

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

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Gas Competition Investigation - En Banc :
Hearing. :
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 In-Person Hearing :
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I-00040103

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Hearing Room 1
Commonwealth Keystone Building
Harrisburg, Pennsylvania

Thursday, September 30, 2004

Met, pursuant to notice, at 1:30 p.m.

BEFORE:

ROBERT K. BLOOM, Vice Chairman
GLEN R. THOMAS, Commissioner
KIM PIZZINGRILLI, Commissioner
WENDELL F. HOLLAND, Commissioner

SUSAN D. COLWELL, Administrative Law Judge

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FORM 1

P R O C E E D I N G S

1
2 COMMISSIONER PIZZINGRILLI: Good afternoon. My name
3 is Kim Pizzingrilli, one of the Commissioners on the Public
4 Utility Commission and I'm happy to open up today's en banc
5 hearing related to our investigation into gas competition.

6 We're here today because Section 2204(g) of the
7 Natural Gas Choice and Competition Act directs the
8 Commission to investigate and evaluate the existing level of
9 natural gas competition five years after the Act went into
10 effect and to report our findings to the General Assembly.
11 The statute provides for participation by all interested
12 parties.

13 At the Public Meeting of May 27th, the Commission
14 approved an order initiating this investigation. The
15 purpose of the investigation is to assess the level of
16 competition that currently exists in the natural gas market.
17 If the Commission concludes that effective competition does
18 not exist, it is obligated to reconvene the stakeholders to
19 explore avenues, including legislative remedies, for
20 encouraging increased competition in Pennsylvania.

21 I would like now to turn the hearing over to PUC
22 Administrative Law Judge Susan Colwell who will swear in all
23 the participants and go over the procedure for providing
24 testimony at today's hearing. We thank all of you for
25 taking the time to participate today.

1 JUDGE COLWELL: Thank you, Commissioner, and good
2 afternoon, everyone. As you can see from the agenda, the
3 witnesses today are grouped into one of three panels.

4 Even though only Mr. Regan is scheduled to speak for
5 the first panel, I'll be swearing everyone from the first
6 panel in at one time and that way if the Commissioner have
7 any questions for anyone on the panel, then I won't have to
8 swear everybody in as you come up individually.

9 In the same fashion, all members of the second panel
10 will be sworn at one time. The members of the third panel
11 will also be sworn at the same time.

12 I ask you to make your presentations from the lectern
13 and speak into the microphone. As you can see, the
14 proceedings today are being taken down by a court reporter.
15 This presents a special challenge with the use of the Power
16 Point presentations, and in order to keep the record clear,
17 I ask that each participant using the Power Point identify
18 the page number in the written presentation as you discuss
19 the accompanying screen. That way, the record will
20 accurately reflect what happens here today.

21 In the front of the room is a light bar with three
22 bulbs in it. When you begin your presentation, the green
23 light will start on. The yellow light will begin to flash
24 when you have 30 seconds left. Mr. Regan is being given 15
25 minutes because he's speaking for so many parties. The

1 other presenters will be given ten minutes apiece.

2 The yellow light will begin to flash when you have 30
3 seconds of your time remaining. The red light will come on
4 when your time is up. As we're on a schedule, I ask you to
5 limit your presentations to the time allotted. I will ask
6 you to stop speaking when your time is up.

7 The Commissioners have agreed to hold their questions
8 until after each panel has presented its cases. After the
9 final presenter in the panel, I will ask each Commissioner
10 if he or she has any questions for any member of the panel.
11 If you're asked a question, please answer from the lectern
12 so that the Commissioners and the court reporter can hear
13 your response. I also ask, especially those in Panel One
14 who are here just to answer questions, bring your name
15 identification with you so everyone knows who you are.

16 Are there any questions regarding the procedure?

17 (No response.)

18 JUDGE COLWELL: Okay. Members of Panel One, as I
19 call your name, will you please stand: Mr. Regan, Erich
20 Evans, William McKeown, Stephen Rafferty, John Quinn, Bruce
21 Heine, Carlo Ciabatttoni, Kurt Sontag, Amy Hamilton, Bruce
22 Davis and Earl Kinter. Would you please raise your right
23 hands?

24 Whereupon,

25 DAN REGAN

1 ERICH EVANS

2 WILLIAM MCKEOWN

3 STEPHEN RAFFERTY

4 JOHN QUINN

5 BRUCE HEINE

6 CARLO CIABATTONI

7 KURT SONTAG

8 AMY HAMILTON

9 BRUCE DAVIS

10 EARL KINTER

11 were duly sworn.

12 JUDGE COLWELL: Please be seated. Mr. Regan, you can
13 begin.

14 Whereupon,

15 DAN REGAN

16 having previously been duly sworn, testified as follows:

17 MR. REGAN: Good afternoon. I'm Dan Regan. I'm vice
18 president and general counsel for the Energy Association of
19 Pennsylvania.

20 I do not have prepared written testimony to present
21 at the hearing today. However, I will be reviewing the
22 comments that the Energy Association filed on September
23 17th. To aid me in that review, I have prepared a nine
24 slide long Power Point presentation which I've marked Energy
25 Association Exhibit 1. I'd like that entered into the

1 record.

2 (Whereupon, the document was marked
3 as Energy Association Exhibit
4 No. 1 for identification and
5 received in evidence.)

6 JUDGE COLWELL: Go ahead.

7 MR. REGAN: If you go to slide two, please. Comments
8 today misstate the mission and scope of the Gas
9 Restructuring Act and this proceeding. We raise two points.

10 The Restructuring Act did not endorse competition for
11 its own sake, but only to the extent consistent with safe
12 and reliable service.

13 In particular, I want to call attention to a couple
14 of remarks that were made this morning by the Chairman with
15 regard to the Duquesne proceeding. And I'll start off by
16 saying that obviously, Duquesne is also a member of the
17 Energy Association, and the Energy Association stands with
18 Duquesne on the merits of the case.

19 But with regard to the statement itself, Chairman
20 Fitzpatrick cited two sections of the Electric Choice Act
21 for the conclusion that the Commission was compelled to move
22 forward with competition and away from regulation.

23 The two sections he cited, first was Section 2802(5)
24 of the Electric Choice Act which says, "Competitive market
25 forces are more effective than economic regulation in

1 controlling the cost of generating electricity." I would
2 simply note that there is no equivalent to that section in
3 the Gas Act. In fact, the very first subsection of the list
4 of guiding principles for implementation of the Gas Act
5 emphasizes not competition but reliability.

6 It says that, "The Commission shall adopt and enforce
7 standards as necessary to insure the continuation of the
8 safety and reliability of the natural gas supply and
9 distribution service." It does not mention the value of
10 competition.

11 In fact, if you look elsewhere in the Act, you can
12 see that competition is relatively downplayed, other
13 representations to the contrary.

14 Section 2204(2) of the Act says, "The Commission
15 shall allow retail gas customers to choose among natural gas
16 suppliers and natural gas distribution company," and then I
17 emphasize, "to the extent that they offer such natural gas
18 supply services."

19 It is not read into that language the notion of the
20 Commission promoting the expansion of the offerings. In
21 fact, if there's any equivalent to Section 2802(5) in the
22 Gas Act, it's in 2204(5) which says, "The Commission shall
23 require that restructuring of the natural gas utility
24 industry be implemented in a manner that does not
25 unreasonably discriminate against one customer class to the

1 benefit of another." And to me, that's a regulatory
2 standard. That's not a competitive standard, and those are
3 the things the Commission needs to be looking out for as it
4 contemplates this investigation.

5 Next slide, please -- actually, back up. The other
6 point I wanted to raise on the scope of this proceeding is
7 that it's been claimed that this is an investigation into
8 all manner of competition for customers great and small,
9 when in fact the Act was directed to residential customers,
10 small commercial customers and expanding choice to them.

11 I've noted in the Energy Association's comments that
12 service to large customers had been in place for a decade
13 and more before the Act was enacted. The Legislature was
14 aware of that through testimony that had been filed on
15 several occasions. Chapter 60 had been around for years.

16 If the Legislature wanted to write Chapter 60 out of
17 the regulations and start over again, it could have repealed
18 Chapter 60. It didn't do that.

19 And so when we look at competition for these
20 purposes, we should be looking at it from the perspective of
21 small commercial customers and residential customers. I
22 think it's ironic that certain parties commented and filed
23 initial comments in this proceeding and expressly say they
24 have no intention of serving those customer classes. I
25 consider that testimony to be immaterial to the

1 investigation, also potentially harmful as I noted in the
2 comments, and I would dismiss it.

3 Now, advance it to the third slide, please. So with
4 a proper view of the scope of this proceeding, I guess the
5 next question has to be whether or not there should be a
6 collaborative formed. I mean, that's in essence what the
7 statute is asking for, is for a finding about effective
8 competition and, in the absence of it, to reconvene the
9 parties which ends up being in effect a collaborative.

10 And for a collaborative to function, all the parties
11 that are involved have to have some reasonable perception
12 that they will benefit in some way from participating.

13 To date, no party that has filed comments has
14 identified any benefit for a customer or for an NGDC that
15 would result from collaboration. And in the absence of
16 that, there's no motivation to participate.

17 I would emphasize to you that forced collaboration is
18 not collaboration. It's a conflict in terms. Clearly
19 parties can be forced to collaborate, but I believe that no
20 party should be forced to do so.

21 Next slide, please. After addressing the scope of
22 this proceeding and the need for a collaborative, I'd like
23 to go over some more background about the Act itself.

24 Our position is that on three very fundamental issue,
25 the Legislature consciously and deliberately chose to

1 maintain a regulated, reliability focused environment in
2 lieu of a competitive model. The three areas are capacity
3 assignment, the natural gas distribution company as supplier
4 of last resort, and the 1307 regulation of supplier of last
5 resort rates.

6 Next slide, please. On capacity assignment, the
7 Legislature recognized that the loads that are at issue in
8 this statute, residential customers, small commercial
9 customers, because they are temperature sensitive, because
10 they have low load factors, they require dedicated firm
11 interstate transportation and storage service.

12 We commend Texas Eastern's comments to your attention
13 in this regard. I think they do a very good job explaining
14 that and why that is, and they further go on to explain very
15 clearly that there is no substitute for that.

16 The Legislature put a premium on maintaining those
17 upstream rights and those upstream arrangements. And even
18 so, the Act itself provides at least three opportunities for
19 marketers to bring exactly that kind of capacity to the
20 market. They're listed right there.

21 Section 2204(d)(5)(ii) provides for parties to
22 petition the Commission to avoid capacity assignment.
23 Marketers have had this right since July 1, 2002. It has
24 never been exercised. There's been the opportunity to
25 substitute for new or renewed firm contracts under 2204(e).

