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August 25, 2009

VIA EXPRESS MAIL

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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INDEPENDENT REGULATORY
COMMISSION

**Re: Natural Gas Distribution Companies and the Promotion
of Competitive Markets, L-2008-2069114**

Dear Secretary McNulty:

Enclosed for filing please find an original and fifteen copies of the comments of
The UGI Distribution Companies, comprised for the purposes of this filing of UGI
Utilities, Inc. – Gas Division, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas,
Inc.

Should you have any questions concerning this filing, please feel free to contact
me.

Very truly yours,

Kent D. Murphy

Counsel for the UGI
Distribution Companies

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AUG 25 2009

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF THE
UGI DISTRIBUTION COMPANIES

The UGI Distribution Companies¹ appreciate this opportunity to submit comments in response to the above-captioned Proposed Rulemaking Order designed to facilitate competition in retail gas markets.

The UGI Distribution Companies were active participants in the Commission's SEARCH investigation at Docket No. I-00040103F0002. This investigation brought stakeholders, including Natural Gas Suppliers ("NGS"), together to investigate ways of promoting retail competition. While there was not consensus on all ideas, the extensive investigatory discussions did lead to broad agreement by most stakeholders that certain ideas that were initially thought to be helpful might not be practicable or have a sufficient impact to meaningfully promote retail competition. To facilitate the broadest consideration of potentially helpful ideas, the SEARCH process also included the investigation of ideas that would require statutory amendments. Such ideas for statutory amendments cannot, of course, be adopted by regulation. The comments below reflect, in part, the SEARCH discussions.

¹ For the purposes of this filing the UGI Distribution Companies are comprised of UGI Utilities, Inc. -- Gas Division ("UGI"), UGI Penn Natural Gas, Inc. ("PNG") and UGI Central Penn Gas, Inc. ("CPG").

The UGI Distribution Companies would also note that virtually all of the UGI Distribution Companies' larger customers have been transportation customers for long periods of time, a number of active NGSs currently serve aggregated and growing pools of residential and small commercial and industrial ("Choice") customers on the UGI and CPG systems, and tariff and system changes in the process of being adopted on the PNG system should facilitate service offering to Choice customers on that system. The UGI Distribution Companies have also conducted their own "best practices" collaborative to investigate ways of facilitating retail competition on their systems, and have adopted ideas discussed at these meetings.

I. Definition of Small Business Customer

The proposed regulations at §62.222 set forth a definition of "Small business customer" that incorporates by reference the definition of this term in the Commission's Customer Information Disclosure regulations at 52 Pa. Code §62.72 that provides:

Small business customer – This term refers to a person, sole proprietorship, partnership, corporation, association or other business entity that receives natural gas service under a small commercial, small industrial or small business rate classification, and whose aggregate maximum registered annual consumption with the NGDC was less than 300 Mcf, or equivalent, over the last 12 months.²

Thereafter, the proposed regulations only use the term "small business customer" in §62.224(a)(5), relating to voluntary purchase of receivable programs, although there is a reference to "small commercial customers" in §62.223(e) and associated definitions,

² The Commission's Customer Information Disclosure regulations may have adopted a definition of "Small Business customer" that was intended to only encompass smaller Choice business customers because of opposition from larger commercial and industrial customers to the disclosure of the consumption information to marketers for competitive reasons.

relating to net gas procurement adjustments, gas procurement charges and gas procurement reduction rates.

The Commission should be aware that the UGI Distribution Companies have Choice rate schedules that apply to customers with much larger loads than 300 Mcf per year, and believe that to the extent the rate adjustments envisioned in §62.223 are established, they should be applicable to all Choice customers, and not just a subset of smaller Choice customers. The Commission should clarify that this is what it intended, and that the term “small commercial customers” utilized in §62.223(e) and associated definitions is not synonymous with the term “Small business customer” established in §62.222.

