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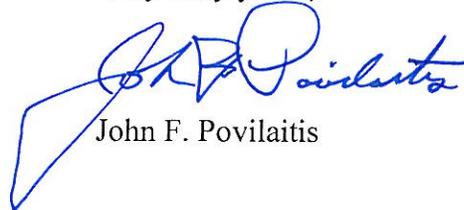
Re: Proposed Rulemaking: Natural Gas
Distribution Company Business Practices;
52 Pa. Code §§ 62.181-62.185, Docket No. L-2009-2069117

*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 Retail Energy Supply Association Comments in the above-referenced proceeding. Copies have been served on the parties to this proceeding as indicated in the attached Certificate of Service.

Very truly yours,


John F. Povilaitis

c. Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

**Comments of the Retail Energy Supply Association
to Proposed Rulemaking Order**

The Retail Energy Supply Association ("RESA")¹ submits these comments to the Proposed Rulemaking Order ("Order") issued by the Pennsylvania Public Utility Commission ("Commission") on May 1, 2009 in the above-captioned docket. The Order provides that any written comments to the proposed rulemaking are to be submitted to the Independent Regulatory Review Commission within 45 days of publication in the Pennsylvania Bulletin with reply comments due 15 days thereafter. The Order was published in the Pennsylvania Bulletin on October 17, 2009.

¹ RESA is a non-profit trade association comprised of a broad range of companies that are involved in wholesale generation of electricity and the competitive supply of natural gas to residential, commercial and industrial consumers. RESA and its members are actively involved in the development of retail and wholesale competition in natural gas and electricity markets in various states throughout the country, including Pennsylvania. RESA's members include ConEd Solutions; Direct Energy Services, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Gexa Energy; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; RRI Energy; Sempra Energy Solutions LLC. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

I. Introduction

The Order arose out of the Commission's stakeholder process known as SEARCH, which was established to explore avenues for increasing competition in Pennsylvania's retail natural gas supply service market.² The Stakeholders were directed to examine issues that are relevant to the retail natural gas supply service competitive market and to develop recommendations regarding changes in market structure and operation, including any necessary amendments to the Code and the Commission's regulations. The SEARCH process culminated in a Commission Final Order and Action Plan ("SEARCH Final Order") which, among other things, directed that a proposed rulemaking order be initiated to revise and, when feasible, to standardize natural gas distribution company ("NGDC") business practices, operating rules, and supplier coordination tariffs. Of note, the natural gas suppliers ("NGSs"), as part of SEARCH, identified certain NGDC operating rules and business practices as competitive barriers to market entry and participation.

The Commission seeks comment on the proposed regulations, which, among other things, direct NGDCs to submit standard supplier coordination tariffs ("SCTs") and implement standard business practices and communications standards and formats that are determined to be cost effective and remove market barriers. In the Order, the Commission also initiated a stakeholder process to run concurrently with the rulemaking

² Pursuant to Section 2204(g) of the Public Utility Code ("Code"), 66 Pa. C.S. § 2204(g), the Commission was required to determine whether "effective competition" existed within the natural gas market in Pennsylvania. By order entered on October 6, 2005, the Commission concluded that "effective competition" did not exist in Pennsylvania's natural gas market. *See Investigation into the Natural Gas Supply Market; Report to the General Assembly on Competition in Pennsylvania's Retail Gas Market*, Docket No. I-00040103. The Stakeholders Exploring Avenues for Removing Competition Hurdles proceeding or "*SEARCH*" was convened in response to this finding.

that is: (i) to develop a standard SCT and (ii) to make recommendations for the adoption of standard business practices for the retail natural gas market.

RESA appreciates this opportunity to provide written comments in this important rulemaking. The proposed regulations represent a significant step towards achieving effective competition in the Commonwealth's natural gas market, by establishing new business standards and operating rules to be standardized across all NGDCs. RESA commends the Commission for its ongoing effort to develop and ensure a competitive natural gas market and to provide interested parties with a meaningful opportunity to participate in the process through such vehicles as this rulemaking, and the collaborative process established in the Order.

