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

COMMENTS OF THE INDUSTRIAL CUSTOMER GROUPS

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I. INTRODUCTION

On September 11, 2008, the Pennsylvania Public Utility Commission ("PUC" or "Commission") adopted its Final SEARCH Order and Action Plan ("SEARCH Order").[1] The purpose of the SEARCH Order, according to the Commission, was to increase effective competition in Pennsylvania's retail gas market by changing the structure of the market, as well as its operation, to reduce and/or eliminate barriers to entry and participation of natural gas suppliers ("NGSs").[2] To implement the directives of the SEARCH Order, the Commission, on October 17, 2009, published a Proposed Rulemaking ("Proposed Rulemaking Order") setting forth proposed regulations for comment.[3] The proposed regulations would require natural gas distribution companies ("NGDCs") to submit standard supplier coordination tariffs ("SCTs"), to implement standard business practices, and to employ communication standards and formats that, according to the Commission, would remove market barriers and be cost-effective.[4]

The Industrial Energy Consumers of Pennsylvania ("IECPA"), Central Penn Gas Large Users Group ("CPGLUG"), Columbia Industrial Intervenors ("CII"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"), PNG Industrial Intervenors ("PNGII"), and UGI Industrial Intervenors ("UGIII"), (collectively, "Industrial Customer Groups") submit these Comments to address their preliminary

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[1] *Investigation into the Natural Gas Supply Market: Report on Stakeholders' Working Group (SEARCH); Action Plan for Increasing Effective Competition in Pennsylvania's Retail Natural Gas Supply Services Market*, Docket No. I-00040103F0002, Final Order and Action Plan, (Order entered Sept. 11, 2008).
[2] *Id.*
[3] *Proposed Rulemaking: Natural Gas Distribution Company; Business Practices*, Docket No. L-2009-2069117/57-268, Proposed Rulemaking Order, (Order entered Apr. 30, 2009).
[4] *Id.*

position and concerns regarding the Commission's proposed regulations on NGDCs and the promotion of competitive retail markets.[5]

IECPA is a 24 member *ad hoc* group of energy intensive industrial customers of electricity and natural gas. More than 41,000 Pennsylvanians are employed by IECPA member companies, which use significant amounts of electricity and natural gas in their operations. CPGLUG, CII, PAIEUG, PICGUG, PNGII, and UGIII are all *ad hoc* groups of commercial, institutional, and industrial customers of natural gas that participate in various proceedings before this Commission. Several issues and regulations as proposed by the Commission may impact large customers. The Industrial Customer Groups submit these Comments to explain the history of natural gas supply competition in Pennsylvania and highlight how that history should be reflected in the proposed regulations.

II. COMMENTS

Section 2204(g) of the Natural Gas Choice and Competition Act ("Competition Act") required the Commission, within five years of the Competition Act's enactment, to investigate whether there was "effective competition for natural gas supply."[6] If finding no effective competition, the Commission was required to "explore avenues . . . for encouraging increased competition in the Commonwealth."[7] As indicated in the Commission's October 2005 *Report to the General Assembly on Pennsylvania's Retail Natural Gas Supply Market*, the PUC found that, as of the date of the report, "effective competition" did not exist in Pennsylvania's natural gas market. Therefore, the Commission convened a Natural Gas Stakeholders' group, otherwise known as "SEARCH" (Stakeholders Exploring Avenues for Removing Competition Hurdles),

[5] The Industrial Customer Groups' failure to address a specific proposed regulation does not represent the Industrial Customer Groups' support for, or acquiescence to, such proposal. The Industrial Customer Groups are only addressing primary areas of concern in these Comments.
[6] 66 Pa. C.S. § 2204(g).
[7] *Id.*

which released a final report in May of 2008. Shortly thereafter, the Commission issued its SEARCH Order, which detailed the work of the SEARCH Committee and concluded that the Commission could take a number of steps to help promote the development of competition in Pennsylvania's retail markets for natural gas supply.[8] The Proposed Rulemaking Order addresses one of these areas: the standardization of SCTs, business practices, and communication formats.

