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December 12, 2013

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

**VIA ELECTRONIC FILING**

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

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") are the Comments of the Pennsylvania Petroleum Association ("PPA"), in the above-referenced proceeding. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By 

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Counsel to the Pennsylvania Petroleum Association

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petroleum marketers at both the wholesale and retail levels and firms supplying petroleum products and related services. With regard to the Gas RMI Order, PPA requests that the Commission consider and adopt principles of fuel-neutrality to ensure that any policies or regulations implemented through the Gas RMI are intended to facilitate effective competition among retail natural gas suppliers, rather than promote natural gas over competing fuel supply options.

## II. COMMENTS

### A. **The Commission Should Apply Fuel-Neutrality Principles to any Retail Market Enhancements Intended to Improve the Retail Natural Gas Market or Supplier of Last Resort Model.**

The Gas RMI Order generally continues the Commonwealth's longstanding efforts to develop and improve competitive retail natural gas markets, but also raises potentially troubling questions regarding initiatives that may be intended to expand natural gas use. As stated in the Order, the Natural Gas Choice and Competition Act ("Gas Choice Act") introduced widespread competitive supply to the Commonwealth, allowing customers to select a Natural Gas Supplier ("NGS") instead of taking compulsory supply service from their Natural Gas Distribution Company ("NGDC").<sup>4</sup> The Gas Choice Act also directed the Commission to monitor retail gas markets and, if necessary, to convene a working group to improve stagnated retail markets.<sup>5</sup> The Commission last investigated retail natural gas markets in 2006 following a determination that effective competition did not exist.<sup>6</sup> Now, following adoption of additional market enhancements in 2008, the Commission has again resolved to review the status of retail natural gas markets.<sup>7</sup> However, the Gas RMI Order includes language that suggests the initiative may

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<sup>4</sup> Gas RMI Order, at 1 *citing* Gas Choice Act, 66 Pa. C.S. §§ 2201-2212.

<sup>5</sup> 66 Pa. C.S. § 2204(g).

<sup>6</sup> Gas RMI Order, at 2.

<sup>7</sup> *Id.*

be directed toward broader interests. While primarily addressing competition within Pennsylvania's retail natural gas market, the Gas RMI Order also indicates support for expanding the use of natural gas in the Commonwealth and potentially promoting natural gas over other fuel supply options.

PPA is concerned that efforts to expand the use of natural gas in the Commonwealth, as distinguished from efforts to improve competitive retail natural gas markets, may unreasonably position the Commission to "pick winners" among potential fuel supply options, rather than focus on its core mission of facilitating competition and consumer choice. Specifically, PPA points to the Commission's observation that "[g]iven the tremendous natural gas resources that exist in the Commonwealth, there is great excitement over the potential to grow the use of natural gas."<sup>8</sup> Similarly, the questions identified for investigation in Phase I of the Gas RMI included the following concerning language:

5. Are there enhancements and updates to the current SOLR model that would further improve the state of competition within the retail natural gas market?
  - 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?
  - 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?
  - 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?
6. [text omitted]
7. To take advantage of the opportunity that is present through the Marcellus Shale resource, should NGDCs and NGSs be

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<sup>8</sup> Gas RMI Order, at 2.

encouraged to explore opportunities with natural gas exploration and production companies?<sup>9</sup>

Both the general observations and the specific questions set forth in the Gas RMI Order indicate a willingness to consider retail market enhancements seeking to expand the use of natural gas in concert with reasonable ambitions to promote efficient and effective competition among natural gas suppliers.<sup>10</sup> Consistent with prior Commission policies and public interest considerations, discussed below, we encourage the Commission to take all necessary steps to ensure that any retail market enhancement measures adopted pursuant to the Gas RMI preserve customer choice and fuel neutrality for all consumers.

**1. Consistent with Prior Commission Policies, Development of a Competitive Retail Natural Gas Market Should Not Extend to Unreasonable Commission Support for Natural Gas Over Other Fuel Supply Options.**

PPA fully understands the Commission's obligation to develop a competitive retail natural gas market consistent with the Gas Choice Act. However, the Gas Choice Act does not compel the Commission to promote natural gas as a fuel supply choice over other readily available alternatives.<sup>11</sup> Moreover, in recent proceedings regarding implementation of Energy Efficiency and Conservation ("EE&C") Plans under Act 129 of 2008 ("Act 129"), the Commission supported preservation of fuel-neutrality for consumers. Consistent with the Gas Choice Act and past policy decisions, the Commission should continue developing a competitive retail natural gas market in the Commonwealth without promulgating regulations demonstrating undue favor or support for natural gas over other fuel supply options.

The Commission has previously developed competitive energy markets without unduly influencing consumer fuel supply choices. The Gas Choice Act restructured the historically

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<sup>9</sup> *Id.* at 3-4.

<sup>10</sup> *See Id.* at 2-4.

<sup>11</sup> *See* 66 Pa. C.S. §§ 2201-2212.

vertically integrated natural gas distribution systems in the Commonwealth and required the Commission to adopt regulations to preserve reliable natural gas supply and distribution services, while allowing retail natural gas consumers to purchase supply from NGSs or their NGDC.<sup>12</sup> Consistent with the Gas Choice Act, the Commission has implemented regulations and convened stakeholder working groups to encourage participation in the retail natural gas market and remove barriers to entry.<sup>13</sup> These efforts were intended to improve the retail market for NGSs and consumers participating in the retail natural gas market without labeling natural gas as a "superior" fuel choice compared to other fuel supply options available to consumers in the Commonwealth.