1 There's been no offer made to do that.

2 My members have been required to hold meetings
3 regularly to discuss implementation of the Act. Clearly the
4 use of an alternative form of FERC capacity is one of the
5 things we could discuss. It doesn't come up.

6 There really is no substitute for this firm capacity.
7 Anything less carries the potential for diversion. We saw
8 in the comments of Dominion Retail an example of that kind
9 of diversion, where gas may go from one place to another to
10 avoid a penalty. That kind of diversion is just not
11 acceptable to the General Assembly, wasn't at the time, and
12 that is why the Act is written the way it is about capacity
13 assignment.

14 Next slide, please. Let's turn to supplier of last
15 resort. The Office of Consumer Advocate provided a number
16 of legitimate reasons why it is that customers have chosen
17 not to choose, why they prefer to stay with supplier of last
18 resort service.

19 One could cite the costs involved in trying to locate
20 marketers and how much is the location cost worth against
21 the potential savings that one could get. One could look at
22 the bankruptcy of Enron. One could look at the failure of
23 other marketers in Pennsylvania.

24 The fact that the customers of Pennsylvania have
25 chosen to stay on supplier of last resort service serves to

1 me as an endorsement of the Legislature's wisdom in keeping
2 the NGDCs as suppliers of last resort.

3 And those who support requiring NGDCs to exit the
4 merchant function would disregard the evident preferences of
5 Pennsylvanians and instead impose mandatory customer
6 assignments like those in Georgia.

7 I think it's ironic that if a private party forced a
8 customer to sign up with an entity against his or her will,
9 that the Commission would prosecute that entity for
10 slamming, and I don't see where having it done and
11 sanctioned by the state makes it any different.

12 I'd also conclude the SOLR discussion by noting that
13 collaboration is unnecessary. In fact, the Commission had a
14 meeting in March, 2003 to do just that and all the parties
15 attended, and all the parties agreed that it would be much
16 better to do SOLR requirements, filing requirements, SOLR
17 theory in the context of an actual proposal than to try and
18 do it in the abstract by trying to divine standards, either
19 filing substantive content standards for seeking to be a
20 SOLR or setting policy guidelines for SOLR service. So
21 we've had that opportunity and all the parties agreed that
22 it was unnecessary to do that.

23 Next slide, please. With regard to the 1307
24 regulation of SOLR rates, it's clear that the General
25 Assembly chose to subject SOLR service to regulation under

1 Sections 1307, 1317 and 1318 because of the consumer benefit
2 embodied in the least cost procurement standard.

3 It goes without saying that NGDCs cannot profit from
4 the sale of gas. At best, they can recover the costs that
5 they've incurred and they run the chance of cost
6 disallowance.

7 Nevertheless, some have argued that those rates
8 should be increased by adding on various charges, and we
9 agree with the Consumer Advocate, that with natural gas
10 commodity rates already at extremely high levels, calls for
11 making 1307(f) rates even higher should be dismissed.

12 Last, I want to address the allegations that NGDCs
13 have manipulated their 1307 rates, or that they market them
14 as fixed price services. No evidence is given of this and
15 we feel it's unfounded. In fact, we take great exception to
16 this. NGDCs do not market their SOLR rates. They provide
17 customers notice of their SOLR rate changes as they're
18 required to under the Commission's regulations.

19 And ironically, although it is claimed that we market
20 SOLR rates as a fixed price service, the announcements that
21 we put in the bills of our customers say that those rates
22 are subject to quarterly change.

23 Moreover, the PGC rates that the NGDCs charge are
24 subject to extensive annual litigation and if there was
25 wrongdoing involved in the setting of those rates, one would

1 think that with the extensive litigation that goes behind
2 it, including litigation by the Commission's Office of Trial
3 Staff, that something would have come out about this. From
4 that, we conclude that the allegations are unfounded and
5 should be given no credit.

6 Next slide, please. Current policies reflect
7 legitimate differences among NGDCs and should not be
8 disturbed. Let me turn briefly to three topics. First, the
9 purchase of receivables should remain optional. Obviously,
10 if you have forced purchase of anything, it is because the
11 buyer thinks it's worth less than the seller is forcing them
12 to buy it at.

13 JUDGE COLWELL: Thirty seconds, Mr. Regan.

14 MR. REGAN: Very good. I would add that the
15 creditworthiness standards vary from NGDC to NGDC because
16 the potential loss associated with misconduct varies from
17 NGDC to NGDC.

18 And I would add also that the penalty provisions
19 properly recognize the role of deterrence. No harm, no foul
20 is basically saying that my wrongdoing is offset by
21 somebody's wrongdoing in the opposite direction.

22 And to say that penalties should be based on the
23 market fails to recognize the potential danger of the
24 activity involved. You don't get out of a speeding ticket
25 by claiming that you didn't have an accident because of it.

1 JUDGE COLWELL: Thank you, Mr. Regan.

2 MR. REGAN: Thank you.

3 JUDGE COLWELL: I'll ask the Commissioners if they
4 have any questions for you. Vice Chairman Bloom, do you
5 have any questions for Mr. Regan or anyone on the panel?

6 VICE CHAIRMAN BLOOM: No.

7 JUDGE COLWELL: Commissioner Thomas?

8 (No response.)

9 JUDGE COLWELL: Commissioner Pizzingrilli?

10 COMMISSIONER PIZZINGRILLI: Just that as we move
11 forward, I know a lot of the company representatives are
12 here today and we would hope for your continued involvement
13 as we continue this investigation and help as we draft our
14 report to the General Assembly, so we'll look forward to
15 continuing to hear from you and sift through the comments
16 we've received so far, and we appreciate the companies
17 coming today, too.

18 JUDGE COLWELL: Commissioner Holland?

19 COMMISSIONER HOLLAND: No, ma'am.

20 JUDGE COLWELL: Thank you. Thank you, Mr. Regan.

21 (Witness excused.)

22 JUDGE COLWELL: Will the members of Panel Two, as I
23 call your name, please stand up: Randy Magnani, Adrian Pye,
24 Thomas Butler, Vincent Parisi, Harry Kingerski and Matthew
25 Sommer. Would you raise your right hands, please?

1 Whereupon,

2 RANDY MAGNANI

3 ADRIAN PYE

4 THOMAS J. BUTLER

5 VINCENT A. PARISI

6 HARRY KINGERSKI

7 MATTHEW SOMMER

8 were duly sworn.

9 JUDGE COLWELL: Please be seated, except for Mr.
10 Magnani. You get to go first. Please begin. You have ten
11 minutes.

12 Whereupon,

13 RANDY MAGNANI

14 having previously been duly sworn, testified as follows:

15 MR. MAGNANI: My name is Randy Magnani and I am
16 representing Amerada Hess Corporation in this proceeding.
17 In my role as director of C&I operations, I am responsible
18 for retail operations including scheduling on 48 natural gas
19 distribution companies in 14 states.

20 Hess is pleased to be given this opportunity for a
21 meaningful discussion of the effectiveness of competition in
22 the natural gas industry in the Commonwealth of
23 Pennsylvania. Through the efforts of the PUC, utilities,
24 suppliers and various other parties, we are encouraged to
25 see the development of competition which ultimately benefits

FORM 1

1 customers in Pennsylvania.

2 However, as with any developing market, an ongoing
3 process is needed in which all parties should work together
4 to improve that framework based on experience and lessons
5 learned.

6 My testimony will focus on three primary areas for
7 improvement of the competitive market and I will identify
8 solutions that, with the support of the Commission, can be
9 implemented with relative ease.

10 Prior to commencing with the heart of my testimony,
11 though, I would like to address some issues raised in the
12 comments and rebuttal comments from other parties.

13 First, the Energy Association of Pennsylvania in its
14 rebuttal comments makes the bold and incorrect assertion
15 that because Hess and some other NGSs at this time market
16 only to commercial and industrial customers in Pennsylvania,
17 that our comments should be rejected summarily. Such a
18 conclusion could not be more unfounded.

19 Section 2204(g) of the Natural Gas Choice and
20 Competition Act directed the Commission to initiate an
21 investigation in which, and I quote, "all interested parties
22 are invited to participate, to determine whether effective
23 competition for natural gas supply services exists in the
24 natural gas distribution companies' systems in this
25 Commonwealth."

1 Natural gas supply services is defined as, and again,
2 I quote, "the sale or the arrangement of the sale of natural
3 gas to retail gas customers," and retail gas customers are
4 defined as, "a direct purchaser of natural gas supply
5 services or natural gas distribution services, other than a
6 natural gas supplier."

7 Notwithstanding any closed door conversations members
8 of the Energy Association may have had five years ago, at no
9 time does the Act make a distinction between small and large
10 customers with respect to the instant investigation.

11 The Energy Association has obviously misinterpreted
12 the nature and purpose of this investigation. As Hess, its
13 customers and the services we provide our customers clearly
14 fall within these definitions, Hess and other NGSs' comments
15 in this proceeding are exactly the type of feedback that was
16 envisioned when the Act was drafted.

17 Second, in its out of time filing this past Monday,
18 Equitable Gas Company took Hess to task on a number of the
19 statements made in our initial comments.

20 It would simply take too much of our allotted time to
21 respond to each of the arguments in this late filing.
22 However, Hess would like to point out two inaccuracies with
23 regard to Equitable's stated willingness to support NGSs in
24 promoting a competitive market.

25 First, while Equitable represents that it is

1 interested with working with Hess and other NGSS to discuss
2 issues Hess would like to explore, Hess has found Equitable
3 to be completely unwilling to attempt to work through the
4 issues we have raised with respect to its agency program and
5 instead has indicated that there are no changes it is
6 willing to make at this time.

7 In our initial comments, unsworn as they may have
8 been, we indicate and continue to maintain here today that
9 the agency program as written in the tariff is unnecessarily
10 vague -- as Equitable points out, it is a mere paragraph of
11 language -- and that the program is a direct impediment to
12 competition.

13 Further, Hess does not have any idea why Equitable
14 would believe Hess is one of the main culprits in
15 encouraging customers to switch NGDCs and in inducing
16 competing NGDCs to build facilities in competition with
17 Equitable. There would be absolutely no incentive for Hess
18 to do that and we would challenge Equitable to provide some
19 evidence that Hess has been working towards that end.

20 While I would like to address all of the allegations
21 made in Equitable's out of time and inappropriate rebuttal
22 comments, I would like to move on now to the issues Hess
23 believes are relevant for the improvement of competition.

24 Affiliate standards of conduct. First, the affiliate
25 standards of conduct. Hess is aware that the Commission

1 recently amended these standards and in fact Hess did
2 provide comments in that proceeding. Nevertheless, we
3 believe there are still significant deficiencies in the
4 standards, particularly with regard to enforcement.

