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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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ESTABLISHING A UNIFORM :  
DEFINITION AND METRICS FOR : Docket No. L-2012-2294746  
UNACCOUNTED-FOR-GAS :

**REPLY COMMENTS OF  
THE OFFICE OF SMALL BUSINESS ADVOCATE  
ON PROPOSED RULEMAKING ORDER**

**I. INTRODUCTION**

In February, 2012, the Bureau of Investigation and Enforcement and Bureau of Audits of the Pennsylvania Public Utility Commission (“Commission”) internally issued a Joint Report regarding unaccounted-for-gas (“UFG”) in the Commonwealth. The Joint Report recommended that the Commission establish a uniform definition of UFG to eliminate any reporting inconsistencies that may exist, as well as establish specific metrics to facilitate a transition to an acceptable level of UFG. The Joint Report also suggested that the Commission consider creating a cap for UFG cost recovery by natural gas distribution companies (“NGDCs”).

The Commission adopted these recommendations and in accordance with Section 501 of the Public Utility Code, 66 Pa. C.S. §501(b), formally commenced its rulemaking process by issuing a Proposed Rulemaking Order on June 7, 2012 (“Order”). The Order directed comments and reply comments to be filed within 30 days and 45 days, respectively, of its publication in the *Pennsylvania Bulletin*. On October 20, 2012, the Order was published accordingly.

On November 19, 2012, the Office of Small Business Advocate (“OSBA”) submitted comments pursuant to the Order. Comments were also submitted by the Pennsylvania Office of Consumer Advocate (“OCA”), the Industrial Energy Consumers of Pennsylvania (“IECPA”), the Energy Association of Pennsylvania (“EA”), Equitable Gas Company, LLC (“Equitable”), Peoples Natural Gas Company LLC and Peoples TWP LLC (jointly, “Peoples/TWP”), Pike County Light & Power (“PCL&P”), and Dominion Retail (“Dominion”). Pursuant to the Order, the OSBA submits these reply comments, addressing certain arguments raised by EA, Equitable, Peoples/TWP and PCL&P.

## **II. REPLY COMMENTS**

1. EA, Equitable, and Peoples/TWP argue that there is no reason to impose maximum UFG standards as proposed by the Commission at §59.111(c)(1), and they advocate continuation of the existing year-by-year, NGDC by NGDC evaluation in Section 1307(f) proceedings. Neither entity offers a specific explanation as to why a case-by-case evaluation is necessary or appropriate. The rationale offered by these parties appears to be that UFG rates result from a wide variety of factors, and that these factors vary from NGDC to NGDC. However, none of these parties offers any evidence demonstrating what specific factors cause variability in UFG rates from NGDC to NGDC, nor do they offer any evidence quantifying such variability. More importantly, none of these parties offers any evidence demonstrating that poor UFG performance by any particular NGDC is caused by factors beyond the control of that NGDC.

In response to these vague assertions, the OSBA offers two observations. First, as the Joint Report demonstrates, much of the variability in UFG rates among the NGDCs is caused by different definitions for the UFG rate, and by the inclusion of different types of

utility assets in the calculation (gathering, storage, transmission, distribution). By standardizing the definition for UFG, and by limiting the proposed standard to *distribution* UFG, the OSBA submits that much of the uncontrollable variability among NGDCs will be eliminated. Absent any specific evidence of other uncontrollable factors affecting *distribution* UFG rates, the OSBA recommends that these parties' vague and unquantified assertions not be given any weight.

Second, as EA acknowledges, §59.111(c)(3) of the proposed regulations does, in fact, provide an opportunity for the Commission to allow a NGDC to recover UFG costs in excess of the standards. Thus, a NGDC will have the opportunity to demonstrate that its poor UFG performance is, in fact, due to factors specific to that utility *and* beyond its control. The key difference between the Commission's proposed approach and the current approach, however, is that the current approach implicitly requires any party who contests a NGDC's high UFG rate in a Section 1307(f) to demonstrate that the high UFG rate was due to imprudence. Asymmetries in information availability within a typical Section 1307(f) proceeding make such a demonstration by ratepayer advocates all but impossible. If a ratepayer advocate does raise such an objection, NGDCs will typically make the same vague arguments that EA advances in its comments in this proceeding, and assert that they are taking all reasonable steps to control UFG. Under the Commission's proposal, however, NGDCs will be required to identify and quantify the specific uncontrollable factors which result in their poor performance. In effect, the burden of proving that poor UFG rate performance is or is not unreasonable or imprudent will shift from ratepayers to NGDCs. Nevertheless, as long as NGDCs can provide a

specific, quantitative explanation for any substandard performance, they should not be penalized.

2. EA argues that, if the Commission does establish a specific numerical standard for distribution UFG rates, an NGDC whose UFG rate experiences an uptick in a particular year but still comes in below the standard should not be required to justify the increase. The OSBA does not disagree with this proposal, as long as it is limited to relatively minor and temporary increases in the UFG rates. Conversely, however, NGDCs should be required to justify any material or sustained increases in their UFG rates, even if they already meet the standard. The OSBA notes that it is important that the Commission not establish a policy that creates even the appearance of a disincentive for NGDCs to continuously improve their UFG rates.

