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December 16, 2009

VIA E-FILE
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 3rd Floor
Harrisburg, PA 17120

Re: Proposed Rulemaking: Natural Gas Distribution Company Business Practices; 52 Pa. Code §§ 62. 181-62.185, Docket No. L-2009-2069117

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

Dear Secretary McNulty:

Enclosed are Retail Energy Supply Association Reply Comments in the above-referenced proceeding. Copies have been served on the parties to this proceeding as indicated in the attached Certificate of Service.

Very truly yours,

John F. Povilaitis

c. Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Proposed Rulemaking: Natural Gas Distribution Company Business Practices; 52 Pa. Code §§ 62.181-62.185	:	Docket No. L-2009-2069117
SEARCH Final Order and Action Plan for Increasing Effective Competition in Pennsylvania's Retail Natural Gas Supply Services Market	:	Docket No. I-00040103F0002

Reply Comments of the Retail Energy Supply Association to Initial Comments Regarding Proposed Rulemaking Order

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I. Introduction

The Retail Energy Supply Association ("RESA")[1] submits these reply comments in accordance with the Proposed Rulemaking Order ("Order") issued by the Pennsylvania Public Utility Commission ("Commission") on May 1, 2009 in the above-captioned docket. The Order proposes regulations that, among other things, seek to standardize national gas distribution company ("NGDC") business practices, operating rules, and supplier coordination tariffs.

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[1] RESA is a non-profit trade association comprised of a broad range of companies that are involved in wholesale generation of electricity and the competitive supply of natural gas to residential, commercial and industrial consumers. RESA and its members are actively involved in the development of retail and wholesale competition in natural gas and electricity markets in various states throughout the country, including Pennsylvania. RESA's members include ConEd Solutions; Direct Energy Services, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Gexa Energy; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; RRI Energy; Sempra Energy Solutions LLC. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

As discussed in more detail below, RESA does not believe that the regulations should be limited in application to residential and small business customers and does not believe that imbalance trading should be prohibited. And, while RESA favors uniform business practices/operating rules on an intra-class basis, RESA agrees that such practices/rules should be able to accommodate inter-class differences. RESA also believes that the benefits to competition from the regulations will outweigh any additional costs that may occur.

II. General Reply Comments

A. The Commission Should Not Restrict Application Of The Regulations To Residential And Small Business Customers.

Several of the NGDCs comment that the proposed regulations should make clear that they apply only to residential and small commercial customers.[2] According to the NGDCs, the Commercial and Industrial ("C & I") competitive market is more "mature" and therefore, it is not necessary for the proposed regulations to apply to these customer classes. RESA disagrees with the proposed restriction because it will result in the continued existence of impediments to competition in the C & I retail gas supply market, which contradicts the Commission's stated objective in the *SEARCH* Order to facilitate competition in all of Pennsylvania's retail natural gas supply markets.[3]

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[2] *See, e.g.*, NFG Comments, pp. 3-4

[3] Pursuant to Section 2204(g) of the Public Utility Code ("Code'), 66 Pa. C.S. § 2204(g), the Commission was required to determine whether "effective competition" existed within the natural gas market in Pennsylvania. By order entered on October 6, 2005, the Commission concluded that "effective competition" did not exist in Pennsylvania's natural gas market. *See Investigation into the Natural Gas Supply Market; Report to the General Assembly on Competition in Pennsylvania's Retail Gas Market*, Docket No. I-00040103. The Stakeholders Exploring Avenues for Removing Competition Hurdles proceeding or "*SEARCH*" was convened in response to this finding and gave rise to the *SEACH* Order that established the above-captioned rulemaking.

Although the C & I natural gas supply market may be more competitive than other customer classes, i.e., a greater percentage of C & I customers may be purchasing natural gas from a Natural Gas Supplier ("NGS") than customers in other classes, there are many business practices that are overly restrictive and unnecessarily costly, which impedes further development of competition in this sector. Thus, there is still a need to facilitate competition in the C & I market. Indeed, NGDC operational rules/business practices currently in place, such as extremely tight imbalance tolerance bands and unreasonable imbalance penalties, serve only as a revenue stream for the NGDCs or as a subsidization of the Purchased Gas Cost ("PGC") rate paid by sales customers. Consequently, competition in the C & I market could be greatly enhanced by relaxing imbalance tolerances and reducing imbalance penalties, for example. Otherwise, ignoring the C & I market and failing to revise the rules under which it operates will irreparably harm competition for these customers by leaving these impediments to competition in place.

