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INDEPENDENT REGULATORY REVIEW COMMISSION

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

January 15, 2010

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

Re: Regulation #57-268 (IRRC #2798)
Pennsylvania Public Utility Commission
Natural Gas Distribution Company; Business Practices

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. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

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

Comments of the Independent Regulatory Review Commission



Pennsylvania Public Utility Commission Regulation #57-268 (IRRC #2798)

Natural Gas Distribution Company; Business Practices

January 15, 2010

We submit for your consideration the following comments on the proposed rulemaking published in the October 17, 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. – Fiscal impact; Reasonableness; Implementation procedure; Feasibility; Need.

Preamble and Regulatory Analysis Form (RAF)

The Preamble of this proposed regulation refers to the PUC report dated September 2008 and titled “Stakeholders Exploring Avenues for Removing Competition Hurdles” (SEARCH) (PUC Docket # I-00040103F0002). Page 11 of the SEARCH report includes this statement:

Differences among NGDC [natural gas distribution company] systems in regard to their organization and operation have been identified as a barrier to supplier entry and full participation in Pennsylvania’s retail natural gas market.

The Preamble includes similar language indicating that the “lack of uniformity in NGDC practices, operating rules and supplier tariffs was cited as a **possible** market barrier to supplier entry and participation.” (Emphasis added.) However, the Preamble and RAF submitted by the PUC with this proposed regulation do not explain, justify or quantify the impact of this “barrier” to suppliers. There are three concerns with this lack of information.

First, without a thorough explanation of this barrier and its impact, it is difficult to ascertain whether the provisions in this proposed regulation will effectively address the problem or provide a solution. Without a detailed description of the problem and its impact, how can the PUC identify effective

methods for reducing or eliminating the barrier? Furthermore, how can the public or the Independent Regulatory Review Commission (IRRC) determine whether an implementation procedure is reasonable or feasible if the problem and solution are not clearly defined?

Second, commentators expressed concerns with the potential costs of various components of this proposed regulation for NGDCs and their ratepayers. These concerns will be further discussed below. The potential costs of this regulation are a significant concern because the PUC has not quantified the fiscal impact of the possible barrier that this regulation is intended to address. Without this information, we cannot determine the potential benefit if this regulation could reduce or eliminate the barrier. It is also difficult to determine whether any such benefits outweigh the costs in time and effort imposed on NGDCs and their ratepayers by this regulation. A related question is who will pay for the costs of this proposed regulation? Several commentators have also expressed concern over this question.

Finally, without a description and quantification of the impact of this market barrier, the question arises as to the need for this proposed regulation.

In the final-form regulation submittal, the PUC must explain and quantify the impact of any barrier to competition that this regulation is intended to remove or reduce. It must also describe how each provision in the regulation will effectively reduce or eliminate any barrier, and who will pay for the costs of the regulation. We will review the PUC's response as part of our determination of whether the final-form regulation is in the public interest.

Stakeholder process

The Preamble refers to a stakeholder process that will run *concurrently* with the rulemaking and will provide an additional avenue for public input. However, the Preamble also states that the PUC intends to complete the stakeholder process "no later than August 1, 2009." This proposed regulation was published in the *Pennsylvania Bulletin* in October 2009, and it is our understanding that the stakeholder process has not yet been initiated. Given the numerous concerns expressed by commentators with this regulation, the PUC needs to initiate an extensive stakeholder process that includes meetings and opportunities for the review of and comments on draft revisions. It would be prudent for the PUC to complete this process before it moves to submit a final-form version of this regulation.

Applicable markets and consumers

The question has been posed by commentators from all sectors of the natural gas market as to what or to whom this regulation would apply. One example of this concern was noted by Philadelphia Gas Works (PGW) in its comments on Sections 62.185(a) and (c). According to PGW, Section 62.185(a) applies to aspects of the retail natural gas market, while Subsection 62.185(c)(3) includes

provisions that relate to wholesale customer supply. The PUC needs to clearly explain how the whole regulation will apply to all parties and sectors of the natural gas market and how each provision applies directly to NGDCs, natural gas suppliers (NGSs) and consumers. The PUC should specifically identify the sectors and parties that will need to comply with each provision in the final-form regulation.

Consistency and overlap between two rulemakings

According to the Preamble, the language in Section 62.184 is similar to that of language found in another PUC proposed rulemaking which appeared in the July 11, 2009 *Pennsylvania Bulletin*. See § 62.226 of proposed PUC Regulation #57-269 (IRRC #2772) (PUC Docket #L-2008-2069114). This is not the only similarity. In addition, Section 62.224(a)(8) of the earlier proposed regulation includes provisions concerning supplier coordination tariffs (SCTs). These tariffs are also addressed in this current proposed regulation in Section 62.185(b).

