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INDEPENDENT REGULATORY
REVIEW COMMISSION

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December 1, 2009

VIA FEDERAL EXPRESS

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

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PA PUBLIC UTILITY COMMISSION
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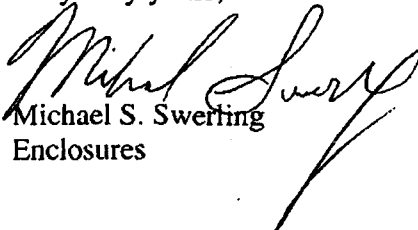
**Re: Proposed Rulemaking: Natural Gas Distribution
Company Business Practices – Docket No. L-2009-2069117**

**SEARCH Final Order and Action Plan for Increasing
Effective Competition in Pennsylvania's Retail Natural
Gas Supply Market – Docket No. I-00040103F0002**

Dear Secretary McNulty:

Enclosed are an original and fifteen (15) copies of the *Comments of PECO Energy Company to the Proposed Rulemaking Order* in the above-captioned matters. An additional copy of this letter is also enclosed to be date-stamped and returned to PECO Energy.

Very truly yours,


Michael S. Swerling
Enclosures

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

NATURAL GAS DISTRIBUTION COMPANY : Docket Nos. L-2009-2069117
BUSINESS PRACTICES; SEARCH FINAL : I-00040103F0002
ORDER AND ACTION PLAN FOR :
INCREASING EFFECTIVE COMPETITION :
IN PENNSYLVANIA'S RETAIL NATURAL :
GAS SUPPLY SERVICES MARKET :

**COMMENTS OF PECO ENERGY COMPANY TO PROPOSED RULEMAKING
REGARDING NATURAL GAS DISTRIBUTION COMPANY BUSINESS PRACTICES**

INTRODUCTION

Pursuant to the Public Utility Commission's ("PUC" or "Commission") May 1, 2009 Proposed Rulemaking Order ("Order")¹ requesting comments on its proposed regulations regarding natural gas distribution company ("NGDC") business practices, PECO Energy Company ("PECO") is pleased to provide its comments included herein. PECO looks forward to working with the Commission, Staff and interested stakeholders to increase the participation of natural gas suppliers ("NGSs") in the retail gas marketplace. PECO applauds the Commission's initiative and proposed regulations on this important subject.

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PECO COMMENTS TO PROPOSED RULEMAKING

A. Comments to Proposed §62.181 [General].

In proposed §62.181, the Commission has proposed inclusion of a General section to define the purposes of the proposed regulations. PECO requests the Commission consider

¹ *Natural Gas Distribution Company Business Practices; SEARCH Final Order and Action Plan for Increasing Effective Competition in Pennsylvania's Retail Natural Gas Supply Services Market*, Docket Nos. L-2009-2069117, I-00040103F0002 (order entered May 1, 2009).

renaming this proposed section as “Purpose” in order to have a format consistent with other Commission regulations and the lead-off “Purpose” subsections contained in each of subchapters A, B and C of Chapter 62 (Natural Gas Supply Customer Choice Act).

PECO also requests that the first sentence of proposed §62.181 be removed. While the Commission has stated correctly therein many of the potential benefits of standardizing business practices across the NGDC-base, PECO does not believe these are appropriately included in the proposed section. PECO notes for the Commission that the “Purpose” subsections of other subchapters in Chapter 62 do not include any potential benefits of those subchapters.

B. Comments to Proposed §62.182 [Definitions].

PECO requests the Commission consider the following changes to the definitions included in proposed §62.182:

Asset management:

PECO suggests removing the definition for “asset management” as this term is not used in the body of the proposed regulations.

Balancing:

The Commission proposed to define “balancing” as equalizing interstate pipeline and NGDC system gas deliveries/withdrawals and receipts. The Commission also indicates that balancing can be done on varying schedules and includes penalties and fees for excessive imbalances. PECO recommends that the definition refer to fees or penalties that *may* be assessed for imbalances and remove the “excessive imbalances” language. Imbalances need not be excessive before triggering late fees and penalties. The definition also should state that fees and penalties will be defined in NGDC Supplier Coordination Tariffs (“SCT”).