As discussed in more detail below, the proposed regulations are necessary to facilitate effective competition in the retail natural gas supply market and should be adopted, with the modifications proposed by RESA.

II. Specific Comments

RESA comments on Section 62.181 (General)

Section 62.181 sets forth the purpose of the proposed regulations and summarizes its contents. Developing a common set of business practices, including standard supplier tariffs, is a good start to facilitating the participation of NGSs in the retail gas market. Consistent business practices, including a consistent standard tariff, will ease the costs and burdens, in general, for NGSs operating in Pennsylvania and will ease the burdens, in particular, for NGSs doing business in multiple NGDC service territories in the Commonwealth.

RESA Proposed Revisions to Section 62.182 (Definitions)

Section 62.182 contains proposed definitions relevant to NGDC business practices, including nominations, balancing, imbalance, tolerance level, and cash out penalties. It is important for all market participants and the government bodies that regulate them to have a basic understanding of these terms. The definitions provided in the proposed rules represent a good start. RESA is concerned, however, that certain of the proposed definitions are incomplete and do not reflect the practical realities of the relationship between a NGS and its customers.

For example, under the proposed definition of “Imbalance” in Section 62.182, an imbalance occurs only when a NGS delivers a larger or smaller quantity of gas to another party than it received. Consequently, this definition addresses only an imbalance caused by the NGS' failure to deliver the amount of gas that a NGDC requires it to deliver. Absent unforeseen circumstances, such as an unexpected change in weather, this is not typically an issue – generally, a NGS can and should be able to deliver the amount of gas the utility specifies, within a small margin of error. The proposed definition, however, does not address an imbalance where the NGS delivers the quantity of gas nominated and scheduled to be delivered but the customer uses more or less gas in a given day than projected. This is more frequently the situation that gives rise to an imbalance. Consequently, the definition should be modified to address this circumstance. RESA proposes the following definition with the changes appearing in CAPS:

Imbalance. When an NGS receives or delivers a quantity of natural gas, then delivers or redelivers a larger or smaller quantity of natural gas to another party OR WHEN A CUSTOMER USES AN AMOUNT OF NATURAL GAS THAT IS DIFFERENT THAN WHAT THE NGS SCHEDULED FOR DELIVERY OR REDELIVERY INTO THE NGDC SYSTEM.

The definition of "Tolerance band" is also incomplete. Similar to the proposed definition of "Imbalance," the term "Tolerance band" is defined within the limited context of NGS nominations and deliveries into a NGDC's system. However, the proposed definition makes no provision for differences between the amount of gas nominated and delivered versus the amount of gas actually used by a customer. Consequently, the proposed definition needs to be revised to reflect that differences can occur between projected deliveries and actual usage due, for example, to weather-related events and other events beyond the control of the NGS or customer. RESA proposes the following definition with the changes appearing in CAPS:

Tolerance band. A range of acceptable values for the measured difference between the gas volume that is nominated to be delivered in a certain time frame and the gas volume that is delivered during that time frame by the NGS OR A RANGE OF ACCEPTABLE VALUES FOR THE MEASURED DIFFERENCE BETWEEN THE GAS VOLUME THAT IS USED BY A CUSTOMER IN A CERTAIN TIME FRAME AND THE GAS VOLUME THAT IS DELIVERED BY THE NGS DURING THAT SAME TIME FRAME.

In addition, RESA recommends revising the definition of "Balancing" to eliminate daily balancing. RESA objects to daily balancing because it produces additional costs with typically no opportunity to mitigate those costs. Instead, balancing should be done on a monthly or seasonal basis only. The new definition would read as follows:

"Balancing." The act of equalizing receipts and deliveries of gas into or withdrawals from an interstate gas pipeline or a NGDC's distribution system. Balancing may be accomplished ~~daily,~~ monthly or seasonally, with fees or penalties generally assessed for excessive imbalances.