Moreover, restricting the application of the proposed regulations to residential and small business customers does not reflect the inter-dependent nature of all market sectors. The businesses that comprise the C & I sector include apartment buildings, hospitals and nursing homes and big industry that feeds the economy of the state. These businesses employ the people who pay residential bills. What benefit will accrue from low residential rates, if those employees are out of work because their businesses could not enjoy the benefits of competition? It is crucial for the Commission to consider *all* market participants as these rules are constructed and implemented, to understand that all sectors are connected and not to ignore a vital sector of the market.

B. The Regulations Should Strive For Uniformity/Standardization Within A Customer Class, While Also Recognizing That Differences Between Types Of Customers May Require Different Practices/Rules.

In its initial comments, RESA supported the Commission's efforts in this rulemaking to standardize business practices and operating rules across all NGDC service territories. RESA maintains that uniformity/standardization is necessary and appropriate for business practices and operating rules within each customer rate class. Nevertheless, RESA acknowledges that, where appropriate, the regulations should accommodate differences between customer classes such as between firm (i.e., residential and small business) and interruptible[4] (i.e., C & I) customers. For example, as discussed below, RESA agrees that a more flexible tolerance band is necessary and appropriate for C & I customers, while a more restrictive tolerance is acceptable for residential and small business customers.

In its comments, the OCA cites to the tolerances on the Columbia Gas of Pennsylvania system as a reasonable benchmark for the regulations.[5] What the OCA fails to understand is that the 0% tolerance it cites is for firm, i.e., non-interruptible customers, only.[6] Suppliers serving these customers on any NGDC have a daily delivery requirement ("DDR," also called Daily Delivery Quantity "DDQ," or Daily Contract Quantity "DCQ"), under which the NGDC forecasts customer usage and informs the NGS how much gas to deliver each day. Absent extreme circumstances, the NGS is

[4] Under interruptible service, which is typically the service provided to C & I customers, customers can either withstand a gas service interruption or have the ability to switch to an alternate fuel during an interruption.
[5] OCA Comments, p. 13.
[6] In contrast, for the larger commercial customers, a 5 or 10% imbalance tolerance is permitted under Columbia's tariff, depending on the size of the customer. See Columbia Tariff Sheet 166, Elective Balancing Service, Option 1.

invariably able to deliver the DDR. Consequently, a low or no imbalance tolerance is acceptable.

It is important to note, however, that even the utilities cannot forecast usage with absolutely certainty. The NGDCs' tariffs contain cash out provisions that are applied to the extent that the amount of gas the NGS delivers differs from the amount of gas the customers consume. Thus, the NGDCs require flexibility to account for inevitable differences between forecasts of customer usage and actual customer usage.

The NGSs also cannot predict customer usage with absolutely certainty and thus, must have the same flexibility to accommodate weather fluctuations, plant outages, and other unforeseen circumstances – just as the utility requires. Consequently, for the non-DDR customers for which they must forecast usage, NGSs must have more liberal tolerance bands. As stated in its initial comments, RESA supports the proposed 10% tolerance level because it strikes the proper balance between encouraging responsible NGS behavior with respect to nominations and deliveries while, at the same time, ensuring sufficient flexibility to account for variables outside a NGS' control that affect balances.

