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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 the Columbia Industrial Intervenors ("CII"), the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"), and the UGI Industrial Intervenors ("UGIII") (collectively, "Industrials") in the above-referenced proceeding. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
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the Philadelphia Industrial and Commercial Gas Users Group, and
the UGI Industrial Intervenors

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF
THE COLUMBIA INDUSTRIAL INTERVENORS,
THE PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP,
THE PHILADELPHIA INDUSTRIAL AND COMMERCIAL GAS USERS GROUP,
AND THE UGI INDUSTRIAL INTERVENORS**

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Dated: November 2, 2017

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I. INTRODUCTION

On August 31, 2017, the Pennsylvania Public Utility Commission ("PUC" or "Commission") held a public meeting whereupon it entered an Advance Notice of Proposed Rulemaking ("Notice" or "ANOPR") to solicit comments regarding amending and adding to the Commission's regulations at 52 Pa. Code § 62.225. The Commission averred that the proposed regulatory changes are the result of the PUC's Natural Gas Retail Markets Investigation ("RMI") and are intended to improve the competitive market by revising how capacity is assigned and addressing related issues, including penalties and imbalance trading.

The Columbia Industrial Intervenors ("CII"), the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"), and the UGI Industrial Intervenors ("UGIII") (collectively, "Industrials") appreciate the Commission's invitation to solicit comments on the various changes proposed in the Notice. As discussed in further detail below, the Industrials are concerned that some of the PUC's proposed changes could detrimentally impact large transportation customers. Specifically, while the goal of the PUC's ANOPR is to improve the competitive retail natural gas market, the Industrials are apprehensive, as some of the proposed modifications may detrimentally impact Large Commercial and Industrial ("C&I") customers (and the related competitive market), contrary to the Commission's intent.

II. COMMENTS

A. Summary

As set forth more fully below, the Industrials are concerned with the PUC's proposal to implement a non-bypassable capacity charge to all customers. Because the retail natural gas market was opened to Large C&I customers in the mid-1980s, modifying the way in which Large

C&I customers contract for their capacity could be extremely detrimental to such customers, especially since many of these customers are currently engaged in long-term Natural Gas Supplier ("NGS") contracts that include capacity pricing. *See* Section II.B., *infra*. Similarly, in light of the fact that each Natural Gas Distribution Company ("NGDC") is unique, implementing a "one-size fits all" formula for capacity cost collection throughout Pennsylvania may create significant difficulties for the NGDCs and their customers. *Id.* For these reasons, the Industrials submit that capacity charges should not be collected on a non-bypassable basis, however, if the PUC chooses to move forward with such a collection, any application of a non-bypassable charge must include a carve-out for Large C&I transportation customers.

In addition, while the Industrials recognize that penalties are a necessary feature of a competitive market, the Industrials submit that such penalties should focus only on errors that have a negative effect on the reliability of the system. *See* Section II.C., *infra*. For this reason, the Industrials propose modifications to the penalty structures to be used by NGDCs for off-peak times, which would effectively enable all market participants to assist in maintaining a balanced system while also ensuring that such penalties are not unreasonably detrimental to customers. *Id.*

B. A Non-Bypassable Capacity Charge Must Be Rejected as Unjust and Unreasonable, or, in the Alternative, Provide a Carve-Out for Large Commercial and Industrial Transportation Customers.

In the Notice, the Commission suggests modifying Section 62.225 of the PUC regulations to provide that "[c]apacity or Pennsylvania supply costs shall be charged to all customers as a non-bypassable charge based on the average contract rate for those services." ANOPR, p. 10. The Industrials submit that the Commission's proposal to establish uniform capacity costs for all customers is unjust and unreasonable, especially with respect to any application to Large C&I transportation customers. As explained below, such a proposal would be problematic for several

reasons, including the failure to: (1) recognize the unique differences among customer classes; (2) consider the distinctive capacity requirements on the various NGDCs' systems; (3) identify the provision in Section 2204(d)(3) of the Public Utility Code requiring that the release, assignment, or transfer of capacity shall be at the applicable contract rate for such capacity; and (4) distinguish the fact that the cited Peoples Natural Gas Company ("Peoples") Tariff provision does not apply to Large C&I transportation customers on Peoples' system. For all of these reasons, the ANOPR's proposal to implement a non-bypassable capacity charge to all customers should be rejected. Assuming, *arguendo*, that the PUC seeks to implement a non-bypassable charge for capacity costs, the Industrials respectfully submit that Large C&I transportation customers be carved out of any application of this charge.

