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November 2, 2017

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

VIA ELECTRONIC FILING

**RE: Proposed Rulemaking: Natural Gas Distribution Company Business Practices; 52
Pa. Code § 62.225; L-2017-2619223**

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission the Comments of Valley Energy, Inc. in the above-referenced proceeding. Thank you.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 
Pamela C. Polacek

Counsel to Valley Energy, Inc.

Enclosure

cc: Certificate of Service

www.McNeesLaw.com

Harrisburg, PA • Lancaster, PA • Scranton, PA • State College, PA • Columbus, OH • Frederick, MD • Washington, DC

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

VIA FIRST-CLASS MAIL

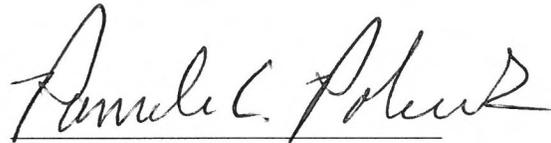
Office of Consumer Advocate
555 Walnut Street
Forum Place - 5th Floor
Harrisburg, PA 17101-1921

Office of Small Business Advocate
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Harrisburg, PA 17101

Bureau of Investigation and Enforcement
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Pamela C. Polacek

Counsel to Valley Energy, Inc.

Dated this 2nd day of November, 2017, in Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PROPOSED RULEMAKING: NATURAL	:	
GAS DISTRIBUTION COMPANY	:	
BUSINESS PRACTICES;	:	Docket No. L-2017-2619223
52 Pa. Code § 62.225.	:	
	:	
	:	

**COMMENTS OF
VALLEY ENERGY, INC.**

I. INTRODUCTION

On August 31, 2017, the Pennsylvania Public Utility Commission ("PUC" or "Commission") issued an Advance Notice of Proposed Rulemaking Order ("August 31 Order") in the above-captioned proceeding to solicit Comments from interested parties on amendments to the PUC's regulations at 52 Pa. Code §62.225. Section 62.225 implements the capacity release, assignment and transfer provisions in Section 2204(d) of the Public Utility Code, 66 Pa. C.S. §2204(d). The Commission proposes several modifications to Section 62.225 of the Regulations that would be mandatory for all Natural Gas Distribution Companies ("NGDCs") as defined in Section 2202 of the Public Utility Code, 66 Pa. C.S. § 2202. The *August 31 Order* states that the proposed changes "are intended to improve the competitive market by revising how capacity is assigned and addressing related issues including penalties and imbalance trading." *August 31 Order*, p. 1.

In accordance with the August 31 Order, Valley Energy, Inc. ("Valley" or "Company") submits the following comments. As explained below, the PUC's proposed changes to 52 Pa. Code § 62.225 are problematic for small NGDCs like Valley because compliance with those proposed rules would present significant financial, administrative and system operational burdens. Valley should be

excused from implementing the changes to the capacity procurement and assignment regulations, as well as any imbalance trading requirements that rely on access to an Electronic Data Interchange ("EDI") system. In the alternative, the Commission should reconsider whether the mandatory nature and substance of the proposed changes to Section 62.225 of the regulations are consistent with the language in Section 2204(d) of the Public Utility Code.

II. COMMENTS

Valley is a small NGDC with a 2016 revenue of \$8,067,859, which classifies Valley a "Small Gas Utility" under 52 Pa. Code § 53.63. Valley serves approximately 6,800 customers in eleven communities in Bradford County, Pennsylvania. Of Valley's 6,800 total customers, approximately 5,945 of these customers are residential customers, while 878 are commercial or industrial. Valley also serves approximately 1,886 customers in Tioga County, New York. Valley's supply of natural gas for all of its customers is delivered through a single city gate in the Pennsylvania portion of its territory. Approximately 90 percent of Valley's throughput is supplied by natural gas suppliers ("NGSs"); however, the accounts that make up this high percentage are largely commercial and industrial customers, who have been purchasing competitive supply for many, many years. Valley also has approximately 52 small commercial accounts that purchase competitive supply.

Valley has many distinguishing factors that differentiate its service territory and its operations as an NGDC from the majority of the other NGDCs in Pennsylvania. First, unlike large NGDCs which employ a sizable staff to oversee operations and customer relations, Valley currently relies on 25 personnel to serve its customers. Valley also has a limited customer base from which to recover any costs of complying with the new regulations.