II. Price to Compare

The proposed regulations at §62.223 contemplate the establishment of a surcharge on PGC rates (referred to as a “Gas procurement charge” or “GPC”) and an offsetting credit to the base rates (referred to as a “Gas procurement reduction rate” or “GPRR”) collectively referred to as a “Net gas procurement adjustment” or “NGPA” that would be established at the time of an annual Section 1307(f) purchased gas cost (“PGC”) filing and “remain in effect until establishment of new base rates and a PGC rider following a base rate case under 66 Pa.C.S. §1308(d).” §62.223(g). The surcharge is intended to recover “natural gas procurement costs removed from an NGDC’s base rates. . . .” §62.222.

1. Problems and information identified during the SEARCH process

During the SEARCH process this approach to making the PGC “Price to Compare” or “PTC” more comparable to NGS service offerings was investigated and

discussed, and a number of problems were identified and relevant information developed that the Proposed Rulemaking Order and regulations do not adequately address.

First, the relative dollar value of potential "natural gas procurement costs" that could be moved from base rates and recovered as a surcharge on PGC rates was identified and discussed. The UGI Distribution Companies believe there was widespread agreement that, apart from the uncollectible expenses associated with PGC charges, these costs were so small compared to total PGC costs that the PGC surcharge would be insignificant and could not reasonably be expected to have an impact on retail choice shopping levels. Before implementing regulation that would require new expensive and contentious rate surcharge proceedings, the UGI Distribution Companies believe, at a minimum, the Commission should, through data requests, establish the potential dollar value of the costs that would be recovered through the proposed GPRR compared to total PGC costs, and/or exempt NGDCs from establishing such surcharges if, apart from uncollectible costs, the GPRR would amount to one percent (1%) or less of PGC rates.

Second, the SEARCH participants recognized Section 1408 of the Public Utility Code provides:

The commission shall not grant or order for any public utility a cash receipts reconciliation clause or another automatic surcharge mechanism for uncollectible expenses. Any orders by the commission entered after the effective date of this chapter for a cash receipts reconciliation clause or another automatic surcharge mechanism for uncollectible expenses shall be null and void.

Accordingly, since the proposed "GPC shall be adjusted and reconciled annually" it presumably could not include uncollectible expenses associated with PGC rates.

The UGI Distribution Companies believe that the best way to address the issue of comparability without violating the provisions of Section 1408 is to establish a non-reconcilable fixed percentage surcharge on PGC rates that can serve as a reasonable proxy for PGC-related uncollectible costs. Such surcharges were proposed in the pending base cases of PNG and CPG at Docket Nos. R-2008-2079660 and R-2008-2079675, and their establishment have been supported in comprehensive settlements. A similar surcharge is in effect at Columbia Gas of Pennsylvania. Another way of addressing uncollectible expense comparability might be through a voluntary purchase of receivables ("POR") program. However, once the issue of uncollectible expense comparability is addressed through one of these mechanisms, the UGI Distribution Companies believe there are not enough other gas supply-related costs left to potentially move from base to PGC rates to justify the establishment of a NGPA or a GPC type surcharge after a base rate case.

Third, the SEARCH discussions reflected that there would be significant problems with attempting to establish a NGPA or GPC outside of a base rate proceeding. It is not clear under the proposed regulations if the gas supply-related costs that would be shifted to the GPC would be current costs or the level of costs established in the last base rate proceeding. If it is the former, public parties would most likely oppose such recovery deeming line item rate making and there could be opposition to the potential interclass cost shifts that could occur through the base rate crediting mechanism. If it is the latter it could be very difficult to determine the level of costs by line item that were approved in the last base proceeding or how those costs were allocated among customer classes given the black box nature of many base rate settlements. Moreover, the costs allowed in prior

base rate settlements may not be reflective of current costs, thereby not entirely solving the perceived problem of comparability. Also, arbitrary judgments would have to be made about the allocation of gas supply-related costs given the uncertainty that surrounds the nature of the SOLR responsibilities that would remain with NGDCs if most or almost all customers procured their gas supplies from Choice NGSs. If forced to make these judgments the UGI Distribution Companies would support the concept that costs should not be shifted if they nonetheless would be incurred in an environment where a NGDC was largely out of the merchant function. For example, individuals currently performing gas supply functions might still be required to manage system balancing and pool administration, as well as other supplier of last resort functions. Given that no NGDC is currently in this position, however, a certain amount of speculation would be required. In the absence of strong evidence that the potential costs that would be shifted from base rate to GPC recovery are of any significance, the proposed regulations should not require NGDCs and public parties to incur the expense of what would likely be contentious rate proceedings to establish and manage NGPAs.