Contrary to some of the NGDC comments, a 10% tolerance band will not result in NGSs "gaming" NGDC systems.[7] According to NFG, for example, a 10% tolerance will allow an NGS to take advantage of procurement opportunities by either increasing volumes up to the tolerance when prices are low or decreasing volumes down to the tolerance when prices are high. But, 10% is the minimum reasonable tolerance, based on the fallibility of weather forecasts, customer efforts to conserve energy, changes in production schedules, plant outages, and the myriad other factors that effect a customer's

[7] *See, e.g.*, NFG Comments, pp. 11-12.

daily usage. In short, "gaming" is nearly impossible because to successfully "game" the system, an NGS would have to predict usage with an accuracy that is not achievable. As a result, there has not been a scintilla of evidence provided that NGSs are "gaming," including in the Columbia service territory where the tolerance level for interruptible customers is 5 or 10%. This gaming accusation is precisely the kind of baseless and unproven accusation that has been leveled throughout the *SEARCH* proceeding in an effort to discredit NGS efforts to avoid inappropriate penalties for fulfilling their agreements customers. These accusations have yet to be grounded in proof or fact and therefore, should be given no weight whatsoever.

C. Imbalance Trading Should Not Be Prohibited.

Several commenting parties argue that imbalance trading should be prohibited.[8] RESA notes that it has proposed a "no harm, no foul" approach to balancing,[9] which could render imbalance trading unnecessary or, in the least, necessary only on rare occasions. Nevertheless, there is simply no sound basis to prohibit imbalance trading given that such trading has no practical impact on the NGDC system. Trading imbalances, which RESA recommends should be done on a monthly basis only, simply allows a NGS to offset a positive imbalance against a negative imbalance incurred by another NGS. There is no net impact on the system, and the trade is simply a paper transaction with minimal or no costs involved. Consequently, there is no practical reason to prohibit trading.

[8] *See. e.g.,* Columbia Comments, p. 16.

[9] RESA Comments, pp. 8-9. In short, RESA proposes a 2-step process to manage NGDC system imbalances. The first step would allow for a system reconciliation of imbalances, while the second step would allow the trading of any remaining offsetting imbalances between suppliers after a system reconciliation occurs. A system reconciliation of imbalances equates to a "no harm, no foul" approach to monthly balancing, whereby a NGS would not be penalized for an imbalance that is in the opposite direction of the overall system position.

In contrast, the harm of prohibiting imbalance trading would be substantial, as NGSs would be required to pay additional fees and penalties for imbalances that cause no net harm to the system but would serve to subsidize the PGC rate. Simply stated, without trading, the cost of doing business as a NGS will increase unnecessarily, which will decrease the competitiveness of the Commonwealth's gas market for no cogent reason. The Commission should ensure a level playing field that removes unfair and unreasonable subsidization of the PGC rate by transportation customers. Only then will the retail gas market in Pennsylvania be truly competitive.

D. The Regulations Will Not Unreasonably Increase Costs.

Almost all of the comments state that the Commission's proposed regulations will increase customer costs.[10] However, no commenting party has provided any specificity in terms of the costs that will increase and by what amount. Indeed, notwithstanding the repeated assertion of this claim, there is a glaring lack of proof that costs will increase, and RESA submits that they will not.

1. Removal of unfair penalties and subsidies is not an increase in costs.

The OCA in particular seems to equate removal of penalties and fees assessed against the NGSs with an increase in costs. But, this is just not the case. Rather, the removal of such unreasonable fees and charges would simply eliminate an unfair subsidy provided by transportation customers to PGC customers. A reduction in these fees and charges would simply level the playing field by resulting in a PGC rate that reflects the true, non-subsidized cost of purchasing gas from the NGDCs.

[10] *See, e.g.*, OCA Comments, pp. 4-6.

2. *"Cheapest" price does not mean best price or highest value.*

In addition, the very limited cost analysis of the OCA and the other commenting parties fails to recognize that NGDCs do not necessarily purchase the cheapest possible gas to serve their customers, and even if they did, cheapest price does not equate to best value.

The OCA seems to believe that the proposed regulations would somehow be contrary to "least cost procurement" because they would result in NGS service being more expensive than NGDC sales. But, the "least cost procurement" provisions of the Public Utility Code are applicable only to NGDCs, not NGSs.[11] In any event, it seems that the OCA would have the Commission deny the benefits of competition to non-residential customers simply because of an assumption that NGSs could not provide the "cheapest" gas to their customers.