Second, there are no NGSs currently serving residential and the majority of small commercial customers in Valley's service territory. In fact, given Valley's small territory and limited customer

base, PAGasSwitch, the Commission's website geared toward increasing competitive shopping among the residential and small commercial customer classes, does not even list Valley as an NGDC.¹ What is more, facilitating such competitive shopping in Valley's service territory would prove difficult given that all of the gas supplied to these customers is delivered via a single interstate pipeline through a single city gate. From an NGS perspective, Valley questions whether it makes sense to incur the costs and expend the labor associated with marketing to approximately 6,000 non-shopping, small customers in a relatively remote and distinct customer market.

Third, Valley is the only Small Gas Utility required to comply with the Natural Gas Choice Competition and Competition Act of 1999 ("Competition Act").² The Commission generally treats Small Gas Utilities differently than it treats Large Gas Utilities. For example, utilities have a less burdensome initial production obligation for rate cases requesting less than \$1 million in additional revenues. In addition, unlike Valley's Section 1307(f) utility counterparts, Valley files its price-to-compare ("PTC") annually, and does not have an extensive regulatory hearing process to review the filing.³ The Commission also recently streamlined the filing requirements for Small Gas Utilities, recognizing the unique burdens faced by small companies. The proposed modifications to Section 62.225 would create a new non-bypassable charge for interstate pipeline capacity and storage costs, which would again change and complicate the schedules submitted by Valley to adjust its Gas Cost Rate ("GCR").

Most importantly, Valley does not have an EDI system for coordination with NGSs. With the small number of accounts that are currently shopping, Valley can effectively process coordination

¹ See http://www.puc.pa.gov/consumer_info/natural_gas/natural_gas_shopping/gas_shopping_tool.aspx (Valley does not appear in the drop-down menu of NGDCs for customers to select in location an alternative NGS).

² 66 Pa. C.S. § 2201, *et seq.*

³ Compare 52 Pa. Code § 53.66 with 52 Pa. Code § 53.64(i)(5)(a).

activities without EDI. Valley will be uniquely burdened in implementing any of the proposed regulations that rely on EDI system availability.

Valley has substantial concerns about the proposed changes to Section 62.225. The changes would dramatically change the Company's financial obligations to interstate pipelines by adding a requirement that Valley obtain interstate pipeline capacity for all customers, including large transportation customers. The changes also require Valley to make pipeline and storage assets available to NGSs, which will change how Valley operates its system and how it plans wholesale gas purchases for SOLR customers. Finally, without the availability of EDI, Valley questions whether it can effectively implement an imbalance trading program.

A. The Commission Should Not Implement the Modifications To 52 Pa. Code §62.225, Which Conflict with the Provisions in Section 2204(d) of the Public Utility Code.

As explained below, several of the proposed modifications to Section 62.225 of the Regulations will be very difficult for Valley to implement. As a threshold matter, however, Valley respectfully questions whether the proposed revisions are consistent with the Public Utility Code.

The existing language in Section 62.225 of the Commission's Regulations tracks closely with the statutory language in the Public Utility Code governing the release, assignment and transfer of capacity. Section 2204(d) of the Public Utility Code states that an NGDC "may at its option release, assign or otherwise transfer" interstate pipeline contracts and local gas supply contracts "to licensed natural gas suppliers or large commercial or industrial customers on its system." 66 Pa. S. S. § 2204(d)(1). "Such release, assignment or transfer shall be at the applicable contract rate for such capacity or Pennsylvania supply and shall be subject to applicable contractual arrangements and tariffs." *Id.* § 2204(d)(3).

The proposed changes to Section 62.225 appear to depart from Section 2204(d) of the Public Utility Code in at least two ways. First, although Section 2204(d)(1) provides NGDCs with the option to determine that contracts should be assigned or released, proposed Section 62.225 of the regulations removes the optionality and establishes a blanket rule that all capacity contracts will be assigned. Second, the proposed regulation replaces the statutory requirement that assignments occur at the applicable contract rate with a non-bypassable cost recovery mechanism applicable to all customers "based on the average contract rate for those services."

Accordingly, Valley respectfully requests that the Commission decline to implement the regulatory modifications proposed in the *August 31 Order*, because the regulations contradict Section 2204(d) of the Public Utility Code.

