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	:	

COMMENTS OF VALLEY ENERGY, INC.

Pamela C. Polacek (Pa. I.D. No. 78276)
Carl J. Zwick (Pa. I.D. No. 306554)
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300
ppolacek@mwn.com
czwick@mwn.com

Counsel to Valley Energy, Inc.

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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, on October 17, 2009, the Commission published a Proposed Rulemaking ("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]

II. COMMENTS

Section 2204(g) of the Natural Gas Choice and Competition Act ("Competition Act" or "Act") required the Commission, within five years of the Competition Act's enactment, to investigate whether there was "effective competition for natural gas supply."[5] If finding no effective competition, the Commission was required to "explore avenues . . . for encouraging increased competition in the Commonwealth."[6] As indicated in the Commission's October 2005 *Report to the General Assembly on Pennsylvania's Retail Natural Gas Supply Market*, the PUC

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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.*

[5] 66 Pa. C.S. § 2204(g).

[6] *Id.*

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), which released a final report in May of 2008. Shortly thereafter, the Commission issued the SEARCH Order in September 2008, 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.[7] One of these steps was to implement standardized SCTs, business practices, and communication formats.

Valley Energy, Inc. ("Valley" or "Company"), is one of smallest jurisdictional NGDCs in Pennsylvania, serving eleven communities in Bradford County, Pennsylvania and Tioga County, New York. All of Valley's stock is owned by a holding company, C&T Enterprises, Inc. ("C&T"). C&T is jointly owned by Tri-County Rural Electric Cooperative and Claverack Rural Electric Cooperative. Valley, which has 25 employees, provides service to approximately 5,754 customers in Bradford, Pennsylvania, and the surrounding area. Of Valley's 5,754 total customers, approximately 4,980 of these customers are residential customers. Valley also serves approximately 774 commercial and industrial accounts. Of those customers, Valley currently has approximately 41 accounts that are served by third party suppliers. Those 41 accounts represent approximately 73% of the Company's total system throughput. Valley's two largest customers constitute 40% of the third party supply throughput. Valley's supply of natural gas that is delivered from the interstate pipeline is received through a single city gate. Valley's 2008 annual revenues were less than $6.5 million.

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[7] *See* SEARCH Order.

Valley has many distinguishing factors that differentiate it from the majority of other NGDCs in Pennsylvania. Some of these factors include: (1) the number of customers served by Valley; (2) the number of employees Valley uses to serve these customers; (3) the amount of annual gas operating revenues generated by Valley; and (4) the tolerance that Valley has to devote resources to and withstand financial risks that may be inherent in standardized business practices and communication formats. Furthermore, because Valley has a limited number of competitive accounts on transportation service, Valley communicates with NGSs in a less formal manner than larger NGDCs.[8] This allows Valley to conserve both time and resources.

As discussed below, these differences justify the Commission's consideration of a waiver of all, or certain, conditions that would be imposed upon Valley and other small NGDCs by the proposed regulations. At a minimum, these operational differences may support variations in the manner in which the Commission implements standardized SCTs, business practices, and communication formats for NGDCs within Pennsylvania.

A. The Commission should exempt Valley and other small NGDCs from the standardization process in the final regulations.

As drafted, the proposed regulations apply uniformly to all NGDCs. The circumstances and resources of NGDCs vary greatly across Pennsylvania. Valley respectfully urges the Commission to reflect the differing circumstances of NGDCs through exempting smaller companies (*i.e.*, those that are categorized as non-1307(f) companies under Section 53.63 of the Commission's regulations) from the regulations. As the Commission has recognized in the context of its initiative to streamline regulatory requirements for "small gas companies," companies such as Valley should focus primarily on providing safe, adequate, and reliable

[8] Even though the majority of Valley's customers do not buy competitive supply, approximately three-fourths of Valley's usage is provided through third party suppliers. This is because Valley has a limited number of very large accounts that purchase competitive supply.

service. Similarly, the Commission acknowledged the unique circumstances of smaller NGDCs in its initial implementation of the Competition Act by allowing Valley to submit a streamlined restructuring plan reflecting the Company's size and service territory, rather than the standard restructuring plan that was required of the larger NGDCs.[9] Although Valley intends to continue its current transportation program for larger customers, Valley questions whether participating in a standardization effort to "promote" competition for its smaller customers is an effective use of the Company's resources, which could be better spent on initiatives to replace aging infrastructure.