Capacity:

The Commission proposed to define “capacity” as the maximum amount of gas produced, transported, stored, distributed, or used in a period under specific conditions. PECO recommends that the definition of capacity be slightly expanded and clarified to include quantities of natural gas that are *injected and withdrawn and subject to contractually specified conditions*.

Cash Out:

The Commission proposed to define “cash out” as a measure to correct NGS imbalances that exceed prescribed tolerance levels. PECO recommends that this definition be revised to clarify that cash out is one type of remedial measure that *may* be used when an NGS causes an imbalance that exceeds prescribed tolerance levels, although other remedial measures may be available.

Imbalance:

The Commission proposed to define “imbalance” as a situation in which a NGS delivers or receives an amount of natural gas and then delivers or redelivers a larger or smaller quantity of gas to a third party. For additional clarification, PECO would ask the Commission to consider replacing the proposed definition with the following:

Imbalance - The difference between an amount of natural gas quantity nominated to be delivered and the quantity of natural gas actually delivered.

Supplier Coordination Tariff:

The Commission proposed to define “SCT” as a NGDC’s formal rules and regulations for providing NGS service to customers, including rate schedules and general terms and conditions for service. The proposed definition of SCT does not explain how SCTs cover the

business relationship between NGDCs and NGSs. Therefore, PECO would ask the Commission to consider using the following language:

SCT - Supplier coordination tariff - The formal rules, regulations and applicable rate schedules of a NGDC that sets forth the basic requirements for interactions and coordination between the NGDC and NGS necessary for maintaining the delivery of a sufficient volume of competitive natural gas supply.

Storage:

The Commission proposed to define “storage” as storing gas that has been transferred from its original location in underground reservoirs. As the Commission is aware, a definition for storage already exists in the Natural Gas Choice and Competition Act, which states:

Storage – Placing natural gas through the interstate pipeline system for delivery to the NGDC. (52 Pa. Code § 62.80).

PECO recommends that the Commission clarify whether the currently proposed definition should be consistent with, or different than, the definition that already exists in order to avoid confusion with 52 Pa. Code § 62.80.

Tolerance band:

The Commission proposed to define “tolerance band” as a range of acceptable values for measured differences between nominated gas amounts and amounts actually delivered during a specified time frame. For purposes of clarification, PECO would ask the Commission to consider defining tolerance band as:

The daily difference, expressed as a percentage, between the amount required by a NGDC to be delivered by a NGS to meet its aggregate customer demand and the actual quantity delivered to the NGDC by the NGS.

Uniform electric transactions:

PECO suggests removing the definition for “uniform electric transactions” as this term is not used in the body of the proposed regulations.

C. Comments to Proposed §62.183 [NGDC Customer Choice System Operations Plan].

Proposed §62.183 would direct NGDCs to file a customer choice system operations plan (“CCSOP”) for Commission review with copies sent to the Office of Consumer Advocate, the Office of Small Business Advocate and NGSs licensed in the NGDC’s service territory. Copies of the CCSOP also would be posted on the NGDC’s internet website and provided to other NGSs upon request. The CCSOP would include a copy of the NGDC’s SCT; business practices and standards; communication standards; and copies of standard agreements and forms of agreements used by NGSs.

PECO recommends that additional language be included in this section to provide guidance on when and how the CCSOP may be changed or revised after initially filed. As the Commission understands, much of the CCSOP’s contents, including without limitation, business practices and standards and standard forms of agreements, will change over time. Requiring these routine changes to be subject to the process for revising a tariff would be burdensome and inefficient. Accordingly, PECO asks the Commission to consider that NGDCs be permitted to make revisions to the CCSOP, other than to the SCT, after a reasonable period of advance notice has been given to the Commission and to those parties set forth in proposed §62.183(b), provided that any such changes are consistent with the NGDC’s SCT, the standard SCT and applicable Pennsylvania laws and regulations.

D. Comments to Proposed §62.184 [NGDC Cost Recovery].

Proposed §62.184 would authorize NGDCs to recover the reasonable costs, which are prudently incurred by them, in support of implementing and promoting natural gas competition through the use of a surcharge with an automatic adjustment mechanism.