2. Coordination of PGC and Surcharge Proceedings

The Proposed Rulemaking Order at pages 4-5 recognizes that the establishment of NGPAs would be conducted in a rate proceeding separate from annual PGC proceedings, and would not be constrained by the abbreviated procedural schedules applicable to PGC proceedings. §62.223(c), however, states that a NGDC shall submit a NGPA tariff rider “in its next purchased gas cost filing” and §62.223(a) states the “GPC shall be adjusted and reconciled annually . . . to become effective with new PGC rates.”

There is no reason that a rider mechanism rate filing would have to wait for the filing of an annual PGC filing, nor is it certain given the differing procedural rule applicable to the differing proceedings that the NGPA would have to become effective at the same time that PGC rates are established after an annual PGC filing. The proposed regulations should be adjusted accordingly.

3. Monthly Reconciliation

The proposed regulations would require PGC rates to be adjusted monthly, because “under the present approach the NGDC gas price does not reflect actual market fluctuations which may be due to changes in weather, the seasons and other factors.” Proposed Rulemaking Order, p. 5.

Importantly, as was also discussed during the SEARCH process, the Commission cannot establish monthly adjustments by simply waiving its current regulations at 52 Pa. Code §53.64(i)(5). Section 1307(f)(1) of the Public Utility Code provides in pertinent part:

No natural gas distribution company shall voluntarily file more than one [PGC] tariff in a 12-month period: Provided, That:

* * * *

(ii) A natural gas distribution company may also file a tariff to establish a mechanism by which such natural gas distribution company may further adjust its rates for natural gas sales on a regular, but no more frequently than monthly, basis to reflect actual or projected changes in natural gas costs ...subject to annual reconciliation under paragraph (5). In the event that the natural gas distribution company adjusts rates more frequently than quarterly, it shall also offer retail

customers a fixed-rate option which recovers natural gas costs over a 12-month period, subject to annual reconciliation under paragraph (5). The commission shall ... promulgate rules and regulations governing such adjustments and fixed-rate option, but the commission shall not prohibit such adjustments and fixed rate option. (Emphasis added.)

Thus, under the controlling statute NGDCs have the right to determine if they will adjust their PGC rates more frequently than annually, but may not voluntarily elect to adjust their PGC rates monthly unless they offer a 12-month fixed rate option to PGC customers. Moreover, the Commission cannot order NGDCs to adopt monthly adjustments nor permit such adjustments without a 12-month fixed rate PGC option. The proposed regulations are accordingly at odds with the controlling statute.

Moreover, as was discussed during the SEARCH process, monthly PGC price adjustments would not result in PGC rates that closely track current wholesale market conditions because, at this time, only a small percentage of PGC supplies are purchased at prices reflective of then current wholesale prices. For example, the UGI Distribution Companies purchase gas supplies primarily during non-winter months that are placed in storage and which may not be used until many months later. Other supplies have prices that are set in advance. Thus, monthly adjustments would not make PGC supply costs reflective of current wholesale prices, and instead would only permit more frequent adjustments to reflect changes in actually experienced weather and customer usage from initial projections and changes in forward market strip prices to minimize the potential impact on annual PGC e-factor adjustments. However, there is no evidence that the current quarterly adjustment mechanism cannot already perform this function, and indeed

most quarters PGC rates are not adjusted because the potential size of the changes does not warrant adjustment.

UGI's rationale for its purchasing strategy is to minimize customer exposure to price volatility while procuring supplies on a least cost basis. While UGI would not necessarily oppose a monthly change in its PGC rate, based on its current procurement strategy, the price changes would be relatively insignificant from month to month. Moreover, under the current statute, gas distributors are prohibited from making monthly changes unless they institute a Commission-approved annual fixed-price option.