The Industrial Customer Groups understand the Commission's desire to bring the benefits of natural gas competition to other customer classes. Larger customers have long recognized and pursued competitive natural gas supply alternatives, even before the enactment of the Competition Act in 1999. In most areas of the Commonwealth, larger customers no longer have the NGDC as their "backstop" or supplier of last resort ("SOLR") for gas supply services.[9] There is no need to "attract" larger customers or suppliers serving larger customers to the competitive market because both are already there and have been for decades. Thus, as explained below, although the Industrial Customer Groups do not wish to impede the Commission's efforts to extend competition to other customer classes, the Industrial Customer Groups respectfully question whether the costs of the proposed standardization measures should be recovered from larger customers when the focus of the Commission's actions is to reform procedures regarding other customer classes. Furthermore, the standardization effort must balance the desire to promote competition with the need to ensure that service reliability continues at adequate levels for all customers, including larger customers who could face service curtailments if sufficient gas is not delivered to the territory by suppliers serving the smaller customer classes.

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[8] SEARCH Order at 2.
[9] *See* 66 Pa. C.S. 2807(a)(1).

A. Costs of competition related activities should not be recovered from larger customers.

In the Proposed Rulemaking Order, as well as the SEARCH Order, the Commission has tentatively concluded that NGDCs "should be able to recover *reasonable* costs that are *prudently* incurred in connection with the implementation of any changes designed to promote the development of effective competition in the retail market."[10] As explained by the PUC, such costs would "also include those associated with increasing customer participation in the market such as modifications to NGDC billing systems or increased consumer education activities."[11] Accordingly, the Commission has proposed that NGDCs be allowed to recover these costs through a surcharge (which would be recovered on a per unit basis on each unit of commodity sold or transported over its distribution system without regard to the customer class of the end user),[12] with an automatic adjustment mechanism. Furthermore, the PUC contends that "to the extent it helps promote competition, the surcharge for competition related activities benefits all customers and, therefore, it should be paid by all customers, shoppers and non-shoppers alike."[13] Because the proposed regulation at 52 Pa. Code § 62.184 indicates that this surcharge would be collected from all customer classes, the Industrial Customer Groups oppose this aspect of the proposed regulations.

Large commercial and industrial ("C&I") customers have had the opportunity to transport natural gas procured from various suppliers since the mid-1980s. In fact, pursuant to a Petition filed by the Pennsylvania Gas Association for an expedited rulemaking regarding gas transportation, on October 16, 1986, at Docket No. L-860016, the Commission adopted uniform

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[10] SEARCH Order at 21(emphasis in original).
[11] *Id.*
[12] *See* Proposed 52 Pa. Code § 62.184; Proposed Rulemaking Order at 5; *see also* Proposed 52 Pa. Code § 62.226.
[13] Proposed Rulemaking Order at 5; *see also Promotion of Competitive Retail Markets Order*, Docket No. L-2008-2069114, (Order entered March 27, 2009).

transportation regulations governing natural gas transportation service, codified at 52 Pa. Code §§ 60.1-60.9. Throughout this period, rules, terms and conditions for service to large transportation customers were developed through multiple tariff filings, cases, and proceedings before the Commission. Large C&I customers have invested significant resources over the last 25 years to litigate transportation service issues in numerous PUC proceedings without recovering those costs from other customer classes. As recognized by various NGDCs during their restructuring proceedings in early 2000, these rules generally have worked well for existing Large C&I customers. Large C&I customers have multiple transportation rate offerings available from most NGDCs and, in some instances, even have supply options available. Most larger customers can easily find at least two NGSs willing to provide competitive supply offers in most NGDC territories.