Prior to C&T's acquisition of Valley in 2002, Valley was owned by NUI Corporation ("NUI") of New Jersey. As such, when the Competition Act was passed in 1999, Valley was under the control and management of NUI, a larger corporate entity that served many natural gas customers in New Jersey and also provided competitive supply services to larger customers through its affiliate, NUI Energy Brokers. At that time, NUI petitioned the Commission to exempt Valley from filing a restructuring plan pursuant to the Act. To support its request, NUI argued that Valley's annual gas operating revenues were less than $6 million and, therefore, Valley was not an NGDC under the Competition Act.[10] Pursuant to 66 Pa. C.S. § 2202, "any public utility subject to the jurisdiction of the Commission which has annual operating revenues of less than $6,000,000 per year" is not an NGDC for purposes of the Act.[11] Therefore, NUI contended that, because only $5.4 million of Valley's sales, transportation, off-system and standby services were related to actual gas sales service revenue, Valley should be exempt from

[9] *See Application of NUI Valley Cities Gas for Approval of a Restructuring Plan*, Docket No. R-00994946, 2000 WL 348138 (PUR Slip Copy) (Order entered Jan. 27, 2000).
[10] *See id.*; *see also* 66 Pa. C.S. § 2202.
[11] 66 Pa. C.S. § 2202.

the requirements of the Act.[12] The Commission, however, determined that the Company's annual gas operating revenues for the pertinent sample year were $6.6 million and, accordingly, denied NUI and Valley's request for a waiver from the Act's requirements.[13]

In doing so, however, the Commission recognized that the Act "affords [the Commission] sufficient discretion to accept an abbreviated filing that includes less information than was required of [larger NGDCs]."[14] Furthermore, the Commission allowed the Company to "tailor its restructuring plan to fit its customers and operations."[15] The Commission, by allowing Valley to submit an abbreviated filing, acknowledged that the General Assembly did not expressly intend to impose the same regulatory burdens on small NGDCs that would be imposed on larger NGDCs.

The Commission's recent initiatives to streamline filing processes for "small natural gas companies" also rests on the premise that smaller companies should focus resources on providing safe, adequate, and reliable service to customers. Specifically, the Commission has made available standardized tariff provisions, affiliate agreements, and a short-form base rate filing format for smaller natural gas companies. Requiring "smaller natural gas companies" to comply with the new proposed regulations that will be designed primarily based on the resources and practices of larger NGDCs is arguably inconsistent with the efforts that the Commission is undertaking through its small natural gas company initiative.

The Commission previously approved Valley's restructuring plan as fully consistent with the requirements of the Competition Act.[16] As drafted, the regulations require all NGDCs to

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12 *NUI Valley Cities*, 2000 WL 348138 at 1.
13 *Id.* at 3.
14 *Id.*
15 *Id.*
16 *Pa. PUC v. NUI Valley Cities Gas*, Docket Nos. R-00994946 and R-00994946C0001, (Order entered June 23, 2000).

actively participate in the stakeholder process to develop standardized business rules and an SCT. Valley is highly concerned with the level of its resources that will be necessary to actively participate in the stakeholder process to evaluate whether it can comply with any of the proposed standardized requirements. Because Valley's plan is compliant with the Competition Act, Valley respectfully requests that the standardization effort apply only to larger NGDCs, and that "small natural gas companies" be exempted from the scope of the regulations.

An appropriate standard to determine the definition of "small natural gas company" is the distinction between Section 1307(f) and non-Section 1307(f) companies. Specifically, gas utilities are categorized as "Section 1307(f) gas utilities," "Group I Gas Utilities," and "Group II Gas Utilities" for the purpose of recovering purchased gas costs under 66 Pa. C.S. § 1307.[17] As defined by the Commission, a "Section 1307(f) gas utility" is "[a] natural gas distributor with gross intrastate annual operating revenues in excess of $40 million."[18] A "Group I Gas Utility," on the other hand, is defined as "[a] natural gas utility with gross intrastate annual operating revenues of between $2.5 million and $40 million."[19] A Section 1307(f) gas utility, because of its size and available resources, is subject to more extensive and onerous filing requirements than a Group I Gas Utility. Exempting small NGDCs from complying with the proposed regulations would be consistent with the differing regulatory burden for the review of gas costs under Section 1307. The Commission's power to implement this exemption is consistent with the power that the Competition Act granted the Commission to consider a different initial restructuring plan for smaller NGDCs such as Valley.

