COMMONWEALTH OF PENNSYLVANIA

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December 16, 2009

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

SEARCH Final Order and Action Plan for Increasing Effective Competition in Pennsylvania's Retail Natural Gas Supply Services Market
Docket No. I-00040103F0002

Dear Secretary McNulty:

Enclosed are the Reply Comments of the Office of Consumer Advocate, in the above-referenced proceeding.

Copies have been served as indicated on the Certificate of Service.

Respectfully Submitted,

James A. Mullins
Assistant Consumer Advocate
PA Attorney I.D. # 77066

Enclosure
cc: Patricia Krise Burket, Law Bureau (Via E-mail Only)
Cyndi Page, Communications (Via E-mail Only)
Annunciata Marino, Bureau of Fixed Utility Services (Via E-mail Only)

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
SEARCH Final Order and Action Plan for Increasing Effective Competition in Pennsylvania's Retail Natural Gas Supply Services Market	:	Docket No.	I-00040103F0002

REPLY COMMENTS OF THE OFFICE OF CONSUMER ADVOCATE

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Dated: December 16, 2009

I. INTRODUCTION

On May 1, 2009, the Pennsylvania Public Utility Commission (PUC or Commission) entered a Proposed Rulemaking Order (Rulemaking Order) issuing for comment proposed regulations that, among other things, direct Natural Gas Distribution Companies (NGDCs) to submit standard Supplier Coordination Tariffs (SCTs), and to implement standard business practices and communication standards and formats that the Commission determines to be cost-effective and that remove market barriers. The proposed regulations also provide for NGDC recovery of "reasonable costs" prudently incurred which are directly attributable to such implementation. Proposed Rulemaking Order, Docket No. L-2009-206911 (Order Entered May 1, 2009). In the Order, the Commission also announced its intention to initiate a stakeholder process to develop a standard SCT and make recommendations for the adoption of standard business practices for the retail natural gas market. Order at 2. This stakeholder process is to run concurrently with the Rulemaking. The Office of Consumer Advocate (OCA), as well as several NGDCs, Natural Gas Suppliers (including Natural Gas Supplier trade associations), an industrial customer group and the Office of Small Business Advocate (OSBA) filed Comments in response to the Rulemaking Order.

The OCA submits these Reply Comments in further support of its position that, as the Commission considers these proposed regulations, the potential cost impacts for customers should be identified and considered.

II. REPLY COMMENTS

A. Section 62.184: NGDC Cost Recovery.

In Proposed Section 62.184, the Commission proposes a mechanism for the NGDC to recover the costs incurred in connection with implementation of any changes designed to promote the development of effective competition in the retail market. Rulemaking Order at 4-5. The Commission proposes the use of a non-bypassable surcharge that would be paid by all customers, shopping and non-shopping, and would not be considered in the calculation of the Price to Compare. Id. The mechanism is to be established as part of an NGDC's next annual filing pursuant to 1307(f).

As set forth previously, the OCA submits that the proposed recovery of these costs from ratepayers is not appropriate. First, there is no indication as to whether the costs associated with implementing these changes are large and volatile, thus warranting recovery through a surcharge mechanism. The OCA would also note that ratepayers have already absorbed costs related to the transition to retail choice and consumer education costs related to retail choice. Despite these costs and efforts, and because the rates of NGDCs' in Pennsylvania have reflected least-cost wholesale market price in their rates for decades, little retail choice has developed in most of Pennsylvania. It seems particularly inappropriate to require ratepayers to pay even more costs associated with untested initiatives. Second, there has been no showing that these costs or changes will be beneficial to customers or cost-effective in any way. Absent such a showing, it is unfair to saddle customers with yet more costs. As Vice-Chairman Christy stated, encouragement of switching to alternative suppliers should not be advanced on the backs of ratepayers. Therefore, the OCA continues to recommend that Proposed Section 62.184 be removed in its entirety. However, the OCA agrees that if any cost recovery from ratepayers is to be permitted, these costs should be recovered from all ratepayers, shopping and non-shopping,

on a non-bypassable basis as provided for in the proposed regulation. Further, a corresponding decrease in NGDC's distribution rates would be necessary to reflect the fact that some costs have been shifted from base rates to a separate cost-recovery mechanism.[1] This would guard against double-recovery from ratepayers. The OCA would note, however, that the Section 1307(f) proceeding is not the appropriate proceeding for consideration of such costs. Rather, these costs should be addressed in a base rate or other proceeding outside the limited schedule of a 1307(f) proceeding.

The Industrial Customer Groups propose that only residential and small commercial customers should be required to pay such a surcharge. Industrial Customer Groups Comments at 7. National Fuel Gas Distribution Company (National Fuel Gas Distribution Company Comments at 3), Equitable Gas Company (Equitable Gas Company Comments at 1) and Columbia Gas of Pennsylvania (Columbia Gas of Pennsylvania Comments at 5) also assert that the proposed regulations be clarified so as to only apply to residential and small commercial customers. The OCA agrees that the Commission's regulations appear to be intended to apply to residential and small commercial customers, rather than large Commercial and Industrial customers that already have competitive alternatives. Although the Rulemaking Order appears to be intended for application to residential and small commercial customers, it is impossible to determine at this time whether any benefits will directly or indirectly flow to large Commercial and Industrial customers as a result of any final Commission determination. Therefore, it would be premature to exempt large Commercial and Industrial customers from cost recovery until an analysis of expected benefits is performed.

