

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation of Pennsylvania's : **Docket No. I-2013-2381742**
Retail Natural Gas Supply Market :

**COMMENTS
ON BEHALF OF THE
RETAIL ENERGY SUPPLY ASSOCIATION**

RETAIL ENERGY SUPPLY ASSOCIATION

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**On Behalf of the Retail Energy Supply
Association**

Dated: December 12, 2013

TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. RESA COMMENTS..... 2

1. What is the current status of retail natural gas competition for customers, by class and by service territory, and for NGDCs? For each such customer class and service territory, how accessible are competitive suppliers?..... 2

2. Are currently effective NGDC rates properly structured to reflect the separation between the costs of the NGDC’s role as a distribution utility and its role as a Supplier of Last Resort (SOLR)?..... 3

3. Does the existing market design of NGDCs serving as the SOLR present barriers that inhibit customer choice or prevent suppliers from fully participating in the retail market? 3

4. Should NGDCs continue in the role of SOLR? 5

5. Are there enhancements and updates to the current SOLR model that would further improve the state of competition with the retail natural gas market? 5

a. Are there opportunities through the potential restructuring of the SOLR model and retail gas market to encourage expansion of natural gas distribution facilities into areas of the Commonwealth that do not currently have access to natural gas facilities?6

b. Are there changes to the retail natural gas market that the Commission can undertake *de novo* through regulation or policy that would promote retail natural gas competition?..... 6

c. Are there changes to the retail natural gas market that the Commission can undertake *de novo* through regulation or policy that would remove barriers to retail natural gas competition? 7

d. What legislative changes should be made to further improve the retail natural gas market in Pennsylvania? 7

6. Are there outcomes from the Commission’s recently completed electric RMI that would be applicable and useful to implement in the retail gas market? To the extent possible, please provide comments on the following topics: 8

a. Seamless Move 8

b. Accelerated Switching Timeframes 8

c. Standard Offer Program	8
d. Low-income customer shopping	8
e. Expanded Consumer Education about shopping.....	8
f. Any additional RMI initiative that would translate well to the retail natural gas market	9
 7. To take advantage of the opportunity that is present through the Marcellus Shale resources, should NGDCs and NGSs be encouraged to explore opportunities with natural gas exploration and production companies?.....	9
 8. Recognizing that the Commission withdrew the proposed rulemaking addressing NGDC business practices at Docket No. L-2009-2069117 and committed to commencing a new proposed rulemaking on these issues, please provide comments on the continued need to address standardized supplier tariffs and business practices with regard to imbalance trading, tolerance bands, cash out and penalties, nominations and capacity....	9
 III. CONCLUSION	10

I. INTRODUCTION

In an Order entered September 12, 2013 at Docket No. I-2013-2381742 (“Investigation Order”), the Pennsylvania Public Utility Commission (“PaPUC” or “Commission”) established an Investigation proceeding soliciting comments from interested parties on eight questions relating to Pennsylvania’s retail natural gas market. This Investigation renews the efforts made in the PaPUC’s SEARCH process to enhance retail gas competition in the Commonwealth. The purpose of the Investigation is “to assess whether effective competition exists and make recommendations for improvements to ensure that a properly functioning and workable competitive retail natural gas market operates in the state.”¹ The Investigation is phased, with the first phase focusing on the current status of the retail market and what changes are needed. The second phase, headed by the PaPUC’s Office of Competitive Market Oversight (“OCMO”) will focus on how best to resolve issues raised and how to implement prudent changes needed to improve competition. The Commission has also indicated it may convene en banc hearings to elicit further information from parties after reviewing the initial comments submitted in response to the Investigation Order.

RESA² supports the Commission’s Investigation and will participate in the process beginning with these Comments. With the Commission’s support and the active participation and collaboration by interested parties, RESA believes both near and long term improvements in the Pennsylvania retail natural gas market can be achieved. RESA’s specific Comments in response to the Commission’s eight questions are as follows.

¹ Investigation Order at 2.

² RESA’s members include: AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization and may not represent the views of any particular member of RESA.

