourse to other collection methods than to sell their receivables to NGDCs. It is to these methods they should turn, not to the Commission or to the NGDCs. The Commission should not reduce consumer protections to shield alternative suppliers from a business risk, particularly not in the name of competition. Section 2206(a) of the Competition Act requires that the Commission ensure that customer service protections remain in place and in full force. That is, the Commission should ensure that all protections afforded through Chapter 56 of the Pennsylvania Code are fully enforced and that customers who dispute the allegations of nonpayment, whatever the foundation of that dispute, are given ample opportunity to bring their complaint before the Commission prior to service termination. These rights cannot be abridged or denied.

Furthermore, should the Commission still choose to allow these POR programs to go forward despite PULP's comments above, then PULP supports the inclusion of the proposed regulation at 52 PA. Code. § 62.224(9), which states,

[a] NGDC may include the difference between its cost of the purchased receivables and the amounts it has actually collected as part of its uncollectible expense in its next base rate case when it agrees to share with its customers the losses or gains associated with POR program collections.

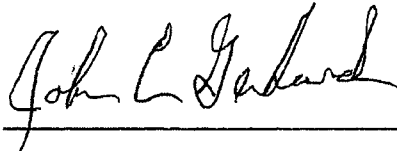
This proposed regulation shares the risk and the reward of POR programs between the NGDC and its customers. This makes perfect sense, since if residential customers are going to bear the risks of these POR programs, then they should also share in any of the financial rewards that the programs yield to the company. If the Commission insists on allowing POR programs, then PULP supports the inclusion of this proposed regulation.

### III. CONCLUSION

The goal of the Competition Act was to serve the interests of consumers by reducing the cost of natural gas through competition. While lower prices will indeed serve the interests of consumers, the Commission should recognize that customers also value stability of service, reliability of service, strong consumer protections, and convenience that are provided by NGDCs. The Commission should not push competition at the expense of these other values.

PULP thanks the Commission for the opportunity to submit these comments.

Respectfully submitted,



Harry S. Geller, Esq.  
Executive Director  
Pa. Atty. # 22415  
E-mail: [hgellerpulp@palegalaid.net](mailto:hgellerpulp@palegalaid.net)

John C. Gerhard, Esq.  
Staff Attorney  
Pa. Atty. # 94809  
E-mail: [jgerhardpulp@palegalaid.net](mailto:jgerhardpulp@palegalaid.net)

Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
Tel.: 717-236-9486  
Fax: 717-233-4088

Dated: August 25, 2009

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that I have today served a true copy of the foregoing document upon the parties of record in the above captioned proceeding, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**VIA FIRST CLASS MAIL**

Irwin A. Popowsky, Esq.  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, Pennsylvania 17101-1923

William A. Lloyd, Jr., Esq.  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101

John Simms, Esq.  
Pa. Public Utility Commission  
Office of Trial Staff  
PO Box 3265  
Harrisburg, PA 17105-3265

Donna M.J. Clark, Esq.  
Energy Association of Pa.  
800 N. 3<sup>rd</sup> Street, Suite 301  
Harrisburg, PA 17102



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John C. Gerhard  
Staff Attorney  
Pa. Attorney I.D. No. 22415  
E-mail: [jgerhardpulp@palegalaid.net](mailto:jgerhardpulp@palegalaid.net)

Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
Tel.: 717-236-9486  
Fax: 717-233-4088

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