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December 1, 2009

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P. O. Box 3265
Harrisburg, PA 17105-3265

In re: Docket No. L-2009-20691171
Proposed Rulemaking: Natural Gas Distribution Company Business Practices;
52 Pa. Code §§ 62.181 – 62.185

Docket No. I-00040103F0002
SEARCH Final Order and Action Plan for Increasing Effective Competition in
Pennsylvania's Retail Natural Gas Supply Services Market

Dear Secretary McNulty:

Enclosed on behalf of Equitable Gas Company, LLC are an original and fifteen copies of its Comments to the above referenced Proposed Rulemaking Order entered May 1, 2009 and Proposed Regulations at 52 Pa. Code §§ 62.181 – 62.185.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By

Thomas T. Niesen

cc: Patricia Krise Burket (by email w/encl.)
Annunciata Marino (by email w/encl.)
Cyndi Page (by email w/encl.)
Daniel L. Frutchey, Esquire (w/encl.)
John M. Quinn (w/encl.)

091201-McNulty (Comments).wpd

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Proposed Rulemaking: Natural Gas Distribution Company Business Practices; 52 Pa. Code §§ 62.181 – 62.185	:	**Docket No. L-2009-2069117**
***SEARCH Final Order and Action Plan for* Increasing Effective Competition in Pennsylvania's Retail Natural Gas Supply Services Market**	:	**Docket No. I-00040103F0002**

COMMENTS OF EQUITABLE GAS COMPANY, LLC
TO PROPOSED RULEMAKING ORDER ENTERED MAY 1, 2009
AND PROPOSED REGULATIONS AT 52 PA. CODE §§ 62.181 – 62.185

AND NOW, comes Equitable Gas Company, LLC ("Equitable" or "Company"), by its attorneys, and submits the following Comments in accordance with the Public Utility Commission's Order ("Order") entered May 1, 2009 in the above captioned proceeding:

1. On May 1, 2009, the Commission entered a Proposed Rulemaking Order issuing for comment proposed regulations at 52 Pa. Code §§ 62.181 – 62.185 concerning Natural Gas Distribution Company business practices.

2. The Order invites interested parties to submit written comments to the proposed regulations within 45 days of their publication in the *Pennsylvania Bulletin*.

3. Equitable is pleased to have the opportunity to submit comments to the proposed regulations at Dockets Nos. L-2009-2069117 and I-00040103F0002. Equitable's Comments are presented in the Appendix A attached hereto for discussion purposes in response to the Commission's invitation and without prejudice to any position Equitable might take in any subsequent proceeding or proceedings involving these or any other matters.

WHEREFORE, Equitable Gas Company, LLC submits its Comments to the Public Utility Commission's Proposed Rulemaking Order entered May 1, 2009 and proposed regulations at 52 Pa. Code §§ 62.181 – 62.185.

Respectfully submitted,

By ________________________

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Date: December 1, 2009

APPENDIX A

Comments of
Equitable Gas Company, LLC
to Proposed Rulemaking Order Entered May 1, 2009
and Proposed Regulations at 52 Pa. Code §§ 62.181 – 62.185
Docket No. L-2009-2069117
Docket No. I-00040103F0002

General Comment

The proposed regulations do not attempt to define the customer choice market to which they would apply. Equitable believes that the regulations should make it clear that they apply to the residential and small business customer choice firm service market only - - the Natural Gas Choice Retail Market - - and not to the large commercial and large industrial interruptible service market - - the Natural Gas General Transportation Pooling Market. Pursuant to Equitable's existing tariff, service for the Natural Gas Choice Retail Market is provided under Rate FPS – Firm Pooling Service and service to the Natural Gas General Transportation Pooling Market is provided under Rate GPS – General Pooling Service. Clarifying language should be added either to the general section or to the definitions section.

The business standards for the Rate FPS and Rate GPS vary significantly on Equitable's system. The variations include service level, mandatory capacity assignment, nomination processes, balancing period, imbalance penalties, and cash-in and cash-out calculations. The following table summarizes the primary differences in Equitable's business standards for these services.