II. RESA COMMENTS

1. **What is the current status of retail natural gas competition for customers, by class and by service territory, and for NGSs? For each such customer class and service territory, how accessible are competitive suppliers?**

Response: RESA does not possess data by natural gas supplier (“NGS”) and natural gas distribution company (“NGDC”) service territory showing the extent of current shopping by retail customers. However, the Commission must seek, collect and evaluate data showing the extent of shopping by type of retail customer in each NGDC service territory. Such data is the best indicator of the extent to which the gas competitive market is functioning properly, and should be the basis for determining if future legislative and regulatory efforts are needed to achieve a successful competitive market in Pennsylvania. PaGasSwitch, a page on the Commission’s website³, provides a list of licensed NGSs. There are one hundred and thirty six (136) NGSs listed on PaGasSwitch collectively offering 52 products for residential customers and these offerings are limited generally to fixed and variable plan plans. However, a more sophisticated website that provides information on specific competitive offers similar to PaPowerSwitch for the competitive electric industry should be developed as soon as possible for natural gas. That new product comparison website should be maintained and operated by the Commission or a neutral unbiased agent of the Commission. This issue is very amenable to a sub-working group approach to develop a program for implementing an improved website that promotes shopping.

Data available on the Pennsylvania Office of Consumer Advocate website indicates that almost half of NGDCs for whom data is reported have zero to less than 1% residential customers shopping as of October 2013. Under any standard, this is not indicative of a successful retail gas

³ This page is found at http://www.puc.pa.gov/consumer_info/natural_gas/natural_gas_shopping/gas_shopping_tool.aspx

market. The Commission and all relevant stakeholders must have access to accurate, timely and complete shopping data so the market can be monitored effectively to determine if meaningful progress in establishing a more active competitive retail gas market is being made.

2. Are currently effective NGDC rates properly structured to reflect the separation between the costs of the NGDC's role as a distribution utility and its role as a Supplier of Last Resort (SOLR)?

Response: The PaPUC's current regulatory efforts, including formal rulemaking, to ensure that the NGDC price to compare ("PTC") for supplier of last resort ("SOLR") service contains all NGDC costs related to acquiring natural gas is a positive initial start to accomplishing the goal of determining what costs are reflected between the NGDC and the SOLR roles. The Commission should continue to remain vigilant on this issue and ensure in every NGDC rate proceeding that SOLR costs are properly classified and allocated for cost of service purposes between true distribution system costs and gas procurement and sale costs. Incentives need to be in place to ensure that NGDCs police this issue themselves, so costly interventions in NGDC PaPUC filings requiring competing cost of service studies are not part of NGS' regular costs of doing business in Pennsylvania.

3. Does the existing market design of NGDCs serving as the SOLR present barriers that inhibit customer choice or prevent suppliers from fully participating in the retail market?

Response: Yes. RESA supports a thorough review in this Investigation of the role of NGDCs in SOLR service and its impact on NGSs and retail customers. The Commission's electric retail market investigation devoted considerable effort to the impact of default service on the competitive retail market. The NGDC's provision of SOLR service is equally important as well. RESA supports a shift toward more NGS involvement in the provision of SOLR service.

This issue is particularly complex because, unlike the Pennsylvania electric industry, there is no retail gas transmission organization such as PJM that provides transmission service to

NGDC city gates or markets for the purchase of power. There is a “balkanization” of supply arrangements of different types, with varying degrees of contractual commitments across Pennsylvania, which make for different situations in different NGDC service territories. That being said, consensus should be sought in this Investigation regarding steps that can be taken to make the price of SOLR service more connected to and reflective of the market price of natural gas; and, steps should be taken to increase the role of NGSs in that process.

Overall, RESA believes the ultimate ideal end-state, as a policy matter and for Pennsylvania’s customers, would allow the provision SOLR service to be provided for by NGS on a retail level, much like the existing structure in Dominion East Ohio or Columbia of Ohio service territories in the adjoining state of Ohio. RESA members serving customers in that territory can testify to the increasingly positive customer experience and the progressively amicable working relationship with certain incumbent utilities.⁴ Ohio is a great example of how NGDCs have been able to leave the SOLR function without endangering reliability for customers. Furthermore, Texas and Georgia have been equally successful in enabling the NGSs to provide SOLR service. The Investigation should consider all approaches for enhanced NGS participation. A possible subject of en banc hearings in this Investigation could be a closer look at these alternatives in order to determine if, and to what extent, they serve as guidance for a new approach in Pennsylvania.

Because of the interrelationship of Chapter 22 Natural Gas Competition and Chapter 13 Rates and Ratemaking, the latter of which includes statutes specific to the standards for NGDC gas procurement, it is important to determine early in this Investigation whether more legal

⁴ Customers in Ohio are enjoying an increasingly positive customer experience and NGSs are experiencing a progressively amicable working relationship with Dominion East Ohio. It is important to note that significant changes in the provision of SOLR service were accomplished in the Dominion East Ohio service territory without formal litigation and with the working cooperation of the NGDC, the Ohio public advocate and the Public Utilities Commission of Ohio.

flexibility is necessary for the PaPUC to pursue a different and improved SOLR service model. Consensus should be sought on what that model should be and whether any steps toward the establishment of that model can be taken by the Commission under existing law. If not, a consensus position should be explored on what legislative amendments are needed.

