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## INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

September 24, 2009

Honorable James H. Cawley, Chairman  
Pennsylvania Public Utility Commission  
Keystone Building, 3rd Floor  
400 North Street  
Harrisburg, PA 17105

Re: Regulation #57-269 (IRRC #2772)  
Pennsylvania Public Utility Commission  
Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets

Dear Chairman Cawley:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman  
Executive Director  
wbg  
Enclosure

cc: Honorable Robert M. Tomlinson, Chair, Senate Consumer Protection and Professional Licensure Committee  
Honorable Lisa M. Boscola, Chair, Senate Consumer Protection and Professional Licensure Committee  
Honorable Joseph Preston, Jr., Chair, House Consumer Affairs Committee  
Honorable Robert W. Godshall, Chair, House Consumer Affairs Committee

# Comments of the Independent Regulatory Review Commission



## Pennsylvania Public Utility Commission Regulation #57-269 (IRRC #2772)

### Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets

**September 24, 2009**

We submit for your consideration the following comments on the proposed rulemaking published in the July 11, 2009 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (PUC) to respond to all comments received from us or any other source.

#### **1. General. – Consistency with statute; Reasonableness.**

##### *Fostering competition*

Under the Natural Gas Choice and Competition Act (Act) (66 Pa. C.S.A. § 2203(3)), the PUC is directed, in part, to “require natural gas distribution companies to unbundle natural gas supply services such that separate charges for services can be set forth in tariffs and on retail customers’ bills.” We believe the simplicity of how this is presented to customers will ultimately affect the participation of customers in competition. Ideally, this could be accomplished by a separation of total cost into distribution cost and supply cost. Hence, a customer could shop and compare the supply cost.

This regulation presents a complex regulatory scheme that might be incomprehensible to most customers and as a result discourage them from participating in competition. Several commentators, including the Energy Association of Pennsylvania, believe the process established in this regulation is complicated. We cite, as one example, that “GPRR – Gas procurement reduction rate” is defined as “an equal offsetting credit to the GPC [gas procurement charge], billed to all residential and small commercial customers.” Since the GPRR is charged to all customers regardless of whether they shop, how does GPRR demonstrate a separation of costs? The application of the term GPRR is further complicated by its application in Subsection 62.223(e), where



the components of the “NGPA [net gas procurement adjustment] tariff rider” would include both the GPRR and GPC, which by definition are “equal offsetting” credits, and therefore would negate each other. While we recognize this is an attempt to separate costs, this method is confusing, even if it is technically correct.

In general, customers pay a rate for their service that represents tremendously detailed calculations and components, yet those details are, in the end, boiled down to a tariff rate. Customers generally would be confused by all of the components of a base rate case that result in a tariff rate. We recommend that the PUC reconsider the complexity of this regulation and the effect of that complexity on customer participation in competition. We also recommend that the PUC produce an example of a bill or pricing comparison that would be presented to the customer to illustrate the result of the final-form regulation and how it would foster competition.

*Restructuring in a manner that does not unreasonably discriminate*

Under 66 Pa. C.S.A. § 2203(5), the PUC must “require that restructuring of the natural gas industry be implemented in a manner that does not unreasonably discriminate against one customer class for the benefit of another.” The regulation envisions future base rate filings and cost of service studies. In base rate cases, the PUC considers all issues and costs to establish just and reasonable rates that are then allocated to customer classes by a tariff filing.

Several sections of the regulation require rate filings for individual cost components in conjunction with filings under 66 Pa.C.S. § 1307(f) and eventually in base rate cases filed under 66 Pa.C.S. § 1308(d). This regulation contemplates tariff riders and other filings to accomplish cost separation. These filings, required in conjunction with filings under 66 Pa.C.S. § 1307(f), are limited in scope. We have three concerns. First, the PUC should explain how these filings will not amount to single issue ratemaking. Second, it is not clear how the regulation protects against cross-subsidization between shopping and non-shopping customers in general, and particularly in regard to the supplier of last resort. Finally, the PUC should explain how the provisions in Sections 62.223, 62.224, 62.225, 62.226 and 62.227 will properly separate costs in compliance with 66 Pa.C.S.A. § 2203(5) which protects customers from unreasonable discrimination against one customer class for the benefit of another.

*Potential costs imposed by the regulation*

At the core of this proposed regulation, the PUC is attempting to establish an “apples to apples” comparison of rates. In order to compare prices, a customer needs dollar amounts from the supplier of last resort and other gas suppliers. This regulation requires rate filings in conjunction with filings under 66 Pa.C.S.