5 One of the most significant barriers faced by
6 marketers and potential marketers to truly open competition
7 in Pennsylvania is the advantage utility affiliates have
8 over non-affiliated NGSs.

9 Hess' concerns with these standards center around two
10 main principles: the lack of adequate reporting measures
11 combined with the virtual lack of any effective audit or
12 enforcement measures, and two, the lack of two-way
13 restrictions on information between affiliated NGSs and
14 their affiliated NGDCs.

15 The plain and simple fact is that no matter how well
16 crafted a set of standards is, if not effectively monitored
17 or enforced, compliance cannot be expected.

18 For many of the provisions in the standards, there
19 are no means at all of monitoring compliance, and for those
20 provisions that do require monitoring, the only method
21 utilized is the maintenance of a log which is to be open for
22 public inspection during business hours.

23 This is unacceptable. The Commission should be able
24 to monitor compliance beyond the simple filing of a log. In
25 particular, the Commission should more proactively collect

1 information on affiliate activities, particularly where the
2 NGDCs have considerable discretion in the administration of
3 their programs and in instances where the affiliate
4 suppliers have much greater market share within their own
5 NGDC territory than in other NGDC areas where it operates.

6 Examples of these discretionary programs which
7 requiring are decisions on when to release capacity to a
8 marketer, daily balancing requirements that can be waived,
9 requiring gas to be brought in on certain pipelines and not
10 on others, decisions on when to interrupt interruptible
11 customers, decisions when to recall capacity or decisions on
12 who to give discounted transportation rates.

13 Even the slightest bit of special consideration on
14 behalf of its affiliate supplier by an NGDC when acting upon
15 these types of discretionary decisions can significantly
16 affect the ability and costs of non-affiliated marketers to
17 serve customers in that NGDC's territory.

18 Yet, because there has been virtually no monitoring
19 of these discretionary programs and the effects of their
20 implementation on non-affiliated versus affiliated
21 suppliers, there is no way to ensure compliance.

22 The second issue I mentioned, the lack of any two way
23 restrictions on the sharing of information by affiliated
24 suppliers with their utilities, creates the same types of
25 concerns regarding the implementation of discretionary

1 programs.

2 Section B(8) of the standards restricts the NGDCs
3 from sharing customer proprietary information with their
4 affiliated suppliers, but there is no restriction on the
5 suppliers sharing information with their affiliated NGDC.

6 Without such a two way restriction, the affiliated
7 suppliers are free to supply information to their affiliated
8 NGDC with the potential of improperly affecting
9 discretionary operational decisions or inappropriately
10 influencing the NGDC's decision to take action in such a way
11 that it specifically benefits the affiliated supplier.

12 The discretionary programs I just mentioned offer a
13 myriad of potential scenarios, but I would like to provide
14 the Commission with one particular example.

15 Under Section 3.B(7) of the standards, if an NGDC
16 provides a distribution service discount, fee waiver or
17 rebate to its customers or its affiliated supplier's
18 customers, the NGDC must also offer the same distribution
19 service discount, fee waiver or rebate to similarly situated
20 customers, and any such offers cannot be tied to unrelated
21 services, incentives or offers on behalf of either
22 themselves or their affiliated supplier.

23 Logically, a means of monitoring this important
24 standard to ensure compliance would be to compare the
25 distribution charges of similarly situated customers.

1 However, this logical method of ensuring compliance is
2 impossible to achieve for several reasons.

3 The first hurdle comes from the fact that some NGDCs
4 require customers to sign confidentiality agreements
5 regarding their distribution charges. It is not clear why
6 this information should not be publicly available, since the
7 purpose of the standards is to ensure that any discounts are
8 applied uniformly.

9 The NGDCs are required to maintain a chronological
10 log of such discounts, but the standards only require the
11 date, party name, time and rationale for the action. There
12 is no requirement to actually report the discounted rate.

13 To our knowledge, other than eliminating the
14 confidentiality agreements and make such information public,
15 there is no other way for a customer, NGS or the Commission
16 to determine compliance with the requirement that the same
17 discounts be offered to similarly situated customers.

18 The second hurdle to overcome is the lack of defined
19 criteria as to what constitutes a similarly situated
20 customer. To eliminate this identification problem, the
21 Commission should require NGDCs to define the criteria.

22 Finally, the standards require the NGDCs to offer,
23 and not simply make available upon request, distribution
24 service discounts to similarly situated customers.

25 It is the obligation of the NGDCs to make their

1 customers aware that such a discount is available to them
2 and actually offer it. As the standards are currently
3 written, there is no means by which the parties can
4 determine if this is occurring.

5 Agency programs. Next, as I mentioned earlier in my
6 testimony, is the operation of Equitable Gas Company's
7 agency program. Equitable's agency program is supposed to
8 enable it to effectively compete with other NGDCs building
9 distribution pipelines to directly compete for the same
10 customer.

11 Hess has no issue with providing Equitable the
12 ability to avoid losing customer business to other NGDCs by
13 discounting distribution rates within specified criteria.

14 However --

15 JUDGE COLWELL: Thirty seconds, sir.

16 MR. MAGNANI: I'm done?

17 JUDGE COLWELL: Thirty seconds.

18 MR. MAGNANI: However, what the program does
19 basically is allow Equitable to stream lower cost gas supply
20 to elastic customers at the expense of pushing their higher
21 cost gas to inelastic customers. There's no way for us to
22 know if that's going on. None of it is reported. There's
23 really no rule that prohibits it in the tariff as it's
24 written today.

25 JUDGE COLWELL: Thank you very much, sir.

1 MR. MAGNANI: I have comments on the rules and things
2 that should be changed, and you can read those in my
3 prepared comments. Thank you.

4 (Witness excused.)

5 JUDGE COLWELL: Mr. Pye?

6 Whereupon,

7 ADRIAN PYE

8 having previously been duly sworn, testified as follows:

9 MR. PYE: Hello. My name is Adrian Pye, director
10 with Direct Energy. I've got a Power Point presentation.
11 I'd like to enter that as DE Exhibit No. 1.

12 JUDGE COLWELL: That's fine.

13 (Whereupon, the document was marked
14 as Direct Energy Exhibit No. 1
15 for identification and received
16 in evidence.)

17 MR. PYE: On page one of the Power Point
18 presentation, it explains the history of Direct Energy.
19 We're part of a Centrica organization. We're owned by a UK
20 organization, a large worldwide company with over \$1 billion
21 turnover, \$17 billion in market capitalization, 38,000
22 employees and we also have an "A" credit rating.

23 Page two, please. We have a large presence
24 throughout North America, in Canada and the United States.
25 We do provide the equivalent of default service in Alberta

1 and Texas, and we serve electricity and natural gas
2 customers throughout and we have gas production facilities
3 and electricity generation facilities throughout North
4 America as well.

5 Page three, please. Before I go into the overall
6 framework, I just want to say thank you for having us here.
7 We're all looking forward and interested in working together
8 with the Commission and other parties to further develop the
9 competitive gas market in Pennsylvania and are looking
10 forward to working beyond this hearing today to further
11 develop it and augment it to benefit Pennsylvania's
12 consumers.

13 The overall framework, Direct Energy believes that
14 competition is the law of the land in Pennsylvania, and we
15 also believe that competition is the right tool to deliver
16 the best services and products to consumers. Every decision
17 that the Commission makes going forward should be made in
18 favor of more competition, not less. Consumers will
19 ultimately benefit through greater competition.

20 We believe that the supplier of last resort or SOLR
21 should be understood by the NGDCs and others as a last
22 resort option for consumers, not a first resort, and that in
23 its design and implementation it should be operated without
24 anti-competitive or anti-consumer restrictions such as
25 switching restrictions or other criteria.

1 It should be viewed as a full retail obligation and
2 importantly, as many others have also commented, the pricing
3 should be adjusted regularly so that the prices actually
4 reflect current market prices and consumers understand the
5 product they're purchasing.

6 We also believe that the PUC and NGDC rules should
7 not restrict entry by suppliers -- this can be through
8 security requirements -- and should not set charges or
9 penalties above utilities' costs. These are essentially
10 profiteering by the utilities and doing market based rates
11 is a reasonable way to implement these, we believe, and they
12 should not restrict suppliers' abilities to market our
13 service to consumers and provide new products and offerings
14 to consumers.

15 Next page, please. This will be five. The
16 Commission set out a number of questions when it set forward
17 for this hearing. We responded to these questions in our
18 written submission.

19 And we believe that the Commission, by making a
20 number of near term changes, can significantly improve the
21 market. There are other longer term changes that I'm sure
22 will be developed through further negotiations and
23 consultations and collaborations between the various
24 stakeholders in the market.

25 Next page, please. Some of the key near term changes

1 to improve the market, we believe with gas delivery, that
2 suppliers' deliveries should match customer demand with
3 monthly imbalance reconciliation.

4 Local production, allowing all gas suppliers to have
5 access to local production can provide an economic resource
6 to supply their customers with.

7 Customer moves is a fairly simple idea. Currently,
8 customers if they move within an NGDC territory cannot have
9 their supplier contract move with them. Customers have
10 signed with a supplier for a reason. We believe that their
11 contract should be able to move with them if they so choose.

12 We believe that utility billing fees should reflect
13 their costs and penalties should be market based.

14 On the issue of receivables, we believe that
15 utilities should purchase receivables at no discount. This
16 is the experience in many other markets, and we can provide
17 information on that if you wish down the road.

18 And in terms of customer renewals, we believe that
19 flexibility is key here, providing marketers the greater
20 range on how they renew their customers. We believe it's
21 important that customers are informed of renewals and given
22 adequate lead time to choose not to renew if they so choose,
23 but allowing markets a set time, say between 30 and 90 days,
24 so that they can purchase the best gas prices for those
25 customers and provide them the most economic option they

1 can.

2 Next page, please. How should SOLR prices be set?
3 Currently, the SOLR prices do not reflect market prices. We
4 believe these should be priced at market, adjusted
5 regularly, preferably monthly to reflect current market
6 prices. This is the price that marketers do compete
7 against.

8 We also believe the SOLR service should include all
9 costs associated with providing the service, customer
10 migration, administrative, operation, customer care costs,
11 and also that SOLR pricing should be transparent so that
12 marketers can understand the price and the components of the
13 price and what they are essentially competing against.

14 Next slide, please. Another issue we believe is that
15 an alternative supplier can be the SOLR provider as per the
16 law, Section 2207 of the Gas Competition Act. We believe
17 the Commission should examine and ultimately, if it so
18 chooses, approve having alternative suppliers provide SOLR
19 service to Pennsylvania consumers.