RESA comments on Section 62.183 (NGDC Customer Choice System Operations Plan)

Proposed Section 62.183 directs NGDCs to file system operations plans for Commission review and to serve a copy of the plan on the statutory advocates and all NGSs licensed in the NGDC's service territory. The contents of the plan are to include a SCT, business practices and standards, and communications standards. RESA agrees with this section as proposed for several reasons. First, RESA agrees with the Commission that the plans will serve to demonstrate NGDC compliance with the SCT requirements and the other business practices and standards that will be established in the above rulemaking. Second, RESA agrees that the plans will act as a complete, single source for all the information that a supplier needs to know in order to operate on the NGDC system. This "one stop shopping" will facilitate NGS market entry by providing a NGS with easy, consistent access to all documents and information relevant to doing business on the NGDC system.

RESA comments on and proposed revision to Section 62.184 (Natural Gas Distribution Company Costs of Competition-Related Activities)

Proposed Section 62.184 permits NGDCs to recover the reasonable costs related to promoting competition in the retail natural gas market through the use of a non-bypassable, reconcilable surcharge filed under Code Section 1307. RESA agrees that if a NGDC elects to do so, it should be able to recover from all ratepayers the 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 gas market. Of note, RESA agrees with the approach to assign these costs to all customers, given that the benefits of effective competition are enjoyed by all customers. These benefits include

more efficient utilization of assets and resources, including capacity. Moreover, competition creates an incentive for the NGDCs to manage costs and operate efficiently.

There appears to be an ambiguity, however, in Subsection 62.184(d) relating to the cost recovery procedures that a NGDC seeking to implement a surcharge is to follow. This subsection mandates that before instituting the surcharge, a NGDC is required to remove the amounts attributable to promoting retail competition from base rates in a general rate case, which must be filed within 5 years after seeking recovery via the surcharge. The phrase "Before instituting the surcharge," can be interpreted to require a NGDC to remove the competition costs from base rates before instituting the surcharge, even though Subsection 62.184(a) explicitly authorizes establishing a surcharge as soon as the NGDCs next Code Section 1307(f) filing and even though Subsection 62.184(d) gives the NGDC five years to file the general rate case. To avoid this ambiguity, RESA recommends eliminating the "Before instituting the surcharge," language from the beginning of Subsection 62.184(d).

RESA Comments on Section 62.185 (Supplier Coordination Tariff, Business Practices and Standards) and proposed revision to Subsection 62.185(c)(3)(iii)

RESA comments, as follows, to each of the Section 62.185 subsections (a) through (d):

Subsection 62.185(a)

RESA agrees that it is necessary to adopt best business practices and standards and to direct NGDC compliance with those practices and standards. As stated by the Commission in its Order, the streamlining and standardization of business interactions

between NGDCs and NGSs are key to facilitating supplier participation and effective competition in the retail natural gas supply market.

Subsection 62.185(b)

RESA fully endorses the Commission's proposal for a standard SCT containing standard business practices. A SCT will facilitate competition by promoting consistency, transparency, and ready access to the information necessary to do business on a NGDC and will ease the burden of a NGS operating in multiple service territories.

Subsection 62.185(c)

Proposed Subsection 62.185(c)(3) sets forth proposed standards for five technical subjects: imbalance trading, tolerance bands, cash outs and penalties, nominations, and capacity. RESA agrees with the approach to define and memorialize the best practices for these five subjects in a SCT via a stakeholder process that are to follow the standards established in Section 62.185. However, RESA recommends adding language to Subsection 62.185(c)(3)(iii) that could simplify monthly imbalance management and lessen the need for imbalance trading. In short, RESA proposes that the Commission establish 2-step process to deal with NGDC system imbalances. The first step would allow for a system reconciliation of imbalances, while the second step would allow the trading of any remaining offsetting imbalances between suppliers after a system reconciliation occurs.