§ 1307(f) and eventually in base rate cases filed under 66 Pa.C.S. § 1308(d). The nature of the separation of costs from base rates is obviously complex based on this regulation and presumably will be subject to the scrutiny and costs of litigation. Has the PUC considered any other mechanism to establish a fair price comparison that would meet the requirements of the Act? The PUC should review the requirements in the regulation to make sure that the regulation itself does not impose the costs of base rate cases and extensive annual litigation of filings under 66 Pa.C.S. § 1307. The PUC should identify or estimate the potential costs imposed by the regulation and explain how the savings to customers from improved competition will outweigh the costs imposed by litigation.

### *Statutory authority*

In the Regulatory Analysis Form (RAF) and Preamble for this proposed regulation, the statutory authority for the rulemaking is identified as Section 2204(g) of the Act (66 Pa.C.S.A. § 2204(g)). Section 2204(g) directs the PUC to conduct an investigation concerning competition in the sales of natural gas supplies. However, it does not address rulemaking authority. The statutory authority for the PUC to propose and adopt regulations implementing the Act is set forth in Section 2204(a) (66 Pa.C.S.A. § 2204(a)). The PUC should identify Section 2204(a) of the Act as the statutory authority in the RAF and Preamble when it submits the final-form regulation.

## **2. Section 62.221. Purpose. – Clarity.**

### *Retail gas customer*

This phrase is defined in Section 2202 of the Act (66 Pa. C.S.A. § 2202), and is used throughout the Act. It is defined, in part, as “a direct purchaser of natural gas supply services or natural gas distribution services, other than a natural gas supplier....” This definition is not limited to any customer class. However, this section of the regulation limits the purpose to fostering competitive service to “residential and small commercial customers.” We recognize the PUC is focusing on a lack of competition in these customer classes. As several commentators observed, however, many provisions in the regulation either directly affect all customers, or raise issues inseparable from all customers. The PUC should explain why this section and the regulation are limited to “residential and small commercial customers” and how the regulation does not affect all service provided to “retail gas customers” as defined in the Act.

### *Small commercial customer*

This section uses the phrase “small commercial customer.” However, the term defined in Section 62.222 is “small business customer.” This section should use the defined term. The same problem occurs in the definition of the “GPRR–



gas procurement reduction rate” in Sections 62.222 and in 62.223(e). Both the definition and the subsection use the term “small commercial customer” and not “small business customer.”

**3. Section 62.222. Definitions. – Consistency; Reasonableness; Implementation procedure; Clarity.**

*GPC - Gas procurement charge*

This definition refers to a “charge” as “a mechanism by which the effect of natural gas procurement costs removed from an NGDC’s [natural gas distribution company] base rates are recovered.” This language is vague because it describes a “mechanism” and its effect. A definition also loses clarity when it uses the term being defined. This definition should directly state what costs the charge encompasses.

*GPRR - Gas procurement reduction rate*

This term is defined as “an equal offsetting credit to the GPC, billed to all residential and small commercial customers.” Section 62.223(e) is the only place this term is used and it also describes the GPRR as “an equal offsetting credit to the GPC, billed to all residential and small commercial customers.” Therefore, the definition is redundant and unnecessary.

*NGPA - Net gas procurement adjustment*

This definition is described as a “tariff rider” in both the definition and Section 62.223(d). This definition is also vague because it describes a concept or goal, but does not increase the understanding of the term or its components.

*Natural gas supply service*

This term is defined in the Act. See 66 Pa.C.S.A. § 2202. The regulation should reference the Act similar to other definitions in this section such as “natural gas supplier.”

*PGC - Purchase gas cost*

This term is defined in this section as “natural gas costs which are collected, with adjustments, by NGDCs from their customers under 66 Pa.C.S. § 1307(f).” Again, a definition loses clarity and usefulness when it uses the term being defined. The Preambles states: “Generally, purchase gas cost (PGC) expenses include the cost of the natural gas itself as well as everything spent to get the gas through the interstate pipeline system to the city gate.” However, another paragraph in the Preamble states that procurement costs may include: “operation and maintenance expense, any procurement-related investment costs, and payroll costs for employees involved in supply acquisition.”

Although specific costs will be unique to some degree for each NGDC, the definition should provide descriptions or examples of the costs that may be included under this definition. Additionally, it is unclear in the regulation whether the PGC includes procurement costs that are mentioned in the GPC definition.