PECO applauds the Commission for addressing in its proposed regulations cost recovery associated with promoting retail natural gas competition and would ask the Commission to consider offering some flexibility to NGDCs on how to accomplish full cost recovery. PECO understands that proposed §62.184 would require each NGDC to (i) identify amounts attributable to promoting retail competition currently included in its base rates (“Competition Costs”); (ii) remove those identified Competition Costs from its base rates by using a revenue neutral adjustment clause to create a “credit”; (iii) file a cost of service study and a proposed tariff rider in a Section 1307(f) purchased gas cost proceeding; and (iv) recover its Competition Costs through a reconcilable, nonbypassable base rate surcharge. Pursuant to proposed §62.184, the surcharge would be recovered on a per unit basis “without regard to the customer class of the end user.”

PECO requests that in addition to the process set forth in its proposed regulations, the Commission also consider the two following options for cost recovery: either (i) defer promotion of competition costs until the next NGDC base rate case and then request those costs be amortized over a number of years or (ii) separate these competition costs out during a NGDC base rate case for surcharge recovery because the cost of service study would normally be performed at that time. These options would alleviate the requirement that NGDCs perform an expensive, full cost of service study outside of a base rate case setting.

E. Comments to Proposed §62.185 [Supplier Coordination Tariff; business practices and standards].

1. Comments to Proposed §62.185(a) [General]

While PECO appreciates the Commission's intent to provide an overview of proposed §62.185, PECO believes this subsection should be removed. As the Commission is aware, no "General" section is required and the operative language within proposed §62.185 may be found in the succeeding subsections. While the first sentence of proposed §62.185(a) provides a standard ("the Commission...will direct NGDCs and NGSs to comply" (emphasis added)), that is slightly different than the standard required by the operative proposed §62.185(c) ("[t]he Commission...may direct their implementation by NGDCs and NGSs" (emphasis added)), PECO believes the Commission's intended standard is best served by reference in one section only. The second sentence of proposed §62.185(a), which refers to the Commission's consideration for adoption of NAESB standards and model agreements, is helpful to stakeholders in order to understand a potential resource for the Commission's establishment of best business practices and standards. Citing to NAESB standards and model agreements only, however, raises the question as to whether any other additional resources would be considered by the Commission. Moreover, PECO believes that a discussion of Commission resources, if any are to be included in the proposed section, would be more appropriately included in §62.185(c) ("*Business Practices and Standards*").

2. Comments to Proposed §62.185(b) [Supplier Coordination Tariff].

Proposed §62.185(b) addresses the establishment of a standardized supplier coordination tariff. Specifically, the Commission has proposed that it may establish and revise a "standard SCT" and will direct that NGDCs implement a SCT based on the standard SCT that conforms to

its customer choice system operations plan. This proposed language suggests that the Commission has discretion whether to adopt a standard SCT or not. Assuming that the Commission will adopt a standard SCT, it should be noted that each NGDC has unique operational differences. Requiring each NGDC to make operational changes that conform to a rigid, standard SCT may result in significant cost increases being passed on to ratepayers in an economic time when all ratepayers are looking to keep their bill payments low.

To appropriately allow for operational diversity and cost savings while furthering the Commission's goals, PECO believes that the regulation should set forth basic elements that each SCT must contain. PECO recommends that the regulation not set forth one rigid SCT that all NGDCs must follow. The collaborative stakeholder strawman process will develop recommended elements for Commission approval. PECO therefore proposes the following language for §62.185(b):

Supplier coordination tariff. The Commission will direct that an NGDC implement a SCT that complies with Commission orders, policies and regulations. Each standard, but not identical, SCT may conform to the specific formatting implemented by a particular NGDC, and shall contain basic elements determined and revised by the Commission through collaborative stakeholder processes.

3. 62.185(b)(3) [Current SCTs]

According to the Commission's proposed §62.185(b)(3), each NGDC's current supplier tariff or supplement shall remain in effect until Commission approval. PECO suggests that each NGDC be granted at least 180 days to file its initial tariff after the final approved regulations, which include a standard SCT form, become effective. PECO requests this 180 day period to ensure adequate time is given to NGDCs to develop a compliant SCT. Subsequent tariff revisions should be implemented at the discretion of the NGDC.