B. If The Commission Implements The Modifications To 52 Pa. Code §62.225, Small Gas Utilities should not be Included in the Requirement for a Non-Bypassable Capacity Charge.

If the Commission implements the proposed modifications to 52 Pa. Code § 62.225 set forth in the *August 31 Order*, the Commission should not require Small Gas Utilities to comply with the requirement for all capacity costs to be collected from customers through a non-bypassable capacity charge. This proposal is inconsistent with the recent streamlining that the Commission implemented for Small Gas Companies. In addition, the proposal appears to modify Valley's current procurement obligations for large transportation customers, for which the Company does not currently obtain interstate pipeline capacity or other services.

The Commission proposes to revise Section 62.225(a)(3) to state that "Capacity or Pennsylvania supply costs shall be charged to all customers as a non-bypassable charge based on the average contract rate for those services." *August 31 Order*, p. 10. The Commission indicates that the new requirement is consistent with a program the Peoples Natural Gas Company ("Peoples")

operates. The Commission believes that replicating the Peoples capacity program in all territories will increase shopping for natural gas supply.

Valley respectfully submits that implementing the new non-bypassable charge will complicate the Company's GCR filing process and be counter to the recent efforts by the Commission "to simplify and streamline information and procedures for small gas utilities use when submitting GCR filings with the Commission." *See Recovery of Fuel Costs by Gas Utilities*, Docket No. L-2013-2346923, Final Rulemaking Order, 46 Pa. Bull. 449, 449 (Jan. 23, 2016) ("Small Gas Company Streamlining Order"). The Commission created the Small Gas Task Force in 2009 to address the burdens on, and regulatory compliance by, Pennsylvania gas companies with annual revenues below \$40 million. One of the Task Force recommendations was to streamline the small gas companies' GCR filings and "better accommodate and consider the limited resources of these utilities in comparison to large gas utilities." *Id.* The Commission eliminated the prior distinction in filing deadlines for Group 1 and Group 2 companies, and eliminated unnecessary schedules and procedures in the GCR filings.

Valley began to use the streamlined filing process in 2016. This required extensive revisions to the prior electronic files and schedules that the Company had used to calculate and submit its GCR for decades. Valley's schedules are now consistent with the other Small Gas Utilities.

As previously discussed, Valley is the only Small Gas Utility that also qualifies as an NGDC under the Gas Competition Act. If Valley implements a new non-bypassable capacity charge, Valley again will need to revise its electronic files and schedules supporting the GCR to remove capacity costs, and to implement a separate surcharge (and reconciliation) for those costs. Requiring Valley to do so seems to be inconsistent with the standardization and streamlining that the Commission just required based on the Task Force's recommendation.

Equally important, if Valley were to implement a non-bypassable capacity charge for all customers, this would substantially modify Valley's procurement obligations and could require Valley to post new financial obligations for an expanded interstate pipeline capacity obligation covering large transportation customers. Currently, Valley does not procure interstate pipeline capacity, Pennsylvania supply or storage service for large transportation customers (*i.e.*, those that do not fall under Valley's Supplier of Last Resort ("SOLR") obligation under Section 2207(a)(1), 66 Pa. C.S. § 2207(a)(1)). Over 90% of the Company's throughput is natural gas obtained by large non-SOLR transportation customers from NGSs. Taking on the responsibility to obtain interstate pipeline capacity, Pennsylvania supply and storage services for those non-SOLR customers would be a monumental task for Valley. This increased task would require Valley to devote additional employee resources and/or outside contractor resources to natural gas supply management. Valley respectfully submits that expanding the Company's obligations this dramatically is not consistent with the goals of the Task Force, nor is it necessary to continue the competitive options for the customers that are already purchasing from NGSs.

If the Commission implements the new requirements in Section 62.225, the PUC could exempt small utilities. There is nothing in the Gas Competition Act that requires uniform regulations for all NGDCs regardless of size and resources. Applying a slightly modified burden is consistent with how the Commission has addressed similar issues for small NGDCs and Electric Distribution Companies ("EDCs"). For example, in 2016, the PUC exempted Valley from the requirement to place a NGS logo on its customer bills. *Petition of Valley Energy, Inc. for Delay in Logo Portion of Joint Natural Gas Distribution Company – Natural Gas Supplier Bill Format*, Docket No. P-2016-2550226 (July 21, 2016); Final Order, *Investigation of Pennsylvania's Retail Natural Gas Market: Joint Natural Gas Distribution Company – Natural Gas Supplier Bill*; Docket