4. Should NGDCs continue in the role of SOLR?

Response: In RESA's view, modification of the NGDC role in SOLR service needs to be closely examined because the current lack of shopping in the residential class and the regulatory process for setting SOLR service rates for NGDCs when combined impede NGS switching success in Pennsylvania. Before committing to a specific alternative to SOLR, more dialogue with public advocates and the NGDCs on the record in this Investigation should occur. The goal should be a collaborative consensus that improves shopping levels without endangering NGDC cost recovery, but also establishes a larger NGS role in the provision of SOLR service.

5. Are there enhancements and updates to the current SOLR model that would further improve the state of competition with the retail natural gas market?

Response: The main enhancement that is currently needed is movement toward a more market reflective price for SOLR service. Key to that issue is the degree of flexibility in gas supply available to the stakeholders – NGDCs, NGSs and end-use retail customers. RESA looks forward to the NGDCs views of the degree to which current SOLR service reflects current market prices.

An enhancement that has been implemented in Ohio and is being examined in other state jurisdictions is a provision for capacity assignment agreements between NGDC and NGSs. Capacity assignment allows NGS to utilize reserve capacity held by the NGDC. Provisions for capacity assignment facilitate an increasingly seamless avenue for the supply of retail natural gas for customers. Chapter 22 of the Public Utility Code addresses the assignment of capacity in the

context of natural gas industry restructuring. However, the capacity usage issue should be given fresh examination to determine if capacity utilization can be improved in Pennsylvania with benefits to all customers.

- a. **Are there opportunities through the potential restructuring of the SOLR model and retail gas market to encourage expansion of national gas distribution facilities into areas of the Commonwealth that do not currently have access to natural gas facilities?**

Response: Service to areas of the Commonwealth that do not currently have access to retail natural gas facilities is an issue that has at its heart the tension between traditional public utility duties and responsibilities and the risk of investment in natural gas infrastructure not being recovered with a reasonable return. RESA recommends that the Investigation explore how barriers to new approaches to expansion of service, and use of abundant natural gas supplies, can be achieved in a way that is fair to all stakeholders.

- b. **Are there changes to the retail natural gas market that the Commission can undertake *de novo* through regulation or policy that would promote retail natural gas competition?**

Response: *De novo* improvements in the Pennsylvania retail natural gas competitive market through regulation or policy have been historically difficult due to the balkanization of NGDC supply scenarios. These differences initially created the need to incrementally address supplier tariff issues one NGDC at a time and on a case by case basis within each NGDC territory. This Investigation serves the important role of attempting to improve the market in a generic fashion.

As will be addressed in RESA's comments to question eight, improvements can be made in NGDC supplier tariff provisions that make operational rules more reasonable, less punitive and more consistent across NGDC service territories. A further step the PaPUC should consider is its commitment to an ongoing annual investigation, perhaps administered by an Administrative

Law Judge that would largely be conducted on a paper record, yet could result in specific regulatory changes being adopted in an NGDC service territory. Such a process would end the necessity of NGSs to monitor all NGDC proceedings and engage in costly interventions in the hope of achieving a modest improvement in the rules applicable to NGS service. A new process that provides due process to all concerned, yet does not make competitive improvements unduly costly and incremental is needed, given the state of gas shopping in Pennsylvania.

RESA is eager to engage in further discussions to address how the momentum established in this Investigation can be maintained until there is a consensus view that the Pennsylvania gas market is a nationwide model of success.

c. Are there changes to the retail natural gas market that the Commission can undertake *de novo* through regulation or policy that would remove barriers to retail natural gas competition?

Response: As suggested in the response to question 8, Commission policy should be that balancing rules, cash outs, pooling and penalties should be as uniform as possible while supporting a competitive market in order to reduce barriers to retail natural gas competition.

d. What legislative changes should be made to further improve the retail natural gas market in Pennsylvania?

Response: It is unlikely that legislation favorable to only one interest group can be proposed and passed in the Pennsylvania General Assembly. Therefore, the Commission should seek in this investigation, consensus regarding what legislative changes are needed to firmly establish a successful retail natural gas market. The Commission's role in that issue is key because the Commission makes the threshold determination of what the law allows or does not allow. The new initiatives the Commission wishes to pursue must be applied to that template to create the list of necessary legislative changes.