The Competition Act,[14] which became effective July 1, 1999, extended the availability of transportation service to all retail natural gas customers, regardless of size;[15] however, in recognition of the satisfactory level of supply competition for Large C&I customers, the Competition Act created an SOLR obligation for NGDCs that was limited to supply service for residential, small commercial, small industrial and essential human needs customers.[16] In extending the competitive supply procurement right to smaller commercial and residential customers, the Competition Act also appropriately recognized that extension of transportation availability should not detrimentally impact the rates, terms and conditions of service for existing transportation customers. In fact, the Competition Act expressly provides that an NGDC "may continue to provide natural gas service to its customers under all tariff rate schedules and riders

[14] *See* 66 Pa. C.S. §§ 2201-2212.
[15] *See id.* §§ 2203(2), 2204(b).
[16] *See* 66 Pa. C.S. § 2207(a)(1) ("After the effective date of this chapter, the natural gas distribution company shall serve as the supplier of last resort for residential, small commercial, small industrial and essential human needs customers...").

incorporated into its tariff, and policies or programs, existing on the effective date of this chapter."[17] As the Commission may recall, the Competition Act was drafted through a stakeholder process. IECPA participated in that process to ensure that existing competition for Large C&I customers was not harmed as a result of the Competition Act. Furthermore, in that process, IECPA participated to ensure that Large C&I customers would not be forced to pay costs associated with the extension of supply competition to smaller customers.[18] Such a result is consistent with the subsequent restructuring proceedings held in accordance with the Competition Act. While changes were made in the restructuring proceedings for residential and small commercial customers, NGDCs attempted and succeeded in essentially maintaining the status quo for transportation service to the Large C&I sector.

While the Industrial Customer Groups agree that there can be improvements made with regard to the level of natural gas competition in the Commonwealth, the Industrial Customer Groups are comfortable with maintaining the status quo for Large C&I competition and allowing those incremental improvements to occur through the traditional processes. Although the Industrial Customer Groups appreciate the Commission's effort to promote natural gas competition in the Commonwealth, the Industrial Customer Groups respectfully submit that the proposed standardized business practices and communication formats are not aimed at promoting competition for Large C&I customers (who already have it), but instead are aimed at other customer classes (specifically, residential and small commercial). Cost of service ratemaking requires that costs be recovered from the ratepayers that the costs were incurred to serve. Because these regulations and the Commission's efforts are not aimed at promoting competition

[17] 66 Pa. C.S. § 2203(14).

[18] Such compromise also produced risk for Large C&I customers, who have no fundamental protection for an SOLR similar to residential, small commercial and small industrial customers. Large C&I customers were willing to take this "trade-off" in order to continue to minimize the potential cost impact on the existing transportation customers due to the passage of the Competition Act.

for Large C&I customers, it is unreasonable and contrary to cost causation principles to force Large C&I customers to contribute to funding such enhancements. Accordingly, only residential and small commercial customers should be required to pay any surcharge that results from the Proposed Rulemaking Order.

Moreover, the Commission's proposal to recover this surcharge on a per unit basis on each unit of commodity sold or transported over an NGDC's distribution system without regard to the customer class of the end user is wholly unjustified. In a cost of service study, costs that cannot be directly assigned to a particular class are generally allocated on a customer, demand or energy (Mcf) basis, or based on a blended allocator.[19] The costs at issue here can be directly assigned to the residential and small commercial classes; however, even if the costs are not directly assigned, using an Mcf allocator would still be inappropriate. The cost categories that typically would be allocated to customer classes based on a pure Mcf allocator (or a blended allocator that includes an Mcf component) are production plant and purchased gas cost expenses.[20] Creating standard SCTs, standard business practices, and standard communication formats are not production plant and purchased gas cost expenses; rather, they appear to be administrative and general expenses. Enacting an Mcf charge to all customers to recover these costs would be inconsistent with standard cost allocation principles and highly unfair to large customers.[21]

Finally, the Commonwealth initiated the process to introduce supply competition for smaller customers out of the belief that competition would result in lower gas costs for

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[19] Many variations exist regarding blended allocators and how to calculate the demand and energy components of the allocators. The Industrial Customer Groups have used the three broad categories here.