[17] *See* 52 Pa. Code § 53.63.
[18] *Id.* at § 53.63(1).
[19] *Id.* at § 53.63(2). A "Group II Gas Utility" is defined as "[a] natural gas utility with gross intrastate annual operating revenues of less than $2.5 million." *Id.* at § 53.63(3).

While Valley realizes that promoting competition in the retail gas market is an important objective, the Commission should be mindful that implementing standardized SCTs, business practices, and communications formats for all NGDCs alike would impose the same burdens upon all NGDCs, regardless of the NGDC's size and resources. This would be problematic because small NGDCs, which already operate with limited resources, would be forced to comply with the same regulatory burdens as large NGDCs. As a result, the ability of small NGDCs to provide reliable service to its customers could be jeopardized. Exempting small NGDCs from the proposed regulations is just, reasonable, and appropriate.

B. To the extent that the PUC chooses not to grant Valley and other small NGDCs a complete waiver from the regulatory burdens imposed by the final regulations, the Commission should consider implementing separate stakeholder processes for Section 1307(f) gas utilities and non-Section 1307(f) gas utilities or granting individual waivers of the regulations when requested by smaller NGDCs .

For the reasons discussed above, Valley and other small NGDCs should not be subject to the same regulatory burdens as large NGDCs. Valley respectfully submits that the proposed regulations should apply only to the larger NGDCs, defined as those with annual revenues in excess of $40 million. At a minimum, small NGDCs should have the opportunity to seek individual waivers of all or portions of the final regulations, and should not be required to actively participate in the various stakeholder processes contemplated by the proposed regulations. Alternatively, a separate stakeholder process could be established for the smaller NGDCs and those NGSs interested in serving in their territories to discuss whether changes to current practices are necessary.

As explained above, small NGDCs face different operational and resource issues than larger NGDCs. Those differences may stem from a number of factors, including the size of the territory, the geographic location of the territory, the number of interstate pipeline city gates serving the territory, the number of employees, and the level of automation of supplier practices. Unlike electric service, which is provided throughout the Commonwealth, gas territories do not have universal coverage. As a result, increased marketing initiatives aimed at small commercial and residential customers in larger territories will not necessarily result in a "spill over" effect in the Valley service territory.

If additional NGSs are interested in serving in the Valley territory, or if the current NGSs view aspects of Valley's current practices as an impediment to expanding service in the territory, Valley is willing to discuss its operations and practices with those suppliers to determine whether changes can be made to better accommodate their needs, while also balancing Valley's operational and financial concerns. Valley respectfully submits, however, that forcing small NGDCs to undertake this process in the abstract with NGSs that may never enter its territory is not an effective use of the parties' and the Commission's resources. In the event that the Commission does not limit the proposed regulations to the larger, Section 1307(f) gas utilities, the Commission should establish an explicit regulation confirming that smaller NGDCs can request waivers of the regulations. Specifically, the regulations should add a provision similar to the one included in the Commission's electric default service regulations for smaller default service providers:

> DSPs shall include requests for waivers from the provisions of this subchapter in their default service program filings. For DSPs with less than 50,000 retail customers, the Commission will grant waivers to the extent necessary to reduce the regulatory, financial or technical burden on the DSP or to the extent otherwise in the public interest.[20]

The Commission could use the $40 million threshold for the availability to this waiver, rather than the 50,000 customer threshold used in the electric default service regulations. In addition, Valley urges the Commission to presumptively grant waiver requests if no NGS opposes the

[20] 54 Pa. Code § 54.185(f).

filing. NGSs could, of course, be given the opportunity to later seek the termination of the waiver if they plan to enter the territory and can establish that the waiver is no longer consistent with the standard set forth in the regulations. Alternatively, the Commission could convene a separate stakeholder process for small NGDCs, if NGSs are interested in serving in the smaller territories.

III. CONCLUSION

WHEREFORE, Valley Energy, Inc respectfully requests that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Comments.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By ______________________

Pamela C. Polacek (Pa. I.D. No. 78276)
Carl J. Zwick (Pa. I.D. No. 306554)
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
717.232.8000 (phone)
717.237.5300 (fax)
ppolacek@mwn.com
czwick@mwn.com

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