RESA proposes that the following issues be studied for purposes of possible legislative amendments: 1) Amendments needed to modify current NGDC gas procurement practices and potentially transfer of SOLR responsibilities to NGSs; 2) Authority that ensures the PaPUC has ratemaking flexibility to determine what are by-passable and non-by-passable NGDC charges; 3) Clarification of cost responsibility for NGDC system improvements that position a system for robust competition through active retail shopping; 4) Clarification of appropriate cost responsibility for customer education; and 5) Authority needed to implement any regulatory regime needed to expand the distribution of natural gas to currently un-served or under-served areas.

6. Are there outcomes from the Commission’s recently completed electric RMI that would be applicable and useful to implement in the retail gas market? To the extent possible, please provide comments on the following topics:

a. Seamless Move

Response: The cost of establishing service with NGS customers is an ongoing concern and RESA supports promotion of the seamless, expeditious move concept.

b. Accelerated Switching Timeframes

Response: RESA supports removal of all impediments to delays in switching customers’ service.

c. Standard Offer Program

Response: RESA supports implementation of a consensus program aimed at making a standard offer to customers available in the gas market.

d. Low-income customer shopping

Response: RESA supports low income customers having access to shopping with appropriate protections for NGSs and NGDCs.

e. Expanded Consumer Education about shopping

Response: Given the current state of residential shopping, a renewed customer education effort is appropriate particularly in association with a renewed opening of the market by regulatory changes adopted by the PaPUC. Appropriate cost recovery for types of education should be addressed as part of this issue.

f. Any additional RMI initiative that would translate well to the retail natural gas market

Response: RESA has not identified an additional RMI initiative but looks forward to discussion of any that another commenter may suggest.

7. To take advantage of the opportunity that is present through the Marcellus Shale resources, should NGDCs and NGSs be encouraged to explore opportunities with natural gas exploration and production companies?

Response: RESA members are keenly interested in any gas procurement strategies that support competitive products being available to retail natural gas customers. Therefore, RESA sees no reason why such encouragement of business opportunities with E & P companies should not be considered. RESA stands ready to offer its views on any specific types of arrangements that may be proposed by the Commission or a party to this investigation.

8. Recognizing that the Commission withdrew the proposed rulemaking addressing NGDC business practices at Docket No. L-2009-2069117 and committed to commencing a new proposed rulemaking on these issues, please provide comments on the continued need to address standardized supplier tariffs and business practices with regard to imbalance trading, tolerance bands, cash out and penalties, nominations and capacity.

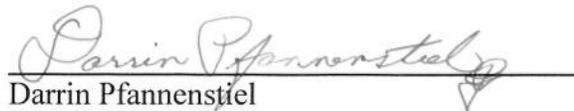
Response: RESA supports reasonable, practical and fair improvements in NGDC balancing rules, cash outs, pooling and penalties. In general, RESA believes that such rules should be as uniform as possible and set for typical system conditions. These issues tie into the possible legislative initiative of clarifying cost responsibility for supplier rule changes. All too often these improvements are defeated because they are considered to create costs for the NGDC system. Such costs can and should be in NGDC rates when changes are needed to make

competition run smoothly. As a policy matter, it should be clear in Pennsylvania that active NGSs operating on all NGDC systems is a public benefit and costs to achieve those benefits are fairly paid by NGDC customers.

III. CONCLUSION

RESA supports the Commission's initiative to improve the Pennsylvania retail gas market through this Investigation. It encourages the PaPUC to be steadfast throughout this investigation and in other processes and initiatives needed to establish and maintain a national model for competition in Pennsylvania.

Respectfully submitted,



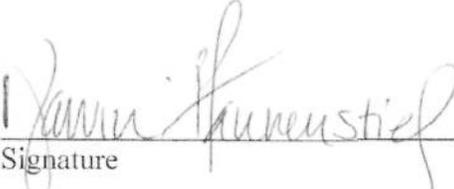
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On Behalf of the Retail Energy Supply Association

Dated: December 12, 2013

VERIFICATION

I, Darrin Pfannenstiel, Chief Regulatory Counsel of Stream Energy, hereby verify that the information in the foregoing Retail Energy Supply Association Comments filed in the Investigation of Pennsylvania's Retail Natural Gas Supply market at Docket No. I-2013-2381742, is true and correct to the best of my information, knowledge and belief. I understand that the statements are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to the unsworn falsification to authorities.


Signature

Dated: December 12, 2013