

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF SMALL BUSINESS ADVOCATE

Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

William R. Lloyd, Jr.
Small Business Advocate

(717) 783-2525
(717) 783-2831 (FAX)

September 9, 2010

HAND DELIVERED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**Re: Natural Gas Distribution Companies and the Promotion of Competitive
Retail Markets
Docket No. L-2008-2069114**

Dear Secretary Chiavetta:

I am delivering for filing the original plus fifteen copies of the Comments on behalf of the Office of Small Business Advocate on the Proposed Rulemaking.

As requested in the Advance Notice of Final Rulemaking Order, entered August 10, 2010, courtesy copies of these Comments are being served on David E. Screven and Richard Wallace.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink that reads "William R. Lloyd, Jr." with a stylized flourish at the end.

William R. Lloyd, Jr.
Small Business Advocate
Attorney ID No. 16452

Enclosures

SECRETARY'S BUREAU
2010 SEP -9 PM 3:12
RECEIVED

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
2010 SEP -9 PM 3:13
PA PUC BUREAU
SECRETARY

Natural Gas Distribution Companies and the :
Promotion of Competitive Retail Markets :

Docket No. L-2008-2069114

**COMMENTS ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

I. Background

By Order entered March 27, 2009, the Pennsylvania Public Utility Commission (“Commission”) initiated a proposed rulemaking intended to promote the development of competition in the retail markets for natural gas supply.

The Office of Small Business Advocate (“OSBA”) and other interested parties filed comments on August 25, 2009.

By Order entered August 10, 2010, the Commission gave advance notice of its final rulemaking and invited comments on changes made in the regulations as originally proposed. The OSBA submits the following comments in response to the August 10, 2010, Order.

II. General Comments

The Commission’s August 10, 2010, Order deleted or revised the provisions of the proposed regulations which were most problematic to the OSBA. In its invitation to file additional comments, the Commission “emphasize[d] that parties should use this opportunity to focus on the revisions to the proposed rule, and not to revisit issues already addressed in previously submitted comments.” To the extent that any party ignores the

Commission's admonition and advocates the reversal of changes in the regulations made in the August 10, 2010, Order, the OSBA incorporates its August 25, 2009, comments herein by reference.

III. Specific Comments

In addition to its general comments, *supra*, the OSBA submits the following comments regarding the specific proposed regulatory language set forth in Annex A to the August 10, 2010, Order.

§62.222. Definitions

"Gas Procurement Charge" ("GPC") is defined as "[a]n element of the PTC [Price To Compare], expressed on per Mcf or Dth basis, that reflects the NGDC's [natural gas distribution company's] total natural gas procurement costs." However, under proposed Section 62.223(a), the PTC includes the gas cost rate ("GCR"), the GPC, and the merchant function charge ("MFC"). Therefore, the OSBA recommends that GPC be defined as "an element of the PTC, expressed on a per Mcf or Dth basis, that reflects the NGDC's total natural gas procurement costs *exclusive of costs included in either the gas cost rate or the merchant function charge.*"

§62.223. PTC.

Price To Compare

Proposed Section 62.223(a)(1) includes the reconciliation for over- and under-collections, *i.e.*, the E-factor, in the PTC. However, customers who switch from NGDC service to service from a natural gas supplier ("NGS") may not be able to avoid paying

the E-factor for the first twelve months of shopping. In contrast, a customer returning to NGDC service from NGS service may not be required to pay the E-factor for 12 months. For those reasons, the PTC will not be perfectly reflective of the cost of NGDC supply that the customer will avoid (or pay) when the customer chooses to shop (or to return to NGDC service). The OSBA is sympathetic to the Commission's desire both to avoid customer confusion and to maintain simplicity on the customer's bill. Therefore, the OSBA recommends that the NGDC be required to identify the PTC on the bill without including the E-factor. To respond to the concerns of the NGSs, the OSBA further recommends that the NGDC include a note on the bill explaining, in general, the impact of the E-factor charge if a customer chooses to shop or return to NGDC service.

Unbundling

One goal of this section is to unbundle "natural gas procurement costs" which are not clearly defined as "gas costs" by Section 1307(h) of the Public Utility Code, 66 Pa. C.S. §1307(h). On a conceptual level, the OSBA agrees with this goal. However, based on cases in which such unbundling has been an issue, the OSBA has some practical concerns.

First, one stumbling block to resolving the issue has been disagreement about which, if any, costs an NGDC is unable to avoid because of its supplier of last resort ("SOLR") obligation. For example, NGDCs have sometimes argued that they must retain certain assets, *e.g.*, what could be characterized as "excess" capacity, in case shopping customers return to SOLR service.

Second, there has been disagreement about whether costs should be unbundled at their current level or at the level claimed in the NGDC's most recent base rate case. In

addition to the underlying policy argument, there can also be disagreement about the level of a particular cost included in current rates if those rates were set via a “black box” settlement. Proposed Section 62.223(c) *implies*, but does not expressly state, that uncollectibles costs are to be removed from base rates at their current level rather than at the level claimed in the last base rate case. However, proposed Section 62.223(b) is even less clear on that point with regard to gas procurement costs.

