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INDEPENDENT REGULATORY REVIEW COMMISSION

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Natural Gas Distribution Company;)
Business Practices) Docket No. L-2009-2069117

COMMENTS OF AGWAY ENERGY SERVICES, LLC, GATEWAY ENERGY SERVICES CORPORATION, AND VECTREN RETAIL, LLC

INTRODUCTION

Through an Order issued by the Pennsylvania Public Utility Commission ("PUC," or "Commission") and published in the Pennsylvania Bulletin on Saturday, October 17, 2009, the Commission is seeking comments on a Proposed Rulemaking aimed at revising and, where possible, standardizing natural gas distribution company ("NGDC") business practices, operating rules, and supplier coordination tariffs ("SCTs").[1]

As independent natural gas suppliers, Agway Energy Services, LLC ("Agway"), Gateway Energy Services Corporation ("Gateway"), and Vectren Retail, LLC ("Vectren"), known separately and together for purposes of this filing as "NGS Parties"[2] collectively appreciate the opportunity to comment on the proposed rules issued by the Commission. We applaud the Commission's desire to help standardize business practices among and between NGDCs where it makes sense, and we appreciate that the PUC has recognized these issues as key areas of focus necessary to advance the intent established under the Natural Gas Choice and Competition Act[3] ("Competition Act").

[1] Docket No. L-2009-2069117/57-268, in accordance with 52 PA. Code Ch. 62, published 39 Pa.B 6078, October 17, 2009.
[2] This group of energy marketers, which supply natural gas, electricity, and various other energy services to residential and commercial customers across a large number of utility markets throughout several states, works together collaboratively on non-competitive, regulatory issues to advance competitive markets and consumer choice.
[3] Pennsylvania Natural Gas Choice and Competition Act of 1999, Act 21.

We believe in general that the concepts outlined in the Proposed Rules would improve the competitive marketplace, attract additional gas marketers to the State, and increase opportunities for consumer choice. At the same time, we recognize that this is a cumbersome process given the large number of natural gas utilities operating in the Commonwealth, and the years of operational history that exist.

Even as these topics are considered, we would emphasize that a critical and continued focus by all parties is necessary on the implementation and standardization of ***purchase of receivables ("POR")*** as the highest priority topic for most NGSs. We believe that this area of focus provides most significant and immediate benefit to consumers, NGDCs, and NGSs.

Mindful of these priorities, we are committed to working with the Commission and all parties to help establish and ensure uniformity in every area of business practice. We agree that standardizing NGDC operating rules, business practices, penalties and procedures will eventually remove barriers to active NGS participation, and are committed to reviewing a Commission strawman as well as participating in stakeholder groups as needed to help advance these efforts.

Finally, we understand the concerns raised by Vice Chairman Christy in his accompanying Statement issued with the Proposed Rules. We agree it is critical for all parties to prioritize their efforts in these matters to maximize benefits based on available resources. We also believe that it has been demonstrated in successful natural gas markets such as Ohio that market competition ultimately produces the "least cost procurement standard" for the industry, in addition to making available a growing range of value-added energy products and services to consumers. Savings is an important aspect of success – however, the ability for consumers to make independent energy choices based on their needs is equally as critical.

DETAILS NEEDED FOR A FULL ASSESSMENT

The Proposed Rulemaking seems to set forth some uniform definitions in §62.182 related to NGDC business practices which cover all the key ingredients for a full set of standards that encompass supplier coordination tariffs, standard business practices, and communication standards. Supplier terms such as capacity, balancing, imbalance, storage, and tolerance band are adequately defined and follow generally accepted industry application. §62.183 requires uniformity in customer choice system operations plans and seeks to include the key parties (i.e., Office of Consumer Advocate, Office of Small Business Advocate, and registered NGSs) in the distribution of the plan and access to standard agreements between the NGDC and NGS.

§62.184 outlines the establishment of an NGDC "nonbypassable reconcilable surcharge" that NGDCs may file along with their periodic §1307(f) gas rate case filings to recover "incurred costs of implementing and promoting natural gas competition."[4]

We realize that the development of a robust, competitive market takes real commitment on the part of the NGSs, Commission and NGDCs. As such, we recognize that those interested in a competitive market must make considerable investment in resources to ensure that the market develops properly to the benefit of the customer. In fact, we believe that the development of programs and systems which promote and bolster competition inure to the benefit of *all* customers – not just those who actually switch suppliers. By more fully understanding energy choice, consumers can make more informed decisions about their future energy purchases.

To that end, we agree with the Commission[5] that all reasonable and prudent costs incurred by NGDCs to support the development of effective competition in the retail market should be fully recovered through rate cases.

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[4] Proposed Rule, § 62.184 (a)
[5] Proposed Rule, § 62.226.NGDC costs of competition and related activities. (a); and SEARCH Report Action plan at p. 21.