III. Purchase of Receivables

The UGI Distribution Companies believe the proposed regulations appropriately recognize that PORs should only be implemented by a NGDC on a voluntary basis. With respect to 62.224(a)(4)(ii) mandating that the discount rate be the same on all purchased receivables, UGI Distribution Companies believe that this proposed rule does not address the actual variability in the quality of receivables based on a variety of factors such as age of receivable, residential versus non-residential, existence of security deposits, payment arrangements, medical certificates or bankruptcies. Such differences should be reflected in differing discount rates. There is no compelling public interest in setting a uniform discount rate when differences between the risks to serve different customers are readily apparent.

The UGI Distribution Companies believe the interim guideline requiring NGSs participating in POR programs to use only NGDC consolidated billing services is a prudent and necessary one. The Order, however, goes to great lengths to eliminate the

requirement because it would allegedly impede marketers' efforts to build other non-supply added services into the billing program and further, that it "may" stifle innovative products such as demand response, efficiency or green products", Order page 6.

Notwithstanding, §62.224(a)(2) requires any NGS to certify that the receivables to be purchased only contain gas supply and not receivables for other services. Therefore, the Order's concerns regarding other NGS services are no longer of major concern and therefore, consolidated billing of a marketer's gas supply charges should be permitted.

On this issue, it is clear that aggressive collection is necessary to prevent customers from falling further behind n their payments, particularly in this economic environment. Wit a POR program in place, and marketer's billing for the receivables, they will have little incentive to engage in aggressive collection processes with customers that fall behind on their bills. If consolidated billing is not permitted, UGI believes that uncollectible accounts expense will needlessly rise.

Moreover, the Commission needs to address the issues surrounding Chapter 14 and NGSs. Specifically, the Chapter 14 issues surrounding payment arrangements. A NGS may not comply with 66 Pa.C.S. §1405 or may not enforce its rights to a security deposit pursuant to §1404(h). The NGS billing system may not be sufficiently complex enough to satisfy the issues surrounding the beneficial receipt of utility energy without paying for it that appears in §1406(e). These and other provisions of Chapter 14 are most likely not built into NGS billing systems.

Such differences between NGS and NGDC billing systems undermine the value of receivables and lead to changes in risk that need to be reflected.

As noted above, the UGI Distribution Companies believe an appropriately designed POR may be one mechanism for addressing the removing uncollectible accounts expense as a potential barrier to competition.. However, this issue may also be addressed through the establishment of a non-reconcilable percentage surcharge or rider on PGC rates reflective of uncollectible percentages. To the extent the issue is addressed through such a mechanism or alternative rider or surcharge of the sort contemplated under the proposed regulations, then the purchase of receivable without a discount reflective of the uncollectible expense associated with the purchased receivable would result in PGC rates reflecting uncollectible expenses but NGS service offering would not.

The proposed regulations at §62.224(a)(3) and (9) would seem to preclude the purchase of receivables at a discount reflective of uncollectible expense associated with the receivables, and should be amended to permit such discounts. The issue of competitively comparable rates can be addressed in different ways, and if receivables are purchased at no discount, incentives would not be in place to safeguard the application of viable credit practices to non-creditworthy customers, and the resulting cost of delinquency would, under proposed §62.224(a)(9), ultimately be passed on to other customers. This would seem to directly contradict the stated legislative intent in Chapter 14 to “provide protections against rate increases for timely paying customers resulting from other customers’ delinquencies.” 66 Pa.C.S. §1402.

Finally, proposed §62.224(c) suggested that a “NGS’s accounts receivable may be used to satisfy in full or in part the security required for licensing as a natural gas supplier.” It is not clear how additional security could be provided to NGDCs through receivables unless the receivables were not purchased by the NGDC and the cash

remittances associated with the receivables were diverted by mutual agreement through a lockbox or otherwise to provide cash collateral. Presumably, however, this was not what the Commission intended. To the extent that a NGDC purchases a receivable, the cash that is subsequently collected from the purchased receivable account must be used to reimburse the NGDC for the incremental cost it incurred in making the purchase, and is not available to provide incremental security. Subsection (c) should accordingly be deleted from the final regulations.