20 In doing this, it can set up an retail auction. It
21 can set the necessary preconditions that would give it the
22 security to go forward with this process, and also you can
23 have multiple SOLR providers in a service territory that can
24 serve different classifications of customers.

25 As I've stated earlier, Direct Energy provides price

1 to beat service in Texas and we provide default services in
2 Alberta, Canada already, so this has occurred in other
3 jurisdictions.

4 Next slide, please. One important issue is the
5 concept of when is the Pennsylvania gas market fully
6 competitive. We believe an important objective would be if
7 the Commission set down a set of objective criteria where it
8 would determine that the market was fully competitive, and
9 then would no longer set the price for the SOLR provider.

10 Those prices would effectively be set by regulation
11 and customers' ability to go to an alternative provider
12 other than the SOLR.

13 I won't dictate what these criteria would be. I
14 believe these are best developed through consultation, but
15 could include the issues of high levels of customer
16 awareness of alternate suppliers, the ease with which
17 customers can switch suppliers, and levels of customer
18 switching rates. You can set a predetermined rate and after
19 that initiate a proceeding to determine if the market is
20 fully competitive.

21 Next slide, please. In conclusion, we commend the
22 PUC for actively reviewing the gas market and we firmly
23 believe that a few changes can significantly improve the
24 market and make it more competitive to benefit Pennsylvania
25 consumers and businesses.

1 the critical facets in terms of creating fundamental
2 competition is simply getting customers to participate in
3 choice.

4 And the fundamental issue to get customers to
5 participate is really their first price or their view of
6 what they're paying.

7 And I'm going to kind of stream my comments around
8 one particular concept, the price to compare, and how the
9 price to compare affects competition in the state and why it
10 may be stymieing the introduction to competition in the
11 state and why it's been so slow to progress.

12 Our feeling on the price to compare is, two things
13 are fundamentally wrong, that the price to compare is not as
14 market reflective as it should be, nor -- there is also a
15 tendency of the utilities, and it's just really born by the
16 state of affairs, to undercollect, because there's a
17 propensity to undercollect from our standpoint, from the
18 standpoint that they pay penalties if they overcollect. So
19 there's a propensity to undercollect because if they
20 overcollect, they're going to be paying penalties.

21 So until you fix things related to their SOLR process
22 and change that process for their GCR and if they're going
23 to have a propensity to undercollect, how does a market
24 entrant like myself get involved in the market? How do I
25 get it started? And it's a fundamental issue for us.

1 And when we evaluate the markets, we have to look at
2 the price to compare and see if we can compete against it.
3 From our standpoint, the way you resolve that, the solution
4 we see -- there's a bunch of solutions. There's a
5 continuum. Let's say, all the way out to one side, go and
6 everyone should, at the far end of the continuum, go to
7 market based, you know, there should be non-reconcilable gas
8 costs. That's probably too extreme to start with.

9 Maybe the midpoint is, you go to monthly gas costs on
10 a reconcilable basis and try to get them to reconcile them
11 quicker, any over- and undercollections.

12 And then maybe a less extreme basis may be, you go to
13 a method that they use in the state of Illinois where the
14 PGC is reconciled as quickly as possible. Any over- or
15 undercollections is reconciled within the year.

16 And the objective there that they use is that you
17 have to cross from an overcollection to an undercollection
18 within the year. So that's one issue with the PTC.

19 The other issue with the price to compare that we see
20 that is significant that we think needs addressed is the
21 issue, not all the costs are included.

22 When my pricing analyst sits down and draws up our
23 prices for consumers and figures out all the costs, all the
24 line items that we have to put in, we have costs that we
25 have to include in our price that's not in the fundamental

1 gas cost of the utility, and they're very simple.

2 Bad debt, I've got to include bad debt into my price.
3 I have to include interest charges for storage. That cost
4 is in the distribution rate. Those first two are in the
5 distribution rates of the utility.

6 The next three end up falling into their "E" factor,
7 which are the risks related to weather. We have to reserve,
8 because we're not going to know exactly what the consumers
9 are going to buy, so we have to reserve an amount of dollars
10 in our gas costs to cover the risks of weather swings, as
11 well as we have, we have issues with attrition that we
12 include in our prices as well as other costs related to
13 imbalance and the penalties we may be exposed to on
14 imbalance.

15 So those last three typically fall into the utility's
16 "E" factor or their over/undercollection. So fundamentally,
17 until some of the issues around the GCR, the SOLR or the
18 price to compare are solved, you're going to have a hard
19 time getting choice started in the state, especially for
20 small customers because you're talking -- it's hard to sell
21 a customer on a five percent savings. And you have to get
22 all the costs included to at least give us a fundamental
23 chance to get started.

24 Other issues, you know, as far as bad debt, we
25 touched on this. We kind of like the idea of something

1 they're promoting in other states where they have, where the
2 utility buys the receivable but they create a bad debt
3 tracker and they socialize all that cost in a bad debt
4 tracker, and all those costs are collected through one rider
5 across all customers.

6 That way, all customers can participate in choice,
7 and if the supplier uses the utility billing, they buy the
8 receivables at 100 percent. You allow the utility to
9 collect for suppliers' receivables. That should be being
10 done today. They're our billing agent. You should allow
11 them to collect for our receivables.

12 Right now, they can't shut off a customer if they
13 don't pay our part of the bill. All a customer today, if
14 they're on consolidated bill today with the utility that
15 we're serving, all they have to do is pay the distribution
16 part and they can just keep on going until we catch up to
17 them and then cut them off.

18 That's not really the way the ship should be run. We
19 should manage it, they should be able to manage it as the
20 billing agent.

21 And then just some other issues on delivery rules, we
22 commented. Certainly we would like some of the delivery
23 rules to be fair and even and balanced, and we think the
24 utilities certainly can look at a lot of their choice
25 program, supplier tariff rules and make them more balanced.

1 Last, fundamentally, I sensed a lot of emotion of
2 competition between the NGDCs and the Energy Commission's
3 comments. We don't want to be competitive from that
4 standpoint. We want this to be a collaborative, and we want
5 it to move forward, and we don't want to expose the
6 utilities to additional risks that they can't manage.

7 We would like it to move forward, and so from our
8 standpoint, we believe utilities should get incentives for
9 making choice happen and making it work. And we think that
10 would help stride this forward. Thank you very much, and if
11 you have any questions, just follow up. Thank you.

12 (Witness excused.)

13 JUDGE COLWELL: Thank you, Mr. Butler. Mr. Parisi?
14 Whereupon,

15 VINCENT A. PARISI

16 having previously been duly sworn, testified as follows:

17 MR. PARISI: Good afternoon. My name is Vincent
18 Parisi. I'm with Interstate Gas Supply. Thank you for this
19 opportunity to address the Commission regarding the state of
20 competition in the natural gas marketplace in Pennsylvania.

21 IGS is looking forward to working with you through
22 this process and hopefully developing a more competitive
23 marketplace.

24 In our written testimony, we touched upon a number of
25 points. I won't go over all the points here in detail.

1 Basically, the essence of some of the points are that we do
2 feel that in order for competition to really take off in
3 Pennsylvania, certain things need to occur.

4 With respect to credit criteria, there needs to be
5 some kind of a standardization across the board, although
6 with specific utilities they can have individual
7 requirements but some kind of standardization so a marketer
8 knows what they should expect when they go in and it should
9 be based upon the financial strength of the individual
10 companies and not necessarily some arbitrary decisions.

11 We also believe, as we stated in our written
12 testimony, that penalties should be based upon actual risk.
13 We understand that penalties also have a tendency to be
14 based on a kind of a deterrent factor, and we understand
15 that, but we think that there are other ways to do it, that
16 penalties should really be based upon the cost associated
17 with whatever the activity is that the NGDCs are attempting
18 to discourage.

19 But the two basic points that I did want to discuss,
20 the first being that in order for competition to be
21 effective in the natural gas marketplace, the utilities
22 really have to be on board.

23 It really does come back to the utilities needing to
24 be supportive of competition and really understanding that
25 competition can benefit the residential and retail

1 commercial and industrial customers.

2 Marketers understand that in order for the utilities
3 to be on board with that, there has to be something in it
4 for them. I don't think any of the marketers feel that
5 there needs to be a one-sided kind of distribution of this.

6 And that's where a collaborative would come into
7 benefit because through a collaborative we could discuss the
8 various places where the various parties could benefit
9 including the marketers, the utilities and the residential
10 consumers.

11 The other point, and it's kind of a more immediate
12 point, is that in order for marketers to be able to
13 effectively compete, there needs to be a market based price.

14 Currently, we're competing against a price that's set
15 periodically by the NGDCs, and when you set a fixed price or
16 try to market a fixed price against what is a variable
17 price, consumers don't really understand necessarily what
18 that is.

19 It has been mentioned in some of the testimony that
20 it's difficult for marketers to compete against the utility
21 price because the utility doesn't have a profit component.

22 But I think what's been left out of that is that a
23 utility's primarily responsibility is as a distribution
24 company. As a distribution company, their focus really
25 isn't on the merchant function or selling the natural gas

1 because they can't profit from that.

2 And in essence, they have to be careful about the
3 price that they set because ultimately they're responsible
4 to come back in and justify the price that they set.

5 Because of that justification, because of other
6 limitations that they have to abide by, regulatory
7 guidelines and other issues, the cost that ultimately is
8 passed onto the residential, commercial, industrial
9 customers through the GCR price isn't necessarily reflective
10 of the best price that a retail customer or a residential
11 customer could ultimately achieve.

12 With the inability of the utility to essentially
13 benefit from, for the lack of a better term, guessing
14 correctly, finding a better price in the market and actually
15 being able to supply the gas at cost less than what they're
16 charging, all those costs are then returned back to the
17 residential consumers and the other tariff customers.

18 And potentially being penalized if they guess the
19 other way incorrectly in setting the GCR price and not being
20 able to recover fully all their costs, they have a tendency
21 to be less market based in the prices that are set.

22 There's also another, there was recently a report
23 that was put out by the United States General Accounting
24 Office. In essence, what it was talking about was demand
25 response programs, which I think is an important issue.

FORM 1

1 With demand response programs, and it was addressing
2 really the utility marketplace but I think that the concepts
3 are transferable over into the natural gas marketplace, they
4 said that the number one limitation on being able to
5 effectively implement demand response programs is the
6 artificial price that's set by government regulation.

7 In essence, what they said is that when consumers
8 aren't able to get a market based price indication, then
9 they're not going to change their consumption patterns based
10 upon spikes in the marketplace.