In an effort to minimize litigation, the OSBA recommends that the additional unbundling contemplated by this section be implemented in a base rate case rather than in a proceeding devoted solely to unbundling. If an NGDC does not file a base rate case within two years of the effective date of the regulations, the OSBA recommends that the additional unbundling be pursued in that NGDC’s first Section 1307(f) proceeding after that two-year deadline.

However, even if the additional unbundling is addressed in a base rate proceeding, the list of administrative costs under proposed Section 62.223(b)(2) to be included in gas procurement costs may lead to confusion and excessive litigation. For example, because working capital costs are typically not considered “administrative costs,” the rationale for their inclusion on this list is unclear. Moreover, although the gas supply function requires the NGDC to incur some working capital costs, it is not clear whether the Commission intends that working capital costs include both costs associated with gas in storage and costs associated with lead-lag effects for receipts and expenses. Therefore, the OSBA recommends that the Commission clarify its intentions with regard to including working capital costs as gas procurement costs.

Similarly, proposed Section 62.223(b)(2) specifies that only administrative costs “related exclusively to SOLR service” are to be included in the gas procurement costs. It is likely that every NGDC will argue that it incurs no administrative costs related *exclusively* to SOLR service, and that all of the costs on the list in proposed Section 62.223(b)(2) are incurred jointly in support of various different functions of the NGDC. If it is the Commission’s intent that an NGDC be required to *allocate* certain administrative costs among its various functions (including gas supply), the OSBA recommends that the Commission delete the word “exclusively” and make it clear that administrative costs should be allocated on some reasonable basis.

Reconciliation

Proposed Section 62.223(f) specifies that the GPC and the MFC “*shall* be subject to audit.” In contrast, proposed Section 62.223(e) specifies that the GPC and MFC “*may* not be subject to reconciliation.” Because of the use of “shall” in proposed Section 62.223(f) and “may” in proposed Section 62.223(e), it could be argued that an NGDC would have the option to reconcile the GPC and MFC. To eliminate ambiguity, the OSBA recommends the use of “shall not” rather than “may not” in proposed Section 62.223(e).

In support of that recommendation, the OSBA notes that reconciliation of the MFC would violate Section 1408 of the Public Utility Code, 66 Pa. C.S. §1408, which prohibits reconciliation of uncollectibles. The OSBA also notes that the August 10, 2010, Order, at 18, specifies that neither gas procurement costs nor costs collected through the MFC are to be reconciled.

§62.224. POR programs.

Discount Rate

Proposed Section 62.224(a)(4) indicates that an NGDC would have the option to use a discount rate for its purchase of receivables (“POR”) program that is based on the system average uncollectibles rate rather than multiple discount rates based on class-specific uncollectibles rates. In that regard, the August 10, 2010, Order, at 26, indicates that the NGDC will be “allowed” to vary the POR discount rate by class. In contrast, the August 10, 2010, Order, at 26, footnote 8, states that “[t]he Commission anticipates that, in practice, the ‘reasonably projected risk’ of non-payment for the accounts receivables will be based on the NGDC’s most recently updated uncollectibles rate *for each customer class.*”

Setting the discount rate on the basis of the system average uncollectibles rate would over-compensate the NGDC in the case of shopping by small business customers and under-compensate the NGDC in the case of shopping by residential customers. Setting the discount rate on the basis of the system average uncollectibles rate might also inhibit NGSs from making competitive offers to small business customers or might result in higher-priced offers to small business customers than might otherwise be expected.

Therefore, the OSBA recommends that “shall” be substituted for “may” in proposed Section 62.224(a)(4).

Implementation Dates

The August 10, 2010, Order, at 30-31, provides a schedule for NGDCs to comply with the POR regulations. That schedule varies on the basis of whether an NGDC

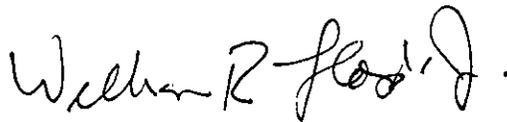
already has a POR program and what terms are included in that POR program. The OSBA recommends that the essence of this schedule be incorporated into the regulations so that practitioners can readily determine the schedule without having to research individual orders.

The OSBA also recommends that a similar schedule be incorporated into the regulations for NGDCs which already have an MFC. In the alternative, the OSBA recommends that the Commission articulate a schedule in its final form order for bringing previously-approved MFCs into compliance with the regulations.

IV. Conclusion

In view of the foregoing, the OSBA respectfully requests that the Commission revise the proposed regulations in accordance with the OSBA's comments.

Respectfully submitted,



William R. Lloyd, Jr.
Attorney ID No. 16452
Small Business Advocate

Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101
(717) 783-2525

Dated: September 9, 2010