Business Standard	Firm Pooling Service	General Pool Service
Service Level	Firm	Interruptible[1]
Mandatory Capacity Assignment	Yes. Ratable allocation of upstream transportation and storage based on pool's design day requirement	No
Nomination Process	Required Nomination Quantity ("RNQ") calculated by Equitable and provided to pool operator	NGS responsible for load forecasting and all nominations
Balancing Period	Daily	Monthly
Imbalance Penalties	\$0.25 per Mcf outside of 3.5% tolerance band	No per Mcf penalties exist
Cash-in/out Calculation	85%/125% of index[2] per Dth greater than or less than RNQ	85%/125% of index[3] per Dth outside of 3.5% tolerance band

Additionally, the proposed regulations would create a nonbypassable reconcilable surcharge to be filed by the NGDC as part of its next Section 1307(f) filing with the surcharge then being calculated and reviewed "in conjunction with" the annual 1307(f) process. The consolidation of the surcharge calculation and review "in conjunction with" the annual 1307(f) process is inconsistent with recent Commission Orders declining to expand the 1307(f) process beyond purchased gas cost consideration and recovery.[4]

§62.181

[1] Customer may elect Firm Stand-by Service pursuant to the terms of Equitable's tariff.

[2] Equitable's tariff provides that the cash-in price for the NGS's daily supply excess up to and including 3.5% shall be equal to eighty-five percent (85%) of the Midpoint price published in Platts, Gas Daily publication, under the heading Appalachia, Dominion, South Point for the day A daily supply excess greater than 3.5% shall be cashed-in at 85% of the lowest price gas purchased by the Company on the day the excess occurs. The cash-out price for the NGS's daily supply shortfall up to and including 3.5% shall be equal to one hundred twenty-five percent (125%) of the Midpoint price published in Platts, Gas Daily publication, under the heading Appalachia, Dominion, South Point for the day. A daily supply shortfall greater than 3.5% will be cashed-out at 125% of the sum of the highest price gas purchased by the Company, on the day the shortfall occurs, plus the applicable transportation and retainage charges to transport the gas from the supply area to the Company's city gate.

[3] Equitable's tariff provides that the cash-in price for the NGS's supply excess shall be equal to eighty-five percent (85%) of the sum of the lowest Midpoint price published in Platts, Gas Daily publication, under the heading Appalachia, Dominion, South Point for the month plus the average variable firm transportation costs, including retainage, to move the gas from the supply area to the Company's city gate. The cash-out price for the NGS's supply shortfall shall be equal to one hundred twenty-five percent (125%) of the sum of the highest Midpoint price published in Platts, Gas Daily publication, under the heading Appalachia, Dominion, South Point for the month, plus the average variable firm transportation costs, including retainage, to move the gas from the supply area to the Company's city gate.

[4] A bench motion in Equitable's 2006 1307(f) proceeding at Docket No. R-00061295 expressed concern about a practice of altering tariff terms and conditions unrelated to annual Section 1307(f) issues within the context of purchased gas cost filings and encouraged utilities to address such issues in separate proceedings. *See also* the Opinion and Order of the Commission entered September 28, 2005 at R-00050272.

§62.181

The first sentence of the proposed regulation is superfluous and states a policy or opinion which may not be a proper function of a regulation. In the alternative, Equitable proposes that the first sentence of Section 62.181 be revised to read as follows:

> The use of a common set of business practices, including standard supplier tariffs, facilitates the participation of NGSs in the Natural Gas Choice Retail Market, reduces the potential for mistakes or misunderstandings between NGSs and NGDCs, and increases efficiency in industry operations.

§62.182

Equitable proposes modifications to several of the proposed definitions presented in Section 62.182. Equitable also proposes two new definitions: Natural Gas Choice Retail Market and Cash In. The definitions for which Equitable proposes modifications are presented as follows with the additional definitions for the Natural Gas Choice Retail Market and Cash In presented thereafter.

