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75th anniversary

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March 12, 2010

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SECRETARY'S BUREAU

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

RE: Fuel Switching Working Group; Docket No. M-00051865

Dear Secretary McNulty:

Please find enclosed the original and fifteen (15) copies of the Reply Comments of the Industrial Energy Consumers of Pennsylvania ("IECPA"), Central Penn Gas Large Users Group ("CPGLUG"), Columbia Industrial Intervenors ("CII"), Duquesne Industrial Intervenors ("DII"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"), PNG Industrial Intervenors ("PNGII"), PP&L Industrial Customer Alliance ("PPLICA"), UGI Industrial Intervenors ("UGIII"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customer Groups") in the above-referenced proceeding.

Please date stamp the extra copy of this transmittal letter and Reply Comments and kindly return them for our filing purposes.

Very truly yours,

McNEES WALLACE & NURICK LLC

By Pamela C. Polacek

Pamela C. Polacek
Saad A. Syed

Counsel to the Industrial Customer Groups

PCP/km
Enclosure

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Fuel Switching Working Group : Docket No. M-00051865

REPLY COMMENTS OF THE INDUSTRIAL CUSTOMER GROUPS

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Dated: March 12, 2010

I. INTRODUCTION

On December 10, 2009, the Pennsylvania Public Utility Commission ("PUC" or "Commission") issued a Secretarial Letter creating the Fuel Switching Working Group ("Working Group"). The primary issues for the Working Group relate to potential energy savings available by switching fuels and whether fuel switching measures should be included in Electric Distribution Companies' ("EDCs") Energy Efficiency and Conservation ("EE&C") Plans. A subset of the Working Group members drafted and circulated a report on specific fuel switching programs. Parties were given an opportunity to file Comments. Although not specifically addressed in the report, several parties used the Comments as a vehicle to argue for the establishment of conservation plans by National Gas Distribution Companies ("NGDCs") that mirror the EDC EE&C Plans.[1] The Industrial Energy Consumers of Pennsylvania ("IECPA"), Central Penn Gas Large Users Group ("CPGLUG"), Columbia Industrial Intervenors ("CII"), Duquesne Industrial Intervenors ("DII"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"), PNG Industrial Intervenors ("PNGII"), PP&L Industrial Customer Alliance ("PPLICA"), UGI Industrial Intervenors ("UGIII"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customer Groups") hereby submit these Reply Comments to address the issue of conservation plans for NGDCs.

[1] Although not addressed in the report, this issue was included in the December 10, 2009, Secretarial Letter.

II. COMMENTS

The Keystone Energy Efficiency Alliance ("KEEA") and the Pennsylvania Utility Law Project ("PULP") suggest that NGDCs should have conservation requirements similar to EDCs. KEEA and PULP argue that NGDC conservation plans should be required because there are state and federal policies promoting conservation, citing Pennsylvania's Act 129 as an example. KEEA asserts that an unnamed Commonwealth Court case from "about ten years ago" indicates "as long as there is no cross-subsidization between customer classes, the authority rests with the Commission to enact demand side and conservation programs."[2] Although the Industrial Customer Groups support the examination and pursuit of cost-effective conservation and efficiency projects by individual commercial and industrial customers, the establishment of gas conservation programs is not appropriate for larger customers. The Industrial Customer Groups reserve the opportunity to address additional issues in subsequent phases of this proceeding as necessary.

A. Act 129 Does Not Establish A Pennsylvania Policy in Favor of Mandatory Gas Conservation Plans.

PULP and KEEA argue that Act 129 supports the Commission's pursuit and approval of gas conservation plans. For example, PULP "suggests a parallel requirement [concerning conservation] for natural gas distribution companies"[3] to mirror the programs mandated for EDCs under Act 129. Contrary to the KEEA's and the PULP's suggestion, however, Act 129 does not authorize or contemplate mandatory NGDC conservation plans; rather, the Pennsylvania Legislature explicitly applies the requirement to EDCs.[4] If the Legislature intended for the Commission to establish a similar program structure for NGDCs, with

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[2] See KEEA Comment at 3.
[3] PULP Comments at 1; see also KEEA Comments at 1-2.
[4] See 66 Pa. C.S. § 2806.1(b).

mandatory reduction targets and NGDC fines for non-compliance, the Legislature would have addressed both in Act 129. Thus, although valid reasons may exist for NGDCs to pursue targeted conservation efforts, those efforts need not apply to all customer classes nor be as expansive as the EDCs' EE&C Plans under Act 129. Act 129 should not be used as the template for NGDC conservation proposals.

B. Mandatory Natural Gas Conservation Programs Would Not be Prudent or Cost-Effective for Large Industrial Customers Within the Meaning of Section 1319.