4. Comments to Proposed §62.185(c) [Business Practices and Standards].

Proposed §62.185(c) provides that the Commission may establish business practices and standards as necessary to implement the Act and would direct their implementation by NGDCs and NGSs. This proposed section also would require that an NGDC's implementation of business practices and standards be consistent with its customer choice implementation system and not (i) undermine existing negotiated settlements with NGSs, (ii) compromise the safety, efficiency, security and reliability of system operations; and (iii) be discriminatory. Finally, the proposed section provides certain standards to be implemented by NGDCs.

The proposed regulation does not define "Act", and PECO would suggest that it be defined in §62.182 as referring to the Natural Gas Supply Customer Choice Act. PECO supports the development of standards that do not impact, negatively, NGDC system operations and increase customer costs. However, the business practices should more readily allow for individual NGDC and NGS system operational differences. Developing a set of inflexible business practices may contradict the Commission's goal of promoting innovative competitive products.² PECO recommends that NGDCs be given flexibility to develop business practices that address the individual NGDC's operational differences.

² The Commission stated the following in its proposed rulemaking order, *Natural Gas Distribution Companies and the Promotion of Competition in the Retail Market*. Docket No. L-2009-2069114 (order entered Mar. 27, 2009):

By forcing NGSs to use the utility's billing system we forbid them to build other non-supply value added services into the billing program. This could have the effect of stifling innovative products such as demand response, efficiency or green products. Moreover, we are not convinced that more advanced supply products can be billed through existing NGDC billing systems. If that is so, it could stifle innovative supply products. (Order entered March 27, 2009).

Order at 6. The Commission desires the promotion and development of innovative competition products. Rigid business practices that require NGDCs to alter their systems and business operations into a singular form may hinder the development of innovative new competitive products.

5. 62.185(c)(3) [Standards to be Implemented]

This proposed section sets forth five complex business practice areas (imbalance trading, tolerance bands, cash out and penalties, nominations and capacity) for which the Commission wishes to develop standards across the NGDC market. PECO will address each area below in the order it is set forth in the proposed regulation. PECO initially would suggest that the proposed regulations distinguish between high volume users, where competition has been successful for years, and low volume users that are new to competition.

Imbalance trading:

The Commission proposes to set a standard whereby NGDCs would facilitate imbalance trading for NGSs. This would be accomplished by balancing NGS customer usage against NGS deliveries each month. NGDCs also would eliminate separate pooling for NGS interruptible customers.

PECO provides a 2% tolerance band for low volume users. Because NGSs are informed by PECO of exact amounts of natural gas to be delivered, there is certainty as to delivery requests and a wide tolerance band is not needed. This limited band is provided for NGSs so they may true up for changes in weather conditions and unexpected circumstances.

PECO also suggests that the issue of placing interruptible customers in the same pool as regular customers should be further discussed in the Commission strawman procedure, which will occur in conjunction with this docket.

Tolerance Bands:

The Commission proposes to set a tolerance band standard whereby if a NGS delivers less than 90% of the natural gas nominated amount or more than 110% of the nominated amount, penalties become enforceable against the NGS.

Allowing a flexible tolerance band creates an economic incentive for NGSs to deliver amounts of gas up to the tolerance band limit. It is reasonable to expect that NGSs will take full advantage of this flexibility to maximize economic gain. PECO believes that allowing such flexibility in situations where the NGS is directed to deliver specified amounts of gas is not the best public policy. PECO understands the Commission's goal of increasing competition through balancing certain factors to make NGSs and NGDCs more equal, however, a balancing is not achieved by granting more flexibility to NGSs. When more flexibility is provided, NGDC customer costs will likely increase. To attain a proper balancing, PECO recommends that when an NGDC instructs an NGS to deliver exact amounts, a restrictive tolerance band of 2% be used.

Cash out and penalties:

The Commission intends to implement a system whereby NGDCs will cash out imbalances inside of the 10% band at 100% of the gas daily average applicable index for the pool level. For imbalances outside of the 10% band, NGDCs will cash out using a multiplier of 110% for under-deliveries and 90% for over deliveries.