First, as noted above, the retail natural gas market was opened to Large C&I customers in the mid-1980s. *See* 52 Pa. Code Section 60.3. As a result, a majority of these customers have been shopping for competitive natural gas supply for approximately the past 30 years. Importantly, while the purpose of the ANOPR seeks to improve the competitive natural gas market to the benefit of customers, the Industrials submit that further retooling of the market is unnecessary for this customer class because most Large C&I customers on the NGDCs' systems in Pennsylvania are already shopping. In addition, capacity may be procured independently by an NGS or may be released by an NGDC to NGSs in order to serve customers participating in the retail competitive natural gas market, with capacity costs then paid by a shopping customer to the NGS.¹ Importantly, competition among NGSs for Large C&I customers often means looking for ways in

¹ The ANOPR focuses on the fact that NGDCs release capacity to NGSs for shopping customers; however, for Large C&I customers, NGSs often procure this capacity through their own efforts. Hypothetically, some pockets of the Commonwealth may exist where, for various reasons, NGDCs would be in the position of contracting for interstate capacity for all customers. In such an instance, the NGDC must take the appropriate steps in allocating costs to ensure all customer classes are treated fairly and competition is promoted. In instances, however, where NGDCs are not contracting for all customers, but rather, NGSs are obtaining capacity on the interstate pipeline for Large C&I customers, the need for a non-bypassable charge is rendered unnecessary for this customer class.

which to compete on the "basis differential" for supply contracts.² One way in which to compete is through the minimization of capacity costs. In addition, some Large C&I transportation customers need to transport natural gas to a specific delivery point rather than a "slice of the system." For example, a customer with very large natural gas usage may need to have its natural gas delivered to a specific interstate pipeline interconnection; assigning this customer's NGS other capacity held by the NGDC would be meaningless for this customer.

As a result, implementing a non-bypassable charge for Large C&I customers would wreak havoc with these customers' long term supply agreements, as the costs of capacity are already included. To attempt to remove these costs would be extremely difficult, especially in light of the fact that each Large C&I customer is unique with respect to their contract terms. Moreover, application of a non-bypassable capacity charge by an NGDC would most likely result in increased capacity costs to Large C&I customers. Unlike NGSs, NGDCs are not incentivized to actively reduce each ratepayer's capacity costs, as that is not the job of a natural gas distribution company. Moreover, because these capacity costs would be non-bypassable and allocated among all customer classes, those Large C&I customers with more favorable capacity costs may be required to subsidize other customers with less favorable capacity costs. Accordingly, Large C&I transportation customers' capacity costs could be compounded by the implementation of a non-bypassable charge due to the fact that the NGSs may be unable or unwilling to remove capacity costs from a customer's long-term natural gas contract, an NGDC would not be incentivized to minimize these costs on a going-forward basis, and cross-subsidization may occur on an inter- and intra-class basis.

² The basis differential is the difference between the Henry Hub spot price and the corresponding cash spot price for natural gas in a specified location.

Second, the use of a non-bypassable charge applicable to all NGDCs ignores the fact that each NGDC's system is unique. As part of the Natural Gas Choice and Competition Act ("Competition Act"), the Pennsylvania Legislature required that "release, assignment, or transfer [of capacity] shall be at the applicable contract rate for such capacity or Pennsylvania supply and shall be subject to applicable contractual arrangements and tariffs." *See* 66 Pa. C.S. Section 2204(d)(1). To that end, each NGDC held its own natural gas restructuring proceeding under the terms of the Competition Act in which each NGDC addressed its own individual needs and concerns. *See id.* at Section 2204(b). For example, some NGDCs may have a more constrained delivery zone, while other NGDCs may have access to greater delivery choices, either of which could raise implications regarding capacity costs. Moreover, as part of this legislation and the resulting restructuring proceedings, the NGDCs recognized that Large C&I customers have been participating in the retail natural gas market for many years prior to the full unbundling of the natural gas retail market in Pennsylvania.

Accordingly, the PUC's proposed modification would be contrary to Section 2204(d)(1), as capacity would no longer be at the applicable contract rate. Moreover, a blanket change to the collection of capacity costs would fail to recognize the differing capacity constraints applicable to each NGDC. For that reason, if the PUC has concerns regarding capacity costs on an NGDC's system, the PUC should require the NGDCs to address these issues through individual proceedings so that each NGDC can implement a solution best suited for its system and ratepayers.³ In the alternative, if the PUC decides that capacity costs must be addressed through the blanket implementation of a non-bypassable capacity charge, the Commission should carve-out Large C&I

³ In considering capacity assets, the Industrials submit that the PUC's proposal to allocate all capacity assets or, if such allocation is not practical with respect to certain assets, to utilize a method based upon proxy or virtual access, may assist in creating a balanced playing field. *See* ANOPR, pp. 11-14. Such modification, however, would need to be cognizant of the unique differences on each NGDC's system, as well as individual customer class needs.

transportation customers so that such customers continue to obtain capacity based upon the requirements of Section 2204(d)(1).