11 When you have a true market based price that
12 fluctuates with the market or alternatively a fixed base
13 price that then is set by the marketplace, consumers have a
14 tendency to react to that price, to reduce consumption in
15 periods where the prices are higher and maybe consume more
16 naturally when the prices are lower. With the regulated
17 price, it's difficult if not impossible to set those demand
18 programs in place.

19 In essence, those were the two main points that IGS
20 wanted to bring up at this hearing. We appreciate your
21 giving us the time to make these comments, and if you have
22 any comments or questions for us, feel free.

23 JUDGE COLWELL: Thank you, Mr. Parisi.

24 (Witness excused.)

25 JUDGE COLWELL: Mr. Kingerski?

1 Whereupon,

2 HARRY KINGERSKI

3 having been duly sworn, testified as follows:

4 MR. KINGERSKI: Commissioners, thank you for the
5 opportunity to be here this afternoon. My name is Harry
6 Kingerski. I'm the regulatory affairs manager with Shell
7 Energy.

8 Shell Energy sells natural gas to residential and
9 small commercial customers in two states, Georgia and Ohio.
10 In Georgia, in addition to providing the commodity, Shell
11 also provides the full range of retail services: billing,
12 call center, all the customer care functions.

13 In Ohio, Shell serves numerous municipal aggregations
14 and is the provider to Dominion East Ohio's percentage of
15 income payment plan customers or PIP customers.

16 In our view, Georgia and Ohio are the two best
17 success stories for retail gas competition. In our view, as
18 we look at Pennsylvania, we do not see that effective
19 competition exists here at the retail level.

20 Our comments for improving the state of competition
21 in Pennsylvania focused on two specific items: first,
22 reforming the gas cost recovery or GCR mechanism; and
23 second, allowing suppliers to establish a direct retail
24 relationship with the customer.

25 First, on the issue of the GCR -- and I know there's

1 been a good bit said about that already here today, but let
2 me emphasize these points -- if all you have is competition
3 between the utility and the marketers, that competition is
4 not going to be sustainable because it is biased against the
5 marketers.

6 Unlike the utility, the marketer must recover all of
7 its costs through its gas price, not just the pure cost of
8 the gas commodity.

9 The utility recovers these non-gas costs including
10 profit through its base rates, and the consumer does not
11 avoid those costs when they purchase from a marketer; in
12 fact, they end up double paying them, once to the utility
13 and then again to the marketer.

14 And unlike the utility, the marketer has no trueup
15 process for its price of gas or whether it has guessed wrong
16 on how many customers it's going to have. We can't just
17 say, oh, well, we're going to make it up next year in a
18 trueup mechanism. It just doesn't work that way for a
19 marketer.

20 To put the utility and the marketer on equal footing,
21 the GCR process must be reformed so that the GCR captures
22 all the utility costs incurred in selling natural gas: the
23 supply costs, the accounting costs, the regulatory costs,
24 all of the overhead costs associated with selling the
25 product.

1 In other words, proper unbundling must be performed.
2 I mean, this is really an unbundling exercise. These costs
3 have to be shifted out of the distribution rate and into the
4 gas cost rate of the utility.

5 That GCR rate should also reflect current market
6 prices, and our recommendation is that that be done on a
7 monthly basis.

8 If a customer wants a fixed price, it should obtain
9 that service through a marketer. The problem with the
10 current process is that it makes customers believe that
11 they're getting a fixed price from the utility and avoiding
12 the volatility of the marketplace.

13 But in reality, the GCR is nothing more than a
14 variable price with a prolonged trueup period. It can be a
15 year or more out when the customer actually ends up paying
16 the true cost for gas that they consumed in the past.

17 We have a sizable part of our portfolio in Georgia.
18 Our customers have fixed rate contracts, and these customers
19 have been able to save millions of dollars over the last two
20 winters because of the fixed rate contracts that they have
21 with Shell Energy.

22 My second point was that supplies must be able to
23 establish a direct retail relationship with their customer
24 if retail competition is to succeed.

25 Pennsylvania, and for that matter all states other

1 than perhaps Georgia, largely prevent that direct
2 relationship from occurring. The utilities control the bill
3 and marketers are basically told what they can communicate
4 to customers and how they can price their product for their
5 customers. This model is never going to produce a
6 successful retail market.

7 By contrast, Georgia has allowed the retail
8 relationship to take root, and at the same time they have a
9 very extensive set of consumer protection processes in
10 place, so these two things can go together. Marketers can
11 have a direct relationship with their customers and there
12 can be extensive consumer protections in place.

13 Our recommendation is that the Pennsylvania
14 Commission should seek ways to allow that retail
15 relationship to form, first by unbundling all of the retail
16 services and, longer term, by having the utility concentrate
17 solely on delivery reliability and allowing suppliers to
18 compete with one another for the right and the opportunity
19 to supply the gas commodity to customers. Thank you very
20 much.

21 JUDGE COLWELL: Thank you, Mr. Kingerski.

22 (Witness excused.)

23 JUDGE COLWELL: Mr. Sommer?

24 MR. SOMMER: Good afternoon. I'm Matt Sommer,
25 representing Shipley. There are four issues that I want to

1 discuss this afternoon, the first being seamless service and
2 better ability for natural gas suppliers to provide customer
3 service to their customers; the second, delivery
4 requirements and penalties; third, security requirements;
5 and lastly, I want to touch on price to compare.

6 And I guess the advantage of being last on a six
7 person panel is that all these issues have already been
8 discussed, so I'll try to keep it brief. I think there was
9 a lot of agreement by the members of our panel.

10 First off, seamless service, and what we mean by that
11 is the ability, if a customer moves, that their relationship
12 with us can continue unchanged in their new home. If
13 they're in the middle of a fixed price contract, they can
14 continue on that contract.

15 We can arrange for service to be cancelled at their
16 previous address, arrange for service to be initiated at
17 their new address, and we believe that systems can be
18 developed and put in place, this would happen and it would
19 be seamless.

20 Interesting fact is, ten percent on average -- and
21 this is for all products that Shipley serves, additionally
22 heating oil and propane -- ten percent of our customers move
23 every year. And obviously, with the oil and the propane
24 where we have this type of relationship with our customers,
25 we're able to add value for them, help coordinate their

1 move, see that everything moves seamlessly for them.

2 Unfortunately, in the current state of natural gas,
3 we oftentimes have to instruct them to contact the
4 distribution company to arrange those things and then, a
5 month later, contact us with their new utility account
6 numbers so that we can resume being their supplier.

7 Additionally, we think there are some other
8 opportunities for marketers to be more involved in possibly,
9 as some other states have done, where the suppliers actually
10 process the invoices so customers can have a consolidated
11 bill coming just from their supplier as opposed to the local
12 distribution company; possibly look at meter reading being
13 something that could be unbundled and bid out.

14 Essentially, we want the service that we provide to
15 our other customers, we want to be able to provide that same
16 high level of service to our natural gas customers.

17 Secondly, delivery requirements and penalties, first,
18 we think it's important that with respect to delivery
19 requirements and with respect really to a lot of choice
20 rules in general, there can be much greater uniformity in
21 those rules across the state.

22 Certainly there are, each utility has unique
23 situations, so I doubt we could ever get to complete
24 uniformity, but even if there were just certain minimum
25 standards that each utility operated under, I think you

1 could really encourage competition in the state.

2 Again, all the other members of this panel were all
3 active in different regions of the state, and a barrier to
4 entry is that as it stands now, every new utility you enter,
5 you're forced to a large expense in learning exactly how
6 they do things, creating computer systems that integrate
7 with their systems.

8 In greater uniformity, there's probably a lot of
9 marketers out there right now that operate in one or two
10 utilities that would gladly expand the number of service
11 territories that they serve.

12 With respect to delivery requirements and penalties,
13 we feel that as it stands now, the \$75 penalty that can be
14 enforced can be excessive and can be abused.

15 We feel that perhaps a better system would be to
16 allow for a sliding scale or a bandwidth mechanism where if
17 a small mistake was made, the penalty would be lesser which
18 would reflect the market prices.

19 Shipley completely agrees that there needs to be a
20 mechanism in place to ensure that marketers are delivering
21 the supply that they need to into the various utilities, but
22 that we've experienced situations in the past where we've
23 been penalized for an underdelivery of 13 dekatherms in a
24 given day. And clearly, Shipley didn't intentionally divert
25 13 dekatherms into another market for some windfall profit.

1 Vice Chairman Bloom, do you have any questions for
2 any member of Panel Two?

3 VICE CHAIRMAN BLOOM: No.

4 JUDGE COLWELL: Commissioner Thomas?

5 COMMISSIONER THOMAS: Yes, thank you. I have two.
6 First, for Mr. Magnani, I'm very intrigued by the fact that
7 you led off with your number one concern being the
8 relationship of affiliates.

9 I guess maybe the best way to handle this is,
10 convince me a little bit more that this is actually a
11 problem. I mean, do you have any examples of this? Are
12 these suspicions? Are these hypothetical possibilities?
13 Tell me in a little bit more detail why you believe this
14 Commission should be concerned about affiliate abuse and try
15 to be as specific as possible.

16 MR. MAGNANI: Just the fact that there's a
17 confidentiality agreement required and that customers view
18 it as, there's a reason why they have to be confidential,
19 that if they deal with the affiliate, that they could get a
20 better transportation rate than if they deal with another
21 marketer.

22 Customers, whether rightly or wrongly, believe that.
23 I think if you were in an open situation where there was no
24 confidentiality agreement, where the number was clearly
25 stated, where the utility said, "This discount is available

1 to our affiliate's customer and it's available to every
2 other marketer's customer," then some of that stuff would go
3 away. But it isn't going away. It is there.

4 That's a clear -- you know, I can only say, I mean,
5 that's happening today. It's a clear example. You see it
6 in the marketplace.

7 COMMISSIONER THOMAS: Do you feel as if it's a
8 problem that you're losing significant market share to
9 affiliates?

10 MR. MAGNANI: In areas where affiliates operate, we
11 are losing -- we either -- well, not just us. If there's
12 not effective competition, new marketers are unwilling to go
13 into the area. In some cases, you need to have a large
14 market to comply with the rules that they've set up and you
15 can't get to that point because the affiliate has all the
16 load. I mean, it is clearly a market impediment in the
17 areas in which it occurs.

18 COMMISSIONER THOMAS: Okay, thank you.

19 My next question is for Mr. Kingerski. You talked
20 about the need to have the GCR and the unbundling factors
21 appropriately delineated. Do you believe Georgia and Ohio
22 have successfully solved that unbundling question, and would
23 you recommend those as models when it comes to the
24 unbundling question?