IV. Miscellaneous

1. Release assignment and transfer of capacity

The provisions of proposed §62.225 mirror in their entirety statutory language set forth in section 2202 of the Public Utility Code, 66 Pa.C.S. §2202. Since the statute can speak for itself, there is probably no reason to include this language in the final regulations.

2. Cost recovery for competition-related activities

The proposed §62.226(a) would permit a NGDC to establish a surcharge to recover “reasonable and prudently incurred costs of implementing and promoting natural gas competition within the Commonwealth.” However, this filing would have to be “part of its next annual filing pursuant to 66 Pa.C.S. §1307(f)” Id. Before establishing the surcharge, however, a NGDC would have to “remove the amounts attributable to promoting retail competition from its base rates . . . through a 66 Pa.C.S. §1308 (relating to voluntary change in rates) rate case filed not less than 5 years after first seeking recovery through a 66 Pa.C.S. §1307 nonbypassable mechanism.” §62.226(d). Moreover, pending the filing of the base rate proceeding the NGDC would have to establish in a

Section 1307(f) PGC proceeding, using a fully allocated cost of service study, an offsetting credit to base rates to reflect existing cost recovery of competition related activities through base rates. §62.226(e).

The rate procedures proposed seem to be unduly complicated and unnecessary given that there does not appear to be any significant new costs that will be placed on NGDCs for promoting competition in the immediate future, and to the extent that there is the Commission could simply permit the recovery of any such incremental costs through a surcharge or rider without adjusting existing base rates or by requiring the production of expensive fully allocated cost of service studies.

Moreover, for the reasons discussed above base rate surcharges or riders need not be proposed or addressed in the context of annual PGC proceedings with their abbreviated procedural schedules, and would be more appropriately addressed in a separate non-general base rate filing.

3. Regulatory assessments

In the SEARCH proceeding, where potential statutory revisions and cross subsidies were the topic of discussion, NGDCs noted that under the current regulatory assessment process NGSs are not assessed any regulatory expenses and that the costs of regulating NGSs and handling associated NGS issues are all attributed to and collected from NGDCs.

In proposed §62.227, the costs of current regulatory assessments would be required to be removed from base rates and recovered through a nonbypassable reconcilable surcharge. The removal of regulatory assessment expense from base rates would be required to be accomplished through the establishment of a "revenue neutral

adjustment clause to credit base rates for the assessment costs reflected in rates....”

§62.227(f). This credit “may be established through a fully allocated cost of service study and a proposed tariff rider in the NGDC’s next proceeding under 66 Pa.C.S. §1307(f) ...” *Id.* Moreover, a follow-up base rate case would apparently have to be filed with five years. §62.227(e).

At a minimum, the Commission should make the establishment of the regulatory assessment rider voluntary pending the filing of a base rate case, and should not force NGDCs and their customers to incur the time and expense of a base rate proceeding simply for the purpose of establishing such a rider.

Moreover, instead of requiring NGDCs that would want to voluntarily establish such a rider to incur the time expense of producing a fully allocated cost of service study, the Commission could simply permit the rider to reflect changes in regulatory assessment levels in place at the time of the last base rate case, in much the same manner as it permits adjustments in tax rates to be reflected in STAS adjustment mechanisms.

Finally, the establishment of a new rate mechanism for the recovery of regulatory assessments seems to be totally unrelated to retail choice. The proposed surcharge would presumably apply to both PGC customers and transportation customers alike, but the current base rate recovery mechanism does as well. Thus, there would appear to be no impact on retail choice from the proposed regulations.

The regulatory assessment cost recovery issue only relates to retail choice insofar as NGSs currently have no incentive to conserve Commission and regulatory resources since they currently incur none of the cost of regulation. However, this issue can only be resolved through statutory amendment, and not by regulation.

Respectfully submitted,

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