PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Natural Gas Distribution Companies And the Promotion of Competitive Retail Markets	**Public Meeting – July 29, 2010** **2069114-LAW** **Docket No: L-2008-2069114**

STATEMENT OF VICE CHAIRMAN TYRONE J. CHRISTY

Before the Commission for consideration is the Final Rulemaking Order to promulgate regulations to encourage increased natural gas supply competition among our jurisdictional Natural Gas Distribution Companies (NGDCs) and licensed Natural Gas Suppliers (NGSs). The genesis of this rulemaking is the Commission's *Report to the General Assembly on Pennsylvania's Retail Natural Gas Supply Market* that was released in October 2005. In that report, the Commission determined that effective competition did not exist in Pennsylvania's retail natural gas market, and reconvened the stakeholders in the natural gas industry to identify existing barriers to competition. In our SEARCH Final Order and Action Plan issued on September 11, 2008, the Commission identified several initiatives to eliminate these barriers to competition. The regulations before us today, which address five specific issues, is the result of analysis of all the comments presented to the Commission in response to our proposed rulemaking order issued on March 27, 2009 (March 27 Order).

The proposed Final Rulemaking Order before us today is significantly different from the March 27 Order. Among the more significant changes to the March 27 Order are the following:

1. Elimination of the gas procurement reduction rate.
2. Inclusion of an NGDC's total natural gas procurement costs in the gas procurement charge (GPC).
3. The inclusion of a Merchant Function Charge (MFC) to be included within the Price to Compare (PTC).
4. Adjustment of the PTC quarterly instead of monthly.
5. Elimination of the net gas procurement adjustment.
6. A requirement that each NGDC file a tariff supplement under 66 Pa. C.S. § 1308(a) to identify the natural gas procurement costs included in base rates, to remove those costs from base rates and to recover those costs under 66 Pa. C.S. § 1307.
7. The addition of a detailed definition of natural gas procurement costs.
8. A requirement that NGSs use consolidated billing from the NGDC to qualify for a Purchase of Receivables (POR) program, except in two certain instances.
9. Changes to how the POR discount factor is to be determined.
10. Making capacity release to NGSs mandatory.

11. Elimination of the NGDC surcharge to collect the costs of implementing and promoting competition.
12. Elimination of the NGDC surcharge to collect regulatory assessments.

Because of these significant changes to the originally proposed regulations, I support Commissioner Coleman’s motion to convert the final rulemaking order to an advance notice of final rulemaking to be issued for public comment. Comments on the changes to the proposed rulemaking order are due within 30 days of the entry of this order.

While many of the changes may reflect an improvement to the regulations as originally proposed, overall I have significant concerns that the regulations as drafted could result in increased costs to non-shopping customers of NGDCs, as well as cost shifting among customers that shop and those that decide to stay with the local NGDC. It is important to realize that the Commission is bound by certain standards in its efforts to enhance competition in the retail natural gas market. These standards are set out in 66 Pa. C.S. § 2203, *Standards for restructuring of natural gas utility industry*. Two of these standards are particularly appropriate in the context of these regulations. For example, 66 Pa. C.S. § 2203(3) states:

> (3) The commission shall require natural gas distribution companies to unbundle natural gas supply services such that separate charges for the services can be set forth in tariffs and on retail gas customers' bills. In it’s restructuring filing, the natural gas distribution company shall establish system reliability standards and capacity contract mitigation parameters and address the unbundling of commodity, capacity, storage, balancing and aggregator services. **The commission may address the unbundling of other services only through a rulemaking. In conducting the rulemaking, the commission shall consider the impact of such unbundling on the labor force, the creation of stranded costs, safety, reliability, consumer protections, universal service and the potential for unbundling to offer savings, new products and additional choices or services to retail gas customers.** The commission's decisions shall assure that standards and procedures for safety and reliability, consumer protections and universal service are maintained at levels consistent with this chapter. (emphasis added)

Furthermore, 66 Pa. C.S. § 2203(5) states:

> 5) The commission shall require that restructuring of the natural gas utility industry be implemented in a manner that does not unreasonably discriminate against one customer class for the benefit of another.

My overriding concern with the regulations as drafted today is that they could violate the aforementioned standards that this Commission is bound to uphold. I have some specific concerns with several aspects of this advance notice of final rulemaking that I list below by section. I request interested parties to consider addressing these specific issues in their filed comments.

Section 62.223 Price to Compare

The proposed final regulations will require each NGDC to identify and remove the natural gas procurement related costs from NGDC base rates in the context of a 1307(a) tariff filing and include such within a 1307 surcharge, to be called the GPC, which will be included within the PTC and therefore avoidable by customers when purchasing alternative supply from an NGS. A definition of natural gas procurement costs is included for the first time in the regulations. I am concerned that attempting to identify these costs outside of a base rate proceeding will be difficult and complex as well as inappropriate. Also, I am concerned about the appropriateness of the proposed definition of natural gas procurement costs. As I mentioned in my prior statement on this proposed rulemaking, if these costs are not avoidable and are included within the PTC, then they may not be recovered by the NGDCs. Unavoidable costs, regardless of whether 50,000 customers or 500 customers shop, do not go away. Inclusion of such unavoidable costs in its PTC will inflate the PTC and could result in more customers leaving the NGDC, thereby placing the unrecoverable gas procurement-related costs on an even smaller customer base. Such an unbundling of unavoidable expenses could result in stranded costs, which is an impact we must consider pursuant to 66 Pa. C.S. § 2203.