25 MR. KINGERSKI: Georgia, clearly, because in Georgia

1 the Atlanta Gas Light which is the host utility there only
2 does delivery. The marketers, every one of them do their
3 own billing, have their own call center and they have gone
4 through an extensive case to take all of those types of
5 costs that were previously held with the utility, take them
6 out of base rates. So there's no double counting that's
7 going on in Georgia.

8 COMMISSIONER THOMAS: Do folks get two bills there,
9 then?

10 MR. KINGERSKI: No. They get one bill --

11 COMMISSIONER THOMAS: Delivered by you?

12 MR. KINGERSKI: -- from the supplier.

13 COMMISSIONER THOMAS: And you add delivery charges on
14 your bill?

15 MR. KINGERSKI: That's correct, and we reimburse the
16 utility 100 cents on the dollar for their delivery charge.

17 COMMISSIONER THOMAS: Okay. So in that sense, you're
18 the billing agent instead of vice versa?

19 MR. KINGERSKI: That's correct, and that's then
20 another opportunity for various marketers to distinguish
21 themselves from one another, is by the type of bill, by the
22 type of payment services they offer, by the quality
23 standards with which they do those services. That's all
24 part of the retail package.

25 COMMISSIONER THOMAS: How many marketers are active

1 in Georgia's residential market, approximately?

2 MR. KINGERSKI: Ten.

3 COMMISSIONER THOMAS: Ten? Thank you.

4 MR. KINGERSKI: You also asked about Ohio. Ohio has
5 made some progress on that front, but they certainly are not
6 as far along as Georgia. And we are active in Ohio,
7 encouraging them to do the same thing, taking these services
8 and bringing them as part of the retail package.

9 COMMISSIONER THOMAS: Thank you. No further
10 questions.

11 JUDGE COLWELL: Commissioner Pizzingrilli?

12 COMMISSIONER PIZZINGRILLI: I just also want to
13 extend my thanks to everyone on the panel for sharing your
14 perspectives today and we encourage your continued
15 involvement as we proceed with this investigation.

16 COMMISSIONER HOLLAND: No.

17 JUDGE COLWELL: Commissioner Holland is indicating he
18 has no questions.

19 At this point, with the Commission's indulgence, I'd
20 like to go off the record for just two minutes while I ask
21 the members of Panel Three to step forward. We're off the
22 record.

23 (Discussion off the record.)

24 JUDGE COLWELL: Let's go back on the record.

25 Mr. Merrill, Mr. Popowsky and Mr. Lloyd, please stand

1 and raise your right hands.

2 Whereupon

3 TIMOTHY W. MERRILL

4 SONNY POPOWSKY

5 WILLIAM R. LLOYD

6 were duly sworn.

7 JUDGE COLWELL: Please be seated except for Mr.

8 Merrill. You're up first.

9 MR. MERRILL: Thank you. My name is Tim Merrill. I
10 welcome the opportunity to appear before you this afternoon.
11 As Commissioner Pizzingrilli led off this session this
12 afternoon citing Section 2204(g), investigation and report
13 to the General Assembly of the Natural Gas Choice and
14 Competition Act, not the Gas Restructuring Act as the Energy
15 Association would rename it, that section concludes with
16 this sentence, as was read:

17 "Should the Commission conclude that effective
18 competition does not exist, the Commission shall reconvene
19 the stakeholders in the natural gas industry in this
20 Commonwealth to explore avenues, including legislative, for
21 encouraging increased competition in the Commonwealth."

22 It seems to me there's not a lot of wiggle room in
23 this language. I guess you could conclude that effective
24 competition does exist in this Commonwealth and then you
25 wouldn't have to go forward with the collaborative. But if

1 your conclusion is that effective competition does not
2 exist, then it seems to me this language is pretty right on
3 point.

4 In my written comments to you earlier, I wanted to
5 establish that I don't think that there's effective
6 competition that's existing in Pennsylvania for numerous
7 reasons, some within your control or the control of the
8 people in this room, some for reasons that are outside of
9 your control and in the hands of other people.

10 And therefore, I suggested that the collaboration
11 deal with three things: mandatory capacity assignment; the
12 re-examination of utility business practices, and a further
13 development of the SOLR concept.

14 Certainly as you've just heard on this past panel,
15 the utility business practices are probably the easiest
16 thing to deal with. They're happening all over the
17 Commonwealth. Getting the parties together and dealing with
18 them on a generic basis I think is relatively easy.

19 Dealing with capacity assignment is a lot more
20 difficult, because of the involvement of FERC and the
21 involvement of pipelines, and things have to be done in
22 Washington before we can really solve things in Pennsylvania
23 with regard to capacity assignment.

24 Similarly with the SOLR model, the SOLR model, as you
25 well know, is a very difficult concept. You're struggling

1 with it on the power side when you're dealing with POLR, and
2 I don't think any state in the country has really developed
3 an effective POLR model let alone a SOLR model.

4 So I think those ideas, the SOLR and capacity
5 assignment, are very difficult, but I think, along with the
6 generic approach to solving utility business practices,
7 through a collaboration we can move the ball forward.

8 For the balance of my comments this afternoon, I'd
9 like to talk about the Energy Association's reply comments.
10 They were late filed after August 27th, but listed as filed
11 on August 27th.

12 It's not very surprising and very telling that the
13 Energy Association would have this Commission not only
14 rename the Act of the Legislature but also redefine its
15 purposes.

16 The very word "competition" is an anathema to the
17 Energy Association. It doesn't believe in competition
18 whatsoever, and therefore this Commission should not be
19 surprised that the Association will do whatever it takes to
20 frustrate the intent of the Legislature.

21 This somewhat harsh conclusion should be apparent to
22 anyone reading the EAP's comments or hearing them this
23 afternoon and seeing the repeated references to the Gas
24 Restructuring Act and not the Natural Gas Choice and
25 Competition Act.

1 This is not to denigrate the Association's stress on
2 the continued need for safe, adequate and reliable gas
3 service. As with medical quality in our hospitals, safe,
4 adequate and reliable gas service must be a pre-condition,
5 not a high priority, in operating our gas distribution
6 systems.

7 But to say that the purpose of the Natural Gas Choice
8 and Competition Act, not the Gas Restructuring Act, is to
9 maintain safe, adequate and reliable service, as EAP does
10 again and again and again, is a deliberate if not a
11 malicious attempt to rewrite history.

12 I do agree with the Association that for a
13 collaboration to function, all participants must perceive a
14 reasonable expectation of benefit. As stated earlier, I
15 strongly disagree that there are those asking you, this
16 Commission, to reconvene the stakeholders. The Legislature
17 told you, told this Commission of the need to reconvene the
18 stakeholders. Just as the Energy Association would rewrite
19 the purpose and the intent of the Natural Gas Choice and
20 Competition Act, it would have the Commission also disregard
21 a specific directive from the Legislature.

22 There's no doubt that the Act is a compromise between
23 the objective of obtaining competitive markets and
24 maintaining safe, adequate and reliable service.

25 The Association is correct that the compromise shows

1 up in several areas, as was demonstrated this afternoon,
2 including capacity assignment and several SOLR issues.

3 Nonetheless, these areas are so vital to the growth
4 of competitive markets that the compromises made in 1999 I
5 believe need to be revisited.

6 Finally, I strongly disagree with the Association's
7 fear of generic proceedings that would look again at
8 utilities' business practices. This disagreement is not
9 surprising given the utilities' disdain for competition.

10 The purchase of receivables, supplier deposit and
11 creditworthiness standards, penalty provisions are all
12 barriers to the growth of competition. The Association
13 would keep those barriers in place for the next five years
14 if not longer, and the same is true for the utility
15 affiliate marketing standards.

16 The association would turn your heads from what's
17 happening in Washington as FERC continues to revisit
18 pipeline affiliate marketing standards.

19 In conclusion, after a long tour of duty in the
20 marketing world, I am once again a purchaser and a converter
21 of energy. I believe in the value of markets to users and
22 suppliers alike.

23 I recently concluded a negotiation with three gas
24 vendors and signed a contract that will add value to my
25 plant and to my customers. I only wish that my family and

1 friends and associates who come to me from time to time with
2 a sporadic offer from the marketplace had the same
3 opportunity to buy as I do as industrial buyer of gas, and
4 the same is true with my friends that operate and own small
5 businesses. They don't see the competitive market. And by
6 the way, I don't believe we should force the market with
7 some kind of an ugly SOLR provision.

8 All my years in this business have convinced me, as
9 I've tried to emphasize in these comments, that the
10 utilities don't like markets and will do everything they can
11 to stifle their growth. This was the case 25 years ago when
12 we started the C&I market. It's the case now.

13 And I think if I were a utility executive, I could
14 understand because I would be very fearful of my company
15 being left holding the bag after the marketers came and went
16 and disappeared. So were I a utility executive, I would be
17 wary as well, but I hope I wouldn't be standing up in front
18 of you today, urging you to stifle competition or go against
19 the will of the Legislature, and I think that's what
20 happened today.

21 I know from previous decisions you've made, indeed
22 the one this morning, that you guys want to see competition
23 in this Commonwealth. I believe that a decision by you to
24 reconvene the stakeholders would reaffirm your commitment to
25 competitive markets on the gas side as your decision this

1 morning in Duquesne did it on the power side. Thank you
2 very much.

3 JUDGE COLWELL: Thank you, Mr. Merrill.

4 (Witness excused.)

5 JUDGE COLWELL: Mr. Popowsky?

6 Whereupon,

7 SONNY POPOWSKY

8 having previously been duly sworn, testified as follows:

9 MR. POPOWSKY: Thank you, Judge Colwell, members of
10 the Commission. My name is Sonny Popowsky. I'm the
11 Consumer Advocate of Pennsylvania.

12 My office has been closely following the development
13 of retail choice for natural gas supply in Pennsylvania by
14 compiling natural gas shopping statistics and preparing
15 monthly shopping guides to assist customers in making
16 informed choices about their natural gas supply service.

17 In reality, despite some early interest in retail
18 shopping, the great majority of residential natural gas
19 customers in Pennsylvania continue to purchase their natural
20 gas supply from their incumbent utility suppliers.

21 There's a chart on page two of my written testimony
22 showing the percentage of gas customers who are being served
23 by alternative suppliers by company, and as you can see from
24 that chart, nearly all of the residential customer switching
25 occurred among the customers of three western Pennsylvania

1 based companies: Columbia, Dominion and Equitable.

2 One reason for this I think is that those three
3 companies already had substantial retail choice pilot
4 programs ongoing well before the 1999 statewide legislation.

5 During those pilot programs, if you recall, customers
6 who switched from the utility to an alternative gas supplier
7 were exempted from paying the five percent gross receipts
8 tax on their monthly gas bills. When the Act was passed,
9 however, this advantage was eliminated because the General
10 Assembly eliminated the gross receipts tax for all natural
11 gas service.