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[1] Sub-paragraph (d) of this provision reads: Before instituting the surcharge, a NGDC shall remove the amounts attributable to promoting retail competition from its base rates.

The OSBA argues that these costs should be recovered via base rates, rather than a surcharge. OSBA Comments at 4. Peoples Natural Gas Company, d/b/a Dominion Peoples proposes that NGDCs should be permitted to track and defer actual retail competition costs for eventual recovery (Peoples Natural Gas Company Comments at 3). PECO Energy Company proposes that promotion of competition costs be deferred until a NGDC's next base rate case and then amortized over a number of years (PECO Energy Company Comments at 6)[2]. As previously set forth, the OCA submits that Proposed Section 62.184 should be removed in its entirety. If there is to be cost recovery from ratepayers, however, the OCA does not object to the alternatives presented by the OSBA. Prior to implementation, detailed analysis of any impacts would need to be undertaken. Further, it is paramount that all customers (shopping and non-shopping) pay these costs. The OCA does, however, object to the proposals of Peoples Natural Gas Company and PECO to defer costs for future recovery. The OCA submits that these proposals are not appropriate. Tracking and deferral of such costs that are not extraordinary or volatile should not be permitted.

B. Additional Issues Raised

In its Comments, the Independent Oil and Gas Association of Pennsylvania proposes that the regulations be expanded to apply to Pennsylvania-produced natural gas for NGDCs with local production on their system. Independent Oil and Gas Association of Pennsylvania Comments at 1. The OCA is uncertain of the impact of this proposal, but submits that the proposal is beyond the scope of the Rulemaking Order and should be treated accordingly.

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[2] PECO also proposes that competition costs be separated out during a NGDC's base rate proceeding for surcharge recovery.

C. Monthly Price-to-Compare

The National Energy Marketers Association (NEMA) states that it supports the Commission's previously proposed reformulation of the price-to-compare for NGDCs. NEMA Comments at 2. Specifically, the NEMA Comments state:

> [W]e support the Commission's proposed reformulation of the utilities' PTC to be expressed as a monthly-adjusted, market-based commodity rate to which is added a utility's fully allocated embedded costs associated with providing all of the otherwise competitive related products and services currently bundled in utility full service rates.

Id. The NEMA Comments refer to the March 27, 2009, Proposed Rulemaking Order entered at Docket No. L-2008-2069114 by the Commission to initiate a rulemaking proceeding to adopt regulations "governing the relationships between Natural Gas Distribution Companies (NGDCs) and the Natural Gas Suppliers (NGSs) which sell, or seek to sell natural gas to end users on the NGDC distribution systems." In that Proposed Rulemaking Order, among other things, the Commission proposed that a NGDC's price-to-compare adjust on a monthly basis rather than on a quarterly basis. The OCA, as well as other parties, presented Comments on this issue. Therefore, the OCA submits that this issue has been previously addressed and is beyond the scope of the instant Rulemaking Order. Consequently, this issue should not be given consideration by the Commission at this time.

However, in response to NEMA's support of a monthly price-to-compare, the OCA submits that a monthly adjustment to the PTC rate, which is largely based on the purchased gas cost rate, is legally flawed as proposed by NEMA. In enacting the Natural Gas Choice Act, the General Assembly specifically addressed the issue of monthly adjustments to the PGC rates. The General Assembly required that if an NGDC performed monthly adjustments, then it must

also offer to its customers a fixed-rate option which recovers natural gas costs over a 12-month period, subject to annual reconciliation. Section 1307(f)(1)(ii) in relevant part provides:

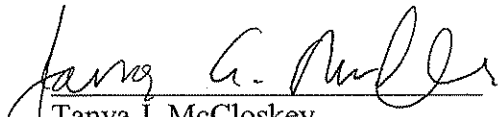
> In the event that the natural gas distribution company adjusts rates more frequently than quarterly, it shall also offer retail gas customers a fixed-rate option which recovers natural gas costs over a 12-month period, subject to annual reconciliation under paragraph (5). The commission shall, within 60 days of the effective date of this subparagraph, promulgate rules or regulations governing such adjustments and fixed-rate option, but the commission shall not prohibit such adjustments or fixed-rate option.

66 Pa.C.S. § 1307(f)(1)(ii). The NEMA proposal, limited to only the provision of a monthly price, does not comport with these statutory requirements. Therefore, the OCA submits that: 1) this issue is beyond the scope of the instant Rulemaking Order, and 2) the NEMA proposal is not in accord with applicable statutory requirements.

III. CONCLUSION

The OCA appreciates the opportunity to comment and reply with respect to the Commission's proposed regulations. As set forth in the OCA's Comments, the OCA submits that the Commission's proposed regulations are in need of substantial modifications.

Respectfully Submitted,



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Dated: December 16, 2009
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CERTIFICATE OF SERVICE

Proposed Rulemaking: Natural Gas Distribution Company Business Practices; 52 Pa. Code §§ 62.181-62.185	:	Docket No.	L-2009-2069117
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I hereby certify that I have this day served a true copy of the foregoing document, the Reply Comments of the Office of Consumer Advocate, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 16th day of December 2009.

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