NGSs generally strive to offer unique products and services to manage customers' energy needs and to do so at a competitive price. But, whether the commodity itself is the cheapest possible option is an overly narrow view that should not be the basis for establishing regulatory policy. Competition brings value to the market beyond the "cheapest price." Suppliers benefit customers by creating innovative products to serve customer needs and manage their energy and business objectives. Whether the price for these products and services is reasonable is something the market determines, as is wont to happen in a competitive environment. Consequently, RESA urges the Commission not to focus solely on absolute price, but rather, to consider the above-described benefits and value competitive suppliers bring to customers when designing the final regulations.

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[11] 66 Pa. C.S. § 1318.

3. A higher imbalance tolerance will not necessarily require NGDCs to purchase additional capacity.

Contrary to the representations of several commenting parties, a 10% tolerance will not necessarily increase NGDC costs by requiring them to acquire additional capacity. NGDCs release capacity to NGSs to serve DDR customers (i.e. firm/residential and small business customers). And, as noted above, a low or no tolerance is acceptable for these customers. Consequently, NGDCs will not need to acquire additional capacity for these customers.

For non-DDR (i.e., interruptible, C & I customers), NGSs must acquire their own capacity. The commenting parties raising this capacity concern presume that given a higher imbalance tolerance, NGSs will fail to deliver on their own capacity, thus, requiring the NGDCs to purchase additional capacity to backstop customer needs. For this assumption to be correct, however, every NGS would have to violate the tolerance on a peak day, which is an unrealistic scenario and gross over-estimation. Indeed, no evidence has been presented that such an extreme failure to abide by tolerances has ever occurred. Thus, RESA cautions the Commission not to be swayed by the unrealistic, doomsday scenarios that the commenting parties present in an effort to avoid being required to permit NGSs additional flexibility to operate on their systems.

E. The Stakeholder Process To Establish A Uniform Supplier Coordination Tariff Should Begin Immediately, And RESA Does Not Support Addressing NGDC Business Practices On A Rate Case-By-Rate Case Basis.

Several parties in their comments address the status of the proposed stakeholder process to establish a uniform Supplier Coordination Tariff ("SCT") with best business practices for use in natural gas retail market and to establish a plan for the implementation of electronic data communications standards. RESA requests that the Commission initiate the collaborative and continue it during the pendency of this rulemaking. This approach is entirely consistent with the Commission's Order issued in April of this year, which specified that the stakeholder process is to "run concurrently with the rulemaking." Thus, the time has come to begin the stakeholder process, as nearly 8 months has passed since the issuance of the Order.

Neither should the Commission be swayed by the UGI companies' argument that business practices/operating rules issues are better addressed in individual NGDC base rate cases. RESA finds this argument ironic when considering that in individual cases before the Commission, UGI repeatedly has argued that these supplier issues should be deferred to and addressed as part of *SEARCH.*[12]

III. Conclusion

The proposed regulations should be adopted with the modifications proposed by RESA in its comments. These modifications include defining the relevant terms such as an "imbalance," not only within the context of NGS nominations and deliveries, but also, within the context of actual customer usage. In addition, RESA has proposed a 2-step balancing process that will lessen the need for imbalance trading and consequently, reduce the administrative burdens associated with such trading. In addition, as set forth in these reply comments, RESA agrees that there may be occasions where different

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[12] *See, e.g., In re: Application of UGI Utilities, Inc. and PPL Gas Utilities Corporation for a Certificate or Certificates of Public Convenience evidencing the Pennsylvania Public Utility Commission's approval of the transfer by sale of 100% of the issued and outstanding Stock of PPL Gas Utilities Corporation, a public utility providing natural gas service in Pennsylvania, to UGI Utilities, Inc., et al.*, Docket Nos. A-2008-2034045, et al.

practices/rules should apply to different types of customers and to that end, would accept a more narrow tolerance band for firm, i.e., residential and small business customers.

The Commission's proposed regulations, combined with RESA's suggested revisions discussed in both comments and reply comments, are necessary and appropriate to facilitate effective retail competition in Pennsylvania's natural gas supply market and should be adopted.

Dated: December 16, 2009

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