12 But for whatever reason, there has been very little
13 retail competitive activity for residential customers in
14 most of the rest of the state, and even in those three
15 service territories, the number of customers served by
16 alternative suppliers has actually declined by about 20
17 percent.

18 Now, I would note at the outset that the Commission
19 is undertaking this review during a period of significantly
20 increased wholesale natural gas prices and extraordinary
21 price volatility as compared to the 1998-1999 period when
22 our retail gas competition act was adopted and implemented.

23 I believe the significant changes in the wholesale
24 natural gas market have likely had a negative impact on
25 retail natural gas competition for residential customers and

1 have made this issue even more difficult both for the
2 companies and the customers.

3 In general, though, I think that it's likely that
4 most residential customers will continue to be served by
5 their natural gas distribution companies. Many are
6 unwilling to make a change. Many find it just too difficult
7 based on the savings that they can expect, and they're not
8 certain of those savings.

9 But for a number of reasons, I do believe that most
10 customers will continue to be served by their natural gas
11 distribution companies, and perhaps most importantly for the
12 reason that there are only a few natural gas suppliers
13 serving residential customers and even fewer of those who
14 actually have been able to offer savings to the customers.

15 Despite this lack of retail competitive activity, I
16 for one believe that the worst possible result from this
17 investigation would be to take a path that is designed to
18 encourage greater customer switching by either increasing
19 the price or degrading the reliability of the natural gas
20 service that is currently provided to the vast majority of
21 residential customers by their regulated natural gas
22 distribution companies.

23 There's two ways, it seems to me, to get customers to
24 shop. One is to enable marketers to offer better service.
25 The other is to force the natural gas distribution companies

1 to provide worse service, higher priced, more volatile
2 service. I support the first but I strongly oppose the
3 latter as a way of getting competition.

4 It's interesting, when the General Assembly enacted
5 the Customer Choice Act in 1999, they did not -- and this is
6 important -- they did not eliminate the statutory
7 requirement that Pennsylvania's regulated gas utilities must
8 pursue a least cost gas procurement policy.

9 On the contrary, as part of the same legislation that
10 created customer choice, the General Assembly amended
11 Section 1307(h) of the Code to make it clear that the cost
12 of natural gas for the purpose of the NGDC's annual
13 purchased gas cost proceedings would include costs paid for
14 employing futures, options and other risk management tools.

15 In other words, the General Assembly not only
16 continued the least cost gas procurement standards of
17 Section 1307, but they gave the NGDCs additional tools which
18 they would be permitted to use and recover the costs of in
19 order to meet those least cost procurement standards.

20 Now, pursuant to those provisions, the Commission
21 carefully reviews the NGDCs' gas purchasing practices every
22 year. Moreover, as you well know, the NGDCs receive no
23 retail profit on the sale of the natural gas commodity.

24 So if the NGDCs and the Commission have been doing
25 their job, that is by following and enforcing a least cost

1 gas procurement policy under which wholesale gas costs are
2 flowed through to customers with no profit or markup, then
3 it should not come as a surprise that it would be difficult
4 for marketers to beat those prices and to attract customers.

5 The unregulated marketers, after all, are operating
6 in the same volatile, escalating wholesale market in which
7 the utilities are buying their gas, and they do have
8 additional costs that are not incurred by the NGDCs.

9 I also believe that it is difficult for residential
10 gas customers to make a choice, in part because of the way
11 the price to compare is calculated and is changed on a
12 quarterly reconcilable basis.

13 It is difficult for customers I think to figure out
14 what the price to compare is and then it is difficult for
15 them to actually compare that to either the variable or
16 fixed rates that the marketers offer.

17 And of course, such problems are not as prevalent in
18 the Electric Choice Act where customers do get a fixed price
19 from the electric utility that is changed annually and is
20 not reconcilable.

21 but nevertheless, again, I would submit that the
22 focus of this investigation must be on how to improve
23 service for gas customers, not simply on how to get them to
24 switch away from their natural gas distribution companies.

25 The intent of the Act, I think, was to provide

1 benefits to consumers by introducing retail choice, not to
2 harm them by increasing natural gas cost rates and
3 volatility or diminishing service and reliability.

4 I would strongly urge the Commission to reject
5 proposals for residential choice that would increase costs
6 to the customers as a means of encouraging switching.

7 My biggest concern involves those arguments that
8 suggest that the way to get customers to switch is to
9 increase costs that the natural gas distribution companies
10 charge to their customers for gas or, worse yet, that they
11 be forced out of the merchant business altogether.

12 I believe actually it would be extremely harmful to
13 eliminate the protections that Pennsylvania customers were
14 continued in the Natural Gas Choice Act of 1999, to continue
15 to have the protection of regulated rates based on a no
16 market, least cost gas procurement standard for the
17 utilities that serve them.

18 To the extent the marketers can beat those prices,
19 that's all the better. To the extent they can't, I don't
20 think the right answer is to raise those prices or to force
21 those distribution companies out of the market.

22 There have been various recommendations made in this
23 proceeding, particularly by the marketing community. I
24 share their concerns regarding the difficulty that they have
25 in competing with the quarterly reconcilable price to

1 compare, although I strongly disagree with some of the
2 solutions that they propose such as forcing those companies
3 out of the market or going to an external monthly changing
4 market price that is not related to the actual least cost
5 procurement of the company.

6 I also agree that it would be beneficial if we did
7 have greater uniformity among the NGDCs and electronic data
8 protocols.

9 I also have no objection to recommendations for the
10 purchase of NGS receivables by NGDCs at an appropriate
11 discount rate as long as those programs do not impose
12 additional costs on other customers and do not compromise
13 consumer protections for affected customers.

14 I would certainly oppose, however, coupling such a
15 receivable purchase requirement with a bad debt tracker for
16 all the reasons that the Commission rejected such a
17 reconcilable uncollectibles clause in the recent PGW case.

18 JUDGE COLWELL: Thirty second, sir.

19 MR. POPOWSKY: I'm also opposed to suggestions that
20 we assign customers to marketers at this time unless there's
21 an absolute assurance, as we had in the electric
22 proceedings, that customers would receive reliable service
23 at rates that are no higher than the default service
24 provided by the regulated utility, and I believe that the
25 experience that we had on the electric side with New Power's

1 competitive default service is hardly a ringing endorsement
2 for the use of that practice here.

3 In closing, again, I'd like to thank you for allowing
4 me to testify, and I'd be happy to answer any questions at
5 the end of our panel.

6 JUDGE COLWELL: Thank you, Mr. Popowsky.

7 (Witness excused.)

8 JUDGE COLWELL: Mr. Lloyd?

9 Whereupon,

10 WILLIAM R. LLOYD

11 having previously been duly sworn, testified as follows:

12 MR. LLOYD: Good afternoon. My name is William
13 Lloyd. I am the Small Business Advocate of Pennsylvania. I
14 have to offer for admission into the record OSBA Exhibit 1,
15 which is the Power Point from which I will speak this
16 afternoon.

17 (Whereupon, the document was marked
18 as OSBA Exhibit No. 1 for
19 identification and received in
20 evidence.)

21 MR. LLOYD: If you'll go to slide two, just as the
22 General Assembly created debate by failing to define in the
23 Electric Choice Act what is meant by prevailing market
24 prices or spell out a procedure for determining that, it has
25 also left you in a quandary because it hasn't defined the

1 term "effective competition." You've heard some different
2 spins this afternoon on how that ought to be defined.

3 If you'd go to slide three, as has been indicated,
4 the General Assembly I think knowingly enacted the Gas
5 Choice Act and kept the default rate as a regulated rate,
6 1307(f).

7 And even if the NGDC exits the merchant function and
8 a natural gas supplier is designated as the supplier of last
9 resort, the Legislature said those prices were not to be
10 prevailing market prices; rather, they said they were to be
11 just and reasonable rates, which is the traditional standard
12 that the Commission has used.

13 So the arguments that we've gone through in electric
14 about ugly POLR rates in order to create an incentive for
15 switching seem to me to be banned by the legislation which
16 was enacted.

17 And so anything that begins to give the marketers
18 most of the things that I've heard about this afternoon
19 requires a trip across the street and is beyond the ability
20 of anybody in this room to effect.

21 Next slide. I think that we should not focus on
22 counting how many customers are shopping, what percentage of
23 the gas is being transported as opposed to what is being
24 purchased from the NGDC.

25 I don't see anything in this Act that says that

1 that's the measure of effective competition. It also seems
2 to me that we ought to take account of the fact that in
3 electric, people would be doing handstands, marketers
4 included, if 40 to 50 percent of all the electricity
5 delivered in Pennsylvania were being provided by non-
6 utilities.

7 But when you add in the gas that's being transported
8 for large C&I customers, that's what you have today for gas,
9 40 to 50 percent. Yes, there has not been vigorous
10 competition for residential and small C&I customers, but
11 some of the prepared testimony provides some pretty
12 compelling arguments as to why that's the case, not the
13 least of which is the economies of scale in terms of
14 purchasing which the utility has when it purchases its gas.

15 So I think the real focus ought to be on, are there
16 things within the parameters the Legislature set which are
17 creating unnecessary impediments to competition. One of
18 those I believe is the lack of uniform penalties and the
19 lack of a penalty base which reflects actual market prices.

20 Now, I certainly agree that there needs to be some
21 type of a multiplier on top of the replacement gas cost when
22 a supplier underdelivers.

23 But I don't see the logic for saying that we have to
24 have that replacement gas cost reflect something other than
25 what the NGDC actually spent.

1 Now, we suggested in our testimony that you try to
2 come up with a two tiered standard, one which looked at
3 situations in which there was gaming and another which
4 looked at situations in which there was simply negligence or
5 an act of God or what have you.

6 And it's been suggested by the Energy Association
7 that that's not workable, and so I went back and I thought
8 about that some more.

9 And it occurred to me that the solution is maybe very
10 simple. Make the base, before you apply the multiplier,
11 make the base be the actual cost that the NGDC incurred to
12 replace the gas that was underdelivered, so that the NGDC is
13 made whole, and then apply the multiplier, whether that's
14 1.4, 1.2, 1.5. That's the penalty.

15 Now, you say, "Gee, we don't really need to address
16 that problem," but I'm telling you you do because you
17 decided a case, you just had the final order entered by
18 secretarial letter a few weeks ago, in which an NGS said,
19 "This tariff is operating in an unjust and unreasonable
20 manner. The penalties being imposed on us are unreasonable
21 and we want relief."