Also, for the first time in this rulemaking is the proposal to establish a MFC, which will remove the cost of uncollectibles applicable to current gas cost rates from an NGDC's delivery rates. The proposed regulations require that the MFC be included within each NGDC's PTC on a revenue neutral basis under 66 Pa. C.S. § 1307, and is therefore avoidable by customers that shop. The MFC is being adopted at the suggestion of National Fuel Gas Distribution Corporation (NFG) at page 16 of its comments filed in response to the March 27 Order. This concept was proposed by NFG and approved by the Commission in NFG's Petition for Approval of a Program to Purchase NGS Accounts Receivable at Docket No. P-2009-2099182. It is important to consider the comments of NFG within this Petition. Paragraph 21 within the NFG Petition states that:

> As part of this voluntary POR proposal, Distribution is requesting that it should not be required to implement any further unbundling of its rates. Any further unbundling of rates will result in the real potential of significant stranded costs and an overall increase in the cost of natural gas service for customers in Distribution's service territory regardless as to whether they receive natural gas supply service from distribution or an NGS. Distribution's voluntary POR program, as demonstrated in New York, should go a long way towards increasing NGS

> participation in distribution's service territory. No further unbundling should be required of Distribution.

Based on statements such as these, I request comments on the effect of including both the MFC as well as the GPC within each NGDC's PTC. Also, I am concerned that the MFC could potentially be in violation of 66 Pa. C.S. § 1408 which provides that:

> The commission shall not grant or order for any public utility a cash receipts reconciliation clause or another automatic surcharge mechanism for uncollectible expenses. Any orders by the commission entered after the effective date of this chapter for a cash receipts reconciliation clause or other automatic surcharge for uncollectible expenses shall be null and void.

I request that interested parties address this potential violation of the statute.

Section 62.224 Purchase of Receivables Programs

The final proposed rulemaking order contains a lengthy discussion of whether the Commission possesses the legal authority to mandate that NGDCs implement purchase of receivables programs. The debate centers around 66 Pa. C.S. § 2205(c) (5) of the Code, which reads as follows:

> No natural gas distribution company shall be required to forward payment to entities providing services to customers and on whose behalf the natural gas distribution company is billing those customers before the natural gas distribution company has received payment for those services from customers. The commission shall issue guidelines addressing the application of partial payments.

The proposed Order finds that the Commission does possess legal authority to mandate POR programs for NGDCs despite the above section of the Code, yet maintains the current policy of making POR programs voluntary. The final regulations also require the use of consolidated billing from the NGDC for NGSs to participate in POR programs with two exceptions, and make changes to the calculations of the discount factor. Comments are requested on each of these issues.

Section 62.225 Release, assignment or transfer of capacity.

In the original March 27 Order, this section, related to the assignment of NGDC contracts for firm storage or transportation capacity, mirrored the Code at 66 Pa. C.S. § 2204(e). Section 2204(e) provides that capacity release to NGSs is voluntary. In the final regulations this has been changed to make capacity release mandatory. I request comments on the Commission's authority to mandate capacity release in these regulations.

Section 62.226 NGDC costs of competition related activities

In the original March 27 Order this section provided for the ability of each NGDC to include a nonbypassable, reconcilable surcharge designed to recover the reasonable and prudently incurred costs of implementing and promoting natural gas competition. The final regulations completely eliminate this surcharge, while at the same time requiring further unbundling of unavoidable costs that could increase the cost exposure of NGDCs and their customers. While I may not agree with many of the facets of these regulations, if they are indeed implemented and NGDCs incur significant costs or stranded costs as a result, it would seem reasonable that they have the ability to recover such costs. I would note that in New York the gas utilities are permitted to recover all stranded and unbundled gas costs.

Customer Information

In my statement issued in response to the Commission's March 27 Order, I expressed my concern that natural gas consumers lack the necessary information to make an informed decision as to whether they should switch to an alternative supplier. They currently receive an offer from an EGS, know what the currently effective price to compare is for their NGDC and possess little more information. I had suggested that consumers be provided some form of a monthly projection of natural gas prices based upon the best available market information before they make a decision to switch to a competitive supplier, and requested parties to address this proposal or offer other proposals that would inform Pennsylvania consumers. Several commenters submitted responses to this request.

In its comments, the Office of Consumer Advocate provided concrete examples of analysis performed in Illinois and Ohio, which indicate that the majority of the plans offered by unregulated gas suppliers "would have lost (or are presently losing) customers money as compared to the plans of their regulated gas companies." This analysis indicates the necessity of consumers becoming more educated and informed before they make a decision. The OCA does point out that forecasts of natural gas prices can be unreliable even if performed by the best forecasters and instead submits that another type of information that might be utilized would be the actual NYMEX futures contracts for a specific time period, such as a 12–month strip. Similarly, in their Joint Comments, the NGSs list their concerns with providing forecasted gas price information to consumers, but note that "Providing historical data to customers might assist them in understanding the ways in which gas prices can and do vary…"

In its comments on this, the Office of Small Business Advocate stated that, based on complaints it has received, it believes my concerns are well-founded and agrees that there is a need to make market price forecasts available so that customers can compare their options. The National Energy Marketers Association (NEMA) also submitted comments in response to my request. While NEMA agreed with my conclusion about the inadequacy of the current PTC information, they did not agree that providing forecasted pricing would improve consumer understanding. Instead, NEMA suggests that utilities post twelve months of historical pricing data on their websites to convey the message to consumers that rates do change over time.

The final regulations before us today do not address this issue, but I wish to thank the commenters for their varying proposals, and to invite further comment on whether the Commission, NGDCs and/or NGSs should provide some type of pricing information, as well as the amount of the applicable migration rider, to consumers.

Because of my concerns and disagreement with many of the proposed regulatory changes, I will concur in the result only of today's action for the purpose of seeking comments from interested parties.

DATE	**TYRONE J. CHRISTY, VICE CHAIRMAN**