Promulgating two separate regulations with similar provisions and intent might lead to possible confusion and conflict between the two. The PUC should either explain the need for the two separate rulemakings, or give strong consideration to combining the two into one rulemaking.

2. Section 62.181. General. – Need; Clarity.

There are three concerns with this section.

First, the section is titled “General,” which is not a standard title for a regulatory section. We recommend the title be changed to “Scope” or “Purpose.”

Second, several commentators are concerned with the first sentence, which reads:

The use of a common set of business practices, including standard supplier tariffs, facilitates the participation of NGSs in the retail market, reduces the potential for mistakes or misunderstandings between NGSs and NGDCs, and increases the efficiency in industry operations.

Commentators suggest that this sentence is a statement of opinion and improper for a regulation. We agree and recommend it should be deleted from the final-form regulation.

Finally, this section is redundant since it describes the rest of the proposed regulation and does not provide any unique information or directive. The *Pennsylvania Code & Bulletin Style Manual* states that this type of section should be used “only when needed to limit the applicability of the chapter.” See § 2.6., “Scope section,” *Pennsylvania Code & Bulletin Style Manual*, Fourth

Edition, 2003. The PUC should either delete this section in its entirety, or clarify the language so that the section specifies and limits the applicability of the proposed regulation.

3. Section 62.182. Definitions. – Need; Clarity.

It appears that the provisions contained in many of the definitions are vague or conceptual in nature. One example is provided by the comments of Columbia Gas of Pennsylvania, Inc. (Columbia), on the term “cash out” which does not include any financial reference. Several commentators offered suggestions for improving the descriptive quality of the definitions. The PUC should examine these comments, along with input from the stakeholder process, to clarify the definitions.

Several terms also are defined, but are not used in the regulation, including: “asset management;” “city gate;” and “uniform electronic transactions.” The PUC should either delete these terms from the final-form regulation or explain the need for their inclusion in this section.

Asset management

If the inclusion of a definition for this term is necessary, National Fuel Gas Distribution Corporation (National Fuel) notes that there already exists a definition for this term at the federal level. The definition should be consistent with federal provisions, and include the appropriate cross-reference.

Business practices

This definition refers to “business operations,” but it does not explain what type of operation is relevant or is included under this term. The final-form regulation should clarify this issue and provide examples.

4. Section 62.183. NGDC customer choice system operations plan. – Implementation procedures; Clarity.

This section uses the term “customer choice system operations plan,” but the term has not been defined by statute or regulation. The final-form regulation should include a definition for this term.

In Subsection (a), NGDCs are instructed to submit a customer choice system operations plan for PUC “review to comply with this subchapter.” It is not clear what process will be used to review the submittal. Will the PUC approve the plan? If so, what is the process for notifying the NGDCs of the results of the review and will there be an opportunity for a response by an NGDC or an appeal? How long will the review process take? Subsection (b) requires NGDCs to serve copies of the plan on the Office of Consumer Advocate (OCA) and other parties. What will be the process for these parties to file comments?

Subsection (c)(3) refers to “communication standards,” but unlike the term “business standards” that is used in Subsection (c)(2), this term is not defined in Section 62.182. The final-form regulation should include a definition for this term.

5. Section 62.184. NGDC cost recovery. – Fiscal impact; Need; Implementation procedures; Clarity.

This section explains the process for NGDCs to recover the costs of implementing and promoting natural gas competition. We have five concerns.

First, Section 1307(f) of the Public Utility Code (Code) already provides a detailed process for cost recovery. See 66 Pa.C.S.A. § 1307(f). While this section requires the PUC to promulgate regulations establishing the “time and manner of filing” tariffs reflecting costs, the language in this section of the regulation does not provide a clear picture of what the timing and manner are. Furthermore, Section 1307(h) of the Code provides a definition for “natural gas costs” which it appears does not include costs incurred from competition. Therefore, based upon the language of the Code and the vague language in the proposed regulation, it is unclear how these costs can be recovered as part of a 1307(f) filing, as Subsection (a) of the regulation intends. Therefore, this section should be revised to provide more detail about the cost recovery process and how it is aligned with the Code.

Second, the OCA questions whether it is appropriate to recover these costs from customers. As part of its revisions to this section, the final-form regulation should explain how the cost recovery process is beneficial to the regulated community, suppliers and consumers, and who should bear the costs.