[20] *See, e.g.*, *Gas Rate Design*, National Association of Regulatory Utility Commissioners, 28, (Aug. 6, 1981).

[21] A per unit charge approach for collecting competition promotion costs will assign a greater cost burden on a NGDC's largest customers, regardless of the actual benefit that these customers receive through any competition-related activities enacted under the proposed regulations. A per unit surcharge is highly inequitable and should be rejected.

consumers.[22] Therefore, as the PUC moves forward with standardizing the business practices within the retail natural gas market, the Industrial Customer Groups urge the Commission to ensure that the intended benefits of standardization outweigh the associated costs. To that end, the Industrial Customer Groups fully support Vice Chairman Christy's observation that, because the goal of competition is to provide consumers with cost savings, "alternative gas suppliers have a significant hurdle here to demonstrate that savings are possible with retail natural gas choice in the residential sector, particularly when the NGDCs are required by statute to procure their gas supply under a Commission approved least cost procurement standard."[23] In addition, as the proposed surcharge would be included within each NGDC's annual 1307(f) purchased gas cost proceeding, these proceedings would likely become more complex and more costly in the future for all parties.[24] Vice Chairman Christy suggested, therefore, that the surcharge might be equivalent to the imposition of new non-bypassable costs upon Pennsylvania gas consumers.[25] For the sake of all customers, the Industrial Customer Groups urge the Commission to carefully weigh the mandatory obligations imposed on the NGDCs to ensure that the benefits outweigh the associated costs of standardizing business practices within the retail gas market.

B. System reliability concerns must be considered in standardization efforts.

In striving to extend competition to smaller customers within Pennsylvania's retail gas market, the Commission should be conscious that, by standardizing SCTS, business practices, and communication formats, an NGDC's ability to provide adequate and reliable service could be adversely affected. Because each NGDC is responsible for managing the supply and demand required to operate its system, a mandated change to an NGDC's operating requirements could

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[22] *See* Proposed Rulemaking Order at 1-2.
[23] *Id.* at 1-2.
[24] Statement of Vice Chairman Tyrone J. Christy, p. 1.
[25] *Id.*

have an adverse impact on the service reliability provided by the NGDC. In this same vein, when an NGDC's aggregate demand for service outweighs the aggregate supply delivered to its territory, the NGDC may seek to limit its service to Large C&I customers. This applies both to customers on interruptible transportation service and those on firm service. Two of the key policies expressed by the General Assembly in the Competition Act are that the Commission would ensure the continuation of the reliability of natural gas supply *and distribution service to all retail gas customers*, and that restructuring would not be implemented in a manner that unreasonably discriminates against one customer class for the benefit of another.[26] The Commission, therefore, in its development of these standardizations, must ensure that the current level of service reliability is maintained for all customer classes, including the Large C&I class. Larger transportation customers should not experience an increase in the potential likelihood, frequency or duration of service interruptions due to the forced standardization of supplier tariffs and business rules.

Although the Industrial Customer Groups realize that promoting competition throughout the retail gas market is an important objective, the extension of competition to smaller customers should not come at the expense of Large C&I customers' service reliability. The Commission, in using a stakeholder process to develop a standard SCT and standard business practices, should also seek to implement these standardizations in a way that will not impair the ability of NGDCs to provide reliable service to all customers.

[26] 66 Pa. C.S. § 2203(1) and (5) (emphasis added).

III. CONCLUSION

WHEREFORE, the Industrial Energy Consumers of Pennsylvania, Central Penn Gas Large Users Group, Columbia Industrial Intervenors, Philadelphia Area Industrial Energy Users Group, Philadelphia Industrial and Commercial Gas Users Group, PNG Industrial Intervenors, and UGI Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Comments.

Respectfully submitted,

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