

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Rulemaking: Natural Gas :
Distribution Company Business Practices; : Docket No. L-2009-2069117
52 Pa. Code §§ 62.181-62.185 :

REPLY COMMENTS OF THE INDUSTRIAL CUSTOMER GROUPS

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Dated: December 16, 2009

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 and reply 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

On December 1, 2009, the Industrial Energy Consumers of Pennsylvania ("IECPA") *et al.* (collectively, "Industrial Customer Groups"),⁵ among others, submitted general comments highlighting areas of concern for the Commission regarding the proposed regulations. The Industrial Customer Groups submit these Reply Comments to address the proposals and

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.*

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 natural gas in their operations. Also sponsoring these Reply Comments are coalitions of industrial customers receiving service from most of the Commonwealth's NGDCs: 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").

comments submitted by other stakeholders in response to the Commission's Proposed Rulemaking Order.⁶

II. REPLY COMMENTS

Unlike the Industrial Customer Groups' Comments that addressed the Proposed Rulemaking Order, these Reply Comments center on various stakeholders' responses to the Order. Similar to the Industrial Customer Groups' Comments, the Industrial Customer Groups reserve the opportunity to address additional issues in subsequent phases of this process, as necessary.

A. Application of Proposed Rulemaking Should be Limited to Residential and Small Commercial Customers

The Industrial Customer Groups agree with National Fuel Gas Distribution's ("NFGD") analysis regarding the proper scope of the Commission's Proposed Rulemaking Order. In its Comments, NFGD recognizes, correctly, that the regulations promulgated under the Natural Gas Choice and Competition Act ("Competition Act") were focused primarily on the Residential and Small Commercial classes.⁷ As such, NFGD suggests that, because the proposed regulations set forth in the Proposed Rulemaking Order are an extension of the overall regulations promulgated under the Competition Act and, thus, are aimed at promoting competition in the retail natural gas market, the proposed regulations should also apply only to the Residential and Small Commercial customer classes.⁸ In support of this conclusion, NFGD points out that customers within the Large Commercial and Industrial ("C&I") class have long enjoyed a competitive

⁶ The Industrial Customer Groups' failure to address a specific stakeholder concern or proposal does not represent the Industrial Customer Groups' support for, or acquiescence to, such concern or proposal. The Industrial Customer Groups are only addressing areas of primary concern in these Reply Comments.

⁷ See NFGD Comments, p. 3.

⁸ *Id.*

market.⁹ Therefore, Large C&I customers, unlike Residential and Small Commercial customers, already operate on a "level playing field" and do not require standardized business practices.¹⁰

In addition, the Industrial Customer Groups supports NFGD's conclusion that if the Commission were to expand the scope of the proposed regulations to include Large C&I customers, then costs to NGDCs and customers would increase significantly.¹¹ In the current economic climate, such increases in costs to Large C&I customers could adversely impact, although indirectly, all customer classes throughout Pennsylvania. As such, the Industrial Customer Groups endorse NFGD's request to limit the application of the Proposed Rulemaking Order to the Residential and Small Commercial customer classes. In addition, as explained in more detail in the Industrial Customer Groups' Comments, cost recovery for these activities should be limited to the Residential and Small Commercial customer classes.

B. Due to Potential Cost Implications for Customers, Tolerance Bands for Large Transportation Customers Should be Evaluated on a Case-By-Case Basis

In Proposed Section 62.185(c)(3)(ii), the Commission intends to set a tolerance band that would prohibit an NGS from deviating more than 10% in the amount of supply delivered vis-à-vis the amount of supply nominated by the NGS.¹² In other words, under the proposed regulation, an NGS could deliver as little as 90% of the nominated gas supply, or as much as 110% of the nominated supply, without being subject to penalties. This proposed regulation would provide NGSs with more flexibility than under current rules.

As set forth in the Industrial Customer Groups' Comments, the transportation service rules for larger customers have evolved over time through a series of litigated proceedings.¹³

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Proposed 52 Pa. Code § 62.185(c)(3)(ii).

¹³ See Industrial Customer Groups Comments, pp. 4-6.