*PTC - Price to compare*

It is not clear whether PTC is a rate or a cost. A customer would need a rate to make a comparison, or at least a volume of gas associated with a cost. The PUC should review this definition and the use of the term so that it is clear what will result from this regulation and how a customer can use the PTC to shop among the Supplier of Last Resort (SOLR) and gas suppliers.

**4. Section 62.223. PTC. – Consistency; Reasonableness; Implementation procedure; Clarity.**

*Monthly adjustments*

In the Preamble, the PUC explains that it is requiring natural gas distribution companies to adjust their purchased gas cost monthly to better reflect market fluctuations. This is implemented in Subsections (h) and (j). Several commentators do not believe this regulation complies with 66 Pa. C.S. § 1307(f)(1)(ii) which states, in part,

In the event that the natural gas distribution company adjusts rates more frequently than quarterly, it shall offer retail gas customers a fixed-rate option which recovers natural gas costs over a 12-month period, subject to an annual reconciliation....

The PUC should explain how the regulation complies with 66 Pa. C.S. § 1307(f)(1)(ii).

Further, under 66 Pa. C.S.A. §§ 2206(c) and (d), the PUC is required to establish customer information “to enable retail gas customers to make informed choices” and guidelines for consumer education to “provide retail gas customers with information necessary to help them make appropriate choices as to their natural gas service.” While we agree that accurate comparisons are needed, we, as well as most commentators, question whether monthly adjustments will result in further confusion to the customer. Price comparison is critical to competition. However, if a customer switches suppliers and the subsequent bill does not substantiate the projected savings, we question whether that customer would venture into competitive rates again. How to best accomplish valid comparisons of rates is a very difficult proposition given the fluctuations in gas market prices. We recommend that the PUC revisit monthly comparisons to determine the best way to fulfill the Act’s requirements relating to customer information and consumer education.



### *Costs of the Supplier of Last Resort*

The Act requires that there be a “supplier of last resort.” See 66 Pa.C.S. § 2207. The readiness and availability of a supplier of last resort requires that there be adequate procurement. PUC Vice Chairman Tyrone J. Christy’s statement included in the Preamble and the Office of Consumer Advocate’s comments both raised similar concerns that “non-shopping consumers” will be forced to pay higher costs that in effect subsidize consumers who shop. Some procurement costs are related to maintaining the readiness of the SOLR. It is not clear in the regulation that all customers will share in the cost of a SOLR, even though a SOLR would have to be available to most customers. The PUC should explain how this proposed regulation will insure that procurement costs for SOLRs are distributed equitably among all consumers who may have to rely on a SOLR.

### *Overall clarity of Section 62.223*

We find that this subsection lacks clarity, as drafted in the proposed regulation. We recommend that the PUC review this provision and rewrite it so that the final-form regulation clearly sets forth what the PTC is, how the PTC is established, what the underlying formulas are and what must be filed with the PUC. We provide the following suggestions to assist in the development of a clearer section on PTC:

- The section shifts between filings under 66 Pa.C.S. § 1307(f) and filings under 66 Pa.C.S. § 1308(d) and simultaneously describes components of costs and charges. We suggest separating the filing requirements from the description of components.
- The regulation is not clear regarding whether Section 1307 filings would continue to be required after a Section 1308(d) filing.
- Two different subsections describe the formation of the PTC. Initially, Subsection (a) indicates that the GPC will be added to the cost of supply rate “to create a comparable PTC.” Yet, Subsection (d) states that the “NGPA shall be designed to create a rate neutral adjustment to currently existing base rates and the PGC rate to develop a reasonable PTC....” The final-form regulation should clarify the development of the PTC.
- In Subsection (a), it appears the phrase “the cost of supply rate developed under 66 Pa. C.S. § 1307(f) (relating to sliding scale of rates; adjustments)” is the same as the defined term PGC. If so, the phrase should be replaced with the defined term. If not, the PUC should explain the difference.