Third, during the Commission's review of these issues, the PUC examined a portion of Peoples' Tariff, which provides for the release of capacity assets to NGSs but requires all customers to pay the average system cost of capacity regardless of their participation in the market. *ANOPR*, p. 8. Because the PUC believes that this structure could offer a benefit to all market participants, the ANOPR proposes that Peoples' approach to capacity payments should be replicated across the Commonwealth. *Id.* Unfortunately, the ANOPR fails to recognize that the Peoples Tariff provision (upon which the Commission relies) is limited to Peoples' Priority-One customers, which are predominantly residential and firm critical commercial essential human needs customers. *See Peoples Natural Gas Company, L.L.C., Rates and Rules Governing the Furnishing of Natural Gas Service to Retail Customers*, Supplement No. 2 to Gas – Pa PUC No. 45, Original Page No. 26, Rule 17.⁴

In other words, the tariff provision that the PUC seeks to apply on a uniform basis to all customers on all NGDCs' systems throughout the Commonwealth is currently being applied to only a small subset of customers (*i.e.*, residential and firm critical commercial essential human needs) in one NGDC's service territory. Based upon the concerns set forth above regarding the need to recognize the uniqueness of each NGDC's system, combined with the significant differences regarding the way in which capacity is procured for Large C&I transportation customers, the Industrials submit that a narrowly applied provision on one NGDC's system cannot and should not be the basis for the implementation of a non-bypassable capacity charge throughout the Commonwealth. For these reasons, the Industrials submit that the PUC should not implement

⁴ https://www.peoples-gas.com/my-account/understand/files/gas-rates-files/Peoples_Current_Retail_Tariff.pdf (last accessed October 20, 2017)

a non-bypassable capacity charge, as such implementation would be unjust and unreasonable. If, however, the PUC chooses to do so, the Industrials submit that a carve-out must be implemented for Large C&I transportation customers for the reasons set forth in this section.

C. Penalty Structures During Non-Peak Times Should Recognize the Impact or Lack Thereof to an NGDC's System.

As part of the ANOPR, the PUC notes that penalties are a necessary market feature to help maintain system integrity and reliability. ANOPR, p. 17. The Industrials concur with the PUC on this issue, but also agree with the concerns raised by stakeholders regarding the fairness of certain penalties during off-peak periods. *Id.* While the PUC proposes to address these concerns by proposing additions to Section 62.225 of the PUC regulations, which would require NGDCs to set penalties during system off-peak periods that correspond to market conditions, the Industrials submit that further action should be taken to ensure that customers are not inappropriately penalized during off-peak periods. *Id.* at 20.

Specifically, the Industrials submit that penalties must consider the actor involved, the impact on the system, and degree of the injury, which is not currently the case. For example, instances occur when an NGS makes an error or is out of balance, and both non-shopping customers and the NGDC are exposed to the error. In that instance, application of a penalty is appropriate. In other instances, however, an NGDC can make an error that leads to a system imbalance, but the NGDC would not be penalized. In such an instance, both the NGDC and NGS want to supply and operate in a balanced system, and all market participants should help to keep the system balanced. In order to ensure, however, that penalties are not inappropriately applied, the Industrials recommend that NGDCs not charge penalties, but rather, simply charge the market rates for the imbalance when: (1) an NGS has an imbalance in an opposite direction of the overall system imbalance, resulting in the imbalance actually aiding the NGDC; (2) the imbalance is

caused by the NGDC; or (3) the overall system remains in balance despite various NGS imbalances that negate themselves (*i.e.*, the NGDC does not need to take any action to correct the imbalance). Implementing these changes would still assure that all market players are working towards a balanced system while not unreasonably penalizing a market participant for an error that caused no harm.

In addition, the Industrials note that both Philadelphia Gas Works and PECO Energy Company allow NGSs to supply "make-up" gas in the summer to alleviate NGS imbalances. This type of mechanism is both flexible and practical while also fulfilling the intent of minimizing penalties in support of system reliability. If the Commission is seeking to implement Commonwealth-wide changes to the off-peak penalty system, this process should be considered. Moreover, due to the lack of timely data on NGDC systems, the Industrials submit that penalty tiers should be set on the high end (*e.g.*, +/- 20% out of balance) before multipliers are utilized. Similarly, the Industrials agree with the PUC's proposal to utilize the market price for the implementation of such penalties.⁵

⁵ The Industrials would also be in favor of imbalance trading with all customers, assuming such trading recognizes the uniqueness of both the customer classes and the NGDC's system. *See* ANOPR, p. 17. In addition, the PUC should consider allowing customers and NGSs to have the ability to retroactively nominate supplies that are in or out of the system's virtual storage. Having the ability to retroactively nominate supplies would allow customers to avoid penalties, while providing the ability to trade should greatly increase the flexibility of the system and the market. Moreover, the NGDCs would benefit through the provision of an additional mechanism that could enable the system to be balanced without NGDC action.

III. CONCLUSION

WHEREFORE, the Columbia Industrial Intervenors, the Philadelphia Area Industrial Energy Users Group, the Philadelphia Industrial and Commercial Gas Users Group, and the UGI Industrial Intervenors respectfully request the Pennsylvania Public Utility Commission consider these Comments in evaluating whether to approve and implement the regulations proposed in the August 31, 2017, Advance Notice of Proposed Rulemaking Order.

Respectfully submitted,

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