The Commission recently reinforced the importance of fuel-neutrality principles in the context of EE&C Programs proposed by various Electric Distribution Companies ("EDCs") pursuant to Act 129. During several EE&C proceedings, natural gas suppliers intervened and recommended that EDCs incorporate fuel switching programs offering rebates to incentivize electric heating customers to install natural gas furnaces.<sup>14</sup> In *PPL Electric*, the Commission rejected a proposal to mandate comprehensive fuel switching incentives favoring one fuel source over another, as follows:

Moreover, we agree with PPL that, while Act 129 was intended to promote the reduction of electric consumption and demand, it was not designed to promote the use of one type of fuel over another. Thus, we question the propriety of requiring an electric utility - and its ratepayers - to pay for comprehensive fuel switching measures that would clearly promote the large-scale use of natural gas, or other alternative fuels, over that of electricity.<sup>15</sup>

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<sup>12</sup> 66 Pa. C.S. § 2203.

<sup>13</sup> Gas RMI Order, at 2.

<sup>14</sup> See *Petition of PPL Electric Utilities Corporation for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan*, 2013 WL 1180367, \*34 (March 14, 2013) [hereinafter "*PPL Electric*"]; see also *Petition of UGI Utilities, Inc.- Electric Division for Approval of its Energy Efficiency and Conservation Plan*, 2011 WL 5115092, slip op. at 35-36 (October 14, 2011) [hereinafter "*UGI Electric*"].

<sup>15</sup> *PPL Electric*, at \*34.

Similarly, the Commission has also confirmed that approval of any fuel switching program, even when voluntarily proposed by the EDC, should not affect market share for any fuel source.<sup>16</sup> Accordingly, in *UGI Electric*, the Commission reduced fuel switching incentives proposed by UGI Electric Company and articulated the following fuel-neutrality principles:

We are concerned, however, that improperly constructed incentives could unfairly impact non-electric fuel sources. Essentially, improperly constructed rebates could be construed as marketing devices that incentivize fuel switching for the primary purpose of increasing market share, as opposed to incentivizing efficient use of energy. We believe the focus of the rebates should be to encourage the purchase of high efficiency appliances by those customers who had already decided to change energy sources and we will base our review of proposed rebates on such a premise.<sup>17</sup>

PPA concurs with the Commission's reasoning in *UGI Electric*. Effective regulation and public policy demand that the Commission refrain from activities designed to increase market share for one fuel source at the expense of another.

Both *PPL Electric* and *UGI Electric* reflect the Commission's past adherence to fuel-neutrality principles. Moreover, nothing in the Gas Choice Act compels the Commission to promote natural gas over heating oil or other fuel supply options. Therefore, as the Commission continues to explore new innovations to improve competition among suppliers in the retail natural gas market, PPA encourages the Commission to closely monitor all proposals to ensure that any retail market enhancements preserve fuel-neutrality.

## **2. Fuel-Neutral Regulation Prevents Market Distortion and Is, Therefore, in the Public Interest.**

Fuel-neutral principles facilitate effective policy by allowing the Commission to structure efficient and effective regulations without distorting markets and consumer choice. Policies abandoning fuel neutrality harm competition and risk unintended consequences by "picking

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<sup>16</sup> *UGI Electric*, slip op. at 35-36.

<sup>17</sup> *Id.*

winners." For example, conversion from heating oil to natural gas may appear favorable today, but substantial data regarding future natural gas and oil market developments (especially data about future natural gas and oil development in the United States) suggests that consumers may reap long-term benefits by remaining on, or converting to, heating oil. The uncertainty surrounding future market developments in the competing natural gas and heating oil markets underscores the need to carefully avoid market distortions by ensuring that Commission market enhancement activities hew to fuel-neutrality principles.

Most provisions in the Gas RMI Order appropriately address improving competition within the retail natural gas market, but select provisions convey a willingness to implement Commission policies or regulations intended to expand the natural gas market.<sup>18</sup> The Commission cites to the "tremendous natural gas resources that exist in the Commonwealth," as reason to "ensure that consumers have opportunities to realize the advantages of a robust and competitive natural gas industry."<sup>19</sup> While the Commission's initiatives may appear laudable, focusing Commission resources on expanding natural gas facilities essentially bets public funds on natural gas as the superior fuel choice. As heating oil and high efficiency heating oil appliances remain economic fuel supply options, the Commission should adopt only retail market enhancements intended to further competition among natural gas suppliers and avoid any policy or regulation designed to influence consumer choice between natural gas and other fuels.

Consistent with the Gas Choice Act, the Commission is well-positioned to structure and promote competition among natural gas suppliers, and should continue fulfilling its obligation to develop a competitive retail natural gas market. However, the choice between natural gas and heating oil should be left to market forces, without undue market influence from regulators.

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<sup>18</sup> Gas RMI Order, at 2.

<sup>19</sup> *Id.*

### III. CONCLUSION

WHEREFORE, the Pennsylvania Petroleum Association respectfully requests that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Comments.

Respectfully submitted,

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