- The first sentence of Subsection (b) states the NGDC must remove costs in a Section 1308(d) filing, and the remainder of the provision states a GPC must be established in Section 1307 filings. This provision appears to be written in the reverse order of what would typically occur. Since the GPC would already be established and possibly litigated in Section 1307 filings, this known GPC should be used to describe how it must be shown in the NGDC’s next Section 1308(d) filing.
- Language discussing the GPC is scattered throughout five different subsections. It may be clearer to address the GPC in one subsection where possible. For example, Subsections (h) and (i) could be combined.
- It would appear that Subsections (c) and (d) addressing the NGPA could be combined.
- Subsection (e) discusses the NGPA, GPC and GPRR in a lengthy sentence that is unclear in its intent, and Subsection (f) addresses both the GPC and NGPA. Both subsections need to be re-written in a structured format that clarifies and supports their intent. See Sections 2.5, 2.8 and 2.9 on pages 6 and 7 of the *Pennsylvania Code & Bulletin Style Manual*.

**5. Section 62.224. POR programs. – Reasonableness; Need; Clarity.**

*Implications relating to POR Programs*

We have three general questions and concerns relating to POR programs and the potential positive and negative effects. First, the PUC should explain further why it is proper for the unregulated charges by an NGS to rely on the regulated NGDC (and potentially on the PUC’s authority) for collection. Second, how will the NGDC separate its operating costs from those related to collecting revenues for an unregulated entity? Finally, how will the costs and revenues from a POR program be considered in the filings envisioned in this rulemaking, including a base rate filing.

*Subsection (a)*

Paragraph (10) requires that “the NGDC shall track its POR program purchases and collections.” This requirement is vague because it is not clear how to comply. The regulation should state a purpose for tracking, specify what information is required and how long the information must be kept.

*Subsection (c)*

Commentators have questioned the use of accounts receivable to satisfy the security required for licensing. Commentators stated this is being considered in other rulemakings. We also question why this provision, relating to



licensure requirements, is placed under this section. The PUC should delete this provision or explain why it is needed under Section 62.224.

**6. Section 62.225. Release, assignment or transfer of capacity. – Need; Clarity.**

*Duplication of statute*

This section is very similar to the Act at 66 Pa.C.S. § 2204(d). The Preamble notes the similarity and some differences. However, it does not explain the need for repeating the statute in the proposed regulation. The PUC should explain the need for this section or delete it from the final-form regulation.

**7. Section 62.226. NGDC costs of competition related activities. – Reasonableness; Implementation procedure; Need; Clarity.**

*Competition related activities*

Since the costs of “competition related activities” are not established or defined in this section or the regulation, it is not possible to determine the components, limits or impact of this provision. Without this direction from the PUC, the subjective nature of determining costs related to competition may expose customers to paying costs that may not be in their best interest, may not be their responsibility, may not be spent effectively or that are redundant to advertising costs already reflected in the NGDC base rates. The PUC needs to provide guidance in the regulation on what specifically are NGDC costs of competition related activities.

We also have concerns relating directly to 66 Pa.C.S.A. § 2203(5), under which the PUC must “require that restructuring of the natural gas industry be implemented in a manner that does not unreasonably discriminate against one customer class for the benefit of another.” While the costs of promoting competition and advertising under this section will be directly paid by existing customers, it is not clear how the profits produced by the advertising will be considered in light of 66 Pa.C.S.A. § 2203(5). The PUC should either delete this section or amend the regulation to strictly interpret what costs may be claimed and to protect customers from paying imprudent costs, redundant costs or costs borne by one customer class for the benefit of another.

**8. Section 62.227. Regulatory assessments. – Fiscal impact; Reasonableness; Need; Clarity.**

*Need to address regulatory assessments*

Commentators, including the Industrial Customer Groups and Office of Consumer Advocate, raised serious questions related to this section and its inclusion in the proposed rulemaking. The concerns are three-fold.

First, commentators questioned the need for this assessment stating that the costs associated with the regulatory assessment are not a large expense that would require special ratemaking treatment. What is the need for any change in the practice of having NGDCs recover these costs through their base rates?

Second, the section does not appear to have any relationship to or impact upon the “price to compare” or competition, and, therefore, it is unclear why it is a part of this proposed regulation.

Third, NGDCs would incur costs in the filings and procedures required to separate these costs from their base rates. Yet, the PUC provides no justification for this additional expense. The PUC should explain the need for this section and the rationale for its inclusion in this rulemaking, or delete it from the final-form regulation.





### Facsimile Cover Sheet



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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
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**To:** Sherri A. DelBiondo  
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**Date:** September 24, 2009  
**Pages:** 11

RECEIVED  
2009 SEP 24 AM 10:41  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Public Utility Commission's regulation #57-269 (IRRC #2772). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: SH DelB Date: 9-24-09