A system reconciliation of imbalances equates to a “no harm, no foul” approach to monthly balancing, whereby a NGS would not be penalized for an imbalance that is in the opposite direction of the overall system position. In other words, if the NGDC system is experiencing a positive imbalance of 10,000 Mcf (i.e., the system has 10,000

Mcf more gas than expected) and an NGS has under-delivered by 1,000 Mcf, then no penalty factor would apply to the NGS imbalance because it partially offsets the system imbalance. This is a reasonable approach because in such a circumstance, the NGDC's system is not harmed by the NGS' imbalance, and may even be helped by reducing the extent of the system imbalance. To this end, RESA proposes adding the following language to the end of Subsection 62.185(c)(3)(iii) that would establish a system reconciliation of imbalances: "However, no multiplier shall apply to imbalances that offset, in whole or in part, any NGDC system imbalance."

As the second step of the 2-step process to deal with system imbalances, RESA supports the use of imbalance trading proposed in the regulations. RESA supports the proposed imbalance trading, in particular, for situations where a NGS has an imbalance in the same direction as the system (for example, the system is over 5,000 Mcf and the NGS is over 1,000 Mcf) or the NGS has a remaining imbalance after system reconciliation occurs (for example, the system is over 500 Mcf, the NGS is under 1,000 Mcf and thus, has a remaining imbalance of under 500 Mcf). Under either scenario, the NGS could offset any leftover imbalance by trading with another NGS that has a leftover imbalance in the opposite direction. Any imbalances that still remain would then be cashed out at the appropriate level, in accordance with Subsections 62.185(c)(3)(ii) and (iii) of the regulations.

RESA supports the 10% tolerance level and cash out and penalty structure in proposed Subsections 62.185(c)(3)(ii) and (iii). The proposed 10% tolerance level strikes the proper balance between encouraging responsible NGS behavior with respect to nominations and deliveries while, at the same time, ensuring sufficient flexibility to

account for variables outside a NGS' control that affect balances. The Commission also struck the right balance with the proposed cash out and penalty structure. If any NGS falls outside the tolerance band, RESA agrees that a penalty should be assessed (provided that the imbalance is in the same direction as the system imbalance as discussed above). But, the penalty factor should be reasonable – it should be steep enough to deter irresponsible behavior but not so oppressive or punitive that it cannot influence NGS behavior and serves purely as a revenue stream for the NGDC. The Commission's proposed 10% penalty factor meets these criteria and, therefore, is reasonable.

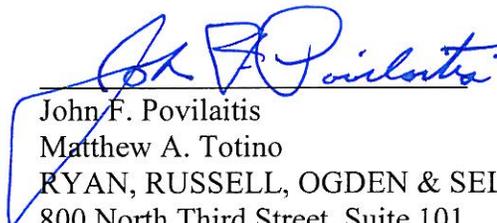
RESA also supports proposed Subsection 62.185(c)(3)(iv), which requires that a NGDC support all four nomination cycles of the North American Energy Standards Board ("NAESB") along with at least one intraday cycle. Using the NAESB cycles will synchronize the nomination deadlines on the NGDC system with the nomination deadlines for interstate pipelines, which will reduce the opportunity for error and missed deadlines. Currently, some NGDCs require that nominations be submitted prior to the time when upstream nominations must be completed. It is not until the upstream arrangements are in place that a marketer has certainty as to its needs on the NGDC systems. Thus, it is important that a NGS be able to make its upstream nominations prior to the deadline for submitting nominations on the NGDCs. Moreover, the opportunity for at least one intraday nomination will limit penalties due to human error (e.g., a typo in a contract number) by allowing corrections to be made in the next nomination cycle.

III. Conclusion

The proposed regulations should be adopted with the modifications proposed above. With these modifications, all terms will be properly defined not only within the

context of NGS nominations and deliveries, but also, within the context of actual customer usage. In addition, RESA has proposed a 2-step balancing process that will lessen the need for imbalance trading and consequently, reduce the costs and administrative burdens associated with such trading. The Commission's proposed regulations, combined with RESA's suggested revisions discussed in these comments, are necessary and appropriate to facilitate effective retail competition in Pennsylvania's natural gas supply market and should be adopted.

Dated: December 1, 2009



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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the relevant documents in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

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