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Independent Regulatory
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June 27, 2016

VIA EMAIL
irrc@irrc.state.pa.us

The Honorable George Bedwick, Chairman
Pennsylvania Independent Regulatory Review Commission
333 Market Street
Harrisburg, PA 17101

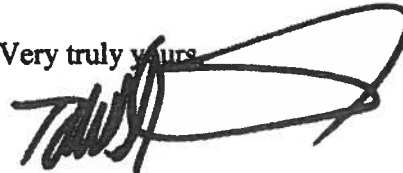
RE: Final Rulemaking of Pennsylvania Public Utility Commission to Amend and Add Regulations to Title 52 of the Pennsylvania Code, Sections 62.72, 62.75, and 62.81 Regarding Customer Information Disclosure Requirements for Natural Gas Suppliers providing Natural Gas Supply to Residential and Small Business Customers; **COMMENTS OF THE NATURAL GAS SUPPLIER PARTIES**

Dear Sir or Madam:

Enclosed is the Comments of the Natural Gas Supplier Parties to the above-captioned Rulemaking of the Pennsylvania Public Utility Commission currently scheduled for consideration by the IRRC at its June 30, 2016 public meeting.

If you have any questions concerning the enclosed Comments, please do not hesitate to contact the undersigned.

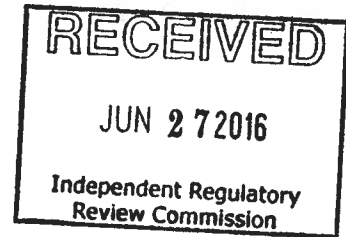
Very truly yours,



Todd S. Stewart
Counsel for the Natural Gas Supplier Parties

TSS/jld
Enclosure

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The Honorable George Bedwick, Chairman
Pennsylvania Independent Regulatory Review Commission
333 Market Street
Harrisburg, PA 17101

RE: Final Rulemaking of Pennsylvania Public Utility Commission to Amend and Add Regulations to Title 52 of the Pennsylvania Code, Sections 62.72, 62.75, and 62.81 Regarding Customer Information Disclosure Requirements for Natural Gas Suppliers providing Natural Gas Supply to Residential and Small Business Customers.

IRRC No. 3101

Comments of the Natural Gas Supplier Parties

Dear Chairman Bedwick:

The Natural Gas Supplier Parties ("NGSP") hereby offer their comments to the Independent Regulatory Review Commission on an issue of critical importance to the developing competitive natural gas market in Pennsylvania. The NGSPs are an *ad hoc* group of licensed Natural Gas Suppliers ("NGS") that collectively provide natural gas supply service in every competitive Natural Gas Distribution Company ("NGDC") service territory in Pennsylvania and include Dominion Retail, d/b/a Dominion Energy Solutions ("DES"), Shipley Choice LLC d/b/a Shipley Energy (Shipley) and AMERIGreen.

The NGSPs are concerned when stricter regulations harm suppliers, harm customers by depriving them of the products to which they obviously wish to subscribe, and which exceed the Pennsylvania Public Utility Commission's ("PUC") statutory mandate. While we are not opposed to necessary and appropriate regulations, there is one proposed change that we would like to highlight that has gone too far and adds limited value for customers.

The NGSPs understand the basis for the PUC's concerns in the electricity markets, but wish to point out that the natural gas markets are more mature, in terms of how long they have

been competitive; are in many respects more stable; and, unlike the electricity markets, did not see the market volatility that accompanied the polar vortex that drove the PUC to implement similar regulations in that retail market. In short, the NGSPs question the need for the instant regulations, as they see none.

One proposed change is particularly heavy handed and will certainly cause harm to the growing market: The Notice of Price Change Month-to-Month Conversions in Section 62.81(a)(2)(ii). Specifically, the proposed Section 62.81(a)(2)(ii) provides that, "If a customer fails to respond to the options notice and is converted to a month-to-month contract, the NGS shall provide a disclosure statement under § 62.75 . . . [and] Notice of a subsequent change in price shall be provided to the customer at least 30 days prior to the new price being charged." The gist of this section is that if a customer begins on a fixed rate, and at some point the contract converts to a variable rate, and the customer does not affirmatively consent to the change, *at the time of the change*, then the supplier must provide 30-days advance notice of any subsequent price change. It appears that the intention of this provision is to eliminate variable rate contracts that flow from initially fixed rate contracts. The difficulty with this provision is that the NGS must provide notice 30 days *in advance* for a month to month variable rate change --- it is obvious that the price will change and the supplier will have to provide notice essentially every month. While we agree that the NGS is only committing to a price for a month, so is the customer. The benefit of this provision seems marginal at best since, since it is only a 30-day price. Monthly providing customers with a written notice via first class mail, however, is a significant cost for a NGS, and begs the question of the real benefit. These costs are only the beginning, as NGSs will certainly need to address the costs of customer confusion which include increased call center activity and the loss of customers who prefer not to be noticed of monthly price changes. As a side note, many other states are more

practical and allow suppliers to post variable rates on a public website as opposed to mandating the significant costs of providing individual written notices.