PECO supports using reasonable cash out and penalty methods to ensure proper natural gas delivery amounts. Public policy should dictate a proper balancing between delivery imbalances and penalties or cash outs. As noted above, requiring that cash outs and penalties occur within a 10% tolerance band may not achieve a proper balance. NGDC customer costs

may increase because NGSs have more tolerance band flexibility. NGDC customer costs may continue to increase if NGSs are granted more flexibility to avoid cash outs and penalties.

PECO recommends that in cases where NGSs must deliver exact amounts of natural gas, penalties and cash outs for imbalances apply within a 2% range and a 200% multiplier. The Commission also should clarify whether cash outs will be performed on a daily or monthly basis. PECO supports using daily cash out schedules.

Nominations:

The Commission proposes that NGDCs support all four NAESB nomination cycles, the timely cycle and at least one intraday cycle. The NAESB cycles contain timely and intraday cycles. Therefore, the timely and intra day cycle language should be removed.

As the Commission is aware, there are administrative costs involved with a requirement that NGDCs support all four NAESB nomination cycles. PECO therefore recommends that additional administrative costs be recoverable by each NGDC through a nonbypassable and reconcilable surcharge mechanism.

Capacity:

The Commission proposes that all NGDCs provide full access to pipeline and storage capacity and will support daily nominations and delivery requirements to reflect current pool consumption conditions. PECO requests that the Commission clarify what is intended by the phrase "full access". PECO does not believe that it is the Commission's intent to provide a NGS with more capacity than is required to supply its daily nominations and delivery requests.

Accordingly, the phrase “full access” should be clarified to limit it to the capacity needed for such nominations and daily requests.

6. Comments to Proposed §62.185(d) [Communication Standards and Formats].

Proposed §62.185(d) provides that the Commission may establish electronic data communication standards and formats and may direct their implementation by NGDCs and NGSs. The proposed section also provides that NGDCs will be responsible for testing and certifying NGSs on the approved communications standards. Finally, the proposed section states that the Commission, subject to notice and an opportunity to be heard, may direct an NGDC to install and upgrade its billing system, electronic bulletin board, software and other communication or data transmission equipment and facilities to implement established electronic data communications standards and formats.

While PECO understands that a working group will be convened to address specifically the establishment of electronic data communications and standards, and PECO applauds the Commission for doing so, we offer the following initial comments to proposed §62.185(d). First, as the Commission can appreciate, implementation of newly-established electronic data communication standards and formats may require NGDCs to expend significant personnel and financial resources. Accordingly, PECO requests that the Commission provide NGDCs with sufficient lead time before the required implementation of any new standards or formats. Second, PECO also requests that the Commission clarify that NGDCs may recover, on a current basis, the costs of any Commission required installation or upgrade to a billing system, electronic bulletin board, or other communication or data transmission equipment. This could perhaps be accomplished by referencing such costs in proposed §62.184. Finally, while PECO supports the

concept of NGDC responsibility for NGS testing and certification, we believe there should be included some limitations regarding the degree of testing/certification required based on specific facts and circumstances. By way of example, the Commission might clarify that only NGSs licensed in the Commonwealth of Pennsylvania are required to be tested/certified under this section.

CONCLUSION

PECO appreciates the opportunity to comment on the Order and looks forward to being an active participant in the Commission's strawman stakeholder proceeding. The Proposed Rulemaking Order is an important step in establishing business practices for natural gas distribution companies and PECO supports its recommendations. PECO respectfully requests that the Commission adopt its comments to the Order as proposed herein.

Respectfully submitted,

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ORDER AND ACTION PLAN FOR :
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GAS SUPPLY SERVICES MARKET :

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a true copy of Comments of PECO Energy Company to the Commission's proposed rulemaking order, *Natural Gas Distribution Company Business Practices; SEARCH Final Order and Action Plan for Increasing Effective Competition in Pennsylvania's Retail Natural Gas Supply Services Market*, Order entered May 1, 2009.

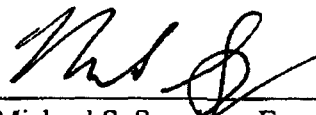
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Dated: December 1, 2009