Our concern is the need for a more specific guideline on what is considered reasonable and directly supportive of competition. These details are needed in order for us to make a full assessment. Similarly, §62.185 outlines a Commission approach to a supplier coordination tariff, business practices, and communication standards, and we feel that the creation of a specific strawman (perhaps for a specific utility on a pilot basis) will provide the best model to consider and advance the intention of the Proposed Rule.

NGS Parties believe that §62.185(3)(i-v) includes an important set of issues related to *imbalance trading, tolerance bands, cash out penalties, nominations, and capacity*. Although we generally agree with the approach outlined in the Proposed Rule, each of these areas requires more detail to fully assess their impact. For example, the proposed tolerance bands which span 90% to 110% of gas delivered v. gas nominated (presumably on a monthly basis) make sense, as do the cash out penalties applicable outside a similar set of tolerances. However, given the unique system characteristics and existing operating processes within each NGDC, we believe this area will need significant discussion to ensure uniformity and balance.

Likewise, we support the concept of applying North American Energy Standards Board ("NAESB") protocols to the nomination cycles as outlined in §62.185(3)(iv); however, feel that individual NGDCs will need to review this requirement and ensure specific application to their supply system.

With regard to §62.185(3)(v) and capacity, NGS Parties strongly advocate that these Proposed Rules be modified to direct NGDCs to release capacity and storage assets as an "equitable slice of the system" that follows the customer. In most instances, this assignment of capacity helps to encourage full transparency and equity throughout the market, and provides for the best way to ensure competitive neutrality. This approach will also reduce the burden on utilities for carrying non-productive assets, which can add to their operational expense.

If a given NGDC does <u>not</u> require an NGS to deliver its gas supplies on a weather-related load curve basis – instead requiring daily or monthly delivery on an equal basis throughout the year – then we believe this should be allowable under the Proposed Rules, so long as such programs are accompanied by market-based capacity that is sufficient to meet the NGS's delivery requirements. In other words, NGSs should not be penalized for meeting NGDC rules, which must be established and operated in a manner that ensures fair and equitable treatment whether customers are served as part of a utility or marketer sale.

The area of capacity is important and should be the subject to a specific set of collaborative discussions to ensure reliability, market transparency, and competitive fairness.

Finally, the area of communication standards and formats described in §62.185(3)(d) sets forth that the Commission "may" establish electronic data communications standards and "may" direct their implementation. Our concern here is simply that this initiative is so large and potentially complicated that it will need a separate and detailed proceeding at a later date. We appreciate the Commission addressing it here, but feel that considerable effort will be necessary to fully address this issue in accordance with the process that was undertaken in accordance with the Stakeholders Exploring Avenues for Removing Competition Hurdles ("SEARCH")[6].

PURCHASE OF RECEIVABLES REMAINS THE KEY ISSUE TO SUCCESSFUL COMPETITION

As NGS Parties' IGS, Gateway Energy and Agway Energy noted in a Supplemental Position Paper filed in December 2008,[7] we want to again emphasize the importance of purchase of receivables ("POR") by utilities as a critical vehicle in the development of competitive markets. Successful POR programs are now fully in place in New York, Ohio, Kentucky, Indiana, and Michigan. In each case, the utility treats the purchased receivable as its own for

[6] Stakeholders Exploring Avenues for Removing Competition Hurdles ("SEARCH"), *Report of the Stakeholders' Working Group, Investigation into the Natural Gas Supply Market*, Docket No. I-00040103F0002, dated September 2008.
[7] Supplemental Position Paper of Interstate Gas Supply, Inc., Gateway Energy Corporation, and Agway Energy Services, LLC, filed with the Commission on December 15, 2008.

collection and disconnection purposes. POR is especially important for supporting mass market consumers, and provides advantages to the utility and marketer alike. From a cost effective standpoint, POR programs help to leverage utility billing systems, reduce redundancy, and send a clear message to consumers about reliability of energy service that is supplied by competitive marketers and delivered by utilities.

In our experience, POR programs take a degree of complexity out of the customer's choice experience, and allow the customer to concentrate on the financial piece of the transaction instead. A properly administered POR program is transparent to the customer when contracting with a supplier for commodity. Further, since in most instances bad debt, collection and disconnection processes, account receivable management, call center functions and other related functions continue to be included in base rates, POR programs which are included in utility residential programs level the playing field for those customers that decide to select a competitive offer and achieve the same associated benefits as being a utility customer.

CONCLUSION

Agway, Gateway, and Vectren believe the Commission has a very important opportunity ahead to put in place a set of policies and consistent practices that will attract investment into the Commonwealth by well-capitalized energy marketers that are committed to the growth and development of markets. Focus on the retail natural gas marketplace by the Commission and consistent treatment by NGDCs is strongly needed to send a positive signal to the industry and consumers, and to foster an environment where transparent prices, simplified billing, efficient use of assets, and all energy resources are best positioned for the benefit of the customer. Paramount to this effort is the development of consistent business practices as have been outlined in this Proposed Rulemaking.

We recognize that a great deal of work remains and pledge to the Commission our support to help make that vision a reality.

December 1, 2009

Respectfully submitted on behalf of NGS Parties,

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