Not only would these regulations force suppliers to abandon contractual obligations to migrate customers to variable rates, the 30-day notice of future rate change requirement will make such rates impractical to provide. The PUC does not possess the statutory authority to regulate the rate offerings of suppliers. *See*, 66 Pa. C.S. §§ 2201, *et seq.* While it may be true that the PUC can regulate the information that is provided to customers regarding rate offerings, and in particular, the veracity of that information, it is not true that through the imposition of information requirements the PUC can effectively ban certain types of rates. Yet that is exactly what the PUC is proposing to do here. There were many commenters before the PUC in this process that unequivocally stated the extreme difficulty if not impossibility of providing 30-days advance written notice of variable rate changes. It is clear, therefore, that the NGS community will not be able to manage under the PUC's one-size-fits-all rule and "roll over" variable rates will disappear. While it may be true that some parties will be pleased with such a result, that fact alone cannot make it legal when it is otherwise in excess of the statutory authority of the PUC.

Another fact is worth addressing when one considers the PUC's alleged and undemonstrated need for the proposed regulations; suppliers who provide variable rates are not permitted to charge cancellation fees. This requirement is an obvious existing protection for customers if variable rates in the natural gas market were to ever experience the turmoil that the electric markets saw. Coupled with the ongoing efforts to decrease switching times, customers are already protected. This is similar to the suggestions that suppliers that offer formulaic rates such that a customer could determine – with publicly available information – any future movement in rates, should be exempt from the 30-day notice requirement. The reason is basic human nature, if

a customer is not motivated and paying attention, no amount of advance notice will protect them from increasing rates. Consequently, and unfortunately for most customers, the only notice that will garner any attention is a higher than normal bill.

Aside from the posting only solution provided above, the NGSP's suggest another plausible solution: if a supplier voluntarily agrees in its contract to refund the difference between the Price to Compare and the NGS charged price for up to a month if a customer is dissatisfied with a variable rate, then that supplier should not be required to provide 30-days advance notice, as it would achieve a better result for a larger group of customers; protecting the vigilant, as well as the non-vigilant customer from price changes.¹ Under the PUC's proposed rules, no such logical flexibility is considered or permitted. Thus, although the 30-days advance notice of price changes is offered as a "solution" to a fixable problem, it ultimately fails.

Another flaw in the proposed regulation is related to the notion that default service rates vary quarterly. The NGDCs are required to recalculate the PTC every quarter and post the rate publically, on their website primarily, several days before it becomes effective. This process appears to work fairly well. Customers who are motivated to keep track of what they are paying can check the prices. However, the paradigm of posting the price publically a few days before it becomes effective is not acceptable for NGSs in the Commission's view, and yet it fails to explain the reason for the discriminatory treatment. If customers are motivated to act on price changes, publically posting the price a week or less before the price becomes effective would accomplish the same result as 30-days advance notice because motivated customers could view the price and

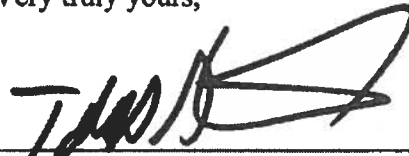
¹ While the NGSPs do not believe the PTC is a necessarily a competitive price in each quarter, and do not believe that it is appropriate to contrive the PTC as a "reasonable" rate, because a supplier's only option to transfer a dissatisfied customer without the customer needing to affirmatively select a different supplier is to send the customer to default service, it is logical to use this as the comparison.

act if they chose to do so. Also, it saves the costs of providing notices to each customer; which can erode margins quickly. What the PUC seeks will impose costs on suppliers and is not likely to produce any benefit beyond what a posting requirement would accomplish.

In short, there is no evidence in the PUC Order that supports the need for these regulations in the competitive natural gas market; there is no statutory authority for the PUC to regulate the rate offerings of suppliers, and certainly no ability for the PUC to accomplish the same result through ostensible "information requirements"; and, the PUC's blunt instrument approach, coupled with its concomitant disregard for more flexible, and cost-effective, approaches, simply will not provide any protection for the vast majority of those customers who participate in such rates in the future. For these reasons, the NGS Parties request that the IRRC disapprove the PUC's proposed regulations.

The NGS Parties thank the IRRC for this opportunity to provide comments on this important issue and will make themselves available to answer and question you may have.

Very truly yours,

A handwritten signature in black ink, appearing to read "Todd S. Stewart", with a large, stylized flourish extending from the end of the name.

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