Third, Subsection (a) uses the term “nonbypassable reconcilable surcharge,” but does not define it. The final-form regulation should include a definition for this term. This definition should specify what type of costs can be included in the surcharge.

Fourth, Subsection (c) requires surcharge recovery “on a per unit basis on each unit of commodity....” How did the PUC decide to recover these costs strictly on a unit basis? The Preamble to the final-form regulation should clarify this issue.

Finally, in Subsections (e) and (f), what is the difference between a “revenue neutral adjustment clause” and a “revenue neutral adjustment clause rider?” The final-form regulation should clarify this issue.

6. Section 62.185. Supplier coordination tariff, business practices and standards. – Fiscal impact; Reasonableness; Need; Implementation procedures; Clarity.

Subsection (a) General.

The first sentence of this subsection reads:

The Commission [PUC] may adopt best business practices and standards that will facilitate supplier participation in the retail natural gas market and will direct NGDCs and NGSs to comply with the practices and standards.

This is very similar to the first sentence of Subsection (c) which reads:

The Commission [PUC] may establish best business practices and standards as necessary to implement the provisions of 66 Pa.C.S. Chapter 22 (relating to natural gas competition), and may direct their implementation by NGDCs and NGSs.

Neither sentence explains how uniform or best practices and standards will be determined. When and how will this “adoption” or “establishment” take place? What sort of process will be used? How will the public, NGSs and NGDCs be notified? Will there be a chance for public input? Will there be an opportunity for legislative and IRRC review? Will new requirements be phased in over a certain period of time or will they occur all at once? These are the types of provisions that should be addressed and developed via a stakeholder process with opportunities for review and comment on drafts, and included in the regulation. Given that the PUC already has the authority to adopt practices and standards, what is the need for the language contained in these subsections? Similar concerns apply to Subsection (c).

Subsection (b) Supplier coordination tariff.

Subsection (b)(2) requires an NGDC to file an SCT with the PUC, but if the NGDC has an existing one, then they must file a tariff supplement. What is the difference between an SCT and a tariff supplement? If the purpose of this regulation and the concurrent stakeholder process is to provide consistency in SCTs, then why are NGDCs permitted to file tariff supplements? The final-form regulation should explain the need for tariff supplements.

Subsection (c) Business practices and standards.

The first sentence of this subsection is very similar to the first sentence of Subsection (a). Therefore it is redundant and raises the same questions. It is unclear how this process to establish or adopt “best business practices” will be implemented.

Subsection (c)(3)(ii) states that a span of 90% to 110% of the volume of gas nominated is an appropriate tolerance band. However, several commentators

question the need for this span, and also whether there should be some flexibility with reaching the exact volumes. How did the PUC determine this was an appropriate span and has the PUC considered permitting span flexibility? In addition, what costs would be associated with this span? The final-form regulation should explain the fiscal impact associated with the implementation of tolerance bands and the justification for the specific span size.

Subsection (c)(3)(iv) refers to nomination cycles. However, Columbia, PECO Energy Company, and National Fuel each question the total number of actual nomination cycles. The regulation includes four North American Energy Standards Board (NAESB) nomination cycles, the timely cycle and at least one intraday cycle. However, these commentators indicate that the four NAESB cycles *include* the timely and intraday cycles. The final-form regulation should clarify the number of and connection between different nomination cycles.

Subsection (d) Communication standards and formats.

Subsection (d)(2) states that NGDCs may be required to install electronic bulletin boards, which are defined in Section 62.181 as a “computer system.” When would the PUC require such installations? It is our understanding that the term “electronic bulletin board” may be outdated and that most companies already have and use web-based systems. In these situations, what is the intent of this provision and what will the fiscal impact be?

Subsection (d)(3) requires communication standards and formats to be revised “in accordance with Commission [PUC] orders, policies and regulations.” To which orders, policies or regulations is this provision referring? When should these revisions occur? Who determines that these revisions must take place or which orders or regulations will apply? Finally, what will be the costs associated with these revisions? In their comments, UGI Distribution Companies refers to the “direct and indirect costs that can result from requiring changes in customer information systems.” The PUC should identify the actual costs and the fiscal impact of this provision. The final-form regulation should clarify these issues. Similar concerns apply to Subsection (b)(2).

Facsimile Cover Sheet



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Date: January 15, 2010
Pages: 9

INDEPENDENT REGULATORY
REVIEW COMMISSION
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Comments: We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Public Utility Commission's regulation #57-268 (IRRC #2798). 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: Keane Maher **Date:** 1/15/2010