No. M-2015-2474802 (July 21, 2016) (collectively, "NGS Logo Final Orders")). In the NGS Logo proceedings, Valley stressed to the Commission that because the Company lacks EDI capabilities necessary to issue consolidated bills, "implementing system modifications to add NGS logos onto the Company's bills would be unduly burdensome and expensive." *Id.* Valley estimates it will cost over \$500,000 to install EDI. Because of Valley's small customer base and limited resources, and because no NGSs serving Valley's existing transportation customers complained about the lack of consolidated billing, the PUC concurred with the Company that it should be exempted from that regulatory burden. *See id.* (citing NGS Logo Final Orders, pp. 7-9).

In conclusion, Valley submits that if the PUC approves the proposed changes to 52 Pa. Code § 62.225, the Commission should expressly exempt Small Gas Utilities from compliance with the new non-bypassable capacity charge.

C. Allowing NGSs to use Valley's Pipeline or Storage Assets would Impair Gas Procurement for GCR Customers and could Impact Operational Reliability, even if the use is "Virtual."

As part of the ANOPR, the Commission suggests that NGSs could be provided with actual or "virtual" access to the pipeline and storage assets that Valley currently holds for its GCR customers. *August 31 Order*, pp. 13-14. The Order does not contain an explanation of how this "virtual" program would operate.

Valley has substantial concerns with the proposed use of GCR assets by NGSs. Because Valley is served by a single interstate pipeline, Valley is prudent in arranging for sufficient interstate pipeline capacity to serve its GCR customers. Valley also contracts for storage services in close proximity to the service territory to ensure operational reliability. Valley uses the pipeline capacity year round to fill the storage, and then calls upon its gas in storage to meet peak demands during the

winter and to balance its system. Even "virtual" access by NGSs to the assets could impair operational reliability practices in the territory.

In addition, Valley uses the pipeline capacity and storage services to prudently purchase natural gas supply for GCR customers during lower cost periods. Restricting Valley's access to the capacity and storage, or requiring "shared virtual" access to the supplies in storage, could increase costs for GCR customers. Although customers have the right to shop for natural gas supply, NGSs have shown little interest in serving the residential and majority of small commercial customers in Valley's territory. As a result, it is important for Valley to continue prudent purchasing strategies for the GCR.

In Valley's territory, providing NGSs with access to pipeline capacity storage assets that are being used for GCR customers will cause operational and cost implications. Those impacts will occur regardless of whether the access is actual or virtual. Valley urges the Commission to reconsider the proposed requirement for NGDCs to provide access to pipeline or storage assets.

D. Implementing Imbalance Trading May Be Difficult Until Valley Implements EDI.

An additional statewide practice that the Commission seeks to implement is allowing market participants to trade imbalances. *August 31 Order*, p. 15. To facilitate this change, the Commission recognizes that some systems may require information technology upgrades as well as increased real-time communications. *Id.* The Commission's focus is on daily imbalance trading.

As previously discussed, Valley has not implemented an EDI system. Currently, all information for the small number of transportation accounts on the system is exchanged by email and calculations are performed by hand in Excel spreadsheets. EDI will be needed to enable real-time information exchange regarding account usage, deliveries and over or under delivery status. Based on the experiences of Valley's sister-affiliates (Citizens' Electric Company and Wellsboro Electric

Company), the costs to implement EDI will be \$500,000 to \$1 million. In a small territory like Valley's the cost equates to approximately \$75 to \$150 per customer. Valley suggests that implementing EDI in order to facilitate imbalance trading may not be cost-effective. To the extent, however, that the Commission disagrees, Valley requests confirmation that it will be able to fully recover the costs of EDI implementation through a surcharge.

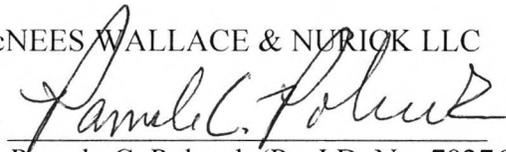
III. CONCLUSION

WHEREFORE, Valley Energy, Inc. respectfully requests the Pennsylvania Public Utility Commission consider these Comments in evaluating whether to approve and implement the regulations proposed in the *August 31 Order*.

Respectfully submitted,

McNEES WALLACE & NURIQK LLC

By



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