KEEA claims in its Comments that "the Commission has the authority to undertake gas conservation as determined by the Commonwealth Court case about ten year ago that involved the Industrial Energy Consumers of Pennsylvania."[5] The Industrial Customer Groups believe that KEEA is referring to Pa. Indus. Energy Coal. v. Pa. Pub. Util. Comm'n (Pa. Commw. Ct. 1995) *aff'd*, 670 A.2d 1152 (Pa. 1996). In that case, the Commonwealth Court held that the Commission has authority pursuant to Section 1319 to approve demand-side management ("DSM") programs that are prudent and cost-effective,[6] and to allow an EDC to recover certain types of expenses related to those plans. KEEA's conclusion that the Pa. Indus. Energy Coal. case establishes that the only issue of concern in approving electric or gas conservation programs is "cross-subsidization between customer classes" vastly misstates the analysis that the Commission must perform prior to approving a program.

Section 1319 authorizes the recovery of specific categories of "prudent and reasonable costs" related to conservation and load management programs that the Commission determines are "prudent and cost-effective." Several important distinctions exist between the natural gas and electric supply markets that may indicate that establishment of NGDC conservation programs for

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[5] KEEA Comment at 3.
[6] Pa. Indus. Energy Coal., 653 A.2d at 1346-47.

larger customers may not be "prudent and cost-effective" despite the Commonwealth Court's action in Pa. Indus. Energy Coal. and the Legislature's enactment of Act 129.

First, the Pa. Indus. Energy Coal. case was decided before the restructuring of the electricity markets. At that time, the Commission engaged in integrated resource planning for electricity that examined projected electricity demand over the next 20 years, and the relative benefits of meeting that demand through either DSM programs or the construction of additional generation capacity. The Pa. Indus. Energy Coal. decision itself references the data supplied by EDCs under Section 524 of the Public Utility Code for this purpose, which included (among other items):

> (3) A year-by-year examination of the potential for promoting and ensuring the full utilization of all practical and economical energy conservation for the next 20 years and a discussion of how existing and planned utility programs do or do not adequately reach this potential. Such programs should include, but not be limited to, educational, audit, loan, rebate, third-party financing and load management efforts to shift load from peak to off-peak periods.
>
> (4) An explanation of how the utility has integrated all demand-side and supply-side options to derive a resource mix to meet customer demand.[7]

Through the approval of rates, the Commission ultimately determined whether a supply side or a demand side option was most prudent and cost-effective for customers to meet the changes in electric demand.

In the context of natural gas, the Commission does not engage in this type of localized planning for supply alternatives. Although some gas supplies are locally produced, much of the natural gas used in Pennsylvania comes from the interstate pipeline system and wells located in distant regions. The prices for locally-produced gas also are often dictated by wholesale prices at Henry Hub or other trading hubs located outside Pennsylvania. Unlike the electric supply

[7] 66 Pa. C.S. § 524 (a)(3)-(4).

function during the integrated resource planning regime, the PUC does not have jurisdiction to order the drilling of additional wells in Pennsylvania or in the other regions that feed the interstate pipelines. Similarly, the Commission cannot order new interstate pipeline construction to transport more gas to Pennsylvania. Thus, the determination of whether a program is cost-effective and prudent may not be as clear as the determination in Pa. Indus. Energy Coal. due to the absence of the alternative to meet additional natural gas demand through a PUC-endorsed supply-side alternative.

Second, under integrated resource planning prior to electric industry restructuring, the choice between balancing supply and demand with a generation resource or a DSM program had a direct impact on customers' rates. Even after restructuring, some parties assert that part of the purported justification for the Act 129 EE&C Plans is an anticipated overall reduction to PJM market prices. In contrast, a natural gas conservation program would not have a direct and verifiable impact on the natural gas supply rates paid by Pennsylvania customers. Wholesale natural gas prices are determined by national, if not global, market conditions. Electric supply rates are determined by a more localized regional market where events in Pennsylvania that reduce electric demand could impact wholesale market prices.

Third, unlike electricity where rates have been capped, natural gas customers have been exposed to market pricing for many years. In the aftermath of Hurricanes Katrina and Rita when the commodities markets experienced drastic spikes in natural gas prices, many large customers began to pursue and implement cost-effective conservation measures. If a particular conservation measure was not cost-effective when gas prices were $10/mcf, it is doubtful that the measure will be cost-effective with today's lower market prices. As previously discussed, because natural gas supply pricing is influenced by broader markets that extend beyond

Pennsylvania, the primary, if not sole, beneficiary of a conservation initiative is the individual gas user that pursues the measure. As such, government-imposed conservation programs are unnecessary and seek to only reward those who have not yet made a prudent business decision by allowing them to profit from subsidies paid by other customers to support the program. This is especially inequitable when a manufacturer that invested in a conservation initiative is required to subsidize a competing company that did not.

III. CONCLUSION

WHEREFORE, Industrial Energy Consumers of Pennsylvania, Central Penn Gas Large Users Group, Columbia Industrial Intervenors, Duquesne Industrial Intervenors, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, Philadelphia Area Industrial Energy Users Group, Philadelphia Industrial and Commercial Gas Users Group, PNG Industrial Intervenors, PP&L Industrial Customer Alliance, UGI Industrial Intervenors, and West Penn Power Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Reply Comments, and forego the implementation of mandatory NGDC conservation programs.

Respectfully submitted,

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