22 We ended up, after a protracted negotiation, we ended
23 up with a settlement which was ultimately approved. But
24 there are absolutely no criteria governing when there should
25 be relief from the tariffed rate, how that should be done in

1 order to avoid violating the law against discriminatory
2 rates, how it should be done to avoid violating the law that
3 says you can't depart from the tariffed rate.

4 And in that case, we had a settlement. If a
5 settlement had not been possible, that case would have been
6 before you. And once you start hearing these cases, you're
7 going to become a court of equity. You're going to be
8 asked, when should relief be granted.

9 I would suggest that you either come up with some
10 kind of a uniform system on penalties which more accurately
11 reflect the harm to the utility and then provide an adequate
12 incentive not to impose that harm, or you come up with a
13 procedure and a set of criteria that we're supposed to
14 follow in handling these cases.

15 Next slide. The final thing or the next to the last
16 thing I want to talk about is mandatory capacity assignment.
17 And while the written comments talk a lot about that, most
18 of the comments today have not.

19 I would just underscore two points. Number one, the
20 statute provides a way to get relief if an NGS believes that
21 it shouldn't be forced to take a mandatory capacity
22 assignment on an old contract. It has been represented that
23 nobody has ever sought that relief.

24 Number two, the statute says, when new contracts are
25 being negotiated, the suppliers have the right to bring

1 their own capacity. And once again, it's been represented
2 that nobody has ever done that.

3 So if nobody has ever tried to take advantage of the
4 statute the way it's written, it would seem to me that a
5 reasonable conclusion would be, it ain't broke, let's not
6 fix it.

7 Now the last slide. It also seems to me that while
8 the Energy Association says, this is really not a useful
9 thing to do, we really ought to have shopping statistics.

10 The only shopping statistics which currently exist
11 are those compiled by the OCA and in the area of gas they
12 address just residential.

13 I tried to get some numbers by contacting chambers of
14 commerce and so forth. I basically ended up with nothing.
15 And I think if we're going to try to judge whether we have
16 competition or we don't, we ought to have some statistics
17 that embrace not only residential customers but also small
18 C&I and large C&I customers so that we can track that over
19 time, so that we can put it into perspective and so that we
20 can maybe correlate, certain things happen in the
21 marketplace or certain things were done as a policy decision
22 and that had this effect on shopping or it had no effect on
23 shopping. It seems to me that's a useful thing to know.

24 The final thing I'd like to say is that what I think
25 is remarkable about the presentations today by those who

1 want to make changes is that I didn't hear anybody talk
2 about, you know, Georgia is the greatest place and rates in
3 Georgia are 20 percent lower than Pennsylvania, or 10
4 percent lower than Pennsylvania.

5 I heard somebody say it's hard to market if it's only
6 a five percent savings. And I don't want to put words in
7 his mouth. I don't know whether he was representing that
8 that's the savings that we could expect.

9 But it seems to me, if we're going to upset the world
10 and tackle this issue and change the statute, we ought to be
11 sure that when we're done, that we're going to end up with
12 lower rates.

13 If we aren't going to end up with lower rates, we
14 should not be making any change in the law at all other than
15 try to make sure that we're adequately enforcing what the
16 legislature has already passed. Thank you very much.

17 JUDGE COLWELL: Thank you, Mr. Lloyd.

18 (Witness excused.)

19 JUDGE COLWELL: Vice Chairman Bloom, do you have any
20 questions for any member of Panel Three?

21 VICE CHAIRMAN BLOOM: No, ma'am.

22 JUDGE COLWELL: Commissioner Thomas?

23 COMMISSIONER THOMAS: Yes, a couple quick ones.

24 First, for Mr. Merrill, Mr. Merrill, in your testimony you
25 indicated that capacity assignment rules need to be fixed

1 and Mr. Lloyd said something a little different, but could
2 you expand on what problems and challenges you see on those
3 capacity assignment rules?

4 MR. MERRILL: I believe there's competition in the
5 large C&I market primarily because marketers are trading
6 capacity, bringing pipeline capacity along with the deal.

7 What we realized five years ago when we were
8 struggling with this compromise, that there are existing
9 contracts out there with utilities that are rolling over,
10 need to be honored, and that if we really wanted to get
11 competition in the residential side, we had to get that
12 capacity in the hands of the marketers. It's very difficult
13 to do that when that capacity is controlled by FERC rates
14 and tariffs.

15 COMMISSIONER THOMAS: But why aren't the suppliers
16 showing up with -- I mean, obviously we've got a lot of
17 suppliers here -- but in your sense, why aren't the
18 suppliers coming up with the capacity when they have the
19 option to do so?

20 MR. MERRILL: Because there's no real market for the
21 capacity. What is offered by the pipelines are essentially
22 utility designed arrangements that don't really allow the
23 trading and the moving back and forth of capacity between
24 marketers. There's not a market for that capacity, even
25 though there are contracts between pipelines and LDCs, those

1 opportunities where LDCs and the LDCs have been reasonably
2 diligent about saying, you know, this contract, this
3 pipeline contract is about to come up, about to be renewed,
4 does any marketer want to stand up and step up to the plate
5 for that.

6 And marketers have not, primarily because of this, in
7 my mind, this lack of trading capacity but also because of
8 their concerns about being able to utilize that to grow, you
9 know, to grow a market.

10 COMMISSIONER THOMAS: Okay, because the original
11 discussion, the idea, these capacity assignments were almost
12 talked about as a stranded cost of natural gas and this was
13 a transition mechanism to get us to a point where these
14 contracts were expiring, and then marketers would show up
15 with their own capacity and serve their own customers.

16 MR. MERRILL: Exactly.

17 COMMISSIONER THOMAS: You say it's more a function
18 that the retail is not where it needs to be, and then --

19 MR. MERRILL: Retail is not where it needs to be and
20 FERC is not doing what it needs to do to continue to make
21 this pipeline capacity a commodity the same way that gas is
22 a commodity.

23 COMMISSIONER THOMAS: Okay. Thank you. That's all I
24 have. I do have two questions for Sonny, though, as well.

25 First of all, you sort of recognize that the

1 quarterly adjustment idea on the GCRs create challenges for
2 marketing, but I assume you're not in favor of going to
3 monthly adjustments. Any ideas on how to get at that issue,
4 or is that just something we have to work around?

5 MR. POPOWSKY: It's something I just really have
6 struggled with, because you're right. By the way, the part
7 of the monthly adjustments that really scared me in some of
8 the proposals here was that it wasn't just monthly
9 adjustments of actual costs.

10 They were talking about in some of the proposals
11 monthly adjustment of NYNEX index costs, regardless of what
12 the least cost procurement was, you know, that the utilities
13 were going on.

14 I've struggled between whether the answer is to have
15 monthly or annual, and even if you do it annually, which is
16 sort of the way we used to do it, the problem is that the
17 gas costs have become so volatile that the risk of massive
18 overrecovery or underrecovery are just greater.

19 So I don't really have a solution. I don't have a
20 solution for that. I do think that even in Ohio, they do
21 use quarterly reconcilable updates, so it's not that
22 uncommon even in states that have had more choice than we
23 do, but I wish I had the answer for that.

24 COMMISSIONER THOMAS: Okay. Second question is on
25 the unbundling question. We've heard a lot of testimony

1 earlier about, you know, certain charges belong more
2 appropriately in GCRs versus distribution rates. Any
3 thoughts on that?

4 MR. POPOWSKY: Well, you know, we litigated that and
5 I was on that side, which is I frankly wanted more costs
6 into the PGC than in the base rates. But there really
7 wasn't, you know, a whole lot of litigation, marketer
8 litigation at that time.

9 But my main concern now is, now that we've decided
10 where the costs should be -- because obviously I would
11 rather have the costs in a portion of the bill that can be
12 avoided by shopping than have it in a portion of the bill
13 that's in the distribution rate, so I would love to have all
14 the costs in the GCR.

15 My concern is we're going to end up with having them
16 in both places; that is, if the NGDC is going to incur most
17 of those costs anyway, even if the customer shops, there's a
18 good chance that we're going to end up with all those costs
19 remaining in the distribution rates and also showing up in
20 the GCR.

21 So my concern here is that customers not pay twice,
22 and then there are other costs, by the way, that I just
23 don't think should be in there at all, things like customer
24 acquisition costs.

25 I don't want to have hypothetical costs that the NGDC

1 is not incurring and put them into the PGC as if they were
2 incurring them.

3 And I certainly don't want to go along with proposals
4 that say that we should now add a return to the NGDC costs
5 when they're not even asking for it. So those are the costs
6 I'd like to keep out.

7 COMMISSIONER THOMAS: Okay. Thanks. No further
8 questions.

9 JUDGE COLWELL: Commissioner Pizzingrilli?

10 COMMISSIONER PIZZINGRILLI: No.

11 JUDGE COLWELL: Commissioner Holland?

12 COMMISSIONER HOLLAND: No, ma'am.

13 JUDGE COLWELL: Thank you.

14 I have two points before I turn it back to the
15 Commissioner. First, the three Power Point presentations
16 that were done here today are all admitted into the record.

17 Secondly, the reply comments are due on October 12th,
18 and because that's fairly soon, we have asked for expedited
19 treatment for the transcript from today's hearing, and that
20 will be available next Tuesday.

21 With that, I'll turn it back to you, ma'am.

22 COMMISSIONER PIZZINGRILLI: First I would like to
23 thank Judge Colwell for monitoring our proceedings, and to
24 those of you participating today, your input is greatly
25 appreciated and will continue to be as our investigation

1 continues.

2 I also want to thank our PUC Staff who is here today
3 monitoring the proceedings and going through the comments
4 and your testimony that we've received.

5 Today I also want to take an opportunity to announce
6 the Commission's Winter Reliability Assessment Meeting. It
7 will be held Tuesday, October 12th at 1:30 p.m. in this
8 Hearing Room 1.

9 The information shared during this meeting will
10 provide a snapshot of various conditions that may affect
11 supply, price and service reliability of natural gas over
12 the upcoming winter. If you have any questions regarding
13 that meeting, please call our Office of Communications.

14 Thank you again for all participating today.

15 MR. POPOWSKY: I'm sorry. Judge Colwell, I would
16 like to move a copy of my prefiled testimony into the
17 record.

18 JUDGE COLWELL: Okay, that's admitted, too.

19 (Whereupon, the document was marked
20 as OCA Exhibit No. 1 for
21 identification and received in
22 evidence.)

23 COMMISSIONER PIZZINGRILLI: Thank you.

24 (Whereupon, at 3:21 p.m., the proceedings were
25 concluded.)

C E R T I F I C A T E

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me and thereafter reduced to typewriting by me or under my direction, and that this transcript is a true and accurate record to the best of my ability.

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By: John A. Kelly

John A. Kelly,
Certified Verbatim Reporter

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