The Comments submitted by various NGDCs highlight how modifications to those rules could impact the fees paid by larger customers for services such as balancing, banking, and advancing services. For example, in its Comments, PECO Energy Company ("PECO") broadly suggests that providing more flexibility to NGSs would result in higher costs to customers. As a result, PECO recommends that when an NGDC directs an NGS to deliver exact amounts of supply, a restrictive tolerance band of 2% should be adopted by the Commission.¹⁴ Similar to PECO's concern, The Peoples Natural Gas Company, d/b/a Dominion Peoples ("Dominion Peoples") expressed unease with the more liberal 10% tolerance bands provided under the proposed regulations.¹⁵ Dominion Peoples indicates that it currently imposes tolerance bands under certain programs that are more restrictive than the 10% tolerance band suggested in the proposed regulations.¹⁶ To this end, Dominion Peoples points out that requiring the same tolerance band for all utilities and programs alike could significantly increase the peak day capacity requirements on an NGDC's system.¹⁷ More specifically, an increased tolerance band, with some programs, would "require NGDCs to acquire additional pipeline capacity and incur additional costs to ensure system supply requirements are met on a peak day."¹⁸ This, in turn, would result in "hidden costs" being charged to transportation customers, because the costs for capacity is recovered through balancing charges applicable only to transportation customers. As recognized by Dominion Peoples, this result would run afoul of the intent of the Proposed Rulemaking Order.¹⁹

The transportation rules for each territory, including tolerance bands, vary and have developed over time. The Industrial Customer Groups, therefore, respectfully suggest that the

¹⁴ PECO Comments, p. 11.

¹⁵ *See generally* Dominion Peoples Comments, pp. 4-5.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 5.

¹⁸ *Id.*

¹⁹ *See id.*

Commission examine tolerance bands and other transportation rule changes on a case-by-case, utility-by-utility basis to ensure that such constraints are neither unnecessarily restrictive (thereby aggravating competition) nor excessively liberal (thereby resulting in "hidden costs" to customers). During that process, the Industrial Customer Groups urge the Commission to examine all the "hidden costs" that would result from any effort to standardize the business practices within the retail natural gas market, such as increases to balancing fees that may be necessary to accommodate more liberal imbalance tolerance bands. In particular, a "one size fits all" approach could have unintended consequences on both customers' costs and system reliability. Informed decision-making on suggested "standardizations" requires thorough vetting of all the potential implications and the benefits that customers will gain.

C. Imbalance Trading Should be Examined in Upcoming Proceedings

Although the Industrial Customer Groups generally support a case-by-case approach to the development rules for larger transportation customers, there are aspects of the Proposed Rulemaking Order that warrant further consideration in upcoming proceedings. For example, in Proposed Section 62.185(c)(3)(i), the Commission intends to require an NGDC to facilitate NGS imbalance trading.²⁰ Programs such as imbalance trading could be beneficial to larger customers. However, the Industrial Customer Groups submit that, because NGDCs across Pennsylvania have varying characteristics and service classifications (including interruptible service options), the implementation or expansion of imbalance trading programs should be examined on a utility-by-utility basis in each Company's next base rate case. Specific determinations regarding which NGDCs should be subject to such requirements should be made by the Commission upon an evaluation of each NGDC's particular circumstances and characteristics.

²⁰ Proposed 52 Pa. Code § 62.185(c)(3)(i).

D. The Industrial Customer Groups Agree with the OSBA that Cost Recovery Should be Consistent with Cost of Service Principles

In its Comments, the Office of Small Business Advocate ("OSBA") argues that cost recovery for these initiatives should be accomplished consistent with cost of service principles.²¹ The OSBA further asserts that a volumetric surcharge (as proposed in the regulations) is not consistent with cost of service principles and should be rejected. The Industrial Customer Groups agree that cost recovery should be consistent with cost of service. The initial step in this inquiry, however, is determining which customer classes should be required to pay the costs. As the Industrial Customer Groups expressed in their Comments, the costs associated with standardizing the business practices within the natural gas retail market should not be recovered from Large C&I customers, because Large C&I customers already operate in a competitive environment and have done so years. Pursuant to traditional cost of service principles, Large C&I customers should not pay those costs. The Industrial Customer Groups also agree that a volumetric surcharge is not appropriate to recover these costs from the other customer classes.

E. The Commission Should Prioritize the Issues Raised by the SEARCH Process

The Industrial Customer Groups agree with the National Energy Marketers Association ("NEM") that the Commission should consider prioritizing the numerous issues identified through the SEARCH process.²² Specifically, the Commission should focus on the unsettled issues relating to the Price to Compare ("PTC") and the Purchase of Receivables ("POR") program.²³ As NEM points out, undertaking these and other important issues prior to standardizing business practices may contribute more efficiently and effectively to the development of the retail gas market, which would allow NGSs to enter the market more

²¹ See OSBA Comments, p. 5.

²² See NEM Comments, p. 2.

²³ See *id.*

freely.²⁴ NEM also expresses concern that the stakeholder process required to develop and implement a standard SCT and business practices will require significant time and cost resources from stakeholders.²⁵ Because the Industrial Customer Groups share NEM's concern, the Industrial Customer Groups submit that resolving the outstanding PTC and POR issues would be a better utilization of the parties' limited resources.

²⁴ *Id.*

²⁵ *Id.*

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 Reply Comments.

Respectfully submitted,

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