Modified Definitions

Asset management – A function of the system operations of an NGDC relative to daily NGS load forecasting and pipeline interactions relating to nominations, capacity, storage, delivery, balancing, reconciliation, penalties, forecasts and customer requirements, to assure safe, reliable natural gas service to the end user.

Cash out - A generic term used to describe the corrective measures taken when a NGS's imbalance of natural gas supply in an NGDCs distribution system is less than the prescribed tolerance.

City gate - Identified location on an NGDC's distribution system where a NGDC receives and measures gas from a pipeline company or local producer.

SCT - Supplier coordination tariff - The formal rules and regulations of an NGDC for providing NGS service to customers. The SCT contains a compilation of all of the effective NGS service rate schedules of the NGDC and the general terms and conditions for providing NGS service. The SCT may be a separate tariff or part of the NGDCs general tariff on file with the Commission

Storage – Stored gas that has been transferred from its original location to storage reservoirs.

New Definitions

Cash in – A generic term used to describe the corrective measures taken when a NGS's imbalance of natural gas supply in the NGDC's distribution system is greater than the prescribed tolerance.

Natural Gas Choice Retail Market - The residential and small business market for natural gas. As defined in Section 52 Pa. Code § 62.72 and here, a small business customer is a business entity that receives natural gas service under a small commercial, small industrial or small business rate classification, and whose aggregate maximum registered annual consumption classification with the NGDC was less than 300 Mcfs, or equivalent, over the last 12 months.

§62.183

Section 62.183(b) provides that copies of the NGDC's customer choice system operations plan shall be provided upon request and made available to the public on the NGDC's website. Equitable believes that website availability is sufficient and that the first part of the second sentence of Section 62.183(b) may be deleted with the second sentence reading as follows:

The plan shall be made available to the public on the NGDC's website.

Additionally, subsections (a) and (c) provide for the filing of a customer choice system operation plan, as well as an SCT. The subsections do not identify a timeline or deadline for the filing of the plan and SCT. The Commission's Order entered May 1, 2009 explains, however, that the Commission intends to initiate a stakeholder process to be used to develop a standard SCT and make recommendations for the adoption of standard business practices for the retail market. In light of the foregoing, Equitable proposes that the filing of the NGDC's operations plan and SCT be delayed until the conclusion of the stakeholder process and that the proposed regulation be modified to delay these filings until the conclusion of that process.

§62.184

Section 62.184 is titled "NGDC Cost Recovery" and proposes to allow an NGDC to establish a nonbypassable reconcilable surcharge designed to recover the reasonable and prudently incurred costs of implementing and promoting natural gas competition within the Commonwealth. There is no definition of "costs" in either this section or in Section 62.182. An explanation of what the Commission deems are appropriate "costs" should be considered and, ultimately, included in any final version of this section. Additionally, as presented in the general comments above, Section 62.184 would create a nonbypassable reconcilable surcharge to be filed by the NGDC as part of its next Section 1307(f) filing with the surcharge then being calculated and reviewed "in conjunction with" the annual 1307(f) process. The consolidation of the surcharge calculation and review "in conjunction with" the annual 1307(f) process is inconsistent with recent Commission Orders declining to expand the 1307(f) process beyond purchased gas cost consideration and recovery as previously mentioned in footnote 4 above.

Equitable believes that the Commission should reconsider whether it is appropriate to include consideration of the recovery surcharge in the context of a 1307(f) proceeding or whether a separate periodic proceeding would offer a more focused and streamlined means of approving a cost recovery mechanism if requested by an NGDC under these rules.