3. Equitable argues that the Commission's rulemaking should be limited to distribution UFG only. Equitable offers no argument in favor of this position. The OSBA respectfully disagrees with this recommendation, in part. The proposed rulemaking would require NGDCs to calculate UFG rates by function, namely gathering, storage, transmission and distribution. The OCA recommends that the UFG calculation be combined for NGDC transmission and distribution, and the OSBA has no disagreement with that proposal. In its initial comments, OSBA argued that UFG for storage systems is difficult to evaluate, because gas losses are not simply equal to metered injections minus metered withdrawals. Nevertheless, OSBA concludes that there is merit in the Commission's proposal to evaluate UFG in NGDC gathering systems.

While it would be difficult to establish a standard for gathering system UFG for all NGDCs, and the Commission wisely does not make such a proposal at this time, the OSBA submits that there is merit in the requirement that NGDCs submit UFG rates for their gathering systems on an annual basis. In that way, the Commission and the parties to the annual Section 1307(i) proceedings can evaluate whether a particular utility is making progress or losing ground with respect to controlling its gathering system UFG.

4. PCL&P argues that the Commission should establish a separate standard for small NGDCs, such that the impact of major events would be *excluded* from the calculation. The OSBA respectfully disagrees. Major events beyond the control of smaller NGDCs can and should be protected under §59.111(c)(3). That is, if a small NGDC experiences an unusual event, it should provide evidence to that effect in its annual proceeding, quantifying the impact of the event and demonstrating that the event was beyond the reasonable control of the NGDC. Nevertheless, over the longer term, smaller NGDCs should have UFG rates that meet the standard. A blanket exemption as proposed by PCL&P would essentially allow smaller NGDCs to bypass the standard. By way of an alternative, OSBA notes that it is not opposed to allowing smaller NGDCs to use a longer-term average UFG rate in cases when they experience significant events, and can demonstrate that those events are, in fact, beyond their control.

5. PCL&P argues that an incentive sharing mechanism be established which would allow NGDCs to benefit from “reducing levels of UFG,” and cites New York as an example of where such a mechanism is in place. As a general matter, the OSBA is not

opposed to incentive sharing mechanisms for UFG, in that they can arguably provide some balance between penalties for poor performance and rewards for superior performance. However, such a mechanism must be developed carefully.

First, it would not be appropriate to allow NGDCs to share in any gains related to merely beating the Commission's proposed standards. As the Commission explains in the Order at some length, the proposed standards should be relatively easy for most NGDCs to achieve with no further improvements.<sup>1</sup> Thus, a more rigorous standard would be necessary for a balanced incentive mechanism, based more on average to above-average Pennsylvania NGDC performance. By way of comparison, the OSBA notes that the New York case cited by PCL&P established a standard UFG rate against which performance was measured of approximately 1.8 percent, well below the Commission's proposed ultimate standard for Pennsylvania of 3.0 percent.<sup>2</sup>

Second, it would be inappropriate to automatically reward NGDCs who have already achieved superior performance. Such a mechanism does not create any incentives, but merely rewards an NGDC for past performance. A sharing mechanism should therefore also require an NGDC to improve relative to its own past performance.

Finally, the OSBA notes that PCL&P does not offer a specific proposal. Thus, while this issue may merit future attention, it would be premature to implement an incentive sharing mechanism at this time. The OSBA therefore recommends that this idea be deferred for future study.

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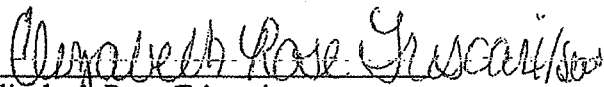
<sup>1</sup> Order at pages 12-13.

<sup>2</sup> New York State Public Service Commission, "Order Adopting Joint Proposal and Implementing a Three-Year Rate Plan, Case 08-G-1398, October 16, 2009, Joint Proposal pages 16-17 and Appendix I.

**III. CONCLUSION**

In view of the foregoing, the OSBA respectfully requests that the Commission enter a Final Rulemaking Order consistent with the OSBA's November 19, 2012 comments and its reply comments above.

Respectfully submitted,



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Dated: December 4, 2012



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OFFICE OF SMALL BUSINESS ADVOCATE

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**E-FILED**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

**Re: Establishing a Uniform Definition and Metrics for Unaccounted-for-Gas  
Docket No. L-2012-2294746**

Dear Secretary Chiavetta:

I am delivering for filing the original of the Reply Comments, on behalf of the Office of Small Business Advocate, on the Proposed Rulemaking.

If you have any questions, please contact me.

Sincerely,

Elizabeth Rose Triscari  
Assistant Small Business Advocate  
Attorney ID No. 306921

Enclosures