Section 62.184(c) provides as follows: The surcharge shall be recovered on a per unit basis on each unit of commodity which is sold or transported over its distribution system without regard to the customer class of the end user. Consistent with Equitable's recommendation for the definition of the Natural Gas Choice Retail Market, Section 62.184(c) should be revised to clarify that the surcharge should be determined and recovered from Natural Gas Choice Retail Market eligible customers only. Non-Choice customers, such as interruptible large commercial and industrial customers, should be excluded from the assessment of this surcharge. Indeed, attempting to recover costs from such customers guarantees that Equitable will not be made whole, as Equitable operates in a highly competitive marketplace where only a few cents can determine whether a customer switches service to other fuels or seeks to bypass the NGDC entirely.

Section 62.184 (d) provides that before instituting the surcharge, an NGDC shall remove the amounts attributable to promoting retail competition from its base rates. This may be done through a 66 Pa.C.S. § 1308 (relating to voluntary changes in rates) rate case filed not less than 5 years after first seeking recovery through a 66 Pa.C.S. § 1307 nonbypassable mechanism. Equitable's most recent rate case filing was decided by Commission Order entered February 26, 2009 at Docket No. R-2008-2029325. The Order approved a black box settlement. Equitable, accordingly, has no readily identifiable amounts attributable to promoting retail competition in base rates. Equitable is concerned that the regulations as structured would preclude the recovery by Equitable of reasonably and prudently incurred costs of implementing and promoting natural gas competition as contemplated by this rulemaking. Equitable requests that the Commission clarify the regulation to provide that an NGDC shall remove the amounts attributable to promoting retail competition from its base rates if they can be identified.

Consistent with the foregoing, Equitable proposes that the Commission modify Section 62.184(e) to read as follows:

> Until an NGDC which seeks a nonbypassable recovery of its costs of promoting retail competition files a base rate case under 66 Pa.C.S. § 1308(d)(relating to general rate increases), the NGDC shall eliminate the effect of recovery of these costs in base rates, if identifiable, though the filing of a credit to its base rates equal to the amount in base rates. This may be accomplished through the use of a revenue neutral adjustment clause that would credit base rates for the costs associated with promoting retail competition that may be currently reflected in base rates. Costs would be fully recoverable through a nonbypassable reconcilable surcharge. The adjustment clause would be established through the filing of a fully allocated cost of service study and a proposed tariff rider in the NGDC's proceeding under 66 Pa.C.S. § 1307(f). The credit and surcharge shall be adjusted not less than annually through the 66 Pa.C.S. § 1307(f) process.

§62.185

Equitable suggests that the filing and implementation of an SCT and best business practices should be delayed until the conclusion of the stakeholder process and that the proposed regulation be modified to delay these filings until the conclusion of that process.

Equitable submits the following comments in regard to the standards presented in Section 62.185(c)(3):

Imbalance trading - For computational purposes related to balancing, the FPS pools and GDS pools tolerances should be calculated separately. Due to the firm service level requirement, FPS pools are balanced daily, while interruptible GDS pools are balanced monthly.

Tolerance bands –Equitable Gas currently allows a tolerance band of 3.5% of the FPS pool's RNQ, before assessing a $0.25 per Mcf penalty. If the NGS does not deliver the RNQ, each Dth of imbalance is cashed in or cashed out on a daily basis. Due to the firm service requirement of customers in FPS pools, strict tolerance bands are necessary to ensure that NGS's meet firm customers' daily delivery requirements. Increasing the tolerance band from 3.5% to 10.0% for all transportation customers would require Equitable to procure approximately $2.3 million of incremental annual upstream pipeline capacity, or no-notice service, in order to maintain the same level of operational flexibility which currently exits on Equitable's system.

Cash out and penalties – Due to the firm service requirement of FPS customers, strict cash out and penalty provisions are necessary to ensure NGS's meet firm customers' daily delivery requirements.

Vice Chairman Christy's Statement requested that parties address the potential costs involved to implement the directives of this rulemaking. In addition to the costs associated with modifying the tolerance bands discussed previously, Equitable estimates that an incremental $1 million may be incurred in order to implement electronic data communication standards and formats discussed